



Broadcasting Decision CRTC 2015-42

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Route reference: 2014-472-2

Additional references: 2014-102, 2014-102-2, 2014-383 and 2014-383-1

Ottawa, 13 February 2015

2251723 Ontario Inc.

Across Canada

Application 2013-1757-9, received 13 December 2013

Public hearing in the National Capital Region

12 November 2014

Video-on-demand service

The Commission approves an application for a broadcasting licence to operate a national video-on-demand service.

Introduction

1. 2251723 Ontario Inc. (2251723 Ontario) filed an application to operate a national video-on-demand (VOD) undertaking. This application, along with four applications (2013-1754-5, 2013-1756-1, 2013-1753-7 and 2013-1755-3) to operate regional broadcasting distribution undertakings (BDUs), was originally scheduled to be considered at a hearing held on 13 May 2014. However, after rescheduling these applications to the 25 September 2014 public hearing, the Commission subsequently withdrew them.¹ The present application was rescheduled for the 12 November 2014 public hearing, and interventions that were filed in connection with the May 2014 and September 2014 hearings were added to the public record of the 12 November hearing for consideration by the Commission.² The applications for the regional BDU licences were rescheduled to a public hearing held on 13 January 2015.³
2. 2251723 Ontario is wholly owned by VMedia Inc. VMedia Inc. is controlled by Content Media Rights Inc., a corporation equally controlled by Alexei Tchernobrivets, Vadim Sloutsky and Ivan Smirnov.

¹ See Broadcasting Notices of Consultation 2014-102 and 2014-102-2, as well as 2014-383 and 2014-383-1.

² See Broadcasting Notice of Consultation 2014-472-2.

³ See Broadcasting Notice of Consultation 2014-541-1.

3. The applicant proposed to offer programming predominantly in the English language. It also intends to offer programming in Cantonese, French, Mandarin, in a variety of South Asian languages and in other languages, as such programming becomes available. Moreover, 2251723 Ontario confirmed that its proposed service would offer adult programming and has submitted an internal policy that includes provisions regarding the acquisition, promotion and distribution of such programming.
4. The applicant indicated that it would adhere to the standard requirements for VOD services set out in Broadcasting Regulatory Policies 2011-59 and 2011-59-1. The Commission notes that these requirements were amended in Appendix 6 to Broadcasting Regulatory Policy 2014-444 to include the requirement that VOD licensees participate in the National Public Alerting System.
5. 2251723 Ontario confirmed that it would contribute at least 5% of its gross annual revenues to the Canada Media Fund and to the Independent Production Fund, a certified independent production fund approved by the Commission.

Interventions

6. The Commission received interventions opposing the application by Ethnic Channels Group Limited (ECGL); however, the Commission notes that they related to 2251723 Ontario's applications for new regional BDU licences. The applicant replied to these interventions. The public record for this proceeding is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the application number indicated above.

Commission's analysis

7. To ensure that the proposed service meets the licensing criteria for VOD services, 2251723 Ontario was requested to:
 - elaborate on and provide examples of the types of VOD content that would be offered pursuant to the VOD licence and the types that would fall under the Exemption order for digital media broadcasting undertakings (the DMBU exemption order, set out in Broadcasting Order 2012-409);
 - explain how the exempt VOD service would be distinguishable from the licensed VOD service; and
 - explain how it would ensure that the proposed VOD service complies with the standard requirements for VOD services.
8. In its reply, 2251723 Ontario noted that subscribers would use its VBox, which acts as a set-top box and media player, to access its VOD service. The proposed VOD service would operate in a manner similar to other regulated VOD services offered by BDUs, with 2251723 Ontario offering an inventory of video programming that the

subscriber could access on demand at a price as part of a transactional VOD service, or at no cost in conjunction with channels that are part of a subscription package.

9. Conversely, the applicant indicated that it does not currently offer exempt VOD services online (such as Bell's service TV Everywhere), which operate under the DMBU exemption order. 2251723 Ontario stated that if it were to do so, the user would be required to register online to obtain authentication credentials to use the VBox to access this service. This would enable consumers to distinguish between services that are regulated and services that operate under the DMBU exemption order.
10. Finally, to ensure compliance with the standard requirements for VOD undertakings, 2251723 Ontario stated that it would employ a project manager dedicated to managing the VOD service and overseeing compliance. Further, it indicated that its proprietary administration system is already set up to distribute revenue streams to ensure payments to rights holders of Canadian feature films. It added that all accessibility functions would be implemented upon launch of the licensed service.
11. Given the preceding, the Commission finds that 2251723 Ontario has demonstrated that customers will be able to distinguish between the proposed regulated VOD service and other features offered by the VBox. The Commission also finds that the applicant has taken steps to ensure that its service will comply with the standard requirements for VOD undertakings at all times by hiring an employee dedicated to overseeing the service.
12. In addition, the Commission is of the view that the applicant's policy on adult programming lacks details as to how the applicant would ensure appropriate staff training and accountability regarding the broadcast of such programming. The Commission therefore requires 2251723 Ontario to file an amended policy on adult programming with the Commission at least 30 days prior to the commencement of operations, consistent with the standard requirements for VOD undertakings.

Conclusion

13. In light of all of the above, the Commission is satisfied that the application complies with the licensing framework for VOD services set out in Broadcasting Regulatory Policy 2010-190 and with all applicable requirements set out in Broadcasting Regulatory Policies 2011-59, 2011-59-1 and 2014-444. Accordingly, the Commission **approves** the application by 2251723 Ontario Inc. for a broadcasting licence to operate a national video-on-demand programming undertaking. The licence will expire 31 August 2021. The licensee shall adhere to the **conditions of licence** set out in Appendix 6 to Broadcasting Regulatory Policy 2014-444. The standard expectations and encouragement applicable to this licensee are also set out in that regulatory policy.
14. 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 **13 February 2017**. 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.

Secretary General

Related documents

- *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2014-541, 21 October 2014, as amended by Broadcasting Notices of Consultation CRTC 2014-541-1 and 2014-541-2
- *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2014-472, 12 September 2014, as amended by Broadcasting Notices of Consultation CRTC 2014-472-1, 2014-472-2 and 2014-472-3
- *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2014-383, 23 July 2014, as amended by Broadcasting Notice of Consultation CRTC 2014-383-1
- *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2014-102, 6 March 2014, as amended by Broadcasting Notices of Consultation CRTC 2014-102-1 and 2014-102-2
- *Amendments to various regulations, the standard conditions of licence for video-on-demand undertakings and certain exemption orders - Provisions requiring the mandatory distribution of emergency alert messages*, Broadcasting Regulatory Policy CRTC 2014-444 and Broadcasting Orders CRTC 2014-445, 2014-446, 2014-447 and 2014-448, 29 August 2014
- *Amendments to the Exemption order for new media broadcasting undertakings (now known as the Exemption order for digital media broadcasting undertakings)*, Broadcasting Order CRTC 2012-409, 26 July 2012
- *Standard requirements for video-on-demand undertakings – Provision of an outlet for local expression, measures to control the loudness of commercial messages and annual filing of aggregate statistical data*, Broadcasting Regulatory Policy CRTC 2011-59-1, 8 May 2012
- *Standard requirements for video-on-demand undertakings*, Broadcasting Regulatory Policy CRTC 2011-59, 31 January 2011
- *Regulatory framework for video-on-demand undertakings*, Broadcasting Regulatory Policy CRTC 2010-190, 29 March 2010

**This decision is to be appended to the licence.*