



Broadcasting Decision CRTC 2014-414

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Ottawa, 6 August 2014

8094039 Canada Corp.

Across Canada

Application 2013-1194-3, received 23 August 2013

Public hearing in the National Capital Region

8 April 2014

Starlight – Specialty Category B service

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

Application

1. 8094039 Canada Corp. (8094039 Canada) filed an application for a broadcasting licence to operate Starlight, a national, English-language specialty Category B service that would be devoted to Canadian movies, in particular, feature films and documentaries intended for theatrical release. It would include Canadian feature films, Canadian feature documentaries, Canadian made-for-TV movies, and programs with or about Canadian creators. All feature films intended for theatrical distribution would be presented without commercial interruption.
2. 8094039 Canada is a private corporation controlled by its board of directors.
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), 5(b), 7(c), 7(d), 7(e), 8(b), 8(c), 12, 13 and 14.
4. To ensure that the service would not be directly competitive with existing Category A services, the applicant indicated that it would adhere, by condition of licence, to the following requirements:
 - Not more than 25% of the programming broadcast each broadcast month shall be drawn from program category 7(e) Animated television programs and films.
 - Not more than 10% of the programming broadcast each broadcast month shall be drawn from program categories 8(b) Music video clips and 8(c) Music video programs combined.

- During each broadcast month, not less than 85% of the entire programming broadcast, and not less than 85% of the programming broadcast during the evening broadcast period, shall be devoted to the broadcast of Canadian programs.
5. The Commission received interventions in support of this application, as well as an intervention offering general comments from the Canadian Broadcasting Corporation (CBC), on behalf of the English-language specialty Category A service known as *documentary*. It also received an intervention in opposition to the application from Corus Entertainment Inc. (Corus). The applicant replied collectively to the interventions from the CBC and Corus. The public record for this application can be found on the Commission's website at www.crtc.gc.ca or by using the application number provided above.

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 issues it must address are the following:
- Would Starlight be directly competitive with existing Category A services?¹
 - Should the Commission approve the request to devote up to 25% of the programming schedule to programs drawn from program category 7(e)?

Would Starlight be directly competitive with existing Category A services?

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 regard to the present application, interveners submitted that the proposed service could be deemed to be competitive with *documentary*, and with the English-language pay Category A services Movie Central and Encore Avenue.

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 or analog pay or specialty services.

documentary

10. According to the CBC, the combination of a broad nature of service with no limits on the broadcast of documentary programming would result in the service competing directly with its service *documentary*, for which the nature of service definition reads as follows:

The licensee shall provide a national, English-language specialty Category A programming undertaking to broadcast documentary programs on a 24-hour per day basis. Programming shall cover the full range of documentary experience.

11. The CBC submitted that, in addition to the limitations proposed by the applicant, the Commission should impose the 10% monthly limitation, set out in Broadcasting Public Notice 2008-100, on the broadcast of programming drawn from program category 2(b) Long-form documentary.
12. In its reply, 8094039 Canada, while expressing its strong support for the Canadian documentary sector, indicated that competing with *documentary* through the exhibition of program category 2(b) programming is not its intention. It argued that a cap on its broadcast of documentary programming is therefore unnecessary. In addition, it stated that the nature of service definition proposed for Starlight would ensure that it would not be able to compete directly with the CBC's service. Specifically, whereas it would be possible for Starlight to respect its nature of service definition by broadcasting programming only from program category 7 Drama and comedy (in particular, program category 7(d)), the broadcast of such programming on *documentary* is limited to six hours per broadcast week. The applicant submitted, however, that should the Commission determine that a limitation on the amount of programming drawn from program category 2(b) is necessary, the appropriate level would be 20% of the broadcast month.
13. In the Commission's view, the nature of service definition proposed by the applicant is sufficient to prevent Starlight from directly competing with *documentary*. However, in order to prevent the service from becoming competitive with *documentary* in the future, and given that the applicant stated that it would accept a 20% limitation on programming drawn from program category 2(b), the Commission finds it appropriate to require that not more than 20% of the programming broadcast each broadcast month be drawn from that program category. A **condition of licence** to that effect is set out in the appendix to this decision.

Movie Central and Encore Avenue

14. Corus submitted that the vast majority (i.e., 85%) of Starlight's programming schedule would be drawn from the same inventory of Canadian films that form a significant portion of the programming schedules for Movie Central and Encore Avenue. It added that the applicant's proposal to license its content on a non-exclusive basis does not detract from the fact that Starlight would be directly competitive with existing general interest pay television services. It further added that

by airing theatrical feature films without commercial interruption, Starlight would resemble Movie Central and Encore Avenue, which, as pay television services, are not allowed to broadcast advertising.

15. In its reply, 8094039 Canada argued that Starlight would not compete with Movie Central since the latter “is in the business of acquiring television broadcast rights for the ‘pay television’ broadcast window.” It noted that since Starlight would acquire television broadcast rights for post-pay-television broadcast windows, it would not compete with Movie Central’s business in any way.
16. The applicant further noted that the central focus of Starlight would be on theatrically-released Canadian feature films, which is not the central focus of either Movie Central or of Corus’s “mini-pay” services. It added that the statistics provided by Corus in its intervention regarding the amount of Canadian movies that its services broadcast relates to “movies” as a whole, which includes both “movies of the week” (program category 7(c) Specials, mini-series or made-for-TV feature films) as well as films intended for theatrical release (program category 7(d)). In 8094039 Canada’s view, Corus’s argument relies on deliberately merging statistics for program categories 7(c) and 7(d) in an effort to “blur the line between its broadcasting schedules’ commitment to Canadian theatrically released feature films with commercial television programming.” The applicant added that the “blurring of programming categories implies a greater commitment to Canadian feature films than is evidenced by the data.”
17. The Commission notes that the proposed service would share some inventory with pay Category A services. However, as noted by the applicant, this programming would be aired after it had completed its run on the pay services. Moreover, while Canadian feature films make up a relatively small portion of the programming offered by the pay services, such films would be the focus of Starlight. The Commission therefore finds that the proposed service would not be competitive with either Movie Central or Encore Avenue.

Proposed limit on programming drawn from program category 7(e)

18. According to Corus, the applicant’s proposal to devote not more than 25% of Starlight’s schedule to animation programming (program category 7(e)) is inconsistent with the standard limitation of 10% for this program category. It submitted that this level of animation programming would result in the proposed service directly competing with TELETOON, a specialty Category A service dedicated to animation programming.
19. In its reply, 8094039 Canada stated that it was surprised with Corus’s comment over the proposed 25% limit since the intervener is currently operating two specialty Category B services that are permitted to provide 100% animation programming (TELETOON Retro and Cartoon Network). According to the applicant, it is difficult to see how Starlight could be directly competitive with TELETOON given that the proposed service would be devoted to Canadian movies, and in particular feature

films and documentaries intended for theatrical release. For this reason, 8094039 Canada argued that a cap on the broadcast of animation programming would be unnecessary. It noted, however, that it would accept any cap on the broadcast of such programming that the Commission deems necessary.

20. In the Commission's view, it would be appropriate to limit to 10% the amount of programming drawn from program category 7(e), so as to conform to the limitation set out in Broadcasting Public Notice 2008-100. In this regard, the applicant agreed to accept this standard limitation on such programming since Starlight's main focus would not be animation programming. Accordingly, Starlight must ensure that not more than 10% of its programming broadcast during each broadcast month is drawn from program category 7(e). A **condition of licence** to that effect is set out in the appendix to this decision.

Conclusion

21. 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 8094039 Canada Corp. for a broadcasting licence to operate the national, English-language specialty Category B service Starlight. The terms and **conditions of licence** are set out in the appendix to this decision.

Reminder

22. 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
- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services – Regulatory policy*, Broadcasting Public Notice CRTC 2008-100, 30 October 2008
- *Introductory statement – Licensing of new digital pay and specialty services – Corrected Appendix 2*, Public Notice CRTC 2000-171-1, 6 March 2001

- *Introductory statement – Licensing of new digital pay and specialty services, Public Notice CRTC 2000-171, 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 2014-414

Terms, conditions of licence, expectations and encouragements for the national, English-language specialty Category B service Starlight

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 2020.

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. In regard to the nature of service:
 - (a) The licensee shall provide a national, English-language specialty Category B service devoted to Canadian movies, in particular, feature films and documentaries intended for theatrical release. It will include Canadian feature films, Canadian feature documentaries, Canadian made-for-TV movies, and programs with or about Canadian creators. All feature films intended for theatrical distribution will be presented without commercial interruption.
 - (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
 - 5 (b) Informal education/Recreation and leisure
 - 7 (c) Specials, mini-series or made-for-TV feature films
 - (d) Theatrical feature films aired on TV
 - (e) Animated television programs and films
 - 8 (b) Music video clips
 - (c) Music video programs

- 12 Interstitials
 - 13 Public service announcements
 - 14 Infomercials, promotional and corporate videos
- (c) Not more than 20% of the programming broadcast each broadcast month shall be drawn from program category 2(b).
- (d) Not more than 10% of the programming broadcast each broadcast month shall be drawn from program category 7(e).
- (e) Not more than 10% of the programming broadcast each broadcast month shall be drawn from program categories 8(b) and 8(c) combined.
3. Not less than 85% of the entire programming broadcast, and not less than 85% of the programming broadcast during the evening broadcast period, shall be devoted to the broadcast of Canadian programs.

For the purposes of these conditions of 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.

Expectations

The standard expectations applicable to this licensee are 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.

Encouragements

The standard encouragements applicable to this licensee are 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.