



Broadcasting Decision CRTC 2004-315

Ottawa, 3 August 2004

TEN Broadcasting Inc.
Across Canada

Application 2003-0698-7
Public Hearing in the National Capital Region
17 May 2004

10 XXX Canadian – Category 2 specialty service

*In this decision, the Commission **approves** the operation of a new Category 2 specialty television service.*

The application

1. The Commission received an application by TEN Broadcasting Inc. (TEN Broadcasting), for a broadcasting licence to operate a national, English-language Category 2¹ specialty television service to be known as 10 XXX Canadian.
2. The applicant proposed to offer an adult entertainment programming service consisting of films, open-line and talk shows and other entertainment and educational programs on the theme of sexuality, with a particular emphasis on Canadian adult entertainment content. The applicant indicated that it would adhere to its own policy on adult programming, as filed with its application. The Commission considers it appropriate that the applicant should be subject to a **condition of licence** that it adhere to that policy. The text of the condition of licence is set out in the appendix to this decision.
3. The Commission did not receive any interventions in connection with this application.
4. Based on its examination of this application, the Commission is satisfied that it is in conformity with all applicable terms and conditions announced in *Introductory statement – Licensing of new digital pay and specialty services – Corrected Appendix 2*, Public Notice CRTC 2000-171-1, 6 March 2001 (Public Notice 2000-171-1). Accordingly, the Commission **approves** the application by TEN Broadcasting Inc. for a broadcasting licence to operate the national, English-language Category 2 specialty television service to be known as 10 XXX Canadian.

¹ The Category 2 services are defined in *Introductory statement – Licensing of new digital pay and specialty services*, Public Notice CRTC 2000-171, 14 December 2000.

5. The Commission notes that the service offered by 10 XXX Canadian is subject to the terms and conditions of the Shareholders Agreement dated 6 June 2003, between LFP Video Inc., Stuart Duncan and TEN Broadcasting, and to the Canadian Agreement, also dated 6 June 2003, between the same parties.
6. The licence will expire 31 August 2010, and will be subject to the conditions set out in Public Notice 2000-171-1, as well as to the **conditions of licence** set out in the appendix to this decision.

Issuance of the licence

7. 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 3 August 2007. 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.

Secretary General

This decision is to be appended to the licence. It is available in alternative format upon request, and may also be examined at the following Internet site: <http://www.crtc.gc.ca>

Appendix to Broadcasting Decision CRTC 2004-315

Conditions of licence

1. The licensee shall provide a national, English-language Category 2 specialty television service devoted to adult entertainment programming, including adult entertainment films, talk shows, phone-in shows and other programming on the theme of sexuality. The programming will range from entertainment programs to educational and analytical programs on sexuality and health. 10 XXX Canadian will place an emphasis on Canadian adult entertainment content.
2. The programming must be drawn exclusively from the following categories, as set out in 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 (c) Specials, mini-series, made-for-TV feature films
 - 7 (d) Theatrical feature films aired on television
 - 7 (e) Animated television programs and films
 - 7 (g) Other drama
 - 11 General entertainment and human interest
 - 12 Interstitials
 - 14 Infomercials, promotional and corporate videos
3. The service must only be distributed at the specific request of the subscriber. Distributors are not permitted to package 10 XXX Canadian 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 10 XXX Canadian to subscribers that request it not to be receivable in their home, in either unscrambled or scrambled analog form.
4. The licensee shall adhere to Section D.3 of the *Industry code of programming standards and practices governing pay, pay-per-view and video-on-demand services*, Broadcasting Public Notice CRTC 2003-10, 6 March 2003.
5. The licensee shall adhere to its internal policy for adult programming as filed with the Commission.

For the purposes of the conditions of this licence, *broadcast day* refers to the 24-hour period beginning at 6:00 a.m. each day.