



## Broadcasting Decision CRTC 2018-26

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Reference: 2017-223

Ottawa, 23 January 2018

### **Vintage TV Canada Limited**

Toronto, Ontario

*Public record for application 2017-0028-7*

*Public hearing in the National Capital Region*

*7 September 2017*

### **Vintage TV Canada – Licensing of discretionary service**

1. The Commission **approves** an application by Vintage TV Canada Limited (VTC) for a broadcasting licence to operate the currently exempt national, English-language discretionary service Vintage TV Canada as a licensed discretionary service. The Commission did not receive any interventions regarding this application. The terms and **conditions of licence** are set out in the appendix to this decision.
2. Vintage TV Canada launched on 19 October 2016 as an exempt service in accordance with the Exemption order respecting discretionary television programming undertakings serving fewer than 200,000 subscribers, set out in the appendix to Broadcasting Order 2015-88. In its application, dated 20 January 2017, VTC confirmed that during the previous three months, the service exceeded the subscriber threshold for the operation of an exempt service. In accordance with Broadcasting Order 2015-88, it filed the present application.
3. The applicant provided the following description for the service:

The service will provide a national, English-language discretionary service devoted to “vintage” music and music-related programming, including programming featuring musical artists and sounds from different decades.

### **Canadian programming expenditures**

4. In Broadcasting Regulatory Policy 2015-86, the Commission indicated that all licensed English-language discretionary services will be subject to a minimum Canadian programming expenditure (CPE) requirement of 10% of the service’s revenues from the previous broadcast year. VTC stated that it will adhere to a minimum 10% CPE requirement for Vintage TV Canada as a licensed service. A **condition of licence** to that effect is set out in the appendix to this decision.

## Ownership considerations

5. VTC is a wholly-owned subsidiary of Vintage Entertainment Canada Limited (Holdco). Four Canadian shareholders hold 67% of Holdco's voting shares, while the remaining 33% are held by Vintage Entertainment Limited (Vintage UK), a non-Canadian corporation.
6. Further to the *Direction to the CRTC (Ineligibility of non-Canadians)* (the Direction), when more than 20% of the voting shares of the parent corporation are owned by non-Canadians, or when more than 20% of the parent corporation's board of directors are non-Canadians, the Commission must ensure that the programming decisions of a licensee are made independently from the parent corporation or its directors. In such cases, the Commission generally requires the licensee to establish an independent programming committee (IPC) to ensure that the parent corporation or its directors do not exercise control over or influence programming decisions. Officers, directors and employees of the parent corporation are not eligible to be members of the IPC.
7. VTC currently has in place a by-law (By-Law No. 2) that establishes an IPC with the exclusive authority to make all programming decisions and of which no member can be an employee, officer or director of Holdco or of a non-Canadian shareholder of Holdco, which is controlled by its board of directors. The IPC is currently composed of three Canadians: Mr. Ivar Hamilton, Ms. Nathalia Browning Ribeiro and Mr. Alan Cross.
8. The Commission considers that the IPC conforms to the requirements of the Direction and that the above-noted by-law effectively prevents the non-Canadian shareholder of Holdco and Holdco from controlling or influencing the programming decisions of VTC. To ensure that it can effectively verify that VTC remains in compliance with the Direction at all times, the Commission considers it appropriate to require VTC to inform the Commission of any amendments to its By-Law No. 2 or of any changes to the membership of its IPC. A **condition of licence** to that effect is set out in the appendix to this decision.
9. Section 3 of the Direction sets out that when the Commission determines that an applicant is controlled by a non-Canadian, whether on the basis of personal, financial, contractual or business relations, or any other considerations relevant to determining control, the applicant is deemed to be a non-Canadian.
10. It is the Commission's general practice to interpret effective control as referring to the ongoing power or ability, whether exercised or not, to determine the strategic decision-making activities of an enterprise. Effective control can also be viewed as the ability to manage and run the day-to-day operations of an enterprise.
11. There is currently an interim shareholder agreement in place among the shareholders of Holdco regarding the governance of VTC and Holdco. There is also a memorandum of understanding for the provision of services by Vintage UK.
12. The Commission is satisfied that these agreements do not allow Vintage UK to determine the strategic decision-making activities of VTC or run its day-to-day

operations. VTC retains numerous operational responsibilities, and any services provided by Vintage UK are provided under the direction of VTC. The Commission considers that effective control is exercised by Holdco, which in turn is controlled by its board of directors.

13. To ensure that it is able to effectively monitor the ongoing control of VTC, the Commission requires the applicant to file executed copies of any new agreement entered into with Vintage UK, or with its successors or assigns, as of the date of execution. A **condition of licence** to that effect is set out in the appendix to this decision.

### **Adherence to regulations**

14. As a licensed service, Vintage TV Canada will be subject to the *Discretionary Services Regulations*. In addition, the distribution of this service will be subject to the requirements set out in the *Broadcasting Distribution Regulations*.

Secretary General

### **Related documents**

- *Exemption order respecting discretionary television programming undertakings serving fewer than 200,000 subscribers*, Broadcasting Order CRTC 2015-88, 12 March 2015
- *Let's Talk TV – The way forward – Creating compelling and diverse Canadian programming*, Broadcasting Regulatory Policy CRTC 2015-86, 12 March 2015

*This decision is to be appended to the licence.*

## **Appendix to Broadcasting Decision CRTC 2018-26**

### **Terms, conditions of licence, expectations and encouragements for the discretionary service Vintage TV Canada**

#### **Terms**

The licence will expire 31 August 2024.

#### **Conditions of licence**

1. The licensee shall adhere to the standard conditions of licence for discretionary services set out in Appendix 2 to *Standard requirements for television stations, discretionary services, and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016, as well as to the conditions set out in the broadcasting licence for the undertaking.
2. The licensee shall inform the Commission of any amendments to Vintage TV Canada Limited's By-Law No. 2 or of any changes to the membership of its independent programming committee.
3. The licensee shall file with the Commission executed copies of any new agreement entered into with Vintage Entertainment Limited, or with its successors or assigns, as of the date of execution.
4. The licensee shall, in each broadcast year, devote not less than 10% of the previous year's gross annual revenues of the undertaking to the acquisition of or investment in Canadian programming. For the first year of the licence term, the calculation of the 10% shall be based on the previous year's gross annual revenues of the previously exempt service.

#### **Expectations**

The standard expectations applicable to this licensee are set out in Appendix 2 to *Standard requirements for television stations, discretionary services, and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016.

#### **Encouragements**

The standard encouragements applicable to this licensee are set out in Appendix 2 to *Standard requirements for television stations, discretionary services, and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016.