



Broadcasting Decision CRTC 2006-369

Ottawa, 14 August 2006

Ethnic Channels Group Limited Across Canada

Application 2004-1311-2
Public Hearing at Québec, Quebec
20 March 2006

Chinese (Mandarin) Family TV Channel – 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 Chinese (Mandarin) Family TV Channel.
2. The applicant proposed to offer a third-language, niche service that would be devoted to the Mandarin-speaking community in Canada. The service would offer family programming related to culture, history, fashion, children and sports. The applicant proposed that not less than 90% of all programming broadcast during the broadcast week would be in the Mandarin language.
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 per hour of local or regional advertising.

Interventions

5. The Commission received interventions in connection with this application by Multivan Broadcast Limited Partnership² (Multivan), the licensee of ethnic television programming undertaking CHNM-TV Vancouver, by NMTV inc. (NMTV), the licensee of the national ethnic Category 2 specialty programming undertaking known as NuevoMundo Television, and by Fairchild Television Ltd. (Fairchild). Fairchild is the licensee of Fairchild Television, a national ethnic specialty television service whose service is directed primarily to the Cantonese-speaking communities in Canada. It is also the licensee of Talentvision, a national ethnic specialty service whose primary target audience is the Mandarin-speaking communities of Canada.
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. Fairchild noted that, 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) the Commission established a buy-through requirement, under which broadcasting distribution undertakings (BDUs) choosing to distribute a general interest, third-language ethnic specialty service operating in Cantonese, Mandarin, Italian, Spanish, Greek or Hindi, must distribute that service only to subscribers who also subscribe to the existing analog third-language ethnic specialty service operating in the same language (the buy-through requirement). Fairchild further stated that, in its opinion, BDUs choosing to distribute this service should be allowed to do so only to subscribers who also subscribe to both Fairchild Television and Talentvision.

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

9. Fairchild further suggested that the programming proposed for the service would represent a general interest service, comparable to that aired on the English-language Family Channel pay television service, and that the applicant had not proposed any restrictions that would define it as a family-oriented service.

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. With respect to Fairchild's concern in regard to family programming, the applicant submitted that children and family programming has been recognized by the Commission as a niche specialty genre, and that such a service would not be subject to the buy through requirement. ECGL indicated that its proposed nature of service would be similar to that of the Fairchild Children's Channel, and that it would accept the same nature of service description. Further, ECGL indicated that it would be prepared to accept a condition of licence requiring that all programming provided by the proposed service would have as its target audience children, youth to age 17, and families with children of those ages. ECGL also indicated that it would commit to ensure that none of the programming offered by the proposed service would have an "adult", "restricted", or equivalent rating from the Ontario Film Review Board. In addition, the applicant indicated that it would not object to the deletion from its nature of service of programming drawn from categories 1 News and 2a) Analysis and interpretation, and requested the addition of programming targeted to children of pre-school age from program category 5a).

Commission's analysis and determinations

13. With respect to NMTV's comments, the Commission notes that, in *Licensing framework policy for new digital pay and specialty services*, Public Notice CRTC 2000-6, 13 January 2000, it implemented a competitive, open-entry approach to licensing Category 2 services.
14. 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). Furthermore, given that the service will offer more than 90% of its programming in a third language, the Commission is satisfied that the application falls under the definition of a third-language service as established in

Public Notice 2005-104. Accordingly, the Commission **approves** the application by Ethnic Channels Group Limited for a broadcasting licence to operate the national, niche, third-language ethnic Category 2 specialty programming undertaking, Chinese (Mandarin) Family TV Channel.

15. With respect to the request to broadcast up to six minutes of local or regional advertising, the Commission notes that, as set out in Public Notice 2005-104, it generally permits new third-language services to broadcast up to six minutes per hour of local advertising unless an intervener makes a compelling case to the contrary.
16. In the present case, the Commission finds that Multivan did not provide any evidence that a negative financial impact would result from permitting the proposed service to broadcast up to six minutes per hour of local or regional advertising.
17. 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.
18. In the Commission's view the amended nature of service, specifically the deletion of program categories 1 and 2a), the addition of programming for pre-school children and the commitment not to broadcast adult programming would ensure that Chinese (Mandarin) Family TV Channel's proposed service would target an audience of only children, youth to age 17 and families with children of those ages. The Commission is also of the view that this service would serve to improve the diversity and choice of programming available to the children and families of the Mandarin-speaking community. In view of the amendments proposed by ECGL, the Commission is further satisfied that these additional safeguards would ensure that the service would constitute a niche programming service. The Commission is imposing these commitments as **conditions of licence**, as set out in the appendix to this decision. The Commission further notes that, as a niche service, consistent with Public Notice 2005-104, the proposed service would not be subject to the buy-through requirement.
19. The Commission notes that Chinese (Mandarin) Family TV Channel will devote at least 90% of its program schedule to programming in the Mandarin language. In accordance with Public Notice 2005-104, the remainder of the program schedule, i.e., up to 10% may be in one or both official languages. The Commission encourages the applicant to ensure that all such programming serves to promote Canada's linguistic duality.
20. 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

21. 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 14 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 2006-369

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, niche, third-language, ethnic Category 2 specialty programming service devoted to the Mandarin-speaking community consisting of programming directed only to children, youth to age 17 and families in conjunction with such children and youth.
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:

2 (b) Long-form documentary

3 Reporting and actualities

4 Religion

5 (a) Formal Education and Pre school

(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 90% of all programming broadcast during the broadcast week shall be in the Mandarin language.
5. The licensee shall not provide any programming with an Adult, Restricted or equivalent rating from the Ontario Film Review Board.
6. Where the licensee broadcasts religious programming as defined in *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 the provision of 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.