



Broadcasting Decision CRTC 2012-559

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Route reference: 2012-300

Ottawa, 12 October 2012

Fifth Dimension Properties Inc.
Across Canada

Application 2012-0325-7, received 6 March 2012
Public hearing in the National Capital Region
18 July 2012

Skinemax TV – Specialty Category B service

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

The application

1. Fifth Dimension Properties Inc. (Fifth Dimension Properties) filed an application for a broadcasting licence to operate Skinemax TV, a national, English-language specialty Category B service that would be devoted to adult entertainment programming designed around high definition (HD) and 3D. The service would feature programming reflecting the latest trends in themes and styles of adult programming. The Commission did not receive any interventions in connection with this application.
2. Fifth Dimension Properties is wholly owned and controlled by Stuart Duncan.
3. 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: 2(a), 5(b), 7(a), 7(c), 7(d), 7(e), 7(g), 8(b), 8(c), 11(a), 12 and 14.
4. To ensure that the proposed service would not be directly competitive with existing Category A services, the applicant indicated that it would accept a condition of licence whereby no more than 10% of all programming broadcast during the broadcast month would be devoted to programming drawn from program categories 8(b) and 8(c) combined.
5. The applicant requested authorization to make Skinemax TV available in 3D format when it becomes available.

Commission's decision

6. To avoid the impression that the service can only be distributed in either HD or 3D format, the Commission has amended the proposed nature of service as follows:

The licensee shall provide a national, English-language specialty Category B service devoted to adult entertainment. The service will feature programming reflecting the latest trends in themes and styles of adult programming.

7. The Commission is satisfied that the application complies with all applicable policies, terms and conditions, including those set out in Public Notice 2000-6, Broadcasting Public Notice 2008-100, and Broadcasting Regulatory Policies 2010-786 and 2010-786-1. Accordingly, subject to the amended nature of service noted above, the Commission **approves** the application by Fifth Dimension Properties Inc. for a broadcasting licence to operate the national, English-language specialty Category B service Skinemax TV. The terms and **conditions of licence** are set out in the appendix to this decision.

Reminders

8. The Commission reminds the applicant that distribution of this service is subject to the requirements set out in the *Broadcasting Distribution Regulations*.
9. The Commission also reminds the applicant and distributors that, due to the adult nature of the programming, this service shall only be distributed at the specific request of the subscriber. 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. 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 homes, in either unscrambled or scrambled form.

Secretary General

Related documents

- *Standard conditions of licence, expectations and encouragements for Category B pay and specialty services – Corrected Appendices 1 and 2*, Broadcasting Regulatory Policy CRTC 2010-786-1, 18 July 2011
- *Standard conditions of licence, expectations and encouragements for Category B pay and specialty services*, Broadcasting Regulatory Policy CRTC 2010-786, 25 October 2010
- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services – Regulatory policy*, Broadcasting Public Notice CRTC 2008-100, 30 October 2008

- *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 2012-559

Terms, conditions of licence, expectations and encouragements for the specialty Category B service Skinemax TV

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 and has provided the Commission with a launch date for the service. The undertaking must be operational at the earliest possible date and in any event no later than 48 months from the date of this decision.

The licence will expire 31 August 2019.

Conditions of licence

1. The licensee shall adhere to the conditions set out in Appendix 1 to *Standard conditions of licence, expectations and encouragements for Category B pay and specialty services – Corrected Appendices 1 and 2*, Broadcasting Regulatory Policy CRTC 2010-786-1, 18 July 2011.
2. In regard to the nature of service:
 - (a) The licensee shall provide a national, English-language specialty Category B service devoted to adult entertainment. The service will feature programming reflecting the latest trends in themes and styles of adult programming.
 - (b) The programming shall be drawn exclusively 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:
 - 2 (a) Analysis and interpretation
 - 5 (b) Informal education/Recreation and leisure
 - 7 (a) Ongoing dramatic series
 - (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
- 8 (b) Music video clips
- (c) Music video programs
- 11 (a) General entertainment and human interest

12 Interstitials

14 Infomercials, promotional and corporate videos

- (c) The licensee shall devote not more than 10% of all programming broadcast during the broadcast month to programming drawn from program categories 8(b) and 8(c) combined.
3. The licensee is authorized to make available for distribution a 3D version of its service, provided that not less than 95% of the video and audio components of the 3D version are the same as either the high definition or standard definition versions of the service, exclusive of any part of the service carried on a subsidiary signal. Further, all of the programming making up the 5% allowance shall be provided in 3D.
 4. The service approved hereby is designated as a Category B service.

For the purposes of the conditions of this licence, “broadcast day” refers to the 24-hour period beginning each day at midnight or any other period approved by the Commission.

Expectations

The standard expectations applicable to this licensee are set out in Appendix 1 to *Standard conditions of licence, expectations and encouragements for Category B pay and specialty services – Corrected Appendices 1 and 2*, Broadcasting Regulatory Policy CRTC 2010-786-1, 18 July 2011, as amended from time to time.

The Commission expects the licensee to adhere to its internal policy on adult programming once reviewed and approved by the Commission. The Commission therefore expects the licensee to provide its proposed internal policy on adult programming at least one month prior to the implementation of the service. The Commission further expects that any future changes made by the licensee to its internal policy on adult programming will be submitted for Commission approval prior to their implementation.

Encouragements

The standard encouragements applicable to this licensee are set out in Appendix 1 to *Standard conditions of licence, expectations and encouragements for Category B pay and specialty services – Corrected Appendices 1 and 2*, Broadcasting Regulatory Policy CRTC 2010-786-1, 18 July 2011, as amended from time to time.