



Broadcasting Public Notice CRTC 2005-122

Ottawa, 15 December 2005

Call for comments on a complaint requesting that WMNB-TV: Russian-American Broadcasting Company be deleted from the lists of eligible satellite services

The Commission seeks comments on a complaint by Ethnic Channels Group Limited requesting that the Commission initiate a public proceeding to determine whether the non-Canadian satellite service WMNB-TV: Russian-American Broadcasting Company should be deleted from the lists of eligible satellite services.

Background

1. The Commission periodically publishes lists of eligible satellite services¹ setting out various Canadian and non-Canadian programming services received via satellite that may be distributed by broadcasting distribution undertakings (BDUs). Since 1997, these lists have included the Russian-language, general interest service, WMNB-TV: Russian American Broadcasting Company (WMNB-TV), which originates in the United States, as one of the non-Canadian satellite services that may be distributed in Canada.

The complaint

2. The Commission received a complaint dated 14 April 2004 regarding WMNB-TV from Ethnic Channels Group Limited (ECGL), a Canadian owned and controlled company that is authorized to operate several ethnic Category 2 specialty services, including two Russian-language services, one known as RTVi and the other as Centre TV.²
3. ECGL alleged that the WMNB-TV service, as it was originally authorized in 1997 for distribution by Canadian BDUs, no longer exists. ECGL contended that WMNB-TV's assets were sold in a bankruptcy proceeding to Russian Media Group (RMG) and, as a consequence, in July 2000, a new and different Russian-language service known as RTN/WMNB-TV replaced WMNB-TV. ECGL also maintained that RMG, the service provider of RTN/WMNB-TV, is carrying on an unlicensed broadcasting service in Canada by carrying unique programming on its Canadian feed that is targeted to a Canadian audience, and by soliciting advertising in Canada. ECGL further claimed that RMG has not acquired Canadian rights for some of the programming broadcast on RTN/WMNB-TV.

¹ For the most recent lists, see *Revised lists of eligible satellite services*, Broadcasting Public Notice CRTC 2005-121, 14 December 2005.

² RTVi began operation in June 2004 while Centre TV began operation in November 2004.

4. ECGL also expressed concern that changes in format have occurred with the launch of RTN/WMNB-TV and that these changes make the service directly competitive with Canadian services. ECGL further claimed that RMG has acquired exclusive Canadian rights for some programming.
5. ECGL requested that the Commission initiate a public proceeding to determine whether WMNB-TV should be deleted from the lists of eligible satellite services. ECGL submitted that a Canadian sponsor could then apply for the addition of RTN/WMNB-TV to the lists of eligible satellite services as a new non-Canadian satellite service. ECGL also submitted that the sponsor would have to satisfy the information requirements for the sponsorship of a non-Canadian third-language service in accordance with the Commission's policy.
6. Given that Rogers Cable Communications Inc. (Rogers) distributes RTN/WMNB-TV as part of its discretionary digital service, the Commission asked Rogers to comment on ECGL's complaint and request. The parties subsequently exchanged a series of letters. Rogers contended that ECGL's request that the Commission rescind WMNB-TV's authority for distribution on Canadian BDUs is without merit and should be denied.

Commission's request for additional information

7. The Commission requests ECGL to file the following information with the Commission, and to provide a copy to Rogers, by **18 January 2006**.
 - a. evidence that WMNB-TV, the service authorized for distribution in 1997, no longer exists, including evidence that the service ceased operation and/or ceased to exist;
 - b. in addition to the program noted in ECGL's letter to the Commission dated 18 February 2005, a list of all programs allegedly aired in Canada by RTN/WMNB-TV to which ECGL submits it has the exclusive Canadian rights (including related details such as the dates and times the programs were aired);
 - c. with regard to all programs noted in b. above, and the program noted in ECGL's letter dated 18 February 2005, evidence that ECGL holds the exclusive Canadian rights for these programs;
 - d. a list of all other programs aired by RTN/WMNB-TV to which ECGL alleges RTN/WMNB-TV does not hold Canadian rights (including related details such as the dates and times the programs were aired), as well as evidence that RTN/WMNB-TV does not hold such rights;
 - e. a list of all programs aired to which ECGL alleges that RTN/WMNB-TV has acquired exclusive Canadian rights (including related details such as the dates and times the programs were aired), along with supporting evidence;

- f. evidence as to RMG's active solicitation of advertising in Canada;
 - g. a list of all programs and of all commercials broadcast by RTN/WMNB-TV in Canada that ECGL alleges were not included in the version of the service broadcast in the United States, including related details, such as the dates and times the programs and commercial messages were aired, along with supporting evidence;
 - h. evidence to support its submission that RTN/WMNB-TV has changed format so as to become directly competitive with Canadian services. That evidence should include the following:
 - (i) a program schedule, with program descriptions, for a recent week that is representative of RTN/WMNB-TV's service;
 - (ii) a breakdown of that programming schedule by genre in accordance with the appendix to *Improving the diversity of third-language television services – A revised approach to assessing requests to add non-Canadian third-language television services to the lists of eligible satellite services for distribution on a digital basis*, Broadcasting Public Notice CRTC 2004-96, 16 December 2004 (Public Notice 2004-96); and
 - (iii) a comparison of the programming in the schedule to that of any Canadian service with which ECGL submits RTN/WMNB-TV competes, in terms of the information requested in (ii) above.
 - i. any further evidence ECGL may wish to submit in support of its complaint.
8. The Commission requests Rogers to file the following information with the Commission, and to provide a copy to ECGL, by **18 January 2006**:
- a. details as to all instances where Rogers has altered or deleted the RTN/WMNB-TV programming service "for the purpose of preventing the breach of programming or underlying rights of a third party, in accordance with an agreement entered into with the operator of the service or the network responsible for the service", as provided for in section 7(e) of the *Broadcasting Distribution Regulations* (including the time and date of the alteration and deletion, the titles of the programs deleted and of the programs aired in their place, and details of the agreement with RTN/WMNB-TV); and
 - b. any further evidence Rogers may wish to file in response to ECGL's complaint.

9. In the event that Commission should find that WMNB-TV must be deleted from the lists of eligible satellite services, the Commission also invites Rogers to provide to the Commission, by **18 January 2006**, the information that would be necessary to support an application to add RTN/WMNB-TV to those lists, in accordance with the appendix to Public Notice 2004-96. A copy of that information is to be provided to ECGL by the same date.
10. All documents filed in connection with ECGL's complaint, including the information requested from ECGL and Rogers in this public notice, will form part of the record of the proceeding and will be placed on the public examination file. In addition, the Commission makes part of the record of this proceeding all documents filed by the sponsor in the proceeding relating to the 1997 request to add WMNB-TV to the lists of eligible satellite services (see *Revised lists of eligible satellite services*, Public Notice CRTC 1997-96, 22 July 1997).

Call for comments

11. The Commission invites comments on ECGL's complaint and on what actions would be appropriate should the Commission find that there is merit to ECGL's complaint. The Commission will accept comments that it receives on or before **8 February 2006**.
12. The Commission will not formally acknowledge comments. It will, however, fully consider all comments and they will form part of the public record of the proceeding, provided that the procedures for filing set out below have been followed.
13. Interested parties may file written responses to any comments filed with the Commission. Any such responses should be filed with the Commission by no later than **22 February 2006**.

Procedures for filing comments

14. Interested parties can file their comments to the Secretary General of the Commission:

- **by using the**
Broadcasting Intervention/Comments Form

OR

- **by mail to**
CRTC, Ottawa, Ontario K1A 0N2

OR

- **by fax at**
(819) 994-0218

15. Submissions longer than five pages should include a summary.
16. Please number each paragraph of your submission. In addition, please enter the line ***End of document*** following the last paragraph. This will help the Commission verify that the document has not been damaged during transmission.

Important notice

17. All information submitted, including email address, name and any other personal information, will be placed on the public examination file and can be examined on the Commission's web site at www.crtc.gc.ca.
18. Comments filed in electronic form or on paper will be available in the *Public Proceedings* section of the Commission's web site in the official language and format in which they are submitted. Paper versions will be converted to electronic versions by the Commission for this purpose. All comments will be placed on the public examination file.
19. The Commission encourages interested parties to monitor the public examination file and the Commission's web site for additional information that they may find useful when preparing their comments.

Examination of public comments and related documents at the following Commission offices during normal business hours

Central Building
Les Terrasses de la Chaudière
1 Promenade du Portage, Room 206
Gatineau, Quebec K1A 0N2
Tel: (819) 997-2429 - TDD: 994-0423
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Metropolitan Place
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Dartmouth, Nova Scotia B3A 4S5
Tel: (902) 426-7997 - TDD: 426-6997
Fax: (902) 426-2721

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55 St. Clair Avenue East
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Toronto, Ontario M4T 1M2
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Kensington Building
275 Portage Avenue
Suite 1810
Winnipeg, Manitoba R3B 2B3
Tel: (204) 983-6306 - TDD: 983-8274
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Cornwall Professional Building
2125 - 11th Avenue
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Secretary General

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