



Broadcasting Decision CRTC 2012-156

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Route reference: Part 1 application posted on 27 October 2011

Ottawa, 15 March 2012

8064750 Canada Inc.
Across Canada

Application 2011-1417-3

FX Canada – Licence amendment

*The Commission **approves** an application by 8064750 Canada Inc. to amend the broadcasting licence for the national, English-language specialty Category B service FX Canada to add certain program categories to the list of categories from which it may draw programming.*

The application

1. The Commission received an application by 8064750 Canada Inc.¹ to amend the broadcasting licence for the national, English-language specialty Category B service FX Canada in order to add the following program categories, as set out in item 6 of Schedule I to the *Specialty Services Regulations, 1990*, to the list of categories from which it may draw programming:
 - 6(a) Professional sports
 - 6(b) Amateur sports
 - 7(e) Animated television programs
 - 7(f) Programs of comedy sketches, improvisations, unscripted works and stand-up comedy
2. The applicant indicated that it would accept conditions of licence limiting programming drawn from each of program category 6(a) and 7(e) to no more than 10% of all programming broadcast during the broadcast month.
3. In its application, the applicant argued that the addition of the above categories would provide a degree of programming flexibility that is consistent with the Commission's approach as set out in Broadcasting Public Notice 2008-100. In addition, the applicant stated that the licence amendment would allow it to offer a more compelling, well-

¹ This application was initially filed by Rogers Broadcasting Limited (Rogers). In Broadcasting Decision 2011-783, the Commission approved an application by Rogers, on behalf of a corporation to be incorporated, for authority to acquire from Rogers the assets of FX Canada. The new licensee incorporated on 1 January 2012 under the name of 8064750 Canada Inc.

rounded service, attuned to the expectations and interests of viewers of the FX programming brand.

4. The Commission received two interventions in opposition to this application from Bell Media Inc. (Bell) and Score Media Inc. (SMI), to which the applicant replied. The public record for this proceeding can be found on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Commission's analysis and decision

5. After examining the application in light of applicable regulations and policies, the Commission considers that the issues it must address relate to the following:
 - whether the request is consistent with Broadcasting Public Notice 2008-100; and
 - whether the amendment is consistent with FX Canada's nature of service.

Is the request consistent with Broadcasting Public Notice 2008-100?

6. In its intervention, Bell stated that the application is not consistent with Broadcasting Public Notice 2008-100 and argued that the programming flexibility was intended for Category A services and not Category B services.
7. With respect to programming flexibility, the Commission stated in Broadcasting Public Notice 2008-100 that it would allow Category A services access to all program categories but that a standard limitation of 10% of the broadcast month would apply for the following categories:
 - 2(b) Long-form documentary;
 - 6(a) Professional sports;
 - 7 Drama and comedy;
 - 7(d) Theatrical feature films aired on television;
 - 7(e) Animated television programs or films; and
 - 8(b) and (c) combined – Music video clips and Music video programs.

In the same notice, the Commission stated that it would generally apply the same limitations to Category B services.

Is the amendment consistent with FX Canada's nature of service?

8. Bell expressed concerns that FX Canada would morph from a niche specialty service devoted to the action and adventure genre into a general interest specialty service. For its part, SMI opposed the addition of category 6(a) and 6(b). It argued that sports is clearly outside of FX Canada's nature of service and is concerned that the application is another attempt by the applicant to secure an extra window for mainstream sports programming.
9. The Commission considers that the onus is on the licensee to select programming that is consistent with its nature of service. The licensee must ensure that all of the programming

it broadcasts is consistent with its nature of service, and this would include any sports programming. Consistent with Broadcasting Public Notice 2008-100, the Commission considers that FX Canada's nature of service along with the standard limitations of 10% for program categories 6(a) and 7(e) are sufficient to ensure that the service does not become competitive with Category A services.

Conclusion

10. In light of the above, the Commission **approves** the application by 8064750 Canada Inc. to amend the broadcasting licence for the national, English-language specialty Category B service FX Canada in order to add the following program categories, as set out in item 6 of Schedule I to the *Specialty Services Regulations, 1990*, to the list of categories from which it may draw programming:

- 6(a) Professional sports
- 6(b) Amateur sports
- 7(e) Animated television programs
- 7(f) Programs of comedy sketches, improvisations, unscripted works and stand-up comedy

11. Consistent with the policy set out in Broadcasting Public Notice 2008-100, the Commission imposes the following **conditions of licence**:

The licensee shall devote no more than 10% of all programming broadcast during the broadcast month to programming drawn from category 6(a).

The licensee shall devote no more than 10% of all programming broadcast during the broadcast month to programming drawn from category 7(e).

Secretary General

Related documents

- *FX Canada – Acquisition of assets*, Broadcasting Decision CRTC 2011-783, 16 December 2011
- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services* – Regulatory Policy, Broadcasting Public Notice CRTC 2008-100, 30 October 2008

**This decision is to be appended to the licence.*