



Broadcasting Decision CRTC 2007-52

Ottawa, 2 February 2007

High Fidelity HDTV Inc., on behalf of a corporation to be incorporated Across Canada

Application 2006-0869-8

Public Hearing in the National Capital Region

14 November 2006

Aqua HD – 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 High Fidelity HDTV Inc., on behalf of a corporation to be incorporated, (High Fidelity) for a broadcasting licence to operate a national English-language Category 2¹ high definition (HD) specialty programming undertaking to be known as Aqua HD.
2. The applicant proposed to offer a service that would be devoted to the theme of water and life in, on, and around bodies of water. The applicant proposed that, in each year of the licence term, 100% of the programming of Aqua HD would be broadcast in HD format.
3. All of the programming would be drawn from the following categories set out in item 6 of Schedule 1 to the *Specialty Services Regulations, 1990*: 1 News; 2(a) Analysis and interpretation; 2(b) Long-form documentary; 3 Reporting and actualities; 5(b) Informal education/Recreation and leisure; 6(a) Professional sports; 6(b) Amateur sports; 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, improvisations, 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; 10 Game shows; 11 General entertainment and human interest; 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.

4. The applicant proposed that:
- not more than 15% of all programming broadcast during the broadcast week would be drawn from category 7; and
 - not more than 25% of all programming broadcast during the broadcast week would be drawn from any one genre of programming.

Intervention

5. The Commission received an intervention by Rogers Cable Communications Inc. (Rogers) in opposition to this application. Rogers also opposed six other applications by High Fidelity for national, English-language Category 2 HD services that are considered in this proceeding.
6. Rogers questioned the Commission's policy of including unlaunched Category 2 services in its application of the competitiveness test for assessing requests to add foreign English- and French-language services to its lists of eligible satellite services (the Lists), as set out in Public Notice CRTC 2000-173². Under that policy, the Commission precludes the addition of a foreign service that can be considered either totally or partially competitive with any Canadian specialty or pay television services whose licence applications have been approved by the Commission, including launched and unlaunched Category 2 services.
7. Rogers argued that the approval of all High Fidelity's applications would result in the applicant occupying a wide range of programming genres. Rogers further contended that High Fidelity could take up to five years to implement these services, thus preventing the addition of any similar non-Canadian programming services to the Lists for that period and depriving Canadians of diversity and choice in digital programming services. Finally, Rogers submitted that the Commission should reconsider its policy framework governing Category 2 services before granting additional licences to High Fidelity.

Applicant's reply

8. In response, High Fidelity maintained that the policy issues raised by Rogers are beyond the scope of the present application. High Fidelity added that Rogers' request should be addressed in the context of the Commission's review of the regulatory framework for discretionary services announced in *CRTC 3-Year Work Plan 2006-2009*, 28 April 2006 (the 3-Year Work Plan).

² Call for proposals to amend the lists of eligible satellite services through the inclusion of additional non-Canadian services eligible for distribution on a digital basis only, Public Notice CRTC 2000-173, 14 December 2000

Commission's analysis and determination

9. While the Commission has noted the concerns raised by Rogers, the Commission finds that these issues are not directly relevant to its consideration of the present application. As announced in the 3-Year Work Plan, the Commission intends to review the framework for discretionary services and is of the view that the matters raised in Rogers' intervention may be more appropriately discussed in that context.
10. In light of the 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 High Fidelity HDTV Inc., on behalf of a corporation to be incorporated, for a broadcasting licence to operate the national English-language Category 2 HD specialty programming undertaking, Aqua HD.
11. 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.
12. The Commission reminds the applicant that, if it wishes to enter at any time into an agreement with non-Canadian independent producers regarding the supply of programming or the use of a licence trademark, it must comply at all times with the *Direction to the CRTC (Ineligibility of non-Canadians)*, P.C. 1997-486, 8 April 1997, as amended by P.C. 1998-1268, 15 July 1998 (the Direction). Accordingly, the Commission has imposed a **condition of licence**, as set out in the appendix to this decision, that requires the licensee to file, for the Commission's review, a copy of any programming supply agreement or licence trademark agreement it intends to enter into with a non-Canadian party, in order to ensure that the licensee complies at all times with the Direction.

Issuance of the licence

13. 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. 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 2 February 2010. 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 2007-52

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 high definition specialty programming service devoted to information and entertainment with the theme of water and life in, on, and around bodies of water. The programming shall include beach themes, underwater adventures and exploration, water and beach sports, and tours of bodies of water and waterfront locations.
3. The programming shall 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:
 - 1 News
 - 2 (a) Analysis and interpretation
(b) Long-form documentary
 - 3 Reporting and actualities
 - 5 (b) Informal education/Recreation and leisure
 - 6 (a) Professional sports
(b) Amateur sports
 - 7 (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, improvisations, 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
 - 10 Game shows
 - 11 General entertainment and human interest
 - 12 Interstitials
 - 13 Public service announcements
 - 14 Infomercials, promotional and corporate videos
4. Not more than 15% of all programming broadcast during the broadcast week shall be drawn from category 7.

5. Not more than 25% of all programming broadcast during the broadcast week shall be devoted to programming from any one genre of programming.
6. In order to ensure that the licensee complies at all times with the *Direction to the CRTC (Ineligibility of non-Canadians)*, P.C. 1997-486, 8 April 1997, as amended by P.C. 1998-1268, 15 July 1998, the licensee shall file, for the Commission's prior review, a copy of any programming supply agreement and/or licence trademark agreement it intends to enter into with a non-Canadian party.

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.