



## Broadcasting Decision CRTC 2005-139

Ottawa, 8 April 2005

### **Asian Television Network International Limited** Across Canada

*Application 2004-0843-6*  
*Public Hearing in the National Capital Region*  
*10 January 2005*

### **ATN – South Asian Devotional Music & Discourse Channel – Category 2 pay television service**

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

#### **The application**

1. The Commission received an application by Asian Television Network International Limited (ATN) for a broadcasting licence to operate a national ethnic Category 2<sup>1</sup> pay television programming undertaking to be known as ATN – South Asian Devotional Music & Discourse Channel.
2. The applicant proposed to offer a service devoted to religious programming presented in South Asian languages.

#### **Interventions**

3. The Commission received a comment from Rogers Cable Communications Inc. (Rogers), as well as an intervention in opposition from VisionTV: Canada's Faith Network/Réseau religieux canadien (VisionTV), the licensee of the national, English-language, multi-faith specialty television service known as VisionTV.
4. Rogers commented that the Commission should issue a moratorium on the licensing of any new ethnic Category 2 services until it has completed the review of its approach to assessing requests to add non-Canadian third-language television services to the Commission's lists of satellite services eligible for distribution on a digital basis.<sup>2</sup>

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<sup>1</sup> 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.

<sup>2</sup> *Review of the approach to assessing requests to add non-Canadian third-language services to the lists of eligible satellite services for distribution on a digital basis – Call for comments*, Broadcasting Public Notice CRTC 2004-53, 15 July 2004.

5. VisionTV expressed concern that ATN's application appeared to be a request for a licence to operate a national, multi-faith religious channel. While VisionTV acknowledged that the applicant may intend to offer only third-language religious programming, it noted that English is widely used in South Asia. VisionTV therefore argued that the proposed condition of licence is too broad since it would allow the applicant to broadcast programs devoted to a wide range of faith traditions in any language used in South Asia, including English.
6. VisionTV further indicated that, even if the proposed service were limited to third-language programming, it would be in competition with VisionTV, since in any given broadcast week, 10% to 15% of VisionTV's programming is religious programming in South Asian languages. VisionTV therefore expressed concern that the proposed channel would compete directly with this portion of its schedule.

#### **The applicant's replies**

7. In response to Rogers' comment, the applicant noted that the Commission has already issued its policy regarding the addition of non-Canadian third-language television services to the lists of satellite services eligible for distribution on a digital basis.
8. In response to VisionTV's intervention, the applicant indicated that its proposed service would be exclusively devotional and accordingly would not be in competition with the 10% to 15% religious programming on VisionTV. The applicant further noted that competition from other licensed religious stations, such as Crossroads Television System, Trinity Broadcasting, EWTN and The Miracle Channel Association, appears not to be adversely affecting VisionTV.
9. The applicant also stated that it was prepared to accept restrictions on the English-language content on its proposed service.

#### **The Commission's analysis and determination**

10. With respect to Rogers' comment, the Commission notes that it has completed its review and set out its findings in *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.
11. In considering VisionTV's intervention, the Commission notes its policies regarding the licensing of Category 2 services. 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. In *Introductory statement - Licensing of new digital pay and specialty services*, Public Notice CRTC 2000-171, 14 December 2000, and Public Notice CRTC 2000-171-1, 6 March 2001 – *Corrected Appendix 2* (Public Notice 2000-171-1), 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 or specialty or existing

Category 1 service, although not with an existing Category 2 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.

12. In the present case, the Commission notes VisionTV's concern that the proposed service would compete directly with a portion of its schedule given that, in any broadcast week, 10% to 15% of VisionTV's programming is religious programming in South Asian languages. The Commission also notes that VisionTV is an English-language specialty television undertaking. In order to reduce the possibility of competitiveness, and given ATN's willingness to accept restrictions on the English-language content on its proposed service, the Commission is imposing a condition of licence permitting ATN to broadcast programming in South Asian languages with no programming in the English language. A **condition of licence** to this effect is set out in the appendix to this decision.
13. In light of the above, the Commission is satisfied that ATN's proposed service will not be directly competitive with VisionTV.
14. Based on its examination of this application, the Commission is satisfied that it is in conformity with all applicable terms and conditions announced in Public Notice 2000-171-1. Accordingly, the Commission **approves** the application by Asian Television Network International Limited for a broadcasting licence to operate the national ethnic Category 2 pay television programming undertaking, ATN – South Asian Devotional Music & Discourse Channel.
15. The licence will expire 31 August 2011, 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**

16. 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 8 April 2008. 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 2005-139

### 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, as well as to the following conditions of licence.
2. The licensee shall provide a national ethnic Category 2 pay television programming undertaking devoted to religious programming presented in South Asian languages.
3. All programming broadcast during the broadcast week shall be in a variety of South Asian languages and no programming shall be in the English language.
4. The programming must be drawn exclusively from the following categories, as set out in Schedule I to the *Pay Television Regulations, 1990*, as amended from time to time:
  - 4 Religion
  - 13 Public service announcements
5. In each broadcast year or portion thereof, the licensee shall devote not less than 15% of the broadcast day and not less than 15% of the evening broadcast period to the exhibition of Canadian programs.
6. In accordance with the Commission's position on Canadian programming expenditures as set out in *New Flexibility With Regard to Canadian Program Expenditures by Canadian Television Stations*, Public Notice CRTC 1992-28, 8 April 1992, in *The Reporting of Canadian Programming Expenditures*, Public Notice CRTC 1993-93, 22 June 1993, in *Additional clarification regarding the reporting of Canadian programming expenditures*, Public Notice CRTC 1993-174, 10 December 1993 and in *Incentives for English-language Canadian television drama*, Broadcasting Public Notice CRTC 2004-93, 29 November 2004, as may be amended from time to time:
  - (a) In each broadcast year of the licence term following the first year of operation, the licensee shall expend on the acquisition of and/or investment in Canadian programs a minimum of 20% of the subscription revenues derived from the operation of this service during the previous broadcast year.

- (b) In each broadcast year of the licence term following the first year of operation, excluding the final year, the licensee may expend an amount on Canadian programs that is up to ten percent (10%) less than the minimum required expenditure for that year calculated in accordance with this condition; in such case, the licensee shall expend in the next broadcast year of the licence term, in addition to the minimum required expenditure for that year, the full amount of the previous year's under-expenditure.
- (c) In each broadcast year of the licence term following the first year of operation, where the licensee expends an amount on Canadian programs that is greater than the minimum required expenditure for that year calculated in accordance with this condition, the licensee may deduct:
  - (i) from the minimum required expenditure for the following year of the licence term, an amount not exceeding the amount of the previous year's over-expenditure; and
  - (ii) from the minimum required expenditure for any subsequent broadcast year of the licence term, an amount not exceeding the difference between the over-expenditure and any amount deducted under (i) above.
- (d) Notwithstanding paragraphs (b) and (c) above, during the licence term, the licensee shall expend on Canadian programs, at a minimum, the total of the minimum required expenditures calculated in accordance with this condition of licence.

For the purposes of the conditions of this licence, including condition of licence no. 1, *broadcast day* refers to the 24-hour period beginning each day at 6 a.m., or any other period approved by the Commission.