



## Broadcasting Decision CRTC 2012-247

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Route reference: 2011-694

Ottawa, 26 April 2012

### **GlassBOX Television Inc.**

Across Canada

*Application 2011-1207-8, received 18 August 2011*

*Public hearing in Calgary, Alberta*

*6 February 2012*

### **AUX 2 – Specialty Category B service**

*The Commission **approves** an application for a broadcasting licence to operate a specialty Category B service.*

#### **The application**

1. GlassBOX Television Inc. (GlassBOX) filed an application for a broadcasting licence to operate AUX 2, a national, English-language specialty Category B service that would be devoted to emerging music and its creation, including programming featuring emerging music and aimed at helping emerging musicians. The Commission did not receive any interventions in connection with this application.
2. GlassBOX is controlled by Michael MacMillan through his control of Blue Ant Media Inc., the majority shareholder in GlassBOX.
3. The applicant proposed to draw programming from the following program categories set out in Item 6 of Schedule I to the *Specialty Services 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, 11(a), 11(b), 12, 13 and 14.
4. To ensure that the proposed service would not be directly competitive with existing Category A services, the applicant indicated that it would adhere to the following conditions of licence:
  - The licensee shall devote no more than 15% of all programming broadcast in each broadcast month to programming drawn from categories 5(a), 7(a), 7(c), 7(d), 7(e), 7(f) and 10.
  - The licensee may rebroadcast non-educational emerging music programming that ceases to be emerging music programming with the following limitations:

- the total airtime of such programming shall not comprise more than 20% of all programming broadcast in each broadcast month;
  - such programming drawn from category 8(b) shall not comprise more than 25% of the time of any individual program; and
  - no more than six hours in each month shall be devoted to the rebroadcast of such programming in retrospective programs.
5. The licensee requested that AUX 2 adhere to the new definition of an emerging Canadian artist set out in Broadcasting Regulatory Policy 2011-316, which specifies that an artist retains the status of “Emerging Canadian Artist” for a period of 36 months from the date he/she reaches the positions on the music charts listed in Schedules A and B to that policy. The licensee also requested that AUX 2 be allowed to broadcast an unlimited amount of programming from category 8(b).

### **Commission’s analysis and decisions**

6. After examining the public record for this application in light of applicable regulations and policies, the Commission considers that the issue it must address is whether the proposed amendments would permit AUX 2 to be directly competitive with existing Category A services and in particular with MuchMusic.
7. In Broadcasting Decision 2011-83, the Commission denied GlassBOX’s request to delete AUX TV’s condition of licence 5 limiting to 35% the amount of programming that the service may draw from program category 8(b) and noted that approval of that licence amendment could permit the service to become directly competitive with the Category A service MuchMusic. GlassBOX had argued that the 35% limit was no longer required in light of an application submitted by CTV Limited (CTV), which sought to reduce from 50 to 25% of the broadcast week the amount of programming drawn from category 8(b) for broadcast on MuchMusic. However, the Commission notes that in Broadcasting Decision 2010-875, it denied CTV’s request to reduce MuchMusic’s minimum requirement of music video clips. In light of the foregoing, the Commission considers it appropriate that AUX 2 be subject to the same limit as AUX TV regarding the amount of programming it can draw from category 8(b).

### **Conclusion**

8. The Commission is satisfied that the application complies with all applicable policies, terms and conditions, including those set out in Public Notice 2000-6, Broadcasting Public Notice 2008-100, and Broadcasting Regulatory Policies 2010-786 and 2010-786-1. Accordingly, the Commission **approves** the application by GlassBOX Television Inc. for a broadcasting licence to operate the national, English-language specialty Category B service AUX 2. The Commission also **approves** the licensee’s request to adhere to the new definition of an emerging Canadian artist set out in Broadcasting Regulatory Policy 2011-316. The terms and **conditions of licence** are set out in the appendix to this decision.

9. However, the Commission **denies** the licensee's request to be permitted to draw an unlimited amount of programming from category 8(b) and imposes a limit of 35% on the amount of programming that AUX 2 may draw from that category in each broadcast month. A **condition of licence** to this effect is set out in the appendix to this decision.
10. The Commission notes that it has also released today Broadcasting Notice of Consultation 2012-246 in which it seeks comments on the possibility of opening the music genre to competition. Should the Commission choose to do so, AUX 2 may consider converting the licence authorized in this decision to a Category C licence.

### **Reminder**

11. The Commission reminds the applicant that distribution of this service is subject to the requirements set out in the *Broadcasting Distribution Regulations*.

Secretary General

### **Related documents**

- *Call for comments on opening up the programming genre of popular music to competition, and on proposed standard conditions of licence for competitive Canadian specialty Category C services operating in the genre of popular music*, Broadcasting Notice of Consultation CRTC 2012-246, 26 April 2012
- *Standard conditions of licence, expectations and encouragements for Category B pay and specialty services – Corrected Appendices 1 and 2*, Broadcasting Regulatory Policy CRTC 2010-786-1, 18 July 2011
- *Definition of emerging Canadian artists on commercial radio*, Broadcasting Regulatory Policy CRTC 2011-316, 12 May 2011
- *AUX TV – Licence amendment*, Broadcasting Decision CRTC 2011-83, 10 February 2011
- *MuchMusic – Licence amendments*, Broadcasting Decision CRTC 2010-875, 25 November 2010
- *Standard conditions of licence, expectations and encouragements for Category B pay and specialty services*, Broadcasting Regulatory Policy CRTC 2010-786, 25 October 2010
- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services – Regulatory policy*, Broadcasting Public Notice CRTC 2008-100, 30 October 2008
- *Licensing framework policy for new digital pay and specialty services*, Public Notice CRTC 2000-6, 13 January 2000

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

## Appendix to Broadcasting Decision CRTC 2012-247

### Terms and conditions of licence for the specialty Category B service AUX 2

#### Terms

A licence will be issued once the applicant has satisfied the Commission with supporting documentation that the following requirements have been met:

- the applicant has entered into a distribution agreement with at least one licensed distributor; and
- the applicant has informed the Commission in writing that it is prepared to commence operations and has provided the Commission with a launch date for the service. The undertaking must be operational at the earliest possible date and in any event no later than 48 months from the date of this decision.

The licence will expire 31 August 2018.

#### Conditions of licence

1. The licensee shall adhere to the conditions set out in Appendix 1 to *Standard conditions of licence, expectations and encouragements for Category B pay and specialty services – Corrected Appendices 1 and 2*, Broadcasting Regulatory Policy CRTC 2010-786-1, 18 July 2011, as amended from time to time.
2. (a) The licensee shall provide a national, English-language specialty Category B service devoted to emerging music and its creation, including programming featuring emerging music and aimed at helping emerging musicians.  
  
(b) The programming shall be drawn exclusively from the following program categories set out in Item 6 of Schedule I to the *Specialty Services 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 dramatic 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, improvisation, 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
  - 12 Interstitials
  - 13 Public service announcements
  - 14 Infomercials, promotional and corporate videos
- (c) The licensee shall devote no more than 15% of all programming broadcast in each broadcast month to programming drawn from categories 5(a), 7(a), 7(c), 7(d), 7(e), 7(f) and 10.
- (d) The licensee shall devote no more than 35% of all programming broadcast in each broadcast month to programming drawn from category 8(b).
- (e) The licensee may rebroadcast non-educational emerging music programming that ceases to be emerging music programming with the following limitations:
- the total airtime of such programming shall not comprise more than 20% of all programming broadcast in each broadcast month;
  - such programming drawn from category 8(b) shall not comprise more than 25% of the time of any individual program; and
  - no more than six hours in each month shall be devoted to the rebroadcast of such programming in retrospective programs.

3. The service approved hereby is designated as a Category B service.

For the purposes of the conditions of this licence:

“broadcast day” means the period of up to 18 consecutive hours, beginning each day not earlier than six o’clock in the morning and ending no later than one o’clock in the morning of the following day, as selected by the licensee, or any other period approved by the Commission.

“Educational emerging music programming” means informal or formal educational programming aimed at assisting musicians or potential musicians in their careers or musicianship, and does not include music videos.

“Non-educational emerging music programming” is defined as programming in which no performing artist who is the primary focus of that programming, except where that performing artist acts as a host, has charted or reached the top 40 position on any of the RPM 100 Singles until 3 September 1988, RPM Retail Singles from 10 September 1988 to 10 February 1990, Record Retail Singles until 1 April 1996, Canadian Music Network National Airplay, Billboard Hot 100 Singles or Billboard Canadian Hot 100, nor the top 25 position on any of the RPM 100 Country Tracks, The Record Country, Canadian Music Network Country Top 50 Audience, Billboard Hot Country or Nielsen BDS Country Spins more than 36 months prior to the date on which the programming aired.

“Artists” includes duos, trios or groups of artists operating under a defined identity, and if a member of a duo, trio or group begins a solo career or creates with other partners a new duo, trio or group with a newly defined identity, the solo artist, duo, trio or group should be considered an “emerging artist” according to the aforementioned criteria.