



Broadcasting Decision CRTC 2011-132

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Route reference: 2010-715

Ottawa, 28 February 2011

FreeHD Canada Inc.
Across Canada

Application 2010-0954-8, received 8 June 2010
Public Hearing in the National Capital Region
26 November 2010

Direct-to-home pay-per-view service

*The Commission **approves** an application for a broadcasting licence to operate a national, direct-to-home pay-per-view programming service largely composed of live sports and concert programming, feature films, general-interest programming and some programming in 3-D.*

The application

1. The Commission received an application by FreeHD Canada Inc. (FreeHD) for a broadcasting licence to operate a national, direct-to-home (DTH) pay-per-view (PPV) programming undertaking to be known as Blusky PPV. The Commission did not receive any interventions in connection with this application.
2. FreeHD is controlled by Mr. David Lewis, who holds 91% of the voting interest. The remaining 9% is held by Mrs. Krista Lewis.
3. The applicant indicated that the new DTH PPV service would consist primarily of live sports and concert programming, feature films, general-interest programming and some programming in 3-D. It proposed to draw programming from the following program categories set out in Item 6 of Schedule I to the *Pay Television Regulations, 1990*, as amended from time to time: 2(b), 3, 6(a), 6(b), 7(c), 7(d), 7(e) and 8(a). In addition, the applicant indicated that the programming would be distributed in high definition format.
4. FreeHD indicated that it would make its PPV program offering available to customers in both official languages. While the programming would be predominantly in the English language, approximately 33% of all programming would be in the French language. The applicant also indicated that of the six PPV channels it plans to offer to its subscribers, two would be in the French language.
5. Finally, FreeHD stated that it would provide closed captioning of its PPV programming to serve the needs of viewers who are deaf or hard of hearing.

Specifically, it indicated that it would ensure that 100% of the programming aired during the broadcast day is closed captioned, beginning in the first year of the licence term. It also indicated that it would provide accessibility of its PPV programming for persons with visual impairments through audio description and through video description (also known as described video).

Commission's analysis and determination

6. The Commission is satisfied that the application is in conformity with the licensing framework for PPV services set out in Public Notice 2000-172. Accordingly, the Commission **approves** the application by FreeHD Canada Inc. for a broadcasting licence to operate the national, direct-to-home pay-per-view programming undertaking to be known as Blusky PPV. The terms and **conditions of licence** are set out in the appendix to this decision.

Closed captioning

7. 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 over the broadcast day, with the exception of advertising and promos, beginning in the first year of the licence term. Accordingly, the Commission sets out a **condition of licence** to this effect in the appendix to this decision.
8. Further, in Broadcasting and Telecom Regulatory Policy 2009-430 (the Accessibility Policy), the Commission stated that it intends to require television licensees to abide by certain conditions of licence relating to closed captioning at the time of their next licence renewal. However, as this is a new service, the Commission requires the applicant to immediately adhere to the quality standards on closed captioning developed by the television industry's working groups and implement a monitoring system to ensure that, for any signal that is closed captioned, the correct signal is captioned, the captioning is included in its broadcast signal and this captioning reaches the distributor of that signal in its original form. **Conditions of licence** to this effect are set out in the appendix to this decision.

Described video

9. In the Accessibility Policy, the Commission indicated that those licensees that are currently required by condition of licence to provide described video would continue to be subject to such a requirement. The Commission intends to consider expanding the types of services to which it will apply described video requirements in the future. For those services such as PPV services that do not currently have a condition of licence regarding described video, the Commission expects these services to acquire and make available described versions of programming whenever possible and to ensure that its customer service responds to the needs of persons with a visual impairment, as set out in the Accessibility Policy.

Employment equity

10. Because this applicant is subject to the *Employment Equity Act* and files reports concerning employment equity with the Department of Human Resources and Skills Development, its employment equity practices are not examined by the Commission.

Secretary General

Related documents

- *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009
- *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.*

Appendix to Broadcasting Decision CRTC 2011-132

Terms, conditions of licence and expectations

Terms

Issuance of the broadcasting licence to operate a national, direct-to-home pay-per-view programming undertaking to be known as Blusky PPV

The licence will expire 31 August 2017.

A 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 28 February 2013. 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.

Conditions of licence

1. The licensee shall provide a national, direct-to-home pay-per-view programming service consisting of live sports and concert programming, feature films, general-interest programming and some programming in 3-D. The programming shall be drawn exclusively from the following program categories set out in Item 6 of Schedule I to the *Pay Television Regulations, 1990*, as amended from time to time:
 - 2 (b) Long-form documentary
 - 3 Reporting and actualities
 - 6 (a) Professional sports
(b) Amateur sports
 - 7 (c) Specials, mini-series and made-for-TV feature films
(d) Theatrical feature films aired on TV
(e) Animated television programs and films
 - 8 (a) Music and dance other than music video programs or clips
2. The licensee shall adhere to the *Pay Television Regulations, 1990*, as amended from time to time, with the exception of sections 4(1), 4(2) and 4(3), which pertain to logs and records.
3. The licensee shall maintain, for a period of one year, and submit to the Commission upon request, a detailed list of programs broadcast on each channel. The list must identify each program broadcast; its key features; its program category; if the program is an event; the language of the program; if it is Canadian or non-Canadian;

if captioning and/or video description is available; if it is produced by the licensee; and the times and dates of broadcast.

4. With respect to English-language programming, the licensee shall, through its agreements with the licensees of direct-to-home broadcasting distribution undertakings, ensure that the following is made available by these licensees to their pay-per-view (PPV) subscribers in each broadcast year:
 - a) a minimum of twelve Canadian feature films (including all new Canadian feature films suitable for PPV exhibition that meet the *Industry code of programming standards and practices governing pay, pay-per-view and video-on-demand services*);
 - b) a minimum of four English-language Canadian-based events; and
 - c) the following minimum percentages of Canadian programs: 5% of feature film titles, and 20% of all program titles other than feature films.
5. With respect to French-language programming, the licensee shall, through its agreements with the licensees of direct-to-home broadcasting distribution undertakings, ensure that the following is made available by these licensees to their pay-per-view (PPV) subscribers in each broadcast year:
 - a) a minimum of 20 Canadian feature films in the original French-language version, or dubbed in French, which have been exhibited in theatres in French-language markets (including all new Canadian feature films suitable for PPV exhibition that meet the *Industry code of programming standards and practices governing pay, pay-per-view and video-on-demand services*);
 - b) a minimum of six French-language events in each of years one and two of operation, eight in each of years three and four; ten in each of years five and six; and twelve in year seven of operation; and
 - c) the following minimum percentages of Canadian programs: 8% of feature film titles, and 20% of all program titles other than feature films.
6. The licensee shall ensure that both English-language and French-language Canadian feature films are scheduled, repeated and promoted in the same manner as non-Canadian feature films.
7. The licensee shall contribute a minimum of 5% of its gross annual revenues derived from its pay-per-view broadcasting activities to one or more independently administered Canadian production fund or funds to support the development of Canadian programming, provided that these funds meet the criteria set out in *Contributions to Canadian Programming by Broadcasting Distribution Undertakings*, Public Notice CRTC 1997-98, 22 July 1997, as amended from time to time. Contributions shall take the form of monthly instalments, to be remitted within

45 days of month's end, and shall represent a minimum of 5% of that month's gross revenues.

8. The licensee shall remit to the rights holders of all English-language Canadian films and two Canadian-based events per year 100% of the gross revenues earned by the licensee from the exhibition of these films and events. With respect to French-language Canadian feature films, the licensee shall remit 100% of the gross revenues earned by the licensee from the exhibition of these films to distributors and providers with a minimum of 60% to the programming providers.
9. The licensee shall not enter into an affiliation agreement with the licensee of a direct-to-home distribution undertaking unless the agreement incorporates a prohibition against the linkage of the licensee's pay-per-view service with any non-Canadian discretionary service.
10. The licensee shall caption 100% of the programming aired during 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.
11. The licensee shall adhere to the quality standards on closed captioning developed by the television industry's working groups, as amended from time to time and approved by the Commission.
12. The licensee shall have a monitoring system in place to ensure that, for any signal that is closed captioned, the correct signal is captioned, the captioning is included in its broadcast signal and this captioning reaches, in its original form, the distributor of that signal. "Original form" means, at a minimum, that the captioning provided by the licensee reaches the distributor unaltered, whether it is passed through in analog or in digital, including in high definition.
13. The licensee shall adhere to the *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.
14. 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.
15. 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

Program offering in both official languages

The Commission expects the licensee to make its program offering available to customers in both official languages. The Commission expects the licensee to adhere to its commitment to offer approximately 33% of its programming in the French language.

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 with the exception of packages of events programming such as seasonal sports or concert series.

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 acquire and make available described versions of programming, where possible, and to ensure that its customer service responds to the needs of persons with a visual impairment, as set out in *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009.

In regard to described programming, the Commission expects the licensee to:

- display a standard described video logo and air an audio announcement indicating the presence of described video before the broadcast of each described program; and
- make information available regarding the described programs that it will broadcast.

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.