



Broadcasting Decision CRTC 2012-175

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Route reference: 2011-595 and 2011-595-2

Ottawa, 23 March 2012

GlassBOX Television Inc.

Across Canada

Application 2011-1017-1, received 30 June 2011

Public hearing in the National Capital Region

21 November 2011

GlassBOX Créneau musical : musiques émergentes – Specialty Category B service

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

The application

1. GlassBOX Television Inc. (GlassBOX) filed an application for a broadcasting licence to operate GlassBOX Créneau musical : musiques émergentes, a national, French-language specialty Category B service that would be devoted to emerging music and its creation and would include programming featuring emerging music with the objective of helping emerging artists.
2. GlassBOX is controlled by Michael MacMillan.
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: 1, 2(a), 2(b), 3, 4, 5(a), 5(b), 6(a), 6(b), 7(a), 7(b), 7(c), 7(d), 7(e), 7(f), 7(g), 8(a), 8(b), 8(c), 9, 10, 11(a), 11(b), 12, 13 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 the following conditions of licence:
 - The licensee shall not devote more than 15% of the programming broadcast during the broadcast month to programming drawn from each of categories 5(a), 7(a), 7(c), 7(d), 7(e), 7(f) and 10.
 - The licensee is authorized to rebroadcast non-educational emerging music programming that ceases to be emerging music programming with the following limitations:

- the total time devoted to such programming shall not exceed 20% of all programming broadcast during the broadcast month;
 - such programming drawn from category 8(b) shall not exceed 25% of the time of any individual program; and
 - no more than six hours per broadcast month shall be devoted to the rebroadcast of such programming in retrospective programs.
- The licensee shall devote the following percentages of all music videos broadcast, to French-language music videos: 25% during the first year of operation, 30% during the second year, and 35% during subsequent years.
 - The licensee shall, in the interpretation of its nature of service, adhere to the definition of emerging Canadian artists (French- and English-language) set out in Broadcasting Regulatory Policy 2011-316.
5. The applicant also committed to have French-language music videos play a key role in its service's programming strategy.
 6. The Commission received one comment in connection with this application. The comment and the applicant's reply are available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Commission's analysis

7. After examining the public record for this application, in light of applicable policies and regulations, the Commission considers that the issues it must address are the following:
 - Would the proposed service be directly competitive with existing Category A services, principally MusiquePlus?
 - Are the proposed limits for program categories appropriate?

Would the proposed service be directly competitive with existing Category A services, principally MusiquePlus?

8. In Public Notice 2000-6, the Commission implemented a competitive, open-entry approach to licensing Category 2 (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.
9. 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.

10. In the present case, the Commission is of the view that the applicant has proposed a definition of its nature of service as well as safeguards limiting its programming that are sufficiently restrictive to ensure that the proposed service does not become directly competitive with MusiquePlus or any other existing Category A service.

Are the proposed limits to program categories appropriate?

11. The Commission notes that the applicant did not propose any limitations relating to program categories 2(b) Long-form documentary and 6(a) Professional sports and did not provide any justification in this regard. The applicant also requested an exception to the limits set out in Broadcasting Public Notice 2008-100 by proposing a 15% limit for the broadcast month on programming drawn from program categories 7(d) Theatrical feature films aired on TV and 7(e) Animated television programs and films. The applicant supported this proposal by noting the Commission's approval of these limitations for its English-language emerging music service, AUX TV.
12. The Commission is not convinced that the proposed service should benefit of a programming flexibility greater than that set out in Broadcasting Public Notice 2008-100, since categories 2(b), 6(a), 7(d) and 7(e) are not central to its nature of service. The Commission further notes that the English- and French-language markets, while sharing common aspects, operate under different conditions and may have different requirements.

Commission's decisions

13. For the above-mentioned reasons, the Commission is of the view that the standard limitation of 10% of the broadcast month, set out in Broadcasting Public Notice 2008-100, should apply to program categories 2(b), 6(a), 7(d) and 7(e). This limitation is included in the conditions of licence set out in the appendix to this decision.
14. In light of the above, 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, the Commission **approves**, subject to certain amendments, the application by GlassBOX Television Inc. for a broadcasting licence to operate the national, French-language Category B specialty service GlassBOX Créneau musical: musiques émergentes. The terms and **conditions of licence** are set out in the appendix to this decision.

Reminder

15. The Commission reminds the applicant that the distribution of this service is subject to the requirements set out in the *Broadcasting Distribution Regulations*.

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
- *Definition of emerging Canadian artists on commercial radio*, Broadcasting Regulatory Policy CRTC 2011-316, 12 May 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
- *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

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

Appendix to Broadcasting Decision CRTC 2012-175

Terms, conditions of licence and encouragement for the specialty Category B service GlassBOX Créneau musical : musiques émergentes

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 2018.

Conditions of licence

1. The licence will be subject to the conditions set out in *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. The licensee shall provide a national, French-language specialty Category B service devoted to emerging music and its creation and would include programming featuring emerging music with the objective of helping emerging musicians.
3. a) 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
 - 4 Religion
 - 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, improvisation, 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 (a) General entertainment and human interest
- (b) Reality television
- 12 Interstitials
- 13 Public service announcements
- 14 Infomercials, promotional and corporate videos

b) The licensee shall, in the interpretation of its nature of service, adhere to the definition of emerging Canadian artists (French- and English-language) set out in *Definition of emerging Canadian artists on commercial radio*, Broadcasting Regulatory Policy CRTC 2011-316, 12 May 2011.

c) The licensee shall not devote more than 15% of the programming broadcast over the broadcast month to programming drawn from each of program categories 5(a), 7(a), 7(c), 7(f) and 10.

d) The licensee shall not devote more than 10% of the programming broadcast over the broadcast month to programming drawn from each of categories 2(b), 6(a), 7(d) and 7(e).

e) The licensee shall devote the following percentages of all music videos broadcast to French-language music videos: 25% during the first year of operation, 30% during the second year, and 35% during subsequent years.

f) The licensee may rebroadcast non-educational emerging music programming that ceases to be emerging music programming with the following limitations:

- the total airtime of such programming shall not comprise more than 20% of all programming broadcast during the broadcast month;
- such programming drawn from category 8(b) shall not comprise more than 25% of the time of any individual program; and
- no more than six hours per month shall be devoted to the rebroadcast of such programming in retrospective programs.

4. The service approved hereby is designated as a Category B service.

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 no 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.

Encouragement

The Commission encourages the licensee ensure that French-language music videos play a key role in the service’s programming strategy.