



Broadcasting Decision CRTC 2009-633

Route reference: 2009-158

Additional reference: 2009-158-2

Ottawa, 8 October 2009

Sam J. Louis, on behalf of a corporation to be incorporated Across Canada

*Application 2008-1694-4, received 17 December 2008
Public Hearing in Halifax, Nova Scotia
28 May 2009*

Black Canadian Broadcasting Television – Category 2 specialty service

*The Commission **approves** an application for a broadcasting licence to operate a new, high definition Category 2 specialty programming undertaking.*

Introduction

1. Sam J. Louis, on behalf of a corporation to be incorporated, filed an application for a broadcasting licence to operate Black Canadian Broadcasting Television,¹ a national, English-language Category 2 specialty programming service that would offer news, sports, entertainment, arts, education, social, political and financial programming reflecting Black Canadian culture and heritage from both a national and international viewpoint.
2. Sam J. Louis will be controlled by its sole shareholder and director Mr. Sam J. Louis, a Canadian within the meaning of 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.
3. The applicant proposed to offer programming drawn from all the categories set out in item 6 of Schedule 1 to the *Specialty Services Regulations, 1990*, including category 15 Filler programming. In each broadcast week, not more than 15% of all programming broadcast would be devoted to category 7(d) Theatrical feature films aired on TV, not more than 15% would be devoted to category 6(a) Professional sports, and not more than 15% would be devoted to category 8 Music. The applicant also requested that, of the 12 minutes of advertising material permitted during each clock hour, it be authorized to broadcast up to six minutes of local and regional advertising. In addition, the applicant proposed to offer the service in high definition format.

¹ In a letter to the Commission dated 10 March 2009, the applicant indicated that the name of the proposed service would be changed from Black Broadcasting Television (the name announced in Broadcasting Notice of Consultation 2009-158) to Black Canadian Broadcasting Television.

4. The Commission did not receive any interventions in connection with this application.
5. The Commission has 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 Category 1 or analog pay or specialty television 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. Where appropriate, in setting conditions of licence, the Commission prevents or limits the broadcast of specific types of programming to ensure that the service is not nor will become directly competitive with any existing Category 1 or analog pay or specialty television service.

Commission's analysis and determinations

6. After examining the application in light of applicable regulations and policies, the Commission considers that the issues to be addressed in its determinations are as follows:
 - Would the proposed service be directly competitive with existing Category 1 or analog pay or specialty services?
 - Has the applicant justified the proposed inclusion of category 15 programming?
 - Should the applicant be authorized to broadcast local and regional advertising?

Would the proposed service be directly competitive with existing Category 1 or analog pay or specialty services?

7. Based on its review of the present application, the Commission determines that, given the broad nature of the applicant's proposed nature of service definition in conjunction with the general interest nature of the proposed service and the fact that the applicant proposed to offer programming from all programming categories, the proposed programming limitations are insufficient to prevent Black Canadian Broadcasting Television from becoming directly competitive with existing Category 1 or analog pay or specialty services.
8. In Broadcasting Public Notice 2008-100, the Commission expressed the view that, in most instances, the narrative descriptions of Category 1 services are sufficiently specific to ensure that these services remain true to the genre for which they were licensed. Consequently, the Commission determined that it would permit all Category 1 services to draw programming from all program categories, thereby providing these services with greater flexibility. 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 1 services, the Commission established 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; and
 - 8(b) and (c) combined – Music video clips and Music video programs.
9. The Commission stated that it did not intend to apply this general approach to Category 2 services. Instead, the Commission indicated that, in assessing applications for new Category 2 services or applications for amendments to the nature of service conditions of licence for Category 2 services, it would consider imposing the limitations noted above on a case-by-case basis.
10. In the present case, the Commission finds that imposing a condition of licence consistent with the approach described in Broadcasting Public Notice 2008-100 in conjunction with the proposed nature of service definition would be sufficient to ensure that the proposed service does not and would not compete with existing Category 1 or analog pay or specialty television services. Accordingly, the Commission is imposing a **condition of licence**, as set out in the appendix to this decision, requiring that the applicant limit the broadcast of programming drawn from each of categories 2(b), 6(a), 7, and 8(b) and (c) combined, to no more than 10% of the broadcast month. As this is a new service, programming drawn from category 7 has been limited to 10% of the broadcast month to ensure the proposed service does not morph into an established programming genre.

Has the applicant justified the proposed inclusion of category 15 programming?

11. In Public Notice 2000-171, the Commission noted that it had removed category 15 from almost all of the Category 2 nature of service descriptions. The Commission considered that all programming from category 15 could be categorized more particularly under other categories and should be logged as such. The Commission indicated that an applicant seeking to offer programming from category 15 on a Category 2 service must provide a sufficient justification.
12. In the present case, the applicant did not provide any justification for its proposal to offer programming from category 15. Accordingly, the Commission **denies** the applicant's proposal to broadcast programming from category 15.

Should the applicant be authorized to broadcast local and regional advertising?

13. In Public Notice 2000-171-1, the Commission stated that Category 2 services must not broadcast any paid advertising material other than national paid advertising. The Commission has granted exceptions to this principle for Category 2 third-language ethnic services as well as those services that broadcast a significant amount of local and regional programming.

14. In the present case, the applicant indicated that its proposed service would target a niche market comprised of small- and medium-sized businesses with limited advertising budgets and whose operations are generally directed to Black consumers. While the applicant indicated that it would provide some local and regional programming directly targeting Canadians of Black heritage and culture, it nevertheless plans to offer a national service that would not target any particular local market directly. In light of the foregoing, the Commission considers that the applicant's proposal does not warrant an exception to the Commission's approach with respect to the broadcast of advertising by Category 2 services. Accordingly, the Commission **denies** the applicant's request to broadcast local and regional advertising.

Conclusion

15. The Commission is satisfied that the application complies with the framework set out in Public Notice 2000-6 and with all applicable terms and conditions announced in Public Notice 2000-171-1. Accordingly, the Commission **approves** the application by Sam J. Louis, on behalf of a corporation to be incorporated, for a broadcasting licence to operate the national, English-language Category 2 high definition specialty programming undertaking Black Canadian Broadcasting Television. The terms and **conditions of licence** are set out in the appendix to this decision.

Reminder

16. The Commission reminds the applicant that distribution of this service is subject to the applicable distribution rules set out in Broadcasting Public Notice 2008-100.

Secretary General

Related documents

- *Various broadcasting applications* – Notice of hearing, Broadcasting Notice of Consultation CRTC 2009-158, 25 March 2009
- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services* – Regulatory policy, Broadcasting Public Notice CRTC 2008-100, 30 October 2008
- *Introductory statement – Licensing of new digital pay and specialty services – Corrected Appendix 2*, Public Notice CRTC 2000-171-1, 6 March 2001
- *Introductory statement – Licensing of new digital pay and specialty services*, Public Notice CRTC 2000-171, 14 December 2000

- *Licensing framework policy for new digital pay and specialty services, Public Notice CRTC 2000-6, 13 January 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 2009-633

Terms and conditions of licence for the Category 2 specialty programming undertaking Black Canadian Broadcasting Television

Terms

The Commission directs the applicant to file an executed copy of the corporation's shareholders' agreement as soon as it becomes available.

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 8 October 2012. 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.

The licence will expire 31 August 2015.

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 devoted to news, sports, entertainment, arts, education, social, political and financial programming reflecting Black Canadian culture and heritage from both a national and international viewpoint.
3. 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
4. Not more than 10% of the programming broadcast during the broadcast month shall be drawn from each of the following categories: 2(b) Long-form documentary; 6(a) Professional sports; 7 Drama and comedy; and 8(b) and (c) combined – Music video clips and Music video programs.
 5. The licensee shall caption 100% of its programs over the broadcast day, consistent with the approach set out in *A new policy with respect to closed captioning*, Broadcasting Public Notice CRTC 2007-54, 17 May 2007.
 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.

7. 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.

For the purposes of the conditions of this licence, including condition of licence 1, *broadcast day* refers to the 24-hour period beginning each day at 6 a.m. or any other period approved by the Commission.