



Broadcasting Decision CRTC 2010-250

Route reference: 2009-461

Additional references: 2009-461-2, 2009-461-3, 2009-461-4

Ottawa, 5 May 2010

Glassbox Television Inc.

Across Canada

Application 2009-0777-7, received 20 May 2009

Public Hearing in the National Capital Region

29 October 2009

CURV TV – Category 2 specialty service

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

1. Glassbox Television Inc. (Glassbox) filed an application for a broadcasting licence to operate CURV TV, a national, English-language Category 2 specialty programming service that would offer programming related to relationships, lifestyle, beauty, trends and style and include features, coverage of live events as well as commentary on politics and modern culture. The service would target young professional women, young mothers and women aged between 18 and 34 years.
2. Glassbox is a Canadian corporation whose principal shareholders are Andrea Pyman and Jeffrey Elliott, who own 40% and 35% of the voting shares, respectively. The remaining voting shares are held by Canadian shareholders (15%) and non-Canadian shareholders (10%). Glassbox is controlled by its board of directors pursuant to the terms of the Securityholders' Agreement.
3. The applicant proposed restrictions on certain categories of programming to be broadcast by CURV TV to ensure that the service would not directly compete with existing Category 1 services or analog pay or specialty services. Specifically, the applicant indicated that, during each broadcast year,
 - no more than 10% of programming would be drawn from program category 6(a) Professional sports, consistent with the standard limitation established in Broadcasting Public Notice 2008-100 on programming from categories that are ancillary to a service's nature of service;
 - no more than 15% of programming would be drawn from any one of the following program categories:

- 2(b) Long-form documentary
- 5(a) Formal education and pre-school
- 7(d) Theatrical feature films aired on TV
- 7(e) Animated television programs and films
- 10 Game shows
- 11 General entertainment and human interest;

- no more than 35% of programming would be drawn from either one of the following program categories:

- 8(a) Music and dance other than music video programs or clips;
- 8(b) Music video clips.

4. The applicant did not propose any restrictions on program category 8(c) Music video programs.
5. The Commission received an intervention by Corus Entertainment Inc. (Corus), commenting on the similarities between the nature of service of its Category 2 specialty service Cosmopolitan TV¹ and the proposed CURV TV's nature of service. The intervention and the applicant's reply can be found on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Commission's analysis and determinations

6. After examining the application in light of applicable regulations and policies and taking into account the intervention and the applicant's reply, the Commission considers that the issue to be addressed in its determinations is whether the proposed service would be or become directly competitive with existing Category 1 or analog pay or specialty services.
7. In Broadcasting Public Notice 2008-100, the Commission expressed the view that, in most instances, the narrative descriptions of existing Category 1 and analog pay and specialty services (to be known as Category A services as of 31 August 2011) are sufficiently specific to ensure that these services remain true to the genre for which they were licensed. Consequently, the Commission determined that it would permit all Category A services to draw programming from all program categories, thereby providing these services with greater flexibility. However, to ensure that this change did not permit services to morph into other established programming genres and thus become directly competitive with other Category A services, the Commission established a standard limitation of 10% of the broadcast month for the following categories:

- 2(b) Long-form documentary;
- 6(a) Professional sports;
- 7 Drama and comedy;
- 7(d) Theatrical feature films aired on television;
- 7(e) Animated television programs or films; and
- 8(b) and (c) combined – Music video clips and Music video programs.

¹ Cosmopolitan TV was approved in Broadcasting Decision 2007-282.

8. In Broadcasting Public Notice 2008-100, the Commission stated that it did not intend to apply the above-described general approach to Category 2 services. Instead, it indicated that, in assessing applications for new Category 2 services or applications for amendments to nature of service conditions of licence for such services, it would generally apply the same limitations.

Proposed limitation with respect to the broadcast of professional sports programming

9. In the present case, the Commission notes that the applicant's proposed restrictions relating to programming from program category 6(a) would be somewhat consistent with the approach set out in Broadcasting Public Notice 2008-100. While the applicant proposed to measure its proposed category 6(a) programming limitation over the broadcast year, Broadcasting Public Notice 2008-100 sets out that the programming limitation be measured over the broadcast month. Accordingly, the Commission considers that, under the circumstances and consistent with the approach set out in that public notice, the program category 6(a) programming limitation should be measured over the broadcast month. A **condition of licence** to this effect is set out in the appendix to this decision.

Proposed limitation with respect to the broadcast of music-related programming

10. With respect to the proposed limitation on music-related programming, the Commission notes that Cosmopolitan TV is subject to a condition of licence requiring that no more than 15% of the programming broadcast in each broadcast year be drawn from each of program categories 8(a) and 8(b).² The Commission considers that, under the circumstances, a condition of licence limiting the broadcast of programming drawn from program category 8(a) to no more than 15%, as measured over the broadcast year, is appropriate for CURV TV. Further, in accordance with the approach set out in Broadcasting Public Notice 2008-100 and with the approach taken for other Category 2 services licensed since the new policy came into effect, the Commission determines that a 10% limitation with respect to programming drawn from program categories 8(b) and 8(c) combined, as measured over the broadcast month, is appropriate for CURV TV. **Conditions of licence** in regard to the above are set out in the appendix to this decision.

Proposed limitation with respect to the broadcast of programming from other program categories

11. With respect to the applicant's proposed limitations on programming drawn from program categories 2(b), 7(d), 7(e), 10 and 11 over the broadcast year, the Commission notes that the proposed limitations exceed the 10% limitation over the broadcast month for each of these categories set out in Broadcasting Public Notice 2008-100.

² Cosmopolitan TV does not air any category 8(c) programming.

12. The Commission further notes that the applicant originally did not propose any restrictions on programming drawn from program categories 7(d) and 11 but, in response to Corus' intervention, indicated its willingness to restrict programming drawn from each of these categories to 15% of the broadcast year in order to accord with the restrictions imposed on Cosmopolitan TV. Along with the proposed 15% restriction over the broadcast year on programming drawn from program category 5(a), this proposal is consistent with Cosmopolitan TV's conditions of licence.
13. The Commission considers that, under the circumstances, the proposed 15% restriction on programming drawn from any one of program categories 5(a), 10 and 11, measured over the broadcast year, is appropriate for CURV TV. However, consistent with Broadcasting Public Notice 2008-100, the Commission considers that the proposed 15% restriction on programming drawn from any one of program categories 2(b), 7(d) and 7(e) is appropriate for CURV TV only if it is measured over the broadcast month, rather than over the broadcast year as proposed by the applicant. **Conditions of licence** in regard to the above are set out in the appendix to this decision.
14. In addition to the above, the Commission considers that further programming restrictions must be imposed in order to establish sufficient safeguards to prevent the proposed service from becoming directly competitive with the analog specialty television services Star!, Slice and W Network, as well as the Category 1 specialty television services FashionTelevisionChannel, Discovery Health Network and travel + escape. In order to ensure that the applicant's proposed Category 2 service does not become directly competitive with the above-noted services, the Commission determines that programming drawn from the fashion, health and wellness, travel, food, and home and garden programming genres must be limited to not more than 15% of the programming broadcast during the broadcast year. A **condition of licence** to that effect is set out in the appendix to this decision.
15. The Commission determines that the proposed nature of service definition along with the addition of the programming restrictions described above are sufficient to ensure that CURV TV would not be or become directly competitive with existing Category 1 or analog pay or speciality services. The Commission reminds the applicant that all programming aired by CURV TV must be consistent with its nature of service as defined in its conditions of licence.

Implementation of the Accessibility Policy – Broadcasting and Telecom Regulatory Policy 2009-430

16. The Commission acknowledges the concerns raised by television broadcasters with respect to the requirement to caption advertising, sponsorship messages and promos as set out in Broadcasting and Telecom Regulatory Policy 2009-430 (the Accessibility Policy). Consequently, the Commission deemed it appropriate to allow some flexibility in this respect and to impose the following condition of licence on new services:

The licensee shall ensure that advertising, sponsorship messages and promos in the English and French language are captioned by no later than the fourth year of the licence term.

Conclusion

17. 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 Glassbox Television Inc. for a broadcasting licence to operate the national, English-language Category 2 specialty programming undertaking CURV TV. The terms and **conditions of licence** are set out in the appendix to this decision.

Reminder

18. 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

- *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009
- *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. 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 2010-250

Terms, conditions of licence, expectations and encouragement for the Category 2 specialty programming undertaking CURV 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. 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 5 May 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 licensee shall provide a national, English-language Category 2 specialty programming service devoted to programming related to relationships, lifestyle, beauty, trends and style that shall include features, coverage of live events and commentary on politics and modern culture, from the female perspective. The service shall focus on the interests and needs of young professional women, young mothers, and women between the ages of 18 and 34 years.
3. 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:
 - 1 News
 - 2 (a) Analysis and interpretation
(b) Long-form documentary
 - 3 Reporting and actualities
 - 5 (a) Formal education and pre-school
(b) Informal education/Recreation and leisure
 - 6 (a) Professional sports

- (b) Amateur sports
 - 7 Drama and comedy
 - (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
 - (e) Animated television programs and films
 - (f) Programs of comedy sketches, improvisations, unscripted works, stand-up comedy
 - (g) Other drama
 - 8 (a) Music and dance other than music video programs or clips
 - (b) Music video clips
 - (c) Music video programs
 - 9 Variety
 - 10 Game shows
 - 11 General entertainment and human interest
 - 12 Interstitials
 - 13 Public service announcements
 - 14 Infomercials, promotional and corporate videos
4. The licensee shall devote not more than 15% of the programming broadcast during the broadcast month to programming drawn from any one of program categories 2(b), 7(d) and 7(e).
 5. The licensee shall devote not more than 10% of the programming broadcast during the broadcast month to programming drawn from program category 6(a).
 6. The licensee shall devote not more than 15% of the programming broadcast during the broadcast year to programming drawn from program category 8(a).
 7. The licensee shall devote not more than 10% of the programming broadcast during the broadcast month to programming drawn from program categories 8(b) and 8(c) combined.
 8. The licensee shall devote not more than 15% of the programming broadcast during the broadcast year to programming drawn from any one of program categories 5(a), 10 and 11.
 9. The licensee shall devote not more than 15% of the programming broadcast during the broadcast year to programming from any one of the following genres: fashion; health and wellness; travel; food; or home and garden.
 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. In accordance with *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009, the licensee shall:

- ensure that advertising, sponsorship messages and promos in the English and French language are captioned by no later than the fourth year of the licence term;
- adhere to the quality standards on closed captioning developed by the television industry's working groups, once approved by the Commission and as amended from time to time; and
- have a monitoring system in place to ensure that closed captioning is included in its broadcast signal and that captioning reaches, in its original form, the distributor of that signal. "Original form" means that, at a minimum, captioning is not dropped, captioning is passed through (including in high definition), and the correct signal is captioned and broadcast.

12. The licensee shall provide audio description for all the key elements of information programs, including news programming.

For the purposes of this condition of licence, "audio description" refers to announcers reading aloud the textual and graphic information that is displayed on the screen during information programs.

13. 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.

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.

Expectations

When captions are available, the Commission expects the licensee to provide viewers with a closed captioned version of all programming aired during the overnight period.

The Commission expects the licensee to acquire and make available described versions of programming, where possible.

In regard to described programming, the Commission expects the licensee to:

- display a standard described video logo and air an audio announcement indicating the presence of described video before the broadcast of each described program; and
- make information available regarding the described programs that it will broadcast.

Encouragement

The Commission encourages the licensee to repeat the announcement and logo following each commercial break.