



Broadcasting Decision CRTC 2009-583

Route reference: 2009-158

Additional reference: 2009-158-2

Ottawa, 17 September 2009

Mitchell Seaforth Cable T.V. Ltd.

Dublin, Ontario

Application 2008-1725-7, received 23 December 2008

Public hearing in Halifax, Nova Scotia

28 May 2009

Video-on-demand service

*The Commission **approves** an application for a broadcasting licence to provide a regional video-on-demand service largely composed of feature films and documentaries, but that may also include other types of programming such as comedy, variety and series. The applicant also proposes to broadcast adult programming.*

Introduction

1. Mitchell Seaforth Cable T.V. Ltd. (Mitchell Seaforth) filed an application for a broadcasting licence to operate a regional video-on-demand (VOD) programming undertaking to serve Dublin, Ontario. The Commission did not receive any interventions in connection with this application.
2. Mitchell Seaforth is a Canadian corporation controlled by Mr. Steven J. Ward, a Canadian citizen ordinarily resident in Canada who owns 100% of the issued common shares.

Proposed service

3. The applicant indicated that the new VOD service would consist primarily of feature films and documentaries, but may also include other types of programming such as comedy, variety and series. It also proposed to broadcast adult programming.
4. Mitchell Seaforth stated that it would provide closed captioning of its VOD programming to serve the needs of viewers who are deaf or hard of hearing. The applicant indicated that it would accept a condition of licence that 100% of English-language and French-language titles would be captioned in each year of the licence term, excluding advertising and promos.

5. Mitchell Seaforth stated that it would make its VOD programming accessible to persons with visual impairments. Visually impaired customers would be able to order the VOD service by telephone. To the greatest extent possible, audio descriptions would be provided for programming that contains textual or graphical information including programming on the barker channel. Mitchell Seaforth would strive to obtain titles with described video, but did not plan to provide this service on its own. The applicant stated that the annual minimum percentage of titles with video description would be established based on availability. It further indicated its willingness to accept these levels as a condition of licence once the percentages have been determined.

Commission's analysis and determinations

6. The Commission is satisfied that the application is in conformity with the licensing framework for VOD services set out in Public Notice 2000-172. Accordingly, the Commission **approves** the application by Mitchell Seaforth Cable T.V. Ltd. for a broadcasting licence to operate a regional video-on-demand programming undertaking to serve Dublin, Ontario. The terms and **conditions of licence** are set out in the appendix to this decision.

Closed captioning and service to persons with visual impairments

7. Consistent with the approach set out in Broadcasting Public Notice 2007-54, the Commission requires Mitchell Seaforth to caption 100% of its programs, beginning in the first year of the licence term. A **condition of licence** to that effect is set out in the appendix to this decision.
8. The Commission notes the applicant's commitments with respect to the services it intends to offer to persons with visual impairments. The Commission expects VOD licensees to provide audio description and video description of programming as well as customer service to respond to the needs of visually impaired customers.

Proposed regulatory framework for video-on-demand services

9. In Broadcasting Public Notice 2008-101, the Commission called for comments on its preliminary determinations on a proposed new regulatory framework for VOD services arising from its review of the regulatory frameworks for broadcasting distribution undertakings and discretionary programming services (see Broadcasting Public Notice 2008-100). Upon completion of the proceeding, the Commission expects the licensee to submit an application for an amendment to its licence in order to ensure that its conditions of licence are consistent with the new regulatory framework.

Secretary General

Related documents

- *Call for comments on a proposed regulatory framework for video-on-demand undertakings* – Notice of Consultation, Broadcasting Public Notice CRTC 2008-101, 30 October 2008

- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services – Regulatory policy, Broadcasting Public Notice CRTC [2008-100](#), 30 October 2008*
- *A new policy with respect to closed captioning, Broadcasting Public Notice CRTC 2007-54, 17 May 2007*
- *Introductory statement to Decisions CRTC 2000-733 to 2000-738: Licensing of new video-on-demand and pay-per-view services, Public Notice CRTC 2000-172, 14 December 2000*

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 2009-583

Terms, conditions of licence, expectations and encouragement

Terms

Issuance of the broadcasting licence to operate a regional video-on-demand programming undertaking to serve Dublin, Ontario.

The licence will expire 31 August 2016.

The applicant must file with the Commission an executed copy of its amended by-laws by 17 September 2010.

Furthermore, the licence for this undertaking will be issued once 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 24 months from the date of this decision, unless a request for an extension of time is approved by the Commission before 17 September 2011. In order to ensure that such a request is processed in a timely manner, it should be submitted at least 60 days before this date.

Conditions of licence

1. The licensee shall adhere to the *Pay Television Regulations, 1990*, as amended from time to time, with the exception of section 4 pertaining to logs and records.
2. The licensee shall maintain for a period of one year and submit to the Commission upon request a detailed list of the inventory available on each file server. The list must identify each program by programming category and by country of origin, and indicate the period of time that each program was on the server and available to subscribers.
3. Except as authorized by the Commission, the broadcasting undertaking licensed herein shall be operated in fact by the licensee itself.
4. The licensee shall ensure that, at all times:
 - a) not less than 5% of the English-language feature films and not less than 8% of the French-language feature films in the inventory available to subscribers are Canadian;
 - b) the feature film inventory includes all new Canadian feature films that are suitable for video-on-demand exhibition and meet the approved *Industry code of programming standards and practices governing pay, pay-per-view and video-on-demand services*; and

- c) not less than 20% of all programming other than feature films in the inventory available to subscribers is Canadian.
5. The licensee shall contribute 5% of its gross annual revenues to an existing Canadian program production fund administered independently of its undertaking.
- For the purpose of this condition:
- a) “gross annual revenues” is the sum of:
 - i) 50% of the total revenues received from customers by the broadcasting distribution undertaking(s) for distributing the video-on-demand service, where the video-on-demand service is a “related service”; and
 - ii) all revenues received by the licensee from the broadcasting distribution undertaking(s) distributing the video-on-demand service, where the video-on-demand service is not a “related service”.
 - b) a “related service” is a video-on-demand service in which the broadcasting distribution undertaking that distributes it, or any of its shareholders owns, directly or indirectly, 30% or more of the equity.
6. The licensee shall ensure that not less than 25% of the titles promoted each month on its barker channel are Canadian titles.
7. The licensee shall remit to the rights holders of all Canadian feature films 100% of revenues earned from the exhibition of these films.
8. The licensee shall not enter into an affiliation agreement with the licensee of a broadcasting distribution undertaking unless the agreement incorporates a prohibition against linkage of its service with any non-Canadian discretionary service.
9. The licensee shall caption 100% of the programs in its inventory, consistent with the approach set out in *A new policy with respect to closed captioning*, Broadcasting Public Notice CRTC 2007-54, 17 May 2007.
10. The licensee shall adhere to the Canadian Association of Broadcasters’ *Equitable Portrayal Code*, as amended from time to time and approved by the Commission. However, the application of the foregoing condition of licence will be suspended if the licensee is a member in good standing of the Canadian Broadcast Standards Council.
11. The licensee shall adhere to the *Pay television and pay-per-view programming code regarding violence*, as amended from time to time and approved by the Commission. However, the application of the foregoing condition of licence will be suspended if the licensee is a member in good standing of the Canadian Broadcast Standards Council.

12. The licensee shall adhere to the *Industry code of programming standards and practices governing pay, pay-per-view and video-on-demand services*, as amended from time to time and approved by the Commission. However, the application of the foregoing condition of licence will be suspended if the licensee is a member in good standing of the Canadian Broadcast Standards Council.

Expectations

Programming packages

The Commission expects the licensee to limit to one week the total period during which the programming in programming packages may be viewed.

Adult programming

The Commission expects the licensee to adhere to its internal policy on adult programming once reviewed and approved by the Commission. The Commission therefore expects the licensee to provide its proposed internal policy on adult programming at least one month prior to the implementation of the service. The Commission further expects that any future changes made by the licensee to its internal policy on adult programming will be submitted for Commission approval prior to their implementation.

Cultural diversity

The Commission expects the licensee to endeavour, through its programming and employment opportunities, to reflect the presence in Canada of ethnocultural minorities, Aboriginal peoples, and persons with disabilities. The Commission further expects the licensee to ensure that the on-screen portrayal of such groups is accurate, fair and non-stereotypical.

Service to persons who are blind or whose vision is impaired

The Commission expects the licensee to provide an audio description of all programming that provides textual or graphic information, including programming broadcast on the barker channel. The Commission also expects the licensee to acquire and make available described versions of programming, where possible, and to ensure that its customer service responds to the needs of visually impaired customers.

Encouragement

Employment equity

In accordance with *Implementation of an employment equity policy*, Public Notice CRTC 1992-59, 1 September 1992, the Commission encourages the licensee to consider employment equity issues in its hiring practices and in all other aspects of its management of human resources.