



Broadcasting Decision CRTC 2015-551

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Reference: Part 1 application posted on 3 July 2015

Ottawa, 11 December 2015

Bell Media Inc.
Across Canada

Application 2015-0626-3

Fashion Television – Licence amendments

*The Commission **approves** an application to delete certain nature of service conditions of licence for the national, English-language specialty Category A service Fashion Television, and to add a condition of licence limiting the amount of live professional sports programming that it may broadcast.*

*The Commission **denies** the licensee’s request to delete the service’s condition of licence relating to the broadcast of programs produced by independent production companies.*

Background

1. In Broadcasting Regulatory Policy 2015-86, the Commission stated that it would eliminate its genre exclusivity policy, which limited programming services to offering certain types of programming (that is, a “nature of service”) and precluded other services from offering that programming. Consequently, it no longer enforces conditions of licence relating to nature of service, with certain exceptions, such as the condition of licence relating to the broadcast of live professional sports programming by services other than mainstream sports services.
2. It further stated that licensees must provide the Commission with a name and a brief description of the service, to be listed on the Commission’s website, and update this name and description any time it changes. This will allow both Canadians and the Commission to continue having basic information about the discretionary services in operation.

Application

3. Bell Media Inc. (Bell Media) filed an application relating to the national, English-language specialty Category A service Fashion Television. Bell Media requested the deletion of the following nature of service conditions of licence:¹

¹ Fashion Television’s current conditions of licence are set out in Appendix 9 to Broadcasting Decision 2011-444.

- 2.(a) The licensee shall provide a national English-language specialty Category A service dedicated to fashion, beauty, style, art, architecture, photography and design.
- (c) No more than 10% of all programming broadcast during each broadcast month shall be drawn from category 6(a) Professional sports.
- (d) No more than 15% of all programming broadcast during each broadcast week shall be drawn from category 7 Drama and comedy.
- (e) No more than 10% of all programming broadcast during each broadcast month shall be drawn from category 7(e) Animated television programs and films.
- (f) No more than 15% of all programming broadcast during each broadcast week shall focus on home and garden design.
4. Condition of licence 2.(b), which reads as follows, would be retained:
- The licensee may draw programming from all the categories set out in item 6 of Schedule I to the *Specialty Services Regulations, 1990*, as amended from time to time.
5. Bell Media also requested the addition of a condition of licence that would limit the amount of live professional sports programming it could broadcast on the service to 10% of the programming broadcast each broadcast month.
6. Finally, the licensee requested the deletion of the following condition of licence:
12. No less than 25% of all Canadian programs broadcast by the licensee, other than news, sports and current affairs programming (categories 1, 2(a), 6(a) and 6(b)), shall be produced by independent production companies.
7. Bell Media stated that the above requests are consistent with the Commission's decisions stemming from its elimination of the genre exclusivity policy.
8. Pursuant to Broadcasting Regulatory Policy 2015-86, the licensee provided the following description for Fashion Television:
- The licensee provides a national English-language discretionary service primarily dedicated to lifestyle and entertainment.

Interventions and licensee's reply

9. The Commission received interventions in opposition to the application from the Canadian Media Production Association (CMPA) and the Writers Guild of Canada (WGC). The licensee replied collectively to the interventions. The public record for this application can be found on the Commission's website at www.crtc.gc.ca or by using the application number provided above.

10. Neither intervener opposed the licensee's request regarding Fashion Television's nature of service conditions of licence.
11. Both the CMPA and the WGC opposed the deletion of the service's condition of licence relating to programming produced by independent production companies (IPCs). They argued that it is not related to the genre exclusivity policy and thus to the nature of service conditions of licence affected by the elimination of that policy. According to the CMPA, Bell Media's request would be inconsistent with the *Broadcasting Act's* (the Act) policy objective regarding independent production and with the Commission's rationale for establishing and maintaining the condition of licence.
12. Arguing that Bell Media was required to demonstrate in its original application why its request was consistent with Broadcasting Regulatory Policy 2015-86, the CMPA stated that the licensee cannot be allowed to advance any new arguments during the reply phase as there would be no opportunity for other parties to challenge these arguments. Both the CMPA and the WGC proposed that Bell Media's request should be considered only when the broadcasting licence for Fashion Television comes up for renewal in 2017, when standard conditions of licence for discretionary and basic services will come into effect, so that it can be properly addressed by Canadians and considered by the Commission.
13. In its reply, Bell Media submitted that the IPC condition of licence is clearly tied to Fashion Television's nature of service and, as such, is no longer enforceable in light of the elimination of the genre exclusivity policy.
14. The licensee further submitted that maintaining this condition of licence would put Fashion Television at a disadvantage, which would be contrary to the spirit and intention of Broadcasting Regulatory Policy 2015-86. In this regard, it noted that the condition of licence was imposed on the service when it was first licensed in 2000 as a digital Category A service, but was not applied to Category B services at that time. Bell Media argued that following the elimination of the genre exclusivity policy, digital services, such as Fashion Television, are now no different than legacy analog services. The elimination of this "digital" distinction, along with the Commission's decision to no longer enforce nature of service conditions of licence, has created regulatory symmetry between Category A and B services. It concluded that the IPC condition of licence, which imposes certain restrictions on a service's programming, should therefore no longer apply as well.
15. Bell Media did not comment on the proposal that its request should be considered only when the broadcasting licence for Fashion Television comes up for renewal in 2017.

Commission's analysis and decisions

16. In regard to Fashion Television's nature of service conditions of licence, the Commission finds that the amendments, as proposed by the licensee, are consistent with Broadcasting Regulatory Policy 2015-86.
17. With respect to the IPC condition of licence, section 3(1)(i)(v) of the Act sets out that "the programming provided by the Canadian broadcasting system should [...] include a significant contribution from the Canadian independent production sector." The IPC condition of licence was introduced in Public Notice 2000-171 as one means of ensuring that the new digital Category 1 services (i.e., Category A services), which benefited from mandatory distribution, would contribute to the above objective. This condition of licence has never formed part of the nature of service condition of licence of these or any other services, and has never been identified as being related to their natures of service. As such, the Commission considers that the IPC condition of licence is enforceable independently of the revised nature of service description.
18. Although Broadcasting Regulatory Policy 2015-86, through its elimination of genre exclusivity, has introduced some regulatory parity between Category A and Category B services (the latter of which have not had the IPC condition of licence imposed), other key changes stemming from that policy will be considered and implemented at licence renewal in 2017. Accordingly, Category A services such as Fashion Television, unlike Category B services, will benefit from mandatory distribution only until their next licence renewal. In the Commission's view, it would therefore be more appropriate to examine any other requests relating to conditions of licence, including the IPC condition of licence, at that time.
19. In light of the above, the Commission **approves** Bell Media Inc.'s request to amend the broadcasting licence for Fashion Television by deleting conditions of licence 2.(a) and 2.(c) through 2.(f), and by adding the following **condition of licence**:

The licensee shall devote not more than 10% of the programming broadcast during the broadcast month to live professional sports programming, which falls under program category 6(a) Professional sports.
20. The Commission **denies** the licensee's request to delete Fashion Television's condition of licence relating to the broadcast of programs produced by IPCs.

Secretary General

Related documents

- *Let's Talk TV: The way forward – Creating compelling and diverse Canadian programming*, Broadcasting Regulatory Policy CRTC 2015-86, 12 March 2015
- *Bell Media Inc. – Group-based licence renewals*, Broadcasting Decision CRTC 2011-444, 27 July 2011

- *Introductory statement – Licensing of new digital pay and specialty services,*
Public Notice CRTC 2000-171, 14 December 2000

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