



Broadcasting Decision CRTC 2011-586

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Route reference: Part 1 application posted on 18 April 2011

Ottawa, 15 September 2011

Novus Entertainment Inc.
Metro Vancouver, British Columbia

Application 2011-0661-7, received 8 April 2011

Class 1 broadcasting distribution undertaking in Metro Vancouver – Licence amendment

*The Commission **denies** the application by Novus Entertainment Inc. to amend the broadcasting licence for its Class 1 broadcasting distribution undertaking serving Metro Vancouver to authorize it to distribute the non-Canadian pay service NFL Sunday Ticket without having to receive the service through a licensed pay-per-view (PPV) service provider or obtaining a PPV licence.*

The application

1. The Commission received an application by Novus Entertainment Inc. (Novus) to amend the broadcasting licence for its Class 1 broadcasting distribution undertaking (BDU) serving Metro Vancouver to authorize it to distribute the non-Canadian pay service NFL Sunday Ticket without having to receive the service through a licensed pay-per-view (PPV) service provider or obtaining a PPV licence.
2. Novus submitted that based on its experience PPV licensees act as gatekeepers by making it difficult and unaffordable for smaller BDUs to acquire popular discretionary services such as NFL Sunday Ticket, NHL Center Ice and certain movie services. Novus further indicated that due to its size a business case could not be made for it to become a licensed PPV service provider. In particular, according to Novus, the obligation to contract for additional programming services to provide a Canadian component to such a service would be beyond the company's resources. Novus submitted that BDUs should have the option of acquiring pay services like those mentioned above in the most efficient manner, including directly from the rights holders.

Interventions and applicant's reply

3. The Commission received interventions in opposition to the application from Bell Canada, Rogers Communications Partnership, Saskatchewan Telecommunications and Shaw Communications Inc. The interventions and the

applicant's reply can be found on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

4. The interveners were generally in agreement that allowing Novus to contract directly for the purchase of non-Canadian programming services would place existing PPV licensees with regulatory obligations at a competitive disadvantage.
5. In its reply comments, Novus noted that it had made arrangements to be able to continue to distribute NFL Sunday Ticket to its subscribers. Novus added that it had only made its current application to explore the possibility of an alternative solution.

Commission's analysis and determinations

6. The Commission notes that NFL Sunday Ticket is currently being distributed by BDUs that are either licensed Canadian PPV service providers or have negotiated a contract to purchase the service from a licensed PPV service provider. Licensed PPV service providers are generally required by condition of licence to fulfill several obligations in order to advance the objectives of the *Broadcasting Act* (the Act), such as making a contribution to Canadian programming and ensuring that a percentage of Canadian content is made available on their PPV platforms.
7. The Commission considers that approving the application would give Novus a competitive advantage over licensed PPV service providers as Novus could choose to distribute the most profitable programming while not having the obligations that the Commission imposes on licensed PPV service providers.
8. The Commission further notes that Novus may obtain the programming services it identified in its application through other means. Specifically, Novus could choose to become a PPV service provider and to contribute, like other PPV service providers, to the achievement of the objectives of the Act. Alternatively, Novus could choose to negotiate an agreement to purchase the services from one of several existing licensed PPV service providers.
9. Finally, the Commission is not persuaded, based on the evidence, that the authorization requested by Novus is necessary.
10. In light of the above, the Commission **denies** the application by Novus Entertainment Inc. to amend the broadcasting licence for its Class 1 BDU serving Metro Vancouver to authorize it to distribute the non-Canadian pay service NFL Sunday Ticket without having to receive the service through a licensed PPV service provider or obtaining a PPV licence.

Secretary General