



## Broadcasting Decision CRTC 2007-373

Ottawa, 15 October 2007

### **Gordon Culley, on behalf of a corporation to be incorporated Across Canada**

*Application 2007-0226-8, received 13 February 2007*

*Public Hearing in the National Capital Region*

*27 August 2007*

### **Black TV – Category 2 specialty service**

*The Commission **approves in part** the application by Gordon Culley, on behalf of a corporation to be incorporated for a broadcasting licence to operate a new Category 2 specialty programming undertaking but **denies** the request to broadcast local and regional advertising.*

### **Introduction**

1. Gordon Culley, on behalf of a corporation to be incorporated, filed an application for a broadcasting licence to operate Black TV, a national, English-language Category 2 specialty service that would target the African-Canadian and Caribbean communities. Programming would consist of a mix of news, original series, music videos, documentary, and specials.
2. The applicant also requested authority to broadcast local and regional advertising.
3. The Commission has implemented a competitive, open-entry approach to licensing Category 2 services. While the Commission does not consider the impact that a Category 2 service might have on an existing Category 2 service, it does seek to ensure that Category 2 services do not compete directly with any existing Category 1 or analog pay or specialty television 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. Where appropriate, in setting conditions of licence, the Commission prevents or limits the broadcast of specific types of programming to ensure that the service is not nor will become directly competitive with any existing Category 1 or analog pay or specialty television service.
4. The Commission received an intervention in connection with the application from Astral Television Networks, a division of Astral Broadcasting Group Inc. (Astral). Astral owns and operates The Movie Network and MPix, two English-language analog pay television programming undertakings that provide general interest theatrical movie-based services in eastern Canada. The intervener noted that the applicant had proposed no restrictions on

its selections from the programming categories set out in the *Specialty Services Regulations, 1990*. Astral requested that the service be subject, by condition of licence, to a 15% limitation on programs from category 7(d) (Theatrical feature films aired on TV).

5. The applicant did not reply to the intervention.

### **Commission's analysis and determinations**

6. The Commission is satisfied that the application is in conformity with all applicable terms and conditions announced in Public Notice 2000-171-1. Accordingly, the Commission **approves** the application by Gordon Culley, on behalf of a corporation to be incorporated, for a broadcasting licence to operate the national, English-language Category 2 specialty programming undertaking Black TV. The terms and **conditions of licence** are set out in the appendix to this decision.
7. However, the Commission is of the view that the applicant's nature of service is not sufficiently defined so as to prevent the proposed service from competing directly with the services provided by Astral. Accordingly, the Commission considers that it would be appropriate to impose a 15% weekly limit on programs to be drawn from category 7(d). A **condition of licence** to that effect is set out in the appendix to this decision.
8. With respect to the applicant's request to be authorized to broadcast local and regional advertising, the Commission noted in Public Notice 2000-171-1 that Category 2 services must not distribute any paid advertising material other than national paid advertising. The Commission has granted exceptions to this approach to the licensees of Category 2 ethnic services and local/regional news services that provide local and regional programming.
9. In the present case, the applicant plans to offer a national service that will not target any particular local market directly. In light of the foregoing, the Commission considers that the applicant's proposal does not warrant an exception to the Commission's approach with respect to the broadcast of advertising by Category 2 services. Accordingly, the Commission **denies** the applicant's request to broadcast local and regional advertising.

Secretary General

### **Related document**

- *Introductory statement – Licensing of new digital pay and specialty services – Corrected Appendix 2, Broadcasting Public Notice CRTC 2000-171-1, 6 March 2001*

*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 2007-373

### Terms and conditions of licence for the Category 2 specialty programming undertaking Black TV

#### Terms

A licence will be issued once the applicant has satisfied the Commission, with supporting documentation, that the following requirements have been met:

- an eligible Canadian corporation has been incorporated in accordance with the application in all material respects;
- 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 October 2010. 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.

The licence will expire 31 August 2014, and will be subject to the **conditions** set out below.

#### Conditions of licence

1. The licence shall 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, English-language Category 2 specialty programming service devoted to the African-Canadian and Caribbean communities. Programming will consist of a mix of news, original series, music videos, documentary, and specials.
3. The programming shall be drawn exclusively from the following categories set out in item 6 of 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 (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 (b) Music video clips
    - (c) Music video programs
  - 10 Game shows
  - 12 Interstitials
  - 13 Public service announcements
  - 14 Infomercials, promotional and corporate videos
4. In order to ensure that the licensee complies 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 licensee shall file, for the Commission's prior review, a copy of any programming supply agreement and/or licence trademark agreement it intends to enter into with a non-Canadian party.
  5. 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.
  6. Not more than 15% of all programming broadcast during the broadcast week shall be drawn from category 7(d).

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.