



Broadcasting Decision CRTC 2009-568

Route reference: 2009-140

Additional reference: 2009-140-1

Ottawa, 10 September 2009

Quebecor Media Inc., on behalf of TVA Group Inc. and Canwest Media Inc., partners in a general partnership carrying on business as Men TV General Partnership

Across Canada

Application 2009-0311-3, received 4 February 2009

Men TV – Licence amendment

*The Commission **approves** the application by Quebecor Media Inc., on behalf of TVA Group Inc. and Canwest Media Inc., partners in a general partnership carrying on business as Men TV General Partnership, to amend the broadcasting licence for the Category 1 specialty service known as Men TV in order to draw programming from all program categories and to devote up to 10% of its programming each month to programming from categories 6(a) and the combination of 8(b) and 8(c).*

*The Commission **denies** the licensee's request to devote up to 10% of its programming each month to programming from each of the subcategories 7(a), 7(b), 7(d) and 7(e). Instead, the Commission imposes a **condition of licence** requiring Men TV to devote no more than 10% of its programming during each broadcast month to programming from category 7 as a whole. The Commission also imposes a **condition of licence** requiring that all programming from categories 6(a) and 6(b) consist of leisure sports.*

Introduction

1. The Commission received an application by Quebecor Media Inc. (QMI), on behalf of TVA Group Inc. (TVA) and Canwest Media Inc. (Canwest), partners in a general partnership carrying on business as Men TV General Partnership, to amend the broadcasting licence for the Category 1 specialty programming undertaking known as Men TV in order to add the following categories, as set out in item 6 of Schedule I to the *Specialty Services Regulations, 1990*, to the list of categories from which it may draw programming:

- 1 News
- 4 Religion
- 5 (a) Formal education and pre-school
- 6 (a) Professional sports
- (b) Amateur sports

- 7 (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
- 15 Filler programming

2. The applicant also requested authorization to devote up to 10% of its programming each broadcast month to programming from each of the categories 6(a), 7(a), 7(b), 7(d), 7(e) and the combination of 8(b) and 8(c).
3. Men TV is a national, English-language specialty television service dedicated to men's lifestyle. It offers programming related to the luxury market, the gourmet market, men's beauty and fitness, the book and music market, outdoor adventures and leisure sports from Canadian men's perspectives.
4. The Commission received an intervention in support of the application, as well as interventions in opposition by Score Media Inc. (SMI) and Astral Media inc. (Astral), to which the applicant replied. The interventions and the applicant's reply are available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."
5. Having reviewed the interventions and the applicant's reply, the Commission considers that the issue to be determined is whether the proposed amendments are consistent with the Commission's regulatory framework for discretionary services, as set out in Broadcasting Public Notice 2008-100.

Are the proposed amendments consistent with the Commission's regulatory framework for discretionary services?

6. In Broadcasting Public Notice 2008-100, the Commission announced its determination to simplify and streamline the rules that govern both nature of service definitions and program categories from which services may draw programming. The Commission indicated that its intent in this respect was to ensure that the nature of service set out in the licensee's conditions of licence reflects, as specifically as possible, the unique characteristics of the service.
7. The Commission stated its view that, in most instances, the narrative descriptions of Category A services (Category 1 and analog pay and specialty services) are sufficiently specific to ensure that these services remain true to the genres for which they were licensed. Therefore, the Commission determined that it would permit all Category A services to draw programming from all program categories, thereby providing these services with greater flexibility in this regard. However, to ensure that this change does not permit services to morph into other established programming genres and thus become directly competitive with other Category A services, the Commission stated that it would establish a standard limitation of 10% of the broadcast month for the following categories:

- 2(b) Long-form documentary
- 6(a) Professional sports
- 7 Drama and comedy
- 7(d) Theatrical feature films aired on television
- 7(e) Animated television programs or films
- 8(b) and (c) combined – Music video clips and Music video programs

8. The Commission also stated that it was prepared to eliminate other limiting conditions of licence where the narrative description of the service was sufficient to ensure that it would not be directly competitive with any other Category A service and would remain true to its genre. The Commission noted that it would be necessary to implement this new approach via amendments to existing conditions of licence.
9. Both opposing interveners submitted that the applicant had misinterpreted the intention of Broadcasting Public Notice 2008-100. Specifically, SMI submitted that allowing Men TV to broadcast programming from categories 6(a) and 6(b) would allow it to compete directly with other Category 1 services. SMI also noted that it was specified in Decision 2000-464 that Men TV would not cover professional or amateur sporting events. SMI submitted that the addition of professional and amateur sports programming would be inconsistent with Men TV's nature of service.
10. For its part, Astral indicated that approving the applicant's request to increase the level of drama programming on Men TV from 10% of category 7 to 10% of each of subcategories 7(a), 7(b), 7(d) and 7(e) and an unlimited amount of the remaining subcategories of drama programming would allow it to morph into a drama service. Astral submitted that Men TV should be subject to a monthly 10% limitation on the broadcast of category 7 programs, including all its subcategories. Astral also questioned why QMI was requesting the addition of category 15 to the list of categories from which it may draw programming.
11. In reply to the intervention by SMI, QMI noted that The Score was originally licensed as a headline sports channel and that since that time it had applied for and received four amendments relating to the categories of programming from which it may draw, including the addition of live sports programming. QMI also argued that implying that watching live sports is not a part of men's lifestyle denies the diversity of men's interests captured in the genre of men's lifestyle programming.
12. In reply to Astral's intervention, QMI stated that if the application were approved, Men TV's nature of service would remain the same and that any drama programming would continue to be targeted to men.

Commission's analysis

Programming from categories 6(a) Professional sports and 6(b) Amateur sports

13. The Commission notes that the flexibility provided in Broadcasting Public Notice 2008-100 is intended to apply to services whose nature of service description is

sufficiently specific to ensure that they remain true to the genres for which they were licensed and that they do not morph into services that are directly competitive with other Category A services. In the present case, the Commission is of the view that, unlike a service such as the Women's Television Network, the audience for which is narrow enough to restrict it to a specific genres of sports (i.e. sports focused on women's athletics such as the WNBA or women's hockey or the LPGA), Men TV's intended audience, as reflected in its nature of service description, would not in and of itself adequately limit the types of professional and amateur sports that it could broadcast to prevent it from becoming directly competitive with other Category A services.

14. This being said, the Commission acknowledges that watching professional sports can be considered an element of men's lifestyles. The Commission also notes that leisure sports are specifically identified in Men TV's nature of service definition and that boating, flying and motorcycling are given as examples of such sports in Decision 2000-464.
15. In light of the above and consistent with Broadcasting Public Notice 2008-100, the Commission considers that it would be appropriate to approve the applicant's request to draw programming from categories 6(a) and 6(b) and to draw up to 10% of all programming broadcast during each month from category 6(a). However, to ensure that the service does not become directly competitive with any existing Category A service, the Commission considers that it would also be appropriate to limit the types of sports broadcast by Men TV to leisure sports, such as boating, flying and motorcycling. This will give Men TV the opportunity to broadcast events such as The America's Cup (sailing regatta and match race) and the World Enduro Championship (cross-country endurance motorcycle race). A **condition of licence** to this effect is set out in the appendix to this decision.

Programming from category 7 Drama

16. In a letter to the Canadian Association of Broadcasters dated 12 January 2009, Commission staff clarified the intent of Broadcasting Public Notice 2008-100 with respect to category 7 and subcategories 7(d) and 7(e). Among other things, Commission staff noted that where a service already has access to some subcategories of category 7 but is requesting subcategory 7(d) and/or subcategory 7(e) for the first time, it will get 10% of each.
17. In this instance, the Commission notes that Men TV is currently allowed to broadcast the programming from subcategories 7(a), 7(b), 7(c), 7(d) and 7(e) and that no more than 10% of all programming broadcast in each broadcast week must be drawn from category 7. Accordingly, the Commission considers that it would be appropriate to authorize Men TV to have access to all subcategories of category 7, provided that no more than 10% of all programming during each broadcast month is drawn from all subcategories of category 7 combined. The Commission notes that this will provide Men TV with more flexibility, while remaining consistent with the intent of Broadcasting Public Notice 2008-100 and ensuring that Men TV will not become competitive with any existing Category A service. A **condition of licence** to this effect is set out in the appendix to this decision.

Programming from category 15 Filler programming

18. Astral commented on the request to broadcast category 15 programming. The Commission notes that it has stated that given the nature of category 15 programming, it is usually authorized for commercial-free services, such as pay-per-view and pay television services. In the context of Category 2 services, the Commission has stated that all programming drawn from category 15 can be categorized more particularly under other categories and should be logged as such. However, in Broadcasting Public Notice 2008-100, the Commission did not explicitly restrict access to category 15 programming by Category A services.

Other matters

19. The Commission notes that further to its request for authorization to broadcast programming from program category 4 Religion, QMI indicated that it will respect the requirements for the provision of balance and ethics in its programming, consistent with the Commission's Religious Broadcasting Policy set out in Public Notice 1993-78, and will accept a condition of licence to this effect.
20. The Commission also notes that QMI indicated that adding program category 1 News to its list of programming categories would not raise any concerns regarding cross-ownership as there would be editorial independence from any other QMI company, the operation of Men TV is a partnership between TVA and Canwest and all major decisions regarding the direction of the station's programming are subject to the approval of the General Partnership Management Committee. The Commission is satisfied that no additional safeguards related to the maintenance of a diversity of editorial voice are required in this instance.

Determinations

21. In light of the above, the Commission **approves** the application by Quebecor Media Inc., on behalf of TVA Group Inc. and Canwest Media Inc., partners in a general partnership carrying on business as Men TV General Partnership, to amend the broadcasting licence for the Category 1 specialty programming undertaking known as Men TV in order to add categories 1, 4, 5(a), 6(a), 6(b), 7(f), 7(g), 8(a), 8(b), 8(c) and 15 to the list of categories from which it may draw programming and to devote up to 10% of its programming each month to programming from categories 6(a) and the combination of 8(b) and 8(c).
22. However, the Commission **denies** the licensee's request to devote up to 10% of its programming each month to programming from each of the subcategories 7(a), 7(b), 7(d) and 7(e). Consistent with Broadcasting Public Notice 2008-100, the Commission imposes a **condition of licence** requiring Men TV to devote no more than 10% of its programming during each broadcast month to programming from category 7 as a whole.

23. The Commission also imposes a **condition of licence** requiring that all programming from categories 6(a) and 6(b) consist of leisure sports. The conditions of licence applicable to the service are set out in the appendix to this decision.

Secretary General

Related documents

- *Administrative renewals*, Broadcasting Decision CRTC 2009-145, 17 March 2009
- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services – Regulatory policy*, Broadcasting Public Notice CRTC 2008-100, 30 October 2008
- *Men TV – a new specialty channel*, Decision CRTC 2000-464, 14 December 2000
- *Religious Broadcasting Policy*, Public Notice CRTC 1993-78, 3 June 1993

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 2009-568

Conditions of licence for the national English-language specialty programming undertaking known as Men TV

1. The licensee shall provide a national English-language Category 1 specialty television service dedicated to men's lifestyle. It will provide programming related to the luxury market, the gourmet market, men's beauty and fitness, the book and music market, outdoor adventures and leisure sports from Canadian men's perspectives.
2. The programming shall be drawn exclusively from the following categories 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
 - 4 Religion
 - 5 (a) Formal education and pre-school
(b) Informal education/Recreation and leisure
 - 6 (a) Professional sports
(b) Amateur sports
 - 7 Drama and comedy
 - (a) Ongoing dramatic 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
 - 12 Interstitials
 - 13 Public service announcements
 - 14 Infomercials, promotional and corporate videos
 - 15 Filler programming

3. No more than 10% of all programming broadcast during each broadcast month shall be drawn from each of the categories 6(a) and the combination of 8(b) and 8(c).
4. All programming from categories 6(a) and 6(b) shall consist of leisure sports, such as boating, flying and motorcycling.
5. No more than 10% of all programming broadcast during each broadcast month shall be drawn from category 7 as a whole.
6. Where the licensee broadcasts religious programming as defined in *Religious Broadcasting Policy*, Public Notice CRTC 1993-78, 3 June 1993, the licensee shall adhere to the guidelines set out in sections III.B.2.a) and IV of that public notice with respect to the provision of balance and ethics in religious programming, as amended from time to time.
7. In each broadcast year or portion thereof, the licensee shall devote to the distribution of Canadian programs 50% of the broadcast day and 50% of the evening broadcast period.
8. In accordance with the Commission's position on Canadian programming expenditures as set out in *New Flexibility With Regard to Canadian Program Expenditures by Canadian Television Stations*, Public Notice CRTC 1992-28, 8 April 1992, in *The Reporting of Canadian Programming Expenditures*, Public Notice CRTC 1993-93, 22 June 1993, in *Additional Clarification Regarding the Reporting of Canadian Programming Expenditures*, Public Notice CRTC 1993-174, 10 December 1993 and in *Incentives for English-language Canadian television drama*, Broadcasting Public Notice CRTC 2004-93, 29 November 2004, as may be amended from time to time:
 - a) In each broadcast year following the first year of operation, the licensee shall expend on Canadian programs not less than 39% of the previous broadcast year's gross advertising, infomercial and subscription revenues.
 - b) In each broadcast year following the first year of operation, excluding the final year, the licensee may expend an amount on Canadian programs that is up to ten percent (10%) less than the minimum required expenditure for that year set out in or calculated in accordance with this condition. In such case, the licensee shall expend in the next year of the licence term, in addition to the minimum required expenditure for that year, the full amount of the previous year's under-expenditure.
 - c) In each broadcast year following the first year of operation, where the licensee expends an amount on Canadian programs that is greater than the minimum required expenditure for that year set out in or calculated in accordance with this condition, the licensee may deduct:

- i) from the minimum required expenditure for the next year of the licence term, an amount not exceeding the amount of the previous year's over-expenditure; and
 - ii) from the minimum required expenditure for any subsequent year of the licence term, an amount not exceeding the difference between the over-expenditure and any amount deducted under paragraph (i) above.
- d) Notwithstanding paragraphs (b) and (c) above, during the licence term, the licensee shall expend on Canadian programs, at a minimum, the total of the minimum required expenditures set out in or calculated in accordance with the licensee's condition of licence.

The terms "broadcast day" and "broadcast month" shall have the same meaning as that out in the *Television Broadcasting Regulations, 1987*.