



Broadcasting Decision CRTC 2004-57

Ottawa, 30 January 2004

Howard Ling, on behalf of a corporation to be incorporated Across Canada

*Application 2003-0343-8
Public Hearing in the National Capital Region
17 November 2003*

China Essence Television Network – Category 2 specialty service

*In this decision, the Commission **denies** the application by Howard Ling, on behalf of a corporation to be incorporated, for a licence to operate a new Category 2 specialty television service.*

The application

1. The Commission received an application by Howard Ling, on behalf of a corporation to be incorporated (Howard Ling), for a broadcasting licence to operate an ethnic Category 2¹ specialty television service to be known as China Essence Television Network (CETN).
2. The applicant proposed to offer a service that would be devoted to programming targeting “Canadians who have recently immigrated from, or have roots or other ties to, the People’s Republic of China.”

Intervention

3. Fairchild Television Ltd. (Fairchild) filed an intervention opposing this application. The intervener is the licensee of the national ethnic specialty programming undertaking Talentvision, a predominantly Mandarin-language service.
4. Fairchild submitted that the proposed service would compete directly with Talentvision “in terms of target audience, programming content, advertising revenue and distribution.” It also stated that CETN’s proposed language mix would be very similar to that broadcast by Talentvision.

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. With respect to CETN's proposed target audience for Mandarin-language programming, Fairchild noted that it "includes any Chinese Canadians that understand the Mandarin language" and expressed concern that such a broad target audience would include Talentvision's Mandarin audience. Fairchild further noted that the Commission would be unable to impose a condition of licence limiting CETN to its proposed target audience of "recent immigrants."

The applicant's reply

6. In response to Fairchild's concerns, Howard Ling stated that CETN would not compete directly with Talentvision. The applicant submitted that Talentvision targets a Canadian audience and its Mandarin-language programming complements existing Cantonese programming on Fairchild TV, while CETN would be "exclusively dedicated to a truly national and international audience speaking People's Republic of China Mandarin." According to Howard Ling, the People's Republic of China's television industry is thriving and, therefore, CETN and Talentvision could provide a larger variety of high quality programs to their respective audiences, thereby complementing each other and not directly competing.
7. Moreover, the applicant indicated that, even if Talentvision offers Mandarin programming, it does not necessarily follow that the proposed service would directly compete with it. "It is perfectly normal for people speaking the same language with different accents and cultural backgrounds to choose different television programs to watch ... if such choices are available for them."
8. In response to Fairchild's concerns that CETN has proposed a language mix similar to the one broadcast by Talentvision, Howard Ling submitted that the content, and not the language, of the service's programming will "win the audience."

The Commission's analysis and conclusion

9. In *Licensing framework policy for new digital pay and specialty services*, Public Notice CRTC 2000-6, 13 January 2000, the Commission implemented a competitive, open-entry approach to licensing Category 2 services. While the Commission does not consider the impact that a new Category 2 service might have on an existing Category 2 service, it does seek to ensure that newly licensed Category 2 services do not compete directly with any existing pay or specialty television service, including any new Category 1 digital service.
10. In *Introductory statement - Licensing of new digital pay and specialty services*, Public Notice CRTC 2000-171, 14 December 2000, the Commission adopted a case-by-case approach in determining whether a proposed Category 2 service should be considered directly competitive with an existing pay, specialty or Category 1 digital 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.

11. In the present case, the Commission notes that the proposed service targets a very broad audience, including the same audience as that currently served by Talentvision. The Commission considers that this could allow the proposed service to directly compete with Talentvision, which could have a significant negative impact on Fairchild's service.
12. Based on the foregoing, the Commission concludes that the proposed Category 2 service would compete directly with the existing specialty television service Talentvision. Accordingly, the Commission **denies** the application by Howard Ling, on behalf of a corporation to be incorporated, for a broadcasting licence to operate the China Essence Television Network programming service.

Secretary General

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