



Broadcasting Decision CRTC 2009-719

Route reference: 2009-296

Ottawa, 25 November 2009

Gear Up Urbanwear Inc.
Across Canada

Application 2009-0186-0, received 15 January 2009

Public Hearing in the National Capital Region

21 July 2009

Black Entertainment Television Canada – Category 2 specialty service

The Commission approves an application for a broadcasting licence to operate a new French-language ethnic Category 2 specialty programming undertaking.

Introduction

1. Gear Up Urbanwear Inc. (Gear Up) filed an application for a broadcasting licence to operate Black Entertainment Television Canada, a national, French-language ethnic Category 2 specialty service targeting the Black community. The service's programming will be devoted to the cultural aspects of the Black community and will present a new, positive image of that culture through music, film, videos, the arts and live performances.
2. Gear Up is a Canadian company owned and controlled by Pierre-Hervé Armand, a Canadian as defined in *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 also requested authorization to provide its service in high-definition (HD) format for a period of three years, in accordance with the Commission's approach set out in Broadcasting Public Notices 2003-61 and 2006-74.
4. The Commission received two interventions in connection with this application. The interventions are available on the Commission's website at www.crtc.gc.ca, under "Public Proceedings."
5. The Commission notes the interveners' concerns regarding the name chosen by the applicant for the new service. According to them, the name proposed for the new service is identical to that of a foreign service authorized for distribution in Canada and the use of that name could contravene the foreign service's trademark rights or copyright. However, given that these issues are beyond its jurisdiction, the Commission did not take them into account in the examination of this application.

Commission's analysis and determinations

6. In Public Notice 2000-171, the Commission adopted a case-by-case approach to determine whether Category 2 services could compete directly with existing analog specialty or pay services or Category 1 services. The Commission examines each application in detail, taking into account the proposed nature of the service and the circumstances specific to the genre in question.
7. After examining this application, the Commission is satisfied that it complies with the framework set out in Public Notice 2000-6 and with the terms and conditions set out in Public Notice 2000-171-1. Accordingly, the Commission **approves** the application by Gear Up Urbanwear Inc. for a broadcasting licence to operate the national, French-language ethnic Category 2 specialty programming undertaking to be known as Black Entertainment Television Canada. The terms and **conditions of licence** are set out in the appendix to this decision.
8. Furthermore, in Broadcasting Public Notice 2008-100, the Commission indicated that, in most instances, the narrative descriptions of the nature of Category A services (currently known as Category 1 and analog pay and specialty 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 A 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 A 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
 - 8(b) and (c) combined - Music video clips and Music video programs.
9. The Commission also indicated that it did not intend to apply this general approach to Category 2 services but 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 above-noted limitations on a case-by-case basis.
10. In the present case, the Commission notes that the definition of the nature of the general-interest service proposed, as well as the program categories that the applicant proposes to broadcast, are not restrictive enough to prevent Gear Up from competing directly with existing Category A services. Accordingly, to ensure that the proposed service does not compete directly with existing Category A services, the Commission is imposing a **condition of licence**, as set out in the appendix to this decision, requiring that the applicant devote no more than 10% of the broadcast month to programming drawn from categories 2(b), 6(a), 7, and 8(b) and (c) combined.

11. With regard to the applicant's request for authorization to offer an HD version of its service for distribution, the Commission stated in Broadcasting Public Notices 2003-61 and 2006-74 that it would authorize licensees of Canadian pay or specialty services to make available upgraded versions of their services for a period of three years. However, given the changes made to the Commission's approach to HD specialty services set out in Broadcasting Public Notice 2008-100, the Commission is of the view that the shorter three-year authorization is no longer necessary.
12. In light of the above, the applicant will be authorized, by **condition of licence**, to make available for distribution a version of Black Entertainment Television Canada in HD format, provided that not less than 95% of the video and audio components of the upgraded and standard definition versions of the service are the same, exclusive of commercial messages and of any part of the service carried on a subsidiary signal. Further, all of the programming making up the 5% allowance must be provided in HD.

Implementation of the Commission's determinations regarding accessibility of services

13. In Broadcasting Public Notice 2007-54, the Commission indicated that it would require all English- and French-language broadcasters to caption 100% of their programs, with the exception of advertising and promos. In Broadcasting and Telecom Regulatory Policy 2009-430 (the Accessibility Policy), the Commission noted that captioning technology, including voice recognition software – which is used extensively in captioning French-language programming – has greatly improved and should no longer be considered a technology in development. Consequently, in accordance with the Accessibility Policy, the Commission has set out a **condition of licence** requiring the licensee to:
 - ensure that advertising, sponsorship messages and promos are closed captioned by no later than the fourth year of the licence term;
 - adhere to the quality standards on closed captioning developed by television industry working groups, as amended from time to time and approved by the Commission; and
 - implement a monitoring system to ensure that closed captioning is included in the broadcast signal and that captioning reaches the viewer in its original form.
14. In the Accessibility Policy, the Commission also indicated that it would continue to require broadcasters to provide four hours of described video per week. However, the Commission determines that it is appropriate not to impose a condition of licence to that effect at this time. Nonetheless, the Commission expects that the service will provide described video whenever it is possible.
15. Further, in that same policy, the Commission indicated that licensees would be required, by condition of licence, to provide audio description for all information programs, including news programming. A **condition of licence** to this effect is 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.

Related documents

- *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009
- *Regulatory framework 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
- *Regulatory framework for the licensing and distribution of high definition pay and specialty services*, Broadcasting Public Notice CRTC 2006-74, 15 June 2006
- *The regulatory framework for the distribution of digital television signals*, Broadcasting Public Notice CRTC 2003-61, 11 November 2003
- *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 for new digital pay and specialty services*, Public Notice 2000-6, 13 January 2000

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 2009-719

Terms, conditions of licence and expectation for the Category 2 specialty programming undertaking Black Entertainment Television Canada

Terms

A licence will be issued once the applicant has satisfied the Commission, with supporting documentation, that the following requirements have been met:

- 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 during the 36 months following the date of this decision, unless a request for an extension of time is approved by the Commission before 25 November 2012. 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.

Further, in accordance with *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009, the following must be received by the Commission for its approval within three months of the date of this decision:

- the licensee's plans to ensure that it meets the expectation that a closed captioned version of all programming aired during the overnight period will be provided to viewers when captions are available;
- a description of the monitoring system to be implemented to ensure that closed captioning is included in the broadcast signal and that captioning reaches the viewer in its original form;
- a description of the mechanisms and procedures to be implemented relating to quality control of closed captioning, including procedures to ensure that closed captioning is present throughout the entire program and the means by which the licensee intends to ensure that captioning errors are corrected before programming is rebroadcast; and
- a description of the measures that will be adopted in order to meet the requirement set out in paragraph 128 of the policy to effectively implement audio description.

The licence will expire 31 August 2016.

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, French-language ethnic Category 2 specialty programming service targeting the Black community that will offer programming devoted to the cultural aspects of the Black community and will present a new, positive image of that culture through music, film, videos, the arts and live performances.
3. The programming will be drawn exclusively from the following categories set out in section 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, improvisation, 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
 - 11 General entertainment and human interest
 - 13 Public service announcements
 - 14 Infomercials, promotional and corporate videos
4. The licensee shall devote no more than 10% of all programming broadcast during the broadcast month to programming drawn from each of the categories 2(b), 6(a) and 7 and from categories 8(b) and (c) combined.

5. The licensee shall caption 100% of the French- and English-language programs broadcast 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 accordance with *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009, the licensee shall:
 - ensure that advertising, sponsorship messages and promos in the English and French language are closed captioned by no later than the fourth year of the licence term;
 - adhere to the quality standards on closed captioning developed by television industry working groups, once approved by the Commission; and
 - implement a monitoring system to ensure that closed captioning is included in the broadcast signal and that captioning reaches the viewer in its original form.
7. The licensee shall provide audio description for all the key elements of information programs, including news programming.
8. 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.
9. Where the licensee broadcasts religious programming as defined in the *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.
10. The licensee is authorized to make available for distribution a version of its service in high definition format, provided that not less than 95% of the video and audio components of the upgraded and standard definition versions of the service are the same, exclusive of commercial messages and of any part of the service carried on a subsidiary signal. Further, all of the programming making up the 5% allowance shall be provided in high definition.

For the purposes of the conditions of this licence, including condition of licence 1,

“broadcast day” means the period of up to 18 consecutive hours, beginning each day not earlier than six o'clock in the morning and ending not later than one o'clock in the morning of the following day, as selected by the licensee, or any other period approved by the Commission; and

“broadcast month” means the total number of hours devoted by the licensee to broadcasting during the aggregate of the broadcasting days in a month.

Expectation

The Commission expects that the service will provide described video whenever it is possible.