



Broadcasting Decision CRTC 2008-66

Ottawa, 20 March 2008

6166954 Canada Inc.
Across Canada

Application 2007-1293-6, received 14 September 2007
Broadcasting Public Notice CRTC 2007-126
14 November 2007

OUTtv – Licence amendment

*The Commission **denies** an application to amend the broadcasting licence for OUTtv in order to reduce the minimum percentage of the broadcast day that must be devoted to the exhibition of Canadian programs from the current 65% to 50% and to reduce its minimum requirements for Canadian programming expenditures from the current level of 49% of the previous broadcast year's gross revenues to 25% of those revenues.*

Introduction

1. In Decision 2000-456, the Commission authorized the operation of the national, English-language Category 1 specialty television programming undertaking known as PrideVision. This service was licensed in the context of the Commission's digital licensing framework set out in Public Notice 2000-6. By condition of licence, PrideVision's nature of service was to provide a service that offered "news and information, current affairs, lifestyle and entertainment programming designed to meet the needs of the gay and lesbian community." In granting the licence for the service, the Commission imposed conditions of licence requiring that 65% of the broadcast day and 50% of the evening broadcast period be devoted to the exhibition of Canadian programs throughout the licence term, and that, in each broadcast year following the first year of operation, a minimum of 49% of the previous year's gross advertising, infomercial and subscription revenues be expended on Canadian programs. As noted in Decision 2000-456, the applicant¹ also committed to devote a minimum of 65% of the Canadian programming broadcast to original productions.
2. In Broadcasting Decision 2004-191, the Commission approved an application by 6166954 Canada Inc. (6166954 Canada) for authority to acquire the assets of PrideVision; the service was subsequently rebranded as OUTtv. The nature of service for OUTtv is the same as that set out for PrideVision in Decision 2000-456.

¹ Levfam Holdings Inc., on behalf of a corporation to be incorporated to be known as PrideVision

The application

3. The Commission received an application by 6559603 Canada Inc. (6559603 Canada), on behalf of 6166954 Canada, licensee of OUTtv, to amend certain conditions of the broadcasting licence for OUTtv. Firstly, the licensee requested a reduction, from 65% to 50%, in the minimum portion of the broadcast day that it must devote to the exhibition of Canadian programs. The minimum portion of the evening broadcast period that it must devote to the exhibition of Canadian programs would remain at 50%. The licensee also requested that its commitment regarding the broadcast of original productions as a portion of the total Canadian programming broadcast be reduced from a minimum of 65% to a minimum of 32.5%.
4. Secondly, the licensee requested a reduction in its minimum requirements relating to Canadian programming expenditures (CPE), from the current level of 49% of the previous broadcast year's gross revenues to 25% of those revenues.
5. In support of this application, 6559603 Canada filed evidence of OUTtv's poor financial performance and submitted that, in light of the service's financial situation, the proposed amendments are reasonable and necessary for it to succeed in its efforts to rehabilitate OUTtv. The licensee also indicated that the proposed amendments would not compromise OUTtv's commitment to offering a significant level of Canadian and original programming, and would assist in alleviating the significant financial pressure associated with its programming expenses.
6. The Commission received a comment on this application from the Canadian Film and Television Producers Association (CFTPA). The CFTPA submitted, among other things, that the cumulative negative effect stemming from the approval of this application and of recent approvals for similar licence amendments for the services known as Discovery Health Channel and Mystère² would be significant, given that all Category 1 services provide an important window or shelf space for programming produced by Canadian independent producers. In reply, 6559603 Canada noted that the CFTPA did not oppose the application, which, according to the licensee, confirms its contention that the proposed amendments to the conditions of licence are reasonable in the unique circumstances facing OUTtv, are consistent with Commission precedent, and are necessary if the licensee is to succeed in its efforts to put OUTtv on a solid financial footing. The intervention and the reply to the intervention can be found on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

² See Broadcasting Decisions CRTC 2006-384 and 2007-367, respectively.

Commission's analysis and determinations

7. Under the licensing framework established in Public Notice 2000-6, the Commission determined that Category 1 services would be a limited number of specialty services that would make a strong contribution to the development, diversity and exhibition of Canadian programs. In return, Category 1 services would be granted protection from direct competition from other services, including new Category 2 services and foreign services, as well as guaranteed access to digital carriage by Class 1 and Class 2 broadcasting distribution undertakings (BDUs) and direct-to-home satellite undertakings. At the same time, the Commission determined that it would license Category 2 services on a more open-entry basis, that Category 2 services would be subject to lower Canadian content requirements³ and not subject to any requirements for CPE, but that they would not be granted genre protection or assured access to digital carriage.
8. Following a highly competitive public process, the Commission, in November 2000, approved 16 English-language and five French-language Category 1 services as well as 262 bilingual, English-, French- and third-language Category 2 services. Since then, the Commission has approved many more Category 2 services.
9. The Commission recognizes the importance of a broadcasting undertaking's commitments to the exhibition of and expenditures on Canadian programming, particularly those made in the context of a competitive licensing process. In the present case, the Commission considers that this application to amend OUTtv's conditions of licence relating to the exhibition of and expenditures on Canadian programming is premature, given the short amount of time that has passed since the transfer of ownership and effective control of 6166954 Canada to 6559603 Canada, which was approved on 10 October 2007 and announced in Broadcasting Public Notice 2007-135.⁴ Further, the Commission is of the view that 6559603 Canada was aware of the financial situation of the service at that time, and considers that the licensee should explore other avenues to improve OUTtv's financial situation before requesting amendments to its conditions of licence.
10. In addition, the Commission notes that the discussion over the issue of appropriate contributions by Category 1 services is being addressed in the current review of the regulatory frameworks for BDUs and discretionary programming services, announced in Broadcasting Notice of Public Hearing 2007-10. This review provides a forum in which OUTtv and other parties who have filed interventions can participate in discussions that will enable the Commission to make its determinations on a number of issues. Further, in the case of OUTtv, the Commission considers that any outstanding issues following the review should be discussed in the context of the service's next licence renewal, which is scheduled for 31 August 2009.

³ English- and French-language Category 2 services must devote the following percentages of the broadcast day and the evening broadcast period to Canadian programs: 15% in the first year of operation; 25% in the second year; and 35% in the third year and each subsequent year. Ethnic Category 2 services must devote 15% of the broadcast day and of the evening broadcast period to Canadian programs.

⁴ Although the present application was filed on 14 September 2007, its submission was contingent, as noted in the application, upon approval of this transfer of ownership and control.

Conclusion

11. In light of all of the above, the Commission **denies** the application by 6559603 Canada Inc., on behalf of 6166954 Canada Inc., licensee of OUTtv, to amend the broadcasting licence for OUTtv in order to reduce the minimum percentage of the broadcast day that must be devoted to the exhibition of Canadian programs from the current 65% to 50% and to reduce its minimum requirements for CPE from the current level of 49% of the previous broadcast year's gross revenues to 25% of those revenues.

Secretary General

Related documents

- *Applications processed pursuant to the streamlined procedure*, Broadcasting Public Notice CRTC 2007-135, 4 December 2007
- *Mystère – Licence amendments*, Broadcasting Decision CRTC 2007-367, 12 October 2007
- *Review of the regulatory frameworks for broadcasting distribution undertakings and discretionary programming services*, Broadcasting Notice of Public Hearing CRTC 2007-10, 5 July 2007
- *Discovery Health Channel – Licence amendments*, Broadcasting Decision CRTC 2006-384, 21 August 2006
- *PrideVision – Acquisition of assets*, Broadcasting Decision CRTC 2004-191, 28 May 2004
- *PrideVision – a new specialty channel*, Decision CRTC 2000-456, 14 December 2000
- *Licensing framework policy for new digital pay and specialty services*, Public Notice CRTC 2000-6, 13 January 2000

This decision 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>.