



Broadcasting Decision CRTC 2010-450

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Route reference: 2010-72

Ottawa, 2 July 2010

Jay Switzer, on behalf of a corporation to be incorporated Across Canada

*Application 2009-1548-1, received 12 November 2009
Public Hearing in the National Capital Region
14 April 2010*

Adventure – Category 2 specialty service

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

The application

1. Jay Switzer (the applicant), on behalf of a corporation to be incorporated (Jay Switzer (OBCI)), filed an application for a broadcasting licence to provide Adventure, a national, English-language Category 2 specialty service that would cover the entire genre of action and adventure, including selections from crime fiction, and epic and heroic drama. Programming would consist of contemporary action and adventure films and series, mini-series, made-for-television movies, classic films, and occasional magazine-style shows focusing on this genre and its stars. The programming would be provided in high definition format.
2. The applicant indicated that no more than 25% of all programming broadcast during the broadcast week would be based on science fiction or fantasy themes.
3. Jay Switzer (OBCI) will be controlled by its majority shareholder, Mr. Jay Switzer.

Interventions

4. The Commission received two interventions opposing this application; one from CTVglobemedia Inc. (CTVgm) and one from an individual. These interventions, as well as the applicant's reply, are available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."
5. CTVgm is the licensee of Space: The Imagination Station (Space), a national analog specialty television service providing programming related to science fiction, science

fact, speculative science, technology and fantasy. CTVgm stated that it is not opposed in general to the licensing of an undertaking of the type proposed by the applicant. However, it opposed this particular application because the applicant has proposed programming with science fiction or fantasy themes. CTVgm submitted that such programming would go beyond Adventure's proposed nature of service and would compete with Space, even though the applicant had proposed to limit the broadcast of programs based on science fiction or fantasy themes to 25% of the broadcast week.

6. The individual opposed the application on the basis that the number of services devoted to men, women, action, adventure or romance offered in the market is sufficient to respond to the demand.
7. In reply, Jay Switzer noted that the proposed nature of service is well-defined and based on a broad genre that is "action and adventure" of which science fiction and fantasy programming constitutes only a subset. As the vast predominance of the programming aired on Adventure would not fall within the science fiction or fantasy sub-genres, the applicant asserted that there was nothing inherent to the proposed service that would make it directly competitive with Space. The applicant added that it has no intention of devoting close to 25% of its weekly schedule to science fiction or fantasy programming.
8. Jay Switzer considered that the intervention from the individual did not apply to this application and did not address the issue that the intervener raised.

Commission's analysis and determinations

9. After considering the positions of the applicant and the interveners, the Commission finds that the issue to be determined in its evaluation of this application relates to whether the proposed service would be directly competitive with existing Category 1 or analog pay or specialty services.
10. The Commission is satisfied with the applicant's reply to CTVgm's intervention and finds that based on the proposed nature of service and the categories from which the programming will be drawn, the proposed service corresponds to the definition of niche programming linked to a specific genre, namely action and adventure. The Commission considers, as submitted by the applicant, that although science fiction and fantasy pertain to the genre of action and adventure, this genre is broad enough, in essence, to cover various other subsets. Given that the applicant proposed to devote no more than 25% of the broadcast week to programs based on the subset of science fiction and fantasy themes, and given that similar category 2 services with identical limitations on science fiction and fantasy have been approved in the past, the Commission is satisfied that the proposed service would not overlap with Space's nature or service and would not directly compete with Space, nor with any other existing Category 1 or analog pay or specialty service.

11. The Commission reminds the applicant that all programming aired by Adventure must be consistent with its nature of service as defined in its conditions of licence.

Conclusion

12. The Commission is satisfied that the application complies with the framework set out in Public Notice 2000-6, and with all applicable terms and conditions announced in Public Notice 2000-171-1. Accordingly, the Commission **approves** the application by Jay Switzer, on behalf of a corporation to be incorporated, for a broadcasting licence to operate the national, English-language Category 2 specialty programming undertaking Adventure. The terms and **conditions of license** are set out in the appendix to this decision.

Reminder

13. The Commission reminds the applicant that the distribution of this service is subject to the applicable distribution rules set out in Broadcasting Public Notice 2008-100.

Secretary General

Related documents

- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services* – Regulatory policy, Broadcasting Public Notice CRTC 2008-100, 30 October 2008
- *Introductory statement – Licensing of new digital pay and specialty services – Corrected Appendix 2*, Public Notice CRTC 2000-171-1, 6 March 2001
- *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.*

Appendix to Broadcasting Decision CRTC 2010-450

Terms and conditions of licence for the Category 2 specialty programming undertaking Adventure

Terms

A licence will be issued once the applicant has satisfied the Commission, with supporting documentation, that the following requirements have been met:

- an eligible Canadian corporation has been incorporated in accordance with the application in all material respects;
- 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 2 July 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.

The licence will expire 31 August 2016.

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 licence will be subject to the conditions set out in *Implementation of the Accessibility Policy with respect to new Category 2 pay and specialty services*, Broadcasting Regulatory Policy CRTC 2010-355, 8 June 2010.
3. The licensee shall provide a national, English-language Category 2 specialty programming service devoted to the entire genre of action and adventure, including selections from crime fiction, epic and heroic drama. It will consist of contemporary action and adventure films and series, mini-series, made-for-television movies, classic films, and occasional magazine-style shows focusing on this genre and its stars. The service will be provided in high definition format.
4. 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:

- 2 (a) Analysis and interpretation
 - (b) Long-form documentary
 - 3 Reporting and actualities
 - 7 (a) Ongoing dramatic series
 - (b) Ongoing comedy series (sitcoms)
 - (c) Specials, mini-series or made-for-TV feature films
 - (d) Theatrical feature films aired on TV
 - (g) Other drama
 - 11 General entertainment and human interest
 - 12 Interstitials
 - 13 Public service announcements
 - 14 Infomercials, promotional and corporate videos
5. The licensee shall devote no more than 25% of all programming broadcast during the broadcast week to programs based on science fiction or fantasy themes.
 6. 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.
 7. The licensee is authorized to make available for distribution an upgraded version of its service in high definition (HD) format, provided that not less than 95% of the video and audio components of the upgraded and standard definition version of the service are the same, exclusive of the commercial messages and of any part of the service carried on a subsidiary signal. All of the programming making up the 5% allowance shall be provided in HD format.

For the purposes of the conditions of this licence, including condition of licence 1, *broadcast day* means the period of up to 18 consecutive hours, beginning each day not earlier than six o'clock in the morning and ending not later than one o'clock in the morning of the following day, as selected by the licensee, or any other period approved by the Commission.