



## Broadcasting Decision CRTC 2011-752

PDF version

Route reference: 2011-427

Additional reference: 2011-427-1

Ottawa, 7 December 2011

### **Canyon.TV Incorporated**

Across Canada

*Applications 2011-0858-0 and 2011-0870-5, received 18 May 2011*

*Public hearing in the National Capital Region*

*19 September 2011*

### **Terrestrial and direct-to-home pay-per-view services**

*The Commission **approves** applications for broadcasting licences to operate a national, English-language terrestrial pay-per-view (PPV) programming undertaking and a national, English-language direct-to-home PPV programming undertaking.*

#### **The applications**

1. The Commission received applications by Canyon.TV Incorporated (Canyon.TV) for broadcasting licences to operate a national, English-language terrestrial pay-per-view (PPV) programming undertaking and a national, English-language direct-to-home (DTH) PPV programming undertaking to be known as Canyon TV. The Commission did not receive any interventions in connection with these applications.
2. Canyon.TV is owned and controlled by Mr. Warren Walsh, a Canadian within the meaning of the *Direction to the CRTC (Ineligibility of non-Canadians)*.
3. The applicant indicated that the new PPV services would provide a wide range of programming, from news and documentaries to film and music. It proposed to draw programming from the following program categories set out in Item 6 of Schedule I to the *Pay Television Regulations, 1990*, as amended from time to time: 1, 2(a), 2(b), 3, 4, 5(a), 5(b), 6(a), 6(b), 7(a), 7(b), 7(c), 7(d), 7(e), 7(f), 7(g), 8(a), 8(b), 8(c), 9, 10 and 11.<sup>1</sup>

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<sup>1</sup> In Broadcasting Regulatory Policy 2011-401, the Commission formally announced that it had amended program category 11 to add a new category 11(b) Reality television. Consistent with this change, the Commission has added an authorization to broadcast programming from both 11(a) General entertainment and human interest and the new 11(b) program category.

4. While indicating that the programming would be predominantly in the English language, Canyon.TV made a commitment to offer programming in French when available.
5. Canyon.TV stated that it would provide closed captioning of its PPV programming to serve the needs of viewers who are deaf or hard of hearing. The applicant indicated that it would ensure that all English- and French-language titles in its inventory are closed captioned beginning in the first year of the licence term. The applicant also stated that it would make its PPV programming accessible for persons with visual impairments by adhering to the standard expectations related to described video and audio description.

### **Commission's decision**

6. The Commission is satisfied that the applications are in conformity with the licensing framework for PPV services set out in Public Notice 2000-172. Accordingly, the Commission **approves** the application by Canyon.TV Incorporated for a broadcasting licence to operate a national, English-language terrestrial PPV programming undertaking. The terms and **conditions of licence** are set out in Appendix 1 to this decision. The Commission also **approves** the application by Canyon.TV Incorporated for a broadcasting licence to operate a national, English-language DTH PPV programming undertaking. The terms and **conditions of licence** are set out in Appendix 2 to this decision.

### **Closed captioning**

7. In Broadcasting Public Notice 2007-54, the Commission indicated that it would require all English- and French-language broadcasters to caption 100% of their programs over the broadcast day, with the exception of advertising and promos, beginning in the first year of the licence term. Accordingly, the Commission sets out a **condition of licence** to this effect in the appendices to this decision.
8. Further, in Broadcasting and Telecom Regulatory Policy 2009-430 (the Accessibility Policy), the Commission stated that it intends to require television licensees to abide by certain conditions of licence relating to closed captioning at the time of their next licence renewal. However, as these are new services, the Commission requires the applicant to immediately adhere to the quality standards on closed captioning developed by the television industry's working groups and implement a monitoring system to ensure that, for any signal that is closed captioned, the correct signal is captioned, the captioning is included in its broadcast signal and this captioning reaches the distributor of that signal in its original form. **Conditions of licence** to this effect are set out in the appendices to this decision.

### **Described video and audio description**

9. In the Accessibility Policy, the Commission indicated that those licensees that are currently required by condition of licence to provide described video would continue

to be subject to such a requirement. The Commission intends to consider expanding the types of services to which it will apply described video requirements in the future. For those services such as PPV services that do not currently have a condition of licence regarding described video, the Commission expects these services to acquire and make available described versions of programming whenever possible and to ensure that its customer service responds to the needs of persons with a visual impairment, as set out in the Accessibility Policy.

Secretary General

**Related documents**

- *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009
- *A new policy with respect to closed captioning*, Broadcasting Public Notice CRTC 2007-54, 17 May 2007
- *Introductory statement to Decisions CRTC 2000-733 to 2000-738: Licensing of new video-on-demand and pay-per-view services*, Public Notice CRTC 2000-172, 14 December 2000

*\*This decision is to be appended to each licence.*

# Appendix 1 to Broadcasting Decision CRTC 2011-752

## Terms, conditions of licence, expectations and encouragement

### Terms

#### Issuance of the broadcasting licence to operate a national, English-language terrestrial pay-per-view programming undertaking to serve communities across Canada

The licence will expire 31 August 2018.

A licence for this undertaking will be issued once the applicant has informed the Commission in writing that it is prepared to commence operations. The undertaking must be operational at the earliest possible date and, in any event, no later than 24 months from the date of this decision, unless a request for an extension of time is approved by the Commission before 7 December 2013. In order to ensure that such a request is processed in a timely manner, it should be submitted at least 60 days before that date.

### Conditions of licence

1. The licensee shall provide a national, English-language, terrestrial pay-per-view (PPV) programming service consisting of a wide range of programming, from news and documentaries to film and music programming. The service shall consist of programming drawn exclusively from the following categories set out in Item 6 of Schedule I to the *Pay Television Regulations, 1990*, as amended from time to time:
  - 1 News
  - 2 (a) Analysis and interpretation  
(b) Long-form documentary
  - 3 Reporting and actualities
  - 4 Religion
  - 5 (a) Formal education and pre-school  
(b) Informal education/Recreation and leisure
  - 6 (a) Professional sports  
(b) Amateur sports
  - 7 Drama and comedy
    - (a) Ongoing drama series
    - (b) Ongoing comedy series (sitcoms)
    - (c) Specials, mini-series or made-for-TV feature films
    - (d) Theatrical feature films aired on TV
    - (e) Animated television programs and films
    - (f) Programs of comedy sketches, improvisations, unscripted works, stand-up comedy
    - (g) Other drama
  - 8 (a) Music and dance other than music video programs or clips  
(b) Music video clips  
(c) Music video programs

- 9 Variety
  - 10 Game shows
  - 11 (a) General entertainment and human interest
  - (b) Reality television
2. The licensee shall adhere to the *Pay Television Regulations, 1990*, as amended from time to time, with the exception of sections 4(1), 4(2) and 4(3) pertaining to logs and records.
  3. The licensee shall maintain for a period of one year and submit to the Commission upon request a detailed list of programs broadcast on each channel. The list must identify each program broadcast; its key features; its programming category; if the program is an event; the language of the program; if it is Canadian or non-Canadian; if captioning and/or video description is available; if it is produced by the licensee; and the times and dates of broadcast.
  4. With respect to English-language programming, the licensee shall, through its agreements with the licensees of terrestrial broadcasting distribution undertakings, ensure that the following is made available by these licensees to their PPV subscribers in each broadcast year:
    - a. a minimum of 12 Canadian feature films (including all new Canadian feature films suitable for PPV exhibition that meet the *Industry code of programming standards and practices governing pay, pay-per-view and video-on-demand services*);
    - b. a minimum of 4 English-language Canadian-based events; and,
    - c. the following minimum percentages of Canadian programs: 5% of feature film titles and 20% of all program titles other than feature films.
  5. With respect to any French-language programming offered, the licensee shall, through its agreements with the licensees of terrestrial broadcasting distribution undertakings, ensure that the following is made available by these licensees to their PPV subscribers in each broadcast year:
    - a. a minimum of 20 Canadian feature films in the original French-language version, or dubbed in French, which have been exhibited in theatres in French-language markets (including all new Canadian feature films suitable for PPV exhibition that meet the *Industry code of programming standards and practices governing pay, pay-per-view and video-on-demand services*);
    - b. a minimum of 12 French-language events; and,
    - c. the following minimum percentages of Canadian programs: 8% of feature film titles, and 20% of all program titles other than feature films.

6. The licensee shall ensure that both English-language and French-language Canadian feature films are scheduled, repeated and promoted in the same manner as non-Canadian feature films.
7. The licensee shall contribute a minimum of 5% of its gross annual revenues derived from its PPV broadcasting activities to one or more independently-administered Canadian production fund or funds to support the development of Canadian programming, provided that these funds meet the criteria set out in *Contributions to Canadian Programming by Broadcasting Distribution*, Public Notice CRTC 1997-98, 22 July 1997, as amended from time to time. Contributions shall take the form of monthly instalments, to be remitted within 45 days of month's end, and shall represent a minimum of 5% of that month's gross revenues.
8. The licensee shall remit to the rights holders of all English-language Canadian films and two Canadian-based events per year 100% of the gross revenues earned by the licensee from the exhibition of these films and events. With respect to French-language Canadian feature films, the licensee shall remit 100% of the gross revenues earned by the licensee from the exhibition of these films to distributors and providers with a minimum of 60% to the programming providers.
9. The licensee shall not enter into an affiliation agreement with the licensee of a terrestrial distribution undertaking unless the agreement incorporates a prohibition against the linkage of the licensee's PPV service with any non-Canadian discretionary service.
10. The licensee shall caption 100% of the programming aired during the broadcast day, consistent with the approach set out in *A new policy with respect to closed captioning*, Broadcasting Public Notice CRTC 2007-54, 17 May 2007.
11. The licensee shall adhere to the quality standards on closed captioning developed by the television industry's working groups, as amended from time to time and approved by the Commission.
12. The licensee shall have a monitoring system in place to ensure that, for any signal that is closed captioned, the correct signal is captioned, the captioning is included in its broadcast signal and this captioning reaches the distributor of that signal in its original form. "Original form" means, at a minimum, that the captioning provided by the licensee reaches the distributor unaltered, whether it is passed through in analog or in digital, including in high definition.
13. The licensee shall adhere to the Canadian Association of Broadcasters' *Equitable Portrayal Code*, as amended from time to time and approved by the Commission. However, the application of the foregoing condition of licence will be suspended if the licensee is a member in good standing of the Canadian Broadcast Standards Council.

14. The licensee shall adhere to the *Pay television and pay-per-view programming code regarding violence*, as amended from time to time and approved by the Commission.
15. The licensee shall adhere to the *Industry code of programming standards and practices governing pay, pay-per-view and video-on-demand services*, as amended from time to time and approved by the Commission.

## **Expectations**

### **Program offering in both official languages**

The Commission expects the licensee to make its program offering available to customers in both official languages. The Commission expects the licensee to adhere to its commitment to offer French-language programming when available.

### **Programming packages**

The Commission expects the licensee to limit to one week the total period during which the programming in programming packages may be viewed with the exception of packages of events programming such as seasonal sports or concert series.

### **Adult programming**

The Commission expects the licensee to adhere to its internal policy on adult programming as approved by the Commission. The Commission further expects that any future changes made by the licensee to its internal policy on adult programming will be submitted for Commission approval prior to their implementation.

### **Cultural diversity**

The Commission expects the licensee to endeavour, through its programming and employment opportunities, to reflect the presence in Canada of ethnocultural minorities, Aboriginal peoples, and persons with disabilities. The Commission further expects the licensee to ensure that the on-screen portrayal of such groups is accurate, fair and non stereotypical.

### **Service to persons who are blind or whose vision is impaired**

The Commission expects the licensee to provide an audio description of all programming that provides textual or graphic information, including programming broadcast on the barker channel. The Commission also expects the licensee to acquire and make available described versions of programming, where possible, and to ensure that its customer service responds to the needs of visually impaired customers.

## **Encouragement**

### **Employment equity**

In accordance with *Implementation of an employment equity policy*, Public Notice CRTC 1992-59, 1 September 1992, the Commission encourages the licensee to consider employment equity issues in its hiring practices and in all other aspects of its management of human resources.

## Appendix 2 to Broadcasting Decision CRTC 2011-752

### Terms, conditions of licence, expectations and encouragement

#### Terms

##### Issuance of the broadcasting licence to operate a national, English-language direct-to-home pay-per-view programming undertaking to serve communities across Canada

The licence will expire 31 August 2018.

A licence for this undertaking will be issued once the applicant has informed the Commission in writing that it is prepared to commence operations. The undertaking must be operational at the earliest possible date and, in any event, no later than 24 months from the date of this decision, unless a request for an extension of time is approved by the Commission before 7 December 2013. In order to ensure that such a request is processed in a timely manner, it should be submitted at least 60 days before that date.

#### Conditions of licence

1. The licensee shall provide a national, English-language direct-to-home (DTH) pay-per-view (PPV) programming service consisting of a wide range of programming, from news and documentaries to film and music programming. The service shall consist of programming drawn exclusively from the following categories set out in Item 6 of Schedule I to the *Pay Television Regulations, 1990*, as amended from time to time.

- 1 News

- 2 (a) Analysis and interpretation

- (b) Long-form documentary

- 3 Reporting and actualities

- 4 Religion

- 5 (a) Formal education and pre-school

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- 7 Drama and comedy

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- (c) Specials, mini-series or made-for-TV feature films

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  - 9 Variety
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2. The licensee shall adhere to the *Pay Television Regulations, 1990*, as amended from time to time, with the exception of sections 4(1), 4(2) and 4(3) pertaining to logs and records.
  3. The licensee shall maintain for a period of one year and submit to the Commission upon request a detailed list of programs broadcast on each channel. The list must identify each program broadcast; its key features; its programming category; if the program is an event; the language of the program; if it is Canadian or non-Canadian; if captioning and/or video description is available; if it is produced by the licensee; and the times and dates of broadcast.
  4. With respect to English-language programming, the licensee shall, through its agreements with the licensees of DTH broadcasting distribution undertakings, ensure that the following is made available by these licensees to their PPV subscribers in each broadcast year:
    - a. a minimum of 12 Canadian feature films (including all new Canadian feature films suitable for PPV exhibition that meet the *Industry code of programming standards and practices governing pay, pay-per-view and video-on-demand services*);
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6. The licensee shall ensure that both English-language and French-language Canadian feature films are scheduled, repeated and promoted in the same manner as non-Canadian feature films.
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