



Broadcasting Decision CRTC 2012-93

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Route reference: 2011-595

Additional reference: 2011-595-2

Ottawa, 14 February 2012

Corus Entertainment Inc., on behalf of a corporation to be incorporated Across Canada

*Application 2011-1244-0, received 31 August 2011
Public hearing in the National Capital Region
21 November 2011*

Harmony – Specialty Category B service

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

The application

1. Corus Entertainment Inc., on behalf of a corporation to be incorporated (Corus) filed an application for a broadcasting licence to operate Harmony, a national, English-language specialty Category B service that would be devoted to romance, love and relationships. The programming would include series based on relationships, feature films, mini-series, made-for-television movies and occasional magazine-style shows focusing on this genre and its stars.
2. The applicant will be controlled by Corus Entertainment Inc.
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: 2(a), 2(b), 3, 7(a), 7(b), 7(c), 7(d), 7(g), 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 accept a condition of licence whereby no more than 10% of all programming broadcast during the broadcast year would be drawn from program category 10 (game shows).
5. The Commission received an intervention in opposition to the application from ZoomerMedia Limited (Zoomer), to which the applicant replied. Zoomer is the licensee of the Category 1 service ONE Body Mind Spirit Love Channel (ONE). 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

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 Harmony would be directly competitive with existing Category A services.¹
7. In Public Notice 2000-6, the Commission implemented a competitive, open-entry approach to licensing Category 2 (Category B) services. While the Commission does not consider the impact that a Category B service might have on an existing Category B service, it does seek to ensure that Category B services do not compete directly with any existing Category A services.
8. In Public Notices 2000-171 and 2000-171-1, the Commission adopted a case-by-case approach to determining whether a proposed Category B service should be considered directly competitive with an existing Category A service. The Commission examines each application in detail, taking into consideration the proposed nature of service and the unique circumstances of the genre in question.
9. In its intervention, Zoomer stated that, since the rebranding of ONE, 20% of ONE's programming is devoted to shows about sexuality and relationships. Zoomer argued that the proposed service would therefore be in direct competition with ONE.
10. In its reply to the intervention, Corus put forth that the Commission previously determined that other Category B services with the same nature of service description as Harmony are not directly competitive with ONE. Corus argued that if Harmony were considered to be competitive with ONE, it would suggest that ONE is morphing into a service focusing on romance, love and relationships, contrary to its approved nature of service description.
11. The Commission notes that when determining whether a Category B service is competitive with a Category A service, it relies primarily on a comparison between the approved nature of service of the Category A service and the proposed nature of service of the Category B service.
12. In this regard, the Commission notes that Harmony's proposed nature of service differs substantially from ONE's nature of service as set out in the licensing decision (Decision 2000-450) and again in Broadcasting Decision 2010-193, which reads as follows:

The licensee shall provide a national English-language Category 1 specialty television service providing programming that discusses, reveals and explores the interconnectedness between body, mind and spirit. The programming will include

¹ In accordance with Broadcasting Public Notice 2008-100, as of 31 August 2011, Canadian analog and Category 1 pay and specialty services—services with access rights—are known as Category A services. The term "Category A" is used in this decision to encompass Category 1 and analog pay or specialty services.

holistic approaches to wellness, but not traditional, Western, medical theory or practices.

13. The Commission also notes that ONE's nature of service requires the licensee to draw a minimum of 70% of its programming from program category 5(b) Informal education/Recreation and leisure.
14. Given the substantial differences between the proposed nature of service for Harmony and ONE's nature of service, the Commission is of the view that the proposed service would not be competitive with ONE.
15. The Commission further notes that it recently approved a number of English-language Category B specialty services with the same nature of service description as Harmony.

Conclusion

16. 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 Corus Entertainment Inc., on behalf of a corporation to be incorporated for a broadcasting licence to operate the national, English-language specialty Category B service Harmony. The terms and **conditions of licence** are set out in the appendix to this decision.

Reminder

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

Secretary General

Related documents

- *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
- *Standard conditions of licence, expectations and encouragements for Category B pay and specialty services*, Broadcasting Regulatory Policy CRTC 2010-786, 25 October 2010
- *Vision TV – Acquisition of assets; CHNU-TV Fraser Valley and CIIT-TV Winnipeg – Change in effective control; ONE: The Body, Mind and Spirit Channel – Change in effective control; Classical Digital, CFZM, CFMZ-FM, CFMZ-DR-1 Toronto, and CFMX-FM Cobourg – Corporate reorganization*, Broadcasting Decision CRTC 2010-193, 30 March 2010

- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services* – Regulatory policy, Broadcasting Public Notice CRTC 2008-100, 30 October 2008
- *Vision TV: Canada's Faith Network, on behalf of a corporation to be incorporated to be known as Wisdom: Canada's Body, Mind and Spirit Channel*, Decision CRTC 2000-450, 14 December 2000
- *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 2012-93

Terms and conditions of licence for the specialty Category B service Harmony

Terms

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

- an eligible Canadian corporation has been incorporated in accordance with the application in all material respects;
- 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 licence will be subject to the conditions set out in *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.
2. a) The licensee shall provide a national, English-language specialty Category B service devoted to romance, love and relationships. The programming will include series based on relationships, feature films, mini-series, made-for-television movies and occasional magazine-style shows focusing on this genre and its stars.

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:
 - 2 (a) Analysis and interpretation
(b) Long-form documentary
 - 3 Reporting and actualities
 - 7 (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
(g) Other drama
 - 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 not devote more than 10% of all programming broadcast during the broadcast year to programming drawn from program category 10.

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.