



Broadcasting Decision CRTC 2006-525

Ottawa, 15 Septembre 2006

Mainstream Broadcasting Corporation Across Canada

Application 2005-0975-5
Public Hearing in the National Capital Region
1 May 2006

MBC Food 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 Mainstream Broadcasting Corporation (MBC), for a broadcasting licence to operate a national, ethnic Category 2¹ specialty programming undertaking to be known as MBC Food TV.
2. The applicant proposed to offer a third-language, niche service that would be devoted to the Mandarin, Cantonese, Japanese, Vietnamese, Korean, Singaporean, Thai and Filipino communities. The service would consist of programming related to food, cooking, food cultivation and preparation, restaurant reviews and nutrition. The applicant proposed that not less than 90% of all programming broadcast during the broadcast week would be in the Cantonese, Mandarin, Japanese, Korean, Filipino, Vietnamese, Malay, Tamil and Thai languages. Not less than 43.5% of all programming broadcast during the broadcast week would be in the Cantonese language and not less than 43.5% of all programming broadcast during the broadcast week would be in the Mandarin language. All of the programming would be drawn from the following categories, as set out in Schedule 1 to the *Specialty Services Regulations, 1990*: 5(b) Informal education/Recreation and leisure; 7(d) Theatrical feature films aired on TV; 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.

Intervention

3. The Commission received one comment with respect to this application from Fairchild Television Ltd. (Fairchild). Fairchild is the licensee of 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.
4. 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.
5. Fairchild noted that MBC has proposed ten niche services, and when considered together, the ten services would provide a comprehensive general interest service offering a broad range of programming. The intervener was of the view that, considering the common ownership and shared branding of the proposed services, the result would be a Chinese-language general-interest “superstation”. Fairchild further stated that, in its opinion, BDUs choosing to distribute any of the MBC services should be allowed to do so only to subscribers who also subscribe to both Fairchild Television and Talentvision.

Applicant’s reply

6. In response to Fairchild’s concerns, MBC submitted that each of its proposed services would be licensed on an individual basis and would be purchased and watched on an individual basis. It contended that all ten services are viable niche services in their own right. MBC stated that, apart from the intervener’s assertion that a “buy-through requirement will be crucial to the continued viability of Fairchild Television and Talentvision”, the intervener did not demonstrate any negative effect on its services.

Commission’s analysis and determination

7. With respect to the concerns expressed by Fairchild, the Commission is satisfied that the description of the nature of the proposed service is sufficiently narrow to qualify as a niche service, and that, as a niche service, consistent with Public Notice 2005-104, the proposed service would not be subject to the buy-through requirement.

8. 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 third languages, the Commission is satisfied that the application falls under the definition of a third-language service, established in Public Notice 2005-104. Accordingly, the Commission **approves** the application by Mainstream Broadcasting Corporation for a broadcasting licence to operate the national, niche, third-language, ethnic Category 2 specialty programming undertaking, MBC Food TV.
9. The Commission notes that MBC Food TV will devote at least 90% of its program schedule to programming in the Cantonese, Mandarin, Japanese, Korean, Filipino, Vietnamese, Malay, Tamil and Thai languages. In accordance with Public Notice CRTC 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.
10. The applicant has indicated that it will be entering into programming supply agreements and licence trademark agreements with non-Canadian independent producers. The Commission reminds the applicant that it must comply at all times with the *Direction to the CRTC (Ineligibility of non-Canadians)*, P.C. 1997-486, 8 April 1997, as amended by P.C. 1998-1268, 15 July 1998 (the Direction). Accordingly, the Commission requests that the applicant file with it for prior review, a copy of any programming supply agreement and/or licence trademark agreement that it intends to enter into with a non-Canadian party, in order to ensure that the applicant complies at all times with the Direction.
11. The licence will expire 31 August 2013, 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

12. 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 September 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 2006-525

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.
2. The licensee shall provide a national, niche, third-language, ethnic Category 2 specialty programming service devoted to the Mandarin, Cantonese, Japanese, Vietnamese, Korean, Singaporean, Thai and Filipino communities. The service will consist of programming related to food, cooking, food cultivation and preparation, restaurant reviews and nutrition.
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:
 - 5 (b) Informal education/Recreation and leisure
 - 7 (d) Theatrical feature films aired on TV
 - 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 following languages: Mandarin, Cantonese, Japanese, Vietnamese, Korean, Thai, Filipino, Malay and Tamil.
5. Not less than 40% of all programming broadcast during the broadcast week shall be in the Mandarin language.
6. Not less than 40% of all programming broadcast during the broadcast week shall be in the Cantonese language.

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.