



## Broadcasting Decision CRTC 2003-527

Ottawa, 29 October 2003

**3850099 Canada Ltd.**  
Across Canada

*Application 2003-0381-8*  
*Broadcasting Public Notice CRTC 2003-40*  
*25 July 2003*

### **Amendment to the nature of service of MTV2**

*The Commission **approves in part** an application by 3850099 Canada Ltd. to amend the licence of the national Category 2 specialty programming service known as MTV2.*

### **Background**

1. 3850099 Canada Ltd. is the licensee of the national Category 2 specialty programming service that operates under the name MTV2. It was originally licensed as a pop music video service<sup>1</sup> in *Music 5*, Decision CRTC 2000-539, 24 November 2000.
2. In *Connect – a new specialty channel*, Decision CRTC 2000-462, 24 November 2000, the Commission approved an application by a company affiliated to 3850099 Canada Ltd., currently incorporated as 3844161 Canada Ltd., for a national Category 1 specialty television service dedicated to the concerns and aspirations of Canada's youth aged 12 to 24. That service now operates under the name MTV Canada.
3. In *Change in the ownership structure of MTV Canada and MTV2, and the Commission's findings concerning complaints regarding the compliance of these services with their licensing decisions*, Broadcasting Decision CRTC 2003-65, 21 February 2003 (Decision 2003-65), the Commission approved applications by Craig Media Inc. (formerly Craig Broadcast Systems Inc.), on behalf of 3844161 Canada Ltd. and 3850099 Canada Ltd. (the applicant; Craig) that resulted in a transfer of control of those companies.
4. The transfer of control approved in Decision 2003-65 entailed a change in ownership structure which resulted in MTVN Networks (MTVN) obtaining rights under certain agreements signed with Craig. MTVN is a non-Canadian corporation and a wholly-owned subsidiary of Viacom International Inc. The agreements between Craig and MTVN raised concerns about the potential for MTVN to exercise control over the licensees of MTV Canada and MTV2.

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<sup>1</sup> The reasons for approval and conditions of licence pertaining to these and other new digital pay and specialty services were published by the Commission in *Introductory statement – Licensing of new digital pay and specialty services*, Public Notice CRTC 2000-171, 14 December 2000.

5. In Decision 2003-65, the Commission examined the concerns related to the ownership structure of Craig, and ruled on complaints filed by CHUM Television, a division of CHUM Limited (CHUM) and MusiquePlus inc. (MusiquePlus) concerning the compliance of MTV Canada and MTV2 with conditions set out in their licensing decisions.
6. With respect to the CHUM complaint concerning MTV2, and in light of the new ownership structure and agreements with MTVN, the Commission determined in Decision 2003-65 that it would be appropriate to incorporate a specific definition of “pop” into the condition of licence which defines the nature of service to be offered by MTV2. The intended purpose of the definition was to ensure that the service continued to adhere to the principles of the Commission’s licensing framework for digital specialty services and its policies regarding the licensing of services that are not directly competitive. Those principles and policies are set out in *Licensing framework policy for new digital pay and specialty services*, Public Notice CRTC 2000-6, 13 January 2000 (Public Notice 2000-6) and reiterated in *Call for applications for licences for new digital pay and specialty television programming undertakings*, Public Notice CRTC 2000-22, 4 February 2000 (Public Notice 2000-22). A key principle of the licensing framework emphasized in those documents is the notion of “one-per-genre”. As stated in Public Notice 2000-6, “the Commission will not license a Category 2 service that is directly competitive with an existing pay or specialty service or with a new Category 1 service”.
7. In light of the above determination, the Commission further decided that the change in ownership for Craig would only become effective when Craig applied, within 30 days of the date of Decision 2003-65, for an amendment to the condition of licence which defines the nature of service to be offered by MTV2, in order to add the following definition:

Not less than 95% of music video clips broadcast on the channel shall consist of Pop Music Videos.

A “Pop Music Video” is a music video clip of a performance of a musical selection that is listed or has been listed within the preceding 12 months on the following trade publication charts: *Billboard’s* Top 40 Tracks and/or *Canadian Music Network’s* CHR Top 50 Spins, and/or CHR Top 50 Audience, or other charts as may be approved by the Commission.

### **The application**

8. In response to the requirements set out in Decision 2003-65, 3850099 Canada Ltd. submitted an application to amend the condition of licence which defines the nature of service to be offered by MTV2. The licensee argued, however, that the definition proposed by the Commission in Decision 2003-65 would be too restrictive.

9. The applicant proposed instead an alternative condition of licence, which, according to the licensee meets the spirit of the Commission's concern respecting the music format of MTV2 but also allows Craig the flexibility it requires to provide a pop music service that will attract an audience and support new Canadian talent.
10. The applicant argued that, rather than the 95% being drawn from specified charts as proposed in the Commission's definition, no more than 70% of all videos should be defined by the charts. Craig stated that while, in any case, all videos to be broadcast would be pop, a smaller percentage drawn from the charts would give MTV2 the flexibility to broadcast selections which are reasonably considered to be pop but which fall outside either the charts or the time limit. The applicant stated that this flexibility would be consistent with that afforded other music video services.
11. Craig also disagreed with the Commission's proposal to use *Billboard's* Top 40 Tracks chart, saying that a more appropriate chart would be the *Billboard* Hot 100, since it is the definitive CHR chart in North America, is more recognizable and more readily available than the lesser known and used Top 40 chart.
12. The applicant also requested that Canadian videos be excluded from any definition, saying that the most popular Canadian songs tend to be from the rock category, and infrequently appear on CHR charts. Craig also suggested that including Canadian videos in the definition would severely limit MTV2's ability to introduce new Canadian artists. In response to a deficiency question, Craig suggested that, if the chart entitled Canadian Top 50 Artists from *Canadian Music Network* were added to the definition, it could accept Canadian videos being included in the definition.
13. Craig further suggested that 36 months, rather than 12, would be an appropriate time period for the use of videos that had appeared on a given chart. In Craig's view, if a video had previously been on an approved chart, that video should still be considered to be pop, no matter how long a period of time had passed. The applicant indicated that the longer period it proposed would allow MTV2 to bring back certain pop hits into rotation.
14. The text of the condition of licence proposed by Craig was as follows:

Not less than 70% of music video clips broadcast on the service shall consist of music video clips of a performance of a music selection that is listed or has been listed within the preceding 36 months on the following trade publication charts: *Billboard's* Hot 100 and/or *Canadian Music Network's* CHR Top 50 Spins and/or CHR Top 50 Audience, or other charts as may be approved by the Commission.

Canadian music videos shall not be subject to the foregoing restrictions.

15. As noted above, the licensee indicated that, if *Canadian Music Network's* Canadian Top 50 Artists chart were also included in the definition, it would accept deletion of the portion of its proposed condition of licence respecting Canadian music videos.

## **Interventions**

16. The Commission received 11 interventions with respect to this application. This total included six interventions submitted by record producers in support of the application, five of which expressed concern that the Commission's proposed definition would be too restrictive. Those interveners were BMG Canada, CeSoul Music, DoubleUp Records, Paper Bag Records, and Shoreline Records. The sixth intervention, expressing support for MTV2 was from Universal Music Canada.
17. An intervention by the Canadian Independent Record Production Association (CIRPA) commented on specific elements of the proposed definitions. CIRPA supported the Commission's proposal that 95% of all videos should be pop videos, and the proposed time frame of 12 months for charted material. It also stated that Canadian videos should be excluded from any definition adopted, thereby offering the widest possible exposure to Canadian artists.
18. The interventions by CHUM, MusiquePlus, Friends of Canadian Broadcasting (Friends) and Stornoway Communications (Stornoway) all emphasized the importance of maintaining the Commission's "one-per-genre" policy, and indicated that MTV2 should remain as it had been licensed, as a pop music video service, to eliminate the possibility of it becoming directly competitive with analog music video specialty services.
19. CHUM, licensee of the specialty television service MuchMusic, made specific comments on Craig's proposed definition and expressed opposition to that definition, stating that "CHUM's analysis shows that the definition proposed by Craig is so broad as to permit MTV2 to become almost indistinguishable from MuchMusic in terms of its music video content."
20. CHUM further was of the view that, as an alternative to applying a definition as a condition of licence, the Commission could instead "interpret" the existing conditions of licence in accordance with the Commission's own definition of pop music. The intervention submitted by Friends concurred with this alternative suggestion.
21. MusiquePlus also opposed the definition of pop music videos proposed by the applicant. MusiquePlus argued that the Commission's proposed definition would provide sufficient flexibility to permit MTV2 to offer a service devoted to pop music.
22. Stornoway expressed concern that reliance on the charts to determine what constitutes a pop music video may be too restrictive.

### **The applicant's reply**

23. In its response to the interventions of CHUM, MusiquePlus, CIRPA, Stornoway and Friends, Craig stated that the concept of "directly competitive" as it relates to Category 1 and Category 2 specialty television services has never been adequately defined. It also

noted that MuchMusic could be distinguished from MTV2 by virtue of the fact that it can broadcast music in any genre and music-related programming such as movies and documentaries.

24. In its reply, Craig further reiterated its views on the various ways in which its suggested condition of licence differed from the Commission's proposed definition. The major differences between the Commission's proposed definition and Craig's were:
  - The percentage of pop music videos defined by charts to be broadcast on the service,
  - The charts to be specified in defining a pop music video,
  - The question of whether to add to the definition a chart that concentrates on Canadian selections, and
  - The appropriate length of time during which a pop music video would be included in the calculation of the percentage of pop music videos.
25. With respect to the percentage of pop music videos to be broadcast on the service, Craig stated that MTV2 needs to be able to air pop music videos that may not appear on the charts. The applicant stated that there will be pop videos that do not appear on any of the charts used for definition purposes, and that it would be very difficult to program an attractive service without access to such material.
26. In regard to the specific charts to be used in defining a pop music video, Craig noted that *Billboard's* Top 40 Tracks, one of the charts proposed by the Commission had recently been discontinued, and reiterated its suggestion that *Billboard's* Hot 100 would be a more appropriate chart to use in defining pop music videos.
27. As stated above, Craig proposed that, if the Canadian Top 50 Artists chart from *Canadian Music Network* was added to the definition, it would agree that the definition should apply to all videos, including Canadian ones. As part of its response to the interveners, Craig indicated that it had reconsidered this position, and would not accept any limit on Canadian videos. It stated that it "believes that it is fundamentally wrong to limit the opportunities for exposure that Canadian artists deserve."
28. With respect to the period of time following a chart appearance in which a video should still be included in the definition, the applicant noted that the Commission originally proposed a 12-month window, while Craig proposed a period of 36 months. Noting that CHUM had agreed that an extension to 24 months would be appropriate, Craig stated that, for the purpose of calculating the percentage of pop music videos, it would be prepared to accept the inclusion of videos for a period of 24 months following their initial appearance on a given chart.

## The Commission's analysis and conclusion

29. A key element to the Commission's policy with respect to the licensing of Category 2 services such as MTV2 has been, and continues to be, that such services may not be directly competitive with analog or Category 1 services. This policy is clearly enunciated in Public Notice 2000-6, Public Notice 2000-22, and, with regard to MTV2 specifically, in Decision 2003-65.
30. The Commission reiterates that, for the reasons originally set out in Decision 2003-65, the Commission must be assured that MTV2 is not directly competitive with any other analog music video service, such as MuchMusic. The Commission recognizes, however, that the licensee requires some flexibility in the programming of its service, and that some uncharted videos will be in the pop genre. It is prepared therefore, to modify its proposed definition of pop music video in three areas, namely the percentage of selections to be drawn from industry charts, the specific charts to be used for the definition, and the time frame during which the definition will remain applicable for charted selections.
31. The Commission is of the view that it would be appropriate to require that MTV2 ensure that not less than 70% of all selections broadcast, including Canadian selections, are drawn from specific charts. The Commission considers that this level would offer MTV2 the flexibility to draw up to 30% of all selections from sources other than the specified charts. The Commission is satisfied that this 70% will not unduly restrict Craig from using new, or uncharted material in the pop genre. Further, the 30% will provide Craig with sufficient flexibility to introduce new Canadian selections that may not have appeared on the specified charts.
32. In this context, the Commission notes that Craig indicated that it could agree to include Canadian videos in the calculation of the 70% of charted material if the Canadian Artists Top 50 Spins chart published by *Canadian Music Network* were included in the list of charts to be used. Consistent with that proposal, the Commission has included the above-noted chart in the list of charts to be used for the purpose of the definition.
33. With respect to the use of specific charts, the Commission agrees with the use of *Billboard's* Hot 100 chart, instead of the recently discontinued *Billboard* Top 40 Tracks. The Commission is not persuaded, however, that the use of the entire Hot 100 is appropriate. Since the Hot 100 is a broad list, the Commission is of the view that the use of the top 50 positions of the Hot 100 will provide Craig with sufficient flexibility. Songs in the remaining positions will be available to use on MTV2, as part of the 30% of videos that may be uncharted selections.
34. With respect to the time frame during which the definition will remain applicable to a video selection following its original appearance on a chart, the Commission agrees with the applicant's and interveners' view that 24 months is a reasonable period of time.

35. Accordingly, the Commission **approves in part** the application by 3850099 Canada Ltd., to amend the licence for MTV2 by incorporating the following into the condition of licence which defines the nature of service to be offered by MTV2. By **condition of licence**, the licensee must ensure that:

No less than 70% of all music video clips broadcast on the service shall consist of music video clips of a performance of a musical selection that is listed or has been listed within the preceding 24 months on the following trade publication charts:

- the top 50 positions of *Billboard's* Hot 100,
- *Canadian Music Network's* CHR Top 50 Spins, Top 50 Audience or Canadian Artists Top 50 Spins, or
- any other chart approved by the Commission.

36. The Commission is satisfied that the above description will ensure that Craig continues to operate MTV2 in accordance with the Commission's one-per-genre policy, while still providing MTV2 with sufficient flexibility to broadcast pop videos that might not appear on the designated charts, and to introduce new Canadian selections. However, the Commission notes that, as set out in the condition of licence which defines the nature of service to be offered by MTV2, all video clips broadcast on MTV2 must be in the pop format. The Commission reminds the licensee that it is the responsibility of the licensee to demonstrate upon request that any uncharted video selections broadcast on the service are in the pop format.

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>*