



Broadcasting Decision CRTC 2006-374

Ottawa, 15 August 2006

Ethnic Channels Group Limited Across Canada

Application 2004-1309-7
Public Hearing at Québec, Quebec
20 March 2006

Caribbean TV – Category 2 specialty service

*In this decision, the Commission **approves** an application for a broadcasting licence to operate a new Category 2 specialty programming undertaking.*

The application

1. The Commission received an application by Ethnic Channels Group Limited (ECGL), for a broadcasting licence to operate a national, ethnic Category 2¹ specialty programming undertaking to be known as Caribbean TV.
2. The applicant proposed to offer a service that would be devoted to the Caribbean community, with programming that would be acquired primarily from existing services that operate in the Caribbean. The applicant proposed that between 30% and 40% of all programming broadcast during the broadcast week would be in each of the Spanish and Creole languages. Further, the applicant proposed that not more than 30% of all programming broadcast during the broadcast week would be in each of the languages of English and French.
3. All of the programming would be drawn from the following categories, as set out in Schedule 1 to the *Specialty Services Regulations, 1990*: 1 News; 2(a) Analysis and interpretation; 2(b) Long-form documentary; 3 Reporting and actualities; 4 Religion; 5(b) Informal education/Recreation and leisure; 6(a) Professional sports; 6(b) Amateur sports; 7(a) Ongoing drama series; 7(b) Ongoing comedy series (sitcoms); 7(c) Specials, mini-series or made-for-TV feature films; 7(d) Theatrical feature films aired on TV; 7(e) Animated television programs and films; 7(f) Programs of comedy sketches, improvisations, unscripted works, stand-up comedy; 7(g) Other drama; 8(a) Music and dance other than music video programs or clips; 8(b) Music video clips; 8(c) Music video programs; 9 Variety; 10 Game shows; 11 General entertainment and human interest; 12 Interstitials; 13 Public service announcements; and 14 Infomercials, promotional and corporate videos.

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.

4. The applicant also requested that it be authorized, by condition of licence, to broadcast up to six minutes of local and regional advertising.

Interventions

5. The Commission received one intervention in support of this application, interventions offering comments, and one intervention in opposition. Comments were submitted by Multivan Broadcast Limited Partnership² (Multivan), the licensee of ethnic television programming undertaking CHNM-TV Vancouver, and by NMTV inc. (NMTV), the licensee of the national ethnic Category 2 specialty programming undertaking known as NuevoMundo Television. The opposing intervention was submitted by CanWest MediaWorks Inc. (CanWest). CanWest, as a partner in general partnerships, is licensee of the national English-language specialty television service Prime TV³ (now known as TVTropolis⁴), and is part owner of the national English-language Category 1 specialty television services, Mystery⁵ and Men TV⁶.
6. While Multivan did not oppose the licensing of the proposed service, it did oppose the applicant's request for authority to broadcast local and regional advertising. Multivan contended that the Commission's policy to generally permit new ethnic Category 2 services to broadcast up to six minutes per hour of local advertising would generate additional competition that would impede CHNM-TV's ability to fulfill its regulatory obligations and prevent it from becoming profitable.
7. NMTV commented on the high volume of applications filed with the Commission for new third-language ethnic services and the process involved in the granting of these types of broadcasting licences.
8. CanWest expressed the view that the applicant had failed to demonstrate that the proposed service would not be directly competitive with existing pay, specialty or Category 1 services. CanWest stated that, under the Commission's revised approach for the consideration of applications for new third-language ethnic Category 2 pay and specialty services as set out in *Revised approach for the consideration of broadcasting licence applications proposing new third-language ethnic Category 2 pay and specialty services*, Broadcasting Public Notice CRTC 2005-104, 23 November 2005 (Public Notice 2005-104), a third-language ethnic Category 2 service must commit to devote at

² Multivan Broadcast Corporation (the general partner) and 650504 B.C. Ltd., Douglas M. Holtby, Geoffrey Y.W. Lau, Robert H. Lee, Joseph Segal and RCG Forex Service Corp. (the limited partners), carrying on business as Multivan Broadcast Limited Partnership

³ CanWest MediaWorks Inc. and Rogers Communications Inc., partners in a general partnership carrying on business as Prime TV

⁴ Prime TV was rebranded as TVTropolis on 1 June 2006.

⁵ CanWest MediaWorks Inc. and TVA Group Inc., partners in a general partnership carrying on business as Mystery Partnership

⁶ CanWest MediaWorks Inc. and TVA Group Inc., partners in Men TV General Partnership

least 90% of the program schedule of the service to programming in languages other than English or French. The intervener submitted that the proposed service is therefore not a third-language ethnic service, and that competitiveness must therefore be determined on a non-ethnic basis.

9. CanWest further contended that the definition of the nature of service proposed by the applicant contained very few restrictions on programming subcategories and was therefore too vague. CanWest argued that Caribbean TV could become a general interest service, or a powerful niche service and that in either case, the proposed service could be directly competitive with a number of existing analog pay and specialty services or Category 1 services, including CanWest's specialty services Mystery TV, Men TV, or TVTropolis.

Applicant's replies

10. In response to Multivan, the applicant maintained that the intervener had not made a compelling case for the Commission to change its practice of generally permitting ethnic Category 2 services to broadcast up to six minutes per hour of local advertising. The applicant further contended that Multivan had not provided any evidence that approval of this application would have any impact on the intervener.
11. The applicant did not respond to NMTV's comment.
12. In response to CanWest's intervention, ECGL stated that there is no basis for CanWest's claim that this service would be directly competitive with Mystery TV, Men TV, or TVTropolis, as Caribbean TV would be focused on serving a particular ethno-cultural community and would obtain programming from services operating in the Caribbean.
13. ECGL further claimed that services with a substantial portion of third-language programming are already, by their nature, targeted to a specific minority audience, whereas CanWest's services draw upon the entire English-speaking audience and focus that audience through demographic-directed programming or genre-specific programming.
14. ECGL indicated that its service would have as a starting point a target ethnic group, which is already a minority group within the entire available audience and that the Commission generally permits such a service to offer a broader range of programming genres than would be the case for a service providing only English- or French-language programming. ECGL noted that none of CanWest's services offer third-language programming or programming specifically targeted to the relevant ethnic group.
15. The applicant also contended that ethnic services face different realities of distribution compared to CanWest's mainstream specialty services. These realities include no guarantee of carriage rights, a higher subscriber fee for ethnic services and a fairly small audience pool to draw upon.

Commission's analysis and determinations

16. 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 Category 1 service.
17. 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 analog pay, specialty or existing Category 1 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.
18. The Commission notes that the applicant has made a commitment that the programming will be dedicated to members of the Caribbean community, and that the programming would be acquired primarily from existing services that operate in the Caribbean. In addition, not less than 70% of all programming broadcast during the broadcast week will be in either the Spanish or the Creole language. The Commission is imposing these commitments as **conditions of licence**, as set out in the appendix to this decision. Should the applicant decide to make any changes in the languages of broadcast, it would have to file another application with the Commission for an amendment to its condition of licence.
19. Considering that 70% of the service's programming will be in Spanish or Creole, the Commission is satisfied that the service will not directly compete with any analog pay or specialty or existing Category 1 service, including the services offered by CanWest and identified in its intervention.
20. The Commission is satisfied that the application 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 Ethnic Channels Group Limited for a broadcasting licence to operate the national, ethnic Category 2 specialty programming undertaking, Caribbean TV.
21. With respect to the applicant's request for regional and local advertising, the Commission notes that the service will be dedicated to members of the Caribbean community, and that not less than 70% of all programming broadcast during the broadcast week will be in either the Spanish or the Creole language. As a result, the Commission is of the view that the service would not compete directly with existing analog or Category 1 services and

that the addition of local or regional advertising on the proposed service would have limited impact on them. The Commission further notes that Multivan did not provide any evidence that a negative financial impact would result from permitting the proposed service to broadcast local and regional advertising.

22. The Commission therefore **approves** the applicant's request for authority to broadcast up to six minutes per hour of local and regional advertising. A **condition of licence** to that effect is set out in the appendix to this decision.
23. The licence will expire 31 August 2012, and will be subject to the **conditions** set out in Public Notice 2000-171-1, as well as to the **conditions** set out in the appendix to this decision.

Issuance of the licence

24. 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 15 August 2009. 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 in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>

Appendix to Broadcasting Decision CRTC 2006-374

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 except for condition 4d) which will not apply, and condition 4a) which is replaced by the following:

Except as otherwise provided in subparagraphs b) and c), the licensee shall not broadcast more than twelve (12) minutes of advertising material during each clock hour, no more than six (6) minutes of which may consist of local or regional advertising.

2. The licensee shall provide a national, ethnic Category 2 specialty programming service devoted to the Caribbean community.
3. The programming shall 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:

- 1 News
- 2 (a) Analysis and interpretation
(b) Long-form documentary
- 3 Reporting and actualities
- 4 Religion
- 5 (b) Informal education/Recreation and leisure
- 6 (a) Professional sports
(b) Amateur sports
- 7 Drama and comedy
 - (a) Ongoing drama 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. Not less than 30% and not more than 40% of all programming broadcast during the broadcast week shall be in the Spanish language and not less than 30% of all programming broadcast during the broadcast week shall be in the Creole language.
5. Not more than 30% of all programming broadcast during the broadcast week shall be in the English language or in the French language.
6. Where the licensee broadcasts religious programming as defined in the *Religious Broadcasting Policy*, Public Notice CRTC 1993-78, 3 June 1993, the licensee shall adhere to the guidelines set out in sections III.B.2.a) and IV of that public notice with respect to balance and ethics in religious programming, as amended from time to time.

For the purposes of the conditions of this licence, including condition of licence no. 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.