



Broadcasting Decision CRTC 2015-483

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Reference: Part 1 application posted on 24 April 2015

Ottawa, 28 October 2015

OWN Inc.
Across Canada

Application 2015-0336-8

OWN: The Oprah Winfrey Network – Licence amendments

*The Commission **approves** an application by Corus Entertainment Inc., on behalf of OWN Inc., to amend the broadcasting licence for the national, English-language specialty Category A service OWN: The Oprah Winfrey Network (OWN). The amended conditions of licence relate to OWN's nature of service and adherence to a terms of trade agreement.*

Introduction

1. Corus Entertainment Inc. (Corus), on behalf of OWN Inc., filed an application to amend the broadcasting licence for the national, English-language specialty Category A service OWN: The Oprah Winfrey Network (OWN). The applicant requested amendments to the conditions of licence relating to its nature of service and adherence to a terms of trade agreement. The applicant stated that this application is pursuant to the policy changes announced in Broadcasting Regulatory Policy 2015-86.
2. Specifically, Corus requested that the following conditions be deleted:
 2. (a) The licensee shall provide a national English-language specialty Category A service which provides formal and informal educational programming and learning opportunities that generally focus on adult education. Educational programs will come from a full spectrum of basic, credit-based, skills-related and life-enhancing programs, many of which will be undertaken in cooperation with colleges, universities and training institutions.
 - (b) The programming must be drawn exclusively from the following categories, as 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(a) Formal education and pre-school
 - (b) Informal education/Recreation and leisure
 - 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) No less than 55% of the programs during the broadcast day shall be drawn from category 5(a) and shall have clear learning objectives.

3. The applicant requested that the above conditions of licence be replaced with the following:
 2. (a) The licensee may draw programming from all the categories set out in item 6 of Schedule I of the *Specialty Services Regulations, 1990*, as amended from time to time.
 - (b) The licensee shall devote no more than 10% of the broadcast month to programming drawn from category 6(a) Professional sports.
4. In accordance with the Commission's requirement set out in Broadcasting Regulatory Policy 2015-86, the applicant provided the following description for its service:

a national, English-language discretionary service that provides general entertainment dedicated to women, bringing them stories that entertain, inspire, engage and enlighten.
5. The applicant also requested that condition of licence 14, which relates to adherence to a terms of trade agreement with the Canadian Media Production Association (CMPA), be amended so that it is no longer applicable effective 29 April 2016.
6. Finally, the applicant requested that the order and requirements relating to compliance with its nature of service set out in Broadcasting Decision 2013-125 and Broadcasting Mandatory Order 2013-126 be rescinded.

Interventions and reply

7. The Commission received comments from the CMPA and the Association québécoise de la production médiatique (AQPM) to which the applicant replied. 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.
8. There were no interventions regarding the proposed amendments to OWN's nature of service.
9. Both CMPA and AQPM filed interventions concerning the amendment to the condition of licence requiring adherence to a terms of trade agreement. CMPA submitted that Corus and other vertically integrated broadcasters should be required to demonstrate that they will negotiate in good faith prior to the elimination of the terms of trade condition of licence. CMPA also suggested that the Commission should consider creating a terms of trade and independent production code and that it be modelled after the Wholesale Code.

AQPM submitted that Corus did not provide an explanation for the amendment. It argued that broadcasters should be required to demonstrate why the condition of licence is no longer necessary.

Commission's analysis and decisions

Nature of service

10. In Broadcasting Regulatory Policy 2015-86, the Commission stated that genre protection has become a regulatory burden and that new or existing services wanting to offer programming from formerly protected genres may do so immediately. The Commission also stated that it will no longer enforce conditions of licence relating to nature of service, with the exception of the 10% limit on live professional sports. Corus's application is therefore consistent with the determinations set out in Broadcasting Regulatory Policy 2015-86.
11. In 2013, the Commission had issued a mandatory order requiring OWN to comply with its nature of service. In light of the determinations set out in Broadcasting Regulatory Policy 2015-86, the requirements imposed in Broadcasting Decision 2013-125 and Broadcasting Order 2013-126 are no longer needed.

Terms of trade agreement

12. In Broadcasting Regulatory Policy 2015-86, the Commission determined that it is no longer necessary to intervene in the relationship between broadcasters and producers by requiring adherence to terms of trade agreements. The Commission indicated that programming services could apply to remove requirements to adhere to a terms of trade agreement effective 29 April 2016.
13. To clarify, 29 April 2016 is the date upon which the terms of trade condition of licence would cease to apply should the Commission approve a licensee's request for an amendment to the condition. Further, the amendment to the condition of licence would not have a direct effect on the agreement itself. The agreement would remain in force in accordance with its terms.
14. In their interventions, AQPM argued that broadcasters should have to demonstrate why the condition of licence is no longer needed and CMPA asked that broadcasters be required to demonstrate that they will negotiate in good faith before the condition of licence can be eliminated. Such requirements were not part of the Commission's determinations in Broadcasting Regulatory Policy 2015-86, nor is there evidence that they are needed. In that policy, the Commission stated that the condition of licence is no longer necessary now that broadcasters and producers "have the clarity and experience they need to negotiate any future agreement among themselves." In addition, it is not clear how a broadcaster could objectively demonstrate to the Commission that they will negotiate in good faith.
15. Lastly, the CMPA's suggestion to create an independent production code is outside the scope of this proceeding.

Conclusion

16. In light of the above, the Commission **approves** the application by Corus Entertainment Inc., on behalf of OWN Inc., to amend the broadcasting licence for the national, English-language specialty Category A service OWN: The Oprah Winfrey Network, as set out below.
17. Consistent with Broadcasting Regulatory Policy 2015-86, condition of licence 2 as set out in Broadcasting Decision 2011-446 is deleted and replaced by the following:
 2. (a) The licensee may draw programming from all the categories set out in item 6 of Schedule I of the *Specialty Services Regulations, 1990*, as amended from time to time.
 - (b) The licensee shall not devote more than 10% of the programming broadcast during the broadcast month to live professional sports programming drawn from category 6(a) Professional sports.
18. Further, the Commission **rescinds** Broadcasting Order 2013-126. The licensee is no longer required to adhere to the monitoring and reporting requirements set out in Broadcasting Decision 2013-125.
19. The Commission amends condition of licence 14 as set out in Broadcasting Decision 2011-446 as follows:

The licensee shall adhere to a terms of trade agreement with the Canadian Media Production Association. This condition remains in effect until 28 April 2016.

Secretary General

Related documents

- *Let's Talk TV: The way forward – Creating compelling and diverse Canadian programming*, Broadcasting Regulatory Policy CRTC 2015-86, 12 March 2015
- *OWN: The Oprah Winfrey Network – Issuance of mandatory order*, Broadcasting Decision CRTC 2013-125 and Broadcasting Mandatory Order CRTC 2013-126, 15 March 2013
- *Corus Entertainment Inc. – Group-based licence renewals*, Broadcasting Decision CRTC 2011-446, 27 July 2011

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