



Broadcasting Decision CRTC 2005-527

Ottawa, 21 October 2005

TVA Group Inc.
Across Canada

Application 2005-0299-9

Public Hearing in the National Capital Region

15 August 2005

Nostalgie – Category 2 specialty service

*In this decision, the Commission **approves** an application for a broadcasting licence to operate a new Category 2 specialty programming undertaking.*

The application

1. The Commission received an application from TVA Group Inc. (TVA) for a broadcasting licence to operate a national, French-language Category 2¹ specialty programming undertaking to be known as Nostalgie.
2. The applicant proposed to offer a service that would consist of movie and television classics. All programs will be drawn from the following categories as set out in Schedule I to the *Specialty Services Regulations, 1990*: 7(a) Ongoing drama series; 7(b) Ongoing comedy series (sitcoms); 7(c) Specials, mini-series or made-for-TV feature films; 7(d) Theatrical feature films aired on TV; 7(e) Animated television programs and films; 7(f) Programs of comedy sketches, improvisation, unscripted works, stand-up comedy; 7(g) Other drama; 8(a) Music and dance other than music video programs or clips; 8(b) Music video clips; 8(c) Music video programs; 9 Variety; 10 Game shows; 11 General entertainment and human interest; 12 Interstitials; 13 Public service announcements; and 14 Infomercials, promotional and corporate videos.
3. The applicant indicated that all programs drawn from categories 7, 8 and 9 would have copyright protection issued at least 15 years prior to the year in which they are broadcast, and that all programs drawn from category 7(d) would have copyright protection issued at least 25 years before the year in which they are broadcast, with the exception of Canadian programs, which would have copyright protection issued at least 15 years before the year in which they are broadcast.

¹ Category 2 services are defined in *Introductory statement - Licensing of new digital pay and specialty services*, Public Notice CRTC 2000-171, 14 December 2000.

Interventions

4. The Commission received several interventions regarding this application. Les Chaînes Télé Astral inc. (Astral), a division of Astral Broadcasting Group Inc., expressed concern that this application had been submitted by TVA, which is a subsidiary of Québecor Média Inc. (QMI). QMI controls Vidéotron ltée (Vidéotron), the largest cable distributor serving Francophone markets in Canada.
5. Astral expressed concern about the distribution of services not affiliated with QMI. In Astral's view, licensees of non-affiliated French-language Category 2 services "[Translation] could have no guarantee that their services will receive fair treatment in terms of access in Francophone markets versus the affiliated French-language services." Astral submitted that, since the access rule formulated by the Commission whereby the distributor must distribute five non-affiliated Category 2 services for each affiliated service applies to English-language and French-language markets, Vidéotron could choose to distribute the affiliated French-language service proposed by TVA as well as five non-affiliated English-language digital services. Consequently, while adhering to the policy established by the Commission, Vidéotron could refuse to distribute any French-language Category 2 digital service licensed by the Commission that is not affiliated with it.
6. Astral noted that the goal identified by the Commission in *Licensing framework policy for new digital pay and specialty services*, Public Notice CRTC 2000-6, 13 January 2000 (Public Notice 2000-6) and in *Introductory statement - Licensing of new digital pay and specialty services*, Public Notice CRTC 2000-171, 14 December 2000 (Public Notice 2000-171) has been achieved in the English-language broadcasting sector, as there is an abundant number of Category 2 services being operated by a broad range of licensees, whereas there are still no French-language Category 2 services in operation at this time.
7. According to Astral, in order for the "[Translation] goals of the *Licensing framework policy for new digital pay and specialty services* to be met in French-language broadcasting as they have been in English-language broadcasting," the Commission should impose the following condition of licence on the licensee:

For each French-language or bilingual Category 2 service of an affiliated programming undertaking it distributes, the licensee shall distribute at least five French-language or bilingual Category 2 services of non-affiliated undertakings.
8. ARTV inc. submitted that TVA's proposal to broadcast programs drawn from categories 7, 8 and 9 that had been under copyright for at least 15 years before the date of broadcast, and feature films that had been under copyright for at least 25 years before broadcast would place Nostalgie in direct competition with the specialty service known as ARTV.

9. ARTV inc. expressed concern that Nostalgie proposed no minimum Canadian content level for the programs from categories 7, 8 and 9 it intends to broadcast, arguing that this would allow the service to broadcast a large number of nostalgic American series with a strong audience potential among Francophone viewers. ARTV inc. therefore proposed that the Commission impose licence restrictions on Nostalgie with respect to the percentages of programs from certain categories that the licensee would be authorized to broadcast.
10. TELETOON Canada Inc. (TELETOON) argued that the service proposed by TVA could potentially compete directly with the French-language signal of its specialty service, Teletoon/Télétoon. Consequently, TELETOON proposed the following condition of licence:

The licensee shall devote no more than 15% of the broadcast week to animated programs, with a further restriction that it shall broadcast not more than one hour of animation between 7:00 p.m. and 11:00 p.m.

Applicant's reply

11. In reply to Astral's intervention, TVA stated that Astral "[Translation] has no reason to fear any undue preference on the part of the distribution undertaking affiliated with TVA," and noted that a distribution agreement has been entered into by Vidéotron and Astral for the distribution of its Category 2 service, Ciné-Pop. TVA added that Astral can submit a complaint under section 9 of the *Broadcasting Distribution Regulations*, if its services are rejected by an affiliated distributor in favour of the applicant's services.
12. With respect to the access rule, TVA submitted that the ratio proposed by Astral was too high because there is no French-language Category 2 specialty service currently in operation. TVA did not consider it should be subject to the condition of licence proposed by Astral because the Commission never imposed such conditions of licence on the distribution undertakings affiliated with Bell Globemedia Inc. or Corus Entertainment Inc., two companies that are also licensees of specialty programming undertakings.
13. TVA added that it was "[Translation] in the interests of the distributors serving Francophone markets to distribute the maximum number of digital channels available to them in order to serve their own interests and to meet the needs of their subscribers," and that the more French-language specialty services there are, "[Translation] the better will be the supply to the Francophone market and the faster the migration to digital will take place."
14. In reply to the intervention by ARTV inc., TVA pointed out that ARTV has a cultural mandate, specifically to promote Francophone and Quebec arts and culture, and that Nostalgie's mandate would differ substantially from that of ARTV. TVA noted that Nostalgie would be a channel devoted strictly to television and film classics and that such classics are not necessarily centred on arts and culture.

15. As to the allegation by ARTV inc. concerning the percentage of Canadian content, TVA reminded ARTV inc. that Nostalgie would be required to broadcast 15%, 25% and 35% Canadian content during its first, second and third years of operation respectively during the broadcast day and evening.
16. TVA added that the restrictions suggested by ARTV inc. are not realistic, would hamper Nostalgie in the execution of its mandate and would prevent Nostalgie from meeting its minimum Canadian content broadcast requirement, resulting in non-compliance.
17. TVA stated that it had no objection to the condition of licence proposed by TELETOON.

Commission's analysis and determination

18. In Public Notice 2000-6, the Commission implemented a competitive open-entry approach to the licensing of Category 2 services. In Public Notice 2000-171, the Commission adopted a case-by-case approach in determining whether a proposed Category 2 service should be considered directly competitive with an analog pay or specialty service or existing Category 1 service, although not with an existing Category 2 service. The Commission examines each application in detail, taking into consideration the nature of the proposed service and the unique circumstances of the genre in question.
19. The Commission is of the view that the nature of the proposed service for Nostalgie is sufficiently specific to ensure that it will not be directly competitive with any analog pay, specialty or existing Category 1 service. The Commission notes the concern expressed by TELETOON with respect to direct competition with Teletoon/Télétoon, and considers that the addition of the condition of licence proposed by TELETOON and accepted by TVA is justified. A **condition of licence** to this effect is, therefore, set out in the appendix to this decision.
20. In the present case, the applicant stated that Nostalgie will emphasize classic television programs and movies, whereas ARTV's programming is devoted to arts that reflect the uniqueness of Quebec culture and the needs and circumstances of French-language communities in other parts of Canada. The Commission further notes that the applicant stated in its application that certain French-language specialty services include programs similar to those that will be shown by Nostalgie, but that these programs account for less than 10% of the programming offered by those services.
21. The Commission recognizes the special circumstances of the French-language market, in particular the need on the part of distributors and the Francophone public to have access to French-language digital specialty services. The Commission considers that the distribution of French-language Category 2 specialty services will serve the public interest, as well as the interests of broadcasters and distributors.
22. The Commission notes that any refusal by a distributor to distribute a non-affiliated Category 2 service in favour of an affiliated Category 2 service could be subject to review pursuant to section 9 of the *Broadcasting Distribution Regulations*.

23. After examining the current application, including the factors mentioned above, the Commission is satisfied that the application is in conformity with all applicable terms and conditions announced in *Introductory statement – Licensing of new digital pay and specialty services – Corrected Appendix 2*, Public Notice CRTC 2000-171-1, 6 March 2001 (Public Notice 2000-171-1). Accordingly, the Commission **approves** the application by TVA Group Inc. for a broadcasting licence to operate the national, French-language Category 2 specialty programming undertaking, Nostalgie.
24. The licence will expire 31 August 2012 and will be subject to the **conditions** set out in Public Notice 2000-171-1 as well as to the **conditions** set out in the appendix to this decision.

Issuance of the licence

25. 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. The undertaking must be operational at the earliest possible date and in any event no later than 36 months from the date of this decision, unless a request for an extension of time is approved by the Commission before 21 October 2008. In order to ensure that such a request is processed in a timely manner, it should be submitted at least 60 days before that date.

Secretary General

This decision is to be appended to the licence. It is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>

Appendix to Broadcasting Decision CRTC 2005-527

Conditions of licence

1. The licence will be subject to the conditions set out in *Introductory statement – Licensing of new digital pay and specialty services – Corrected Appendix 2*, Public Notice CRTC 2000-171-1, 6 March 2001.
2. The licensee shall provide a national, French-language Category 2 specialty programming undertaking devoted to television and movie classics.
3. The programming shall be drawn exclusively from the following categories, as set out in Schedule I to the *Specialty Services Regulations, 1990*, as amended from time to time:
 - 7 Drama and comedy
 - (a) Ongoing drama 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 General entertainment and human interest
 - 12 Interstitials
 - 13 Public service announcements
 - 14 Infomercials, promotional and corporate videos
4. All programs drawn from categories 7, 8 and 9 broadcast by the licensee must have copyright protection issued at least 15 years prior to the broadcast year in which they are broadcast. Programs from category 7(d), must have copyright protection issued at least 25 years prior to the year of broadcast; with the exception of Canadian programs from that category, which must have copyright protection issued at least 15 years prior to the year of broadcast.

5. The licensee shall devote not more than 15% of all programming broadcast during the broadcast week to programs from category 7(e), of which not more than one hour shall be broadcast during the period from 7:00 p.m. to 11:00 p.m.

For the purposes of the conditions of this licence, including condition of licence 1, *broadcast day* refers to the 24-hour period beginning each day at midnight, or any other period approved by the Commission.