



Broadcasting Decision CRTC 2008-176

Ottawa, 14 August 2008

Wightman Telecom Ltd.

Clifford, Teeswater, Mildmay, Neustadt, Gorrie and Ayton, Ontario

Application 2008-0022-8, received 31 December 2007

Public Hearing in the National Capital Region

13 May 2008

Video-on-demand service

*The Commission **approves** an application for a broadcasting licence to operate a regional, video-on-demand service largely composed of feature films.*

*The Commission further **approves** the applicant's request to distribute programming that contains commercial messages where those messages are already included in a program previously aired by a Canadian programming undertaking. The program's inclusion as part of the video-on-demand offering must be in accordance with the terms of a written agreement entered into with the operator of the Canadian programming service that broadcast the program. The program must be subsequently offered on an on-demand basis at no charge to the subscriber.*

Introduction

1. The Commission received an application by Wightman Telecom Ltd. (Wightman) for a broadcasting licence to operate a regional, video-on-demand (VOD) programming undertaking to serve Clifford, Teeswater, Mildmay, Neustadt, Gorrie and Ayton, Ontario.
2. The Commission did not receive any interventions in connection with this application.

Proposed service

3. The applicant indicated that the new VOD service would consist primarily of feature films but may also include other types of programming such as long-form documentary, drama, comedy, and general entertainment and human interest.
4. VOD services are subject to the *Pay Television Regulations, 1990* (the Regulations) including section 3(2)(d), which prohibits the distribution of programming containing any commercial message. The applicant requested a condition of licence that would permit it, as an exception to section 3(2)(d) of the Regulations, to offer, on an on-demand basis, programming that contains commercial messages where:
 - the messages were already included in a program previously broadcast by a Canadian programming service;

- the program’s inclusion as part of the video-on-demand offering is in accordance with the terms of a written agreement entered into with the operator of the Canadian programming service that broadcast the program; and
 - the program is offered to subscribers on an on-demand basis at no charge.
5. Wightman stated that it would provide closed captioning of its VOD programming to serve the needs of viewers who are deaf or hard of hearing. The applicant committed to ensure that 100% of all English-language titles in its inventory are closed captioned, beginning in the sixth year of the licence term. Wightman also indicated that a minimum of 55% of all English-language titles in the inventory would be closed captioned beginning in the fourth year increasing to 65% in the fifth year of the licence term. However, the applicant did not commit to abide by these levels by condition of licence.
 6. Notwithstanding the applicant’s commitments with respect to closed captioning, consistent with the framework set out in Public Notice 2007-54, the Commission is of the view that the service should provide captioning for 100% of its programs beginning in its first year of operation. A **condition of licence** to that effect is set out in the appendix to this decision.
 7. Wightman stated that it would attempt to make its VOD programming accessible to persons with visual impairments through audio description and endeavour to obtain titles with video description (also known as described video) where possible and practical. Further, the applicant proposed to work with its program suppliers to meet industry standards with respect to described video services.

Commission’s analysis and determinations

8. The Commission is satisfied that the application is in conformity with the licensing framework for VOD services set out in Public Notice 2000-172. Accordingly, the Commission **approves** the application by Wightman Telecom Ltd. for a broadcasting licence to operate a regional, video-on-demand programming undertaking to serve Clifford, Teeswater, Mildmay, Neustadt, Gorrie and Ayton, Ontario. The terms and **conditions of licence** are set out in the appendix to this decision.

Commercial messages

9. The Commission has approved a number of applications for amendments to the broadcasting licences of VOD programming undertakings to permit them to offer programming that includes commercial messages subject to the same criteria as proposed by Wightman. In these decisions, the Commission indicated that the approval of these applications “would not represent a significant departure from the Commission’s framework for the licensing of VOD undertakings.”

10. In light of the above, the Commission also **approves** the addition of a condition of licence authorizing the applicant to distribute programming that contains commercial messages where those messages are already included in a program previously aired by a Canadian programming undertaking, the program's inclusion as part of the VOD offering is in accordance with the terms of a written agreement entered into with the operator of the Canadian programming service that broadcast the program, and that program is subsequently offered on an on-demand basis at no charge to the subscriber. A **condition of licence** to that effect is set out in the appendix to this decision.

Secretary General

Related documents

- *A new policy with respect to closed-captioning*, Broadcasting Public Notice CRTC 2007-54, 17 May 2007
- *Introductory statement to Decisions CRTC 2000-733 to 2000-738: Licensing of new video-on-demand and pay-per-view services*, Public Notice CRTC 2000-172, 14 December 2000

This decision is to be appended to the licence. It 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>.

Appendix to Broadcasting Decision CRTC 2008-176

Terms, conditions of licence, expectations and encouragement

Terms

Issuance of the broadcasting licence to operate a regional, video-on-demand programming undertaking to serve Cliffton, Teeswater, Mildmay, Neustadt, Gorrie and Ayton, Ontario.

The licence will expire 31 August 2014.

A licence for this undertaking will be issued once 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 24 months from the date of this decision, unless a request for an extension of time is approved by the Commission before 14 August 2010. 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.

Conditions of licence

1. The licensee shall adhere to the *Pay Television Regulations, 1990*, as amended from time to time, with the exception of section 3(2)(d) pertaining to commercial messages and section 4 pertaining to logs and records.
2. The licensee shall not include, as part of its video-on-demand offering, any program containing a commercial message except where:
 - a) the message was already included in a program previously broadcast by a Canadian programming service;
 - b) the program's inclusion as part of the video-on-demand offering is in accordance with the terms of a written agreement entered into with the operator of the Canadian programming service that broadcasts the program; and
 - c) the program is offered to subscribers on an on-demand basis at no charge.
3. The licensee shall maintain for a period of one year and submit to the Commission upon request a detailed list of the inventory available on each file server. The list must identify each program by programming category and by country of origin, and indicate the period of time that each program was on the server and available to subscribers.
4. Except as authorized by the Commission, the broadcasting undertaking licensed herein shall be operated in fact by the licensee itself.

5. The licensee shall ensure that, at all times:
 - a) not less than 5% of the English-language feature films and not less than 8% of the French-language feature films in the inventory available to subscribers are Canadian;
 - b) the feature film inventory includes all new Canadian feature films that are suitable for VOD exhibition and meet the approved *Industry code of programming standards and practices governing pay, pay-per-view and video-on-demand services*; and
 - c) not less than 20% of all programming other than feature films in the inventory available to subscribers is Canadian.
6. The licensee shall contribute 5% of its gross annual revenues to an existing Canadian program production fund administered independently of its undertaking.

For the purpose of this condition:

- a) “gross annual revenues” shall be 50% of the total revenues received from customers of the broadcasting distribution undertaking distributing the video-on-demand service, when the video-on-demand service is a “related service”;
 - b) a “related service” is one in which the broadcasting distribution undertaking distributing the video-on-demand service, or any of its shareholders owns, directly or indirectly, 30% or more of the equity of the video-on-demand service;
 - c) “gross annual revenues” shall be the total amount received from the broadcasting distribution undertaking distributing the video-on-demand service, when the video-on-demand service is not a “related service”.
7. The licensee shall ensure that not less than 25% of the titles promoted each month on its barker channel are Canadian titles.
 8. The licensee shall remit to the rights holders of all Canadian feature films 100% of revenues earned from the exhibition of these films.
 9. The licensee shall not enter into an affiliation agreement with the licensee of a broadcasting distribution undertaking unless the agreement incorporates a prohibition against linkage of its service with any non-Canadian discretionary service.

10. The licensee shall caption 100% of its programs over the broadcast day, consistent with the approach set out in *A new policy with respect to closed captioning*, Broadcasting Public Notice CRTC 2007-54, 17 May 2007.
11. The licensee shall adhere to the Canadian Association of Broadcasters' *Equitable Portrayal Code*, as amended from time to time and approved by the Commission. However, the application of the foregoing condition of licence will be suspended if the licensee is a member in good standing of the Canadian Broadcast Standards Council.
12. The licensee shall adhere to the *Pay television and pay-per-view programming code regarding violence*, as amended from time to time and approved by the Commission.
13. The licensee shall adhere to the *Industry code of programming standards and practices governing pay, pay-per-view and video-on-demand services*, as amended from time to time and approved by the Commission.

Expectations

Program offering in both official languages

The Commission notes that the licensee did not commit to offer any programming in the French language. Nevertheless, the Commission expects the licensee to make its program offering available, to the maximum extent possible, to customers in both official languages.

Programming packages

The Commission expects the licensee to limit to one week the total period during which the programming in programming packages may be viewed.

Adult programming

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.

Cultural diversity

The Commission expects the licensee to endeavour, through its programming and employment opportunities, to reflect the presence in Canada of ethnocultural minorities, Aboriginal peoples, and persons with disabilities. The Commission further expects the

licensee to ensure that the on-screen portrayal of such groups is accurate, fair and non-stereotypical.

Service to persons who are blind or whose vision is impaired

The Commission expects the licensee to provide an audio description of all programming that provides textual or graphic information, including programming broadcast on the barker channel. The Commission also expects the licensee to acquire and make available described versions of programming, where possible, and to ensure that its customer service responds to the needs of visually impaired customers.

Encouragement

Employment equity

In accordance with *Implementation of an employment equity policy*, Public Notice CRTC 1992-59, 1 September 1992, the Commission encourages the licensee to consider employment equity issues in its hiring practices and in all other aspects of its management of human resources.