



## Broadcasting Decision CRTC 2012-11

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Route reference: 2011-427

Additional reference: 2011-427-1

Ottawa, 10 January 2012

**Andtell Studios Inc.**  
Across Canada

*Application 2011-0825-9, received 10 May 2011*  
*Public hearing in the National Capital Region*  
*19 September 2011*

### **Fitness Lifestyle TV – Specialty Category B service**

*The Commission **denies** an application for a broadcasting licence to operate a specialty Category B service.*

#### **The application**

1. Andtell Studios Inc. (Andtell) filed an application for a broadcasting licence to operate Fitness Lifestyle TV, a national, English-language specialty Category B service that would be dedicated predominantly to healthy, fit lifestyles. The programming would include instructional workouts, health and fitness news, sports competitions (i.e., weightlifting, running, cycling), documentaries and interviews.
2. The applicant proposed to draw programming from the following program categories set out in Item 6 of Schedule I to the *Specialty Services Regulations, 1990*, as amended from time to time: 1, 2(a), 2(b), 3, 5(a), 5(b), 6(a), 6(b), 7(c), 7(g), 8(a), 8(b), 9, 10, 11,<sup>1</sup> 12, 13 and 14.
3. To ensure that the proposed service would not be directly competitive with existing Category A services, the applicant indicated that it would accept the following conditions of licence:
  - No more than 10% of all programming broadcast during the broadcast week shall be drawn from program categories 7(c) and 7(g).

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<sup>1</sup> In Broadcasting Regulatory Policy 2011-401, the Commission formally announced that it had amended program category 11 to add a new category 11(b) Reality television. Consistent with this change, the Commission has added an authorization to broadcast programming from both 11(a) General entertainment and human interest and the new 11(b) program category.

- No more than 15% of all programming broadcast during the broadcast week shall be based on food preparation, yoga and reality television.
  - No more than 10% of all programming broadcast during the broadcast week shall be committed to live professional sporting events coverage.
4. Andtell further proposed to air programming from program categories 8(a) and 8(b) only when it relates to workouts and programming guests.
  5. The Commission received an intervention in opposition to the present application from ZoomerMedia Limited (Zoomer), an independent media company that owns and operates a number of traditional and online media services including the specialty Category A service The Brand New One: Body, Mind, Spirit, Love Channel (ONE). Andtell did not reply to the intervention. The public record for this proceeding can be found on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Public Proceedings."

### **Commission's analysis and decision**

6. After examining the public record for this application in light of applicable regulations and policies, the Commission considers that the issue it must address is whether Fitness Lifestyle TV would be directly competitive with existing Category A services, and in particular, ONE.<sup>2</sup>
7. In Public Notice 2000-6, the Commission implemented a competitive, open-entry approach to licensing Category B services. While the Commission does not consider the impact that a Category B service might have on an existing Category B service, it does seek to ensure that Category B services do not compete directly with any existing Category A services.
8. In Public Notices 2000-171 and 2000-171-1, the Commission adopted a case-by-case approach to determining whether a proposed Category B service should be considered directly competitive with an existing Category A 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.
9. Zoomer submitted that the nature of service description that Andtell provided for Fitness Lifestyle TV is identical to that of ONE, and that it does not believe that the conditions of licence proposed by Andtell are sufficient to ensure that Fitness Lifestyle TV would not be directly competitive with ONE. Zoomer further stated that the approval of Andtell's proposed service would cause material harm to ONE and would diminish the service's ability to meet the public policy objectives set out in the *Broadcasting Act*.

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<sup>2</sup> In accordance with Broadcasting Public Notice 2008-100, as of 31 August 2011, Canadian analog and Category 1 pay and specialty services – services with access rights – are known as Category A services. The term "Category A" is used in this decision to encompass Category 1 or analog pay or specialty services.

10. Based on its analysis of Fitness Lifestyle TV's nature of service and a comparison with the programming of ONE, the Commission finds that the proposed service would be directly competitive with ONE.
11. The Commission is also of the view that the conditions of licence proposed by Andtell are not sufficient to ensure that the proposed service will not be directly competitive with existing Category A services.

## **Conclusion**

12. In light of the above, the Commission **denies** the application by Andtell Studios Inc. for a broadcasting licence to operate the national, English-language specialty Category B service Fitness Lifestyle TV.
13. The Commission notes that in Broadcasting Public Notice 2008-100, it stated that it would be prepared to introduce competition in those programming genres for which it is convinced that a competitive environment would not significantly reduce either the diversity of services available to viewers or these services' contributions to the creation of Canadian programming. The Commission further indicated that it is prepared to consider competitive applications in genres not currently open for competition, should an applicant demonstrate that the genre meets the criteria outlined in paragraph 270 of that public notice.

Secretary General

## **Related documents**

- *Amendments to certain Regulations made under the Broadcasting Act to add a new program category "Reality television", Broadcasting Regulatory Policy CRTC 2011-401, 30 June 2011*
- *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*
- *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*