



## Broadcasting Decision CRTC 2007-90

Ottawa, 19 March 2007

**François Caron, on behalf of a corporation to be incorporated  
Across Canada**

*Application 2006-0898-7*

*Public Hearing in the National Capital Region*

*18 December 2006*

### **The Canadian Public – 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 licence will be issued once the applicant has met the requirements specified at the end of this decision.*

#### **The application**

1. The Commission received an application by François Caron, on behalf of a corporation to be incorporated, for a broadcasting licence to operate a national, English-language Category 2<sup>1</sup> specialty programming undertaking to be known as The Canadian Public.
2. The applicant proposed to offer a public access channel, specializing in content provided by Canadian citizens and organizations from across the nation and around the world. All of the Canadian programming would be public access programming, that is to say programming provided by Canadian citizens, including public and private institutions, who are a) amateur filmmakers; b) film and television students; c) professionals working on their own personal projects; or d) institutions presenting their own in-house productions.
3. All of the programming would be drawn from the following categories set out in item 6 of Schedule I 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; 9 Variety; 10 Game shows; 11 General entertainment and human interest; and 13 Public service announcements.

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<sup>1</sup> 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 to broadcast a daily minimum of 70% Canadian programming by the end of the first year of operation, increasing to a minimum of 90% within three years.
5. The applicant indicated that it would not “broadcast any paid advertising material other than national paid advertising” and that there would be “no pre-established requirements related to the content or the target geographic location/demographic of said [advertising].”

### **Interventions**

6. The Commission received one intervention in support of this application and several interventions providing comments on the proposed service.
7. Professor John Drendel of the Département d’Histoire at the Université du Québec à Montréal submitted an intervention in support of this application. Professor Drendel noted that the proposed service would provide an opportunity to extend the concept of video sharing made popular by various on-line video-sharing Internet sites, thereby allowing for increased creative content and the opportunity for the creators of this content to profit from their creativity.
8. Riley Whitelock submitted an intervention seeking clarification on the source of the proposed service’s programming, how advertising revenues would be distributed, the possibility of airing content from sporting leagues that are not currently carried by Canadian broadcasters, the criteria for program selection, the language of the programming to be aired, the possibility of the proposed service competing with existing community channels, the distribution strategy of the proposed service, and the possibility of a French-language counterpart in Quebec.
9. Astral Television Networks, a division of Astral Broadcasting Group Inc., noted in its intervention that, under the Commission’s licensing framework for new specialty and pay services, the Commission has established restrictions on proposed Category 2 services, including specific restrictions on program categories, so as to ensure that they will not become directly competitive with existing pay, specialty and Category 1 digital channels. The intervener requested that the proposed service be subject to a 15% limitation on programs from category 7(d).
10. The Community Media Education Society (C.M.E.S.) did not comment specifically on the application, instead providing commentary on the state of community channels and their programming and suggesting a full review of the funding of such programming.

### **Applicant’s replies**

11. In response to the points related to programming raised in Riley Whitelock’s intervention, the applicant replied that no programming would be directly produced by the proposed service. It stated further that, though amateur and professional sporting events not currently aired by any existing Canadian network or sports channel could be

broadcast, the leagues would be responsible for providing the programming, and live presentations would initially be impossible, due to cost. The applicant reiterated that no religious, hate or sexually explicit material would be broadcast other than in the context of a documentary, and that a certain level of broadcast quality would have to be attained for a program to be aired.

12. With regard to the language of service, the applicant reiterated that the proposed service would operate in the English language, but that it intends to submit an application for a French-language equivalent once the English-language service is officially launched.
13. With respect to advertising, the applicant stated that advertising revenues would be shared with the content producers and that embedded or hidden advertising for products and services would be prohibited.
14. The applicant further stated that it would seek to have the proposed service carried as part of a broadcasting distribution undertaking's basic channel package at no additional charge to the subscriber.
15. Finally, on the topic of competition with community channels, the applicant was of the opinion that the proposed service would be complementary to community channels and that it could encourage the creation of new community channels.
16. In response to the intervention from Astral Television Networks, the applicant indicated that it would be willing to accept a condition of licence limiting the amount of time devoted to material from category 7(d) to 15%, so long as this was measured on an annual basis.
17. The applicant acknowledged C.M.E.S.'s intervention and described the proposed service as a complement to community channels and a potential solution to some of the issues raised by this intervener.

### **Commission's analysis and determinations**

18. With regard to the imposition of a condition of licence related to limiting to 15% the proportion of programs drawn from category 7(d), the Commission notes that the applicant is not opposed to such a condition of licence, but that the applicant requested that it be measured on an annual basis. The Commission notes, however, that such conditions of licence are generally measured on a weekly basis. The Commission is of the opinion that this would not have an undue negative impact on the applicant's programming strategy. A **condition of licence** to this effect is set out in the appendix to this decision.

19. With respect to advertising, though the applicant indicated that it would not “broadcast any paid advertising material other than national paid advertising,” the Commission notes the applicant’s further statement that there would be “no pre-established requirements related to the content or the target geographic location/demographic of said [advertising].” The Commission reminds the applicant that it is restricted to broadcasting national paid advertising.
20. The Commission notes that the applicant proposed a daily minimum of 70% Canadian programming by the end of the first year of operation, increasing to a minimum of 90% within three years. However, the Commission is of the view that, given the distribution environment in which Category 2 services operate, it would not be appropriate to require higher Canadian programming levels by condition of licence. Therefore, in accordance with its standard approach to Category 2 services, as set out in *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), the Commission has imposed the standard Canadian programming conditions of licence as set out in Public Notice 2000-171-1. Nevertheless, the Commission encourages the applicant to achieve its proposed Canadian programming levels.
21. The Commission is satisfied that the applicant has adequately addressed the interventions and that the application, with the alterations noted above, is in conformity with all applicable terms and conditions announced in Public Notice 2000-171-1. Accordingly, the Commission **approves** the application by François Caron, on behalf of a corporation to be incorporated, for a broadcasting licence to operate the national, English-language Category 2 specialty programming undertaking, The Canadian Public.
22. 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 prior 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.
23. 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

24. 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 19 March 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 2007-90

### 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 consisting of a public access channel, specializing in content provided by Canadian citizens and organizations from across the nation and around the world.
3. The programming shall be drawn exclusively from the following categories set out in 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 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, 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
  - 9 Variety
  - 10 Game shows
  - 11 General entertainment and human interest
  - 13 Public service announcements

4. No more than 15% of all programming broadcast during each broadcast week shall be drawn from category 7(d).
5. 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.