



Broadcasting Decision CRTC 2007-205

Ottawa, 27 June 2007

TEN Broadcasting Inc.

Across Canada

Application 2006-1513-0, received 20 November 2006

Public Hearing at Membertou, Nova Scotia

16 April 2007

Hustler Français – Category 2 specialty service

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

1. TEN Broadcasting Inc. filed an application for a broadcasting licence to operate Hustler Français, a national French-language Category 2 specialty service devoted to adult entertainment programming and educational and analytical material concerning sexuality and health, including adult entertainment films as well as open-line and other programs on the theme of sexuality.
2. 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.
3. In the present case, the Commission received one intervention in connection with the application from Astral Television Networks, a division of Astral Broadcasting Group Inc. (Astral). Astral operates Super Écran, a national French-language general interest pay television service. The intervener noted that the applicant had proposed no restrictions on its selections from the programming categories set out in the *Specialty Services Regulations, 1990*. Astral requested that the service be subject, by condition of licence, to a 15% limitation on programs from category 7(d) (Theatrical feature films aired on TV).
4. In its reply, the applicant stated that a limit on category 7(d) programming was not necessary as the intervener had not demonstrated how the proposed service would be competitive with Super Écran.

Commission's analysis and determinations

5. With respect to the intervener's comment, the Commission notes that the applicant's nature of service is limited to the distribution of adult-type entertainment and films. The Commission considers that this is sufficient to distinguish the service from Super Écran without imposing a 15% limitation on programs from category 7(d).
6. The Commission is further satisfied that the application is in conformity with all applicable terms and conditions announced in Public Notice 2000-171-1. Accordingly, the Commission **approves** the application by TEN Broadcasting Inc. for a broadcasting licence to operate the national French-language Category 2 specialty programming undertaking Hustler Français. The terms and **conditions of licence** of the new undertaking are set out in the appendix to this decision.
7. The Commission reminds the applicant and distributors that the service, due to the adult nature of the programming, may only be distributed at the specific request of the subscriber and that distributors are not permitted to package the service in such a way that subscribers are obligated to purchase it in order to purchase any other programming service, other than an adult programming service. Furthermore, distributors are required to take measures to fully block the reception of both the audio and video portions of the service to subscribers that request it not to be receivable in their home, in either unscrambled or scrambled form.

Secretary General

Related documents

- *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 2007-205

Terms and conditions of licence for the Category 2 specialty programming undertaking *Hustler Français*

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 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 27 June 2010. 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 2013.

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 Category 2 specialty programming service devoted to adult entertainment programming and educational and analytical material concerning sexuality and health, including adult entertainment films and open-line and other programs on the theme of sexuality.
 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:
 - 7 (c) Specials, mini-series or made-for-TV feature films
 - (d) Theatrical feature films aired on TV
 - (e) Animated television programs and films
 - (g) Other drama
- 12 Interstitials
14 Infomercials, promotional and corporate videos

4. 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.
5. The licensee shall adhere to the provisions regarding adult programming set out in section D.3 of the *Industry code of programming standards and practices governing pay, pay-per-view and video-on-demand services*, Broadcasting Public Notice CRTC 2003-10, 6 March 2003.

For the purposes of the conditions of this licence, including condition of licence no. 1, *broadcast day* refers to the 24-hour period beginning each day at 6 a.m., or any other period approved by the Commission.

Expectation

The Commission expects the licensee to adhere to its internal policy on adult programming.