



Broadcasting Decision CRTC 2006-511

Ottawa, 14 September 2006

Black Walk Corporation Across Canada

Application 2005-0962-2
Public Hearing in the National Capital Region
1 May 2006

Tonic – 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 by Black Walk Corporation (Black Walk) for a broadcasting licence to operate a national, English-language Category 2¹ specialty programming undertaking to be known as Tonic.
2. The applicant proposed to offer a service that would be dedicated to people who imbibe, collect, cook with, and are generally interested in the consumption of wines and spirits. The applicant stated that Tonic would be a “lifestyle service” and would “showcase people enjoying a good time in various locations and venues all over the world.” It also indicated that the programming would feature the long and storied history of alcohol production as well as movies dealing with alcohol. Black Walk emphasized that its programming would focus on the responsible consumption of wines and spirits.
3. All of the programming would be drawn from the following categories set out in Schedule 1 to the *Specialty Services Regulations, 1990*: 2(a) Analysis and interpretation; 2(b) Long-form documentary; 3 Reporting and actualities; 7(a) Ongoing drama series; 7(b) Ongoing comedy series (sitcoms); 7(c) Specials, mini-series or made-for-TV feature films; 7(e) Animated television programs and films; 7(f) Programs of comedy sketches, improvisations, unscripted works, stand-up comedy; 12 Interstitials; 13 Public service announcements; and 14 Infomercials, promotional and corporate videos.

¹ The 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 numerous interventions in support of this application and interventions in opposition by CanWest MediaWorks Inc. (CanWest) and Captioning Consumers of Canada (CCC).
5. CanWest noted that the onus is on Black Walk to demonstrate that its proposed Category 2 service would not be directly competitive with any existing analog pay or specialty service, including any Category 1 service. In CanWest's view, Black Walk has not submitted sufficient evidence about the programming to be broadcast by Tonic to adequately assess the potential competitiveness of the proposed service. CanWest further contended that the lack of evidence about the programming to be broadcast and the broad definition of the nature of service proposed by the applicant could result in making Tonic directly competitive with several existing analog and Category 1 specialty services, including the intervener's specialty service, Prime TV (now known as TVTropolis²), and Category 1 services, Mystery and Men TV. CanWest expressed particular concern with the applicant's statement that Tonic would be a "lifestyle service" and would "showcase people enjoying a good time in various locations and venues from all over the world."
6. CCC contended that the applicant had not proposed an adequate level of closed captioning. In CCC's view, all the programming offered by the proposed service should be captioned, either by adding captioning to its programming or by acquiring captioned programming. CCC also expressed concern about the quality of captioning.

Applicant's reply

7. In its response, Black Walk maintained that its proposed service would not be directly competitive with any of the services noted by CanWest. Black Walk contended that any direct association between its proposed service and existing analog or Category 1 specialty services would be extremely tenuous.
8. The applicant did not respond to CCC.

Commission's analysis and determinations

9. In *Licensing framework policy for new digital pay and specialty services*, Public Notice CRTC 2000-6, 13 January 2000, the Commission implemented a competitive, open-entry approach to licensing Category 2 services. While the Commission does not consider the impact that a Category 2 service might have on an existing Category 2 service, it does seek to ensure that Category 2 services do not compete directly with any existing pay or specialty television service, including any Category 1 service.

² Prime TV was rebranded as TVTropolis on 1 June 2006.

10. In *Introductory statement - Licensing of new digital pay and specialty services*, Public Notice CRTC 2000-171, 14 December 2000, and Corrected Appendix 2, Public Notice CRTC 2000-171-1, 6 March 2001 (Public Notice 2000-171-1), 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 or existing Category 1 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.
11. With respect to CanWest's intervention, the Commission also considers that Tonic's nature of service definition, as proposed in the application, would be overly broad. The Commission is satisfied that deletion of the reference to Tonic as being a "lifestyle service" that would "showcase people enjoying a good time in various locations and venues from all over the world" from the definition proposed in the application would sufficiently limit Tonic's nature of service to ensure that the proposed service would not directly compete with any existing analog pay or specialty service, including any Category 1 service.
12. The Commission further notes Black Walk's statement that Tonic's programming would focus on the responsible consumption of wines and spirits.
13. The Commission acknowledges the concerns raised by CCC. As indicated in *Review of certain aspects of the regulatory framework for over-the-air television*, Broadcasting Notice of Public Hearing CRTC 2006-5, 12 June 2006, the Commission is currently reviewing its approach to closed captioning with a view to improving the quantity and quality of captioning in the Canadian broadcasting system.
14. In light of the above, the Commission is satisfied that the application is in conformity with all applicable terms and conditions announced in Public Notice 2000-171-1. Accordingly, the Commission **approves** the application by Black Walk Corporation for a broadcasting licence to operate the national, English-language Category 2 specialty programming undertaking, Tonic.
15. The licence will expire 31 August 2013, 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

16. 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 14 September 2009. 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 2006-511

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, English-language Category 2 specialty programming service dedicated to people who imbibe, collect, cook with, and are generally interested in the consumption of wines and spirits. The programming shall also feature the long and storied history of alcohol production as well as movies dealing with the subject of alcohol.
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:
 - 2 (a) Analysis and interpretation
 - (b) Long-form documentary
 - 3 Reporting and actualities
 - 7 (a) Ongoing drama series
 - (b) Ongoing comedy series (sitcoms)
 - (c) Specials, mini-series or made-for-TV feature films
 - (e) Animated television programs and films
 - (f) Programs of comedy sketches, improvisations, unscripted works, stand-up comedy
 - 12 Interstitials
 - 13 Public service announcements
 - 14 Infomercials, promotional and corporate videos

For the purposes of the conditions of this licence, including condition of licence no.1, *broadcast day* refers to the 24-hour period beginning each day at 6 a.m., or any other period approved by the Commission.