



Broadcasting Decision CRTC 2005-363

Ottawa, 2 August 2005

**John S. Panikkar, on behalf of a corporation to be incorporated
Across Canada**

*Application 2004-1391-4
Public Hearing in the National Capital Region
16 May 2005*

OasisHD – Category 2 specialty service

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

The application

1. The Commission received an application by John S. Panikkar, on behalf of a corporation to be incorporated, for a broadcasting licence to operate a national English-language Category 2¹ high definition (HD) specialty programming undertaking to be known as OasisHD.
2. The applicant proposed to offer an HD programming service featuring urban and wild landscapes by Canadian and international cinematographers.
3. All of the programming would be drawn from the following categories, as set out in Schedule 1 to the *Specialty Services Regulations, 1990*: 2(a) Analysis and interpretation; 2(b) Long-form documentary; 5(b) Informal education/Recreation and leisure; 7(g) Other drama; 11 General entertainment and human interest; 12 Interstitials; and 13 Public service announcements.

Interventions

4. The Commission received several interventions in support of this application and one comment from Global Television Network Inc. (Global).
5. Global expressed concern that the applicant was using HD as the only or the primary element to differentiate its proposed service from existing services. Global stated that HD programming content, in and of itself, does not constitute a separate genre. The programming content, and not the technology behind the signal, is what makes one service directly competitive with another.

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.

6. Global indicated that the “directly competitive” test must remain technology neutral. It added that the sheer level of HD content should not override the fundamental principle of genre protection.

Applicant’s reply

7. The applicant stated that its application does not rest solely on the basis that the proposed service would be Canada’s first 24-hour, seven-days-a-week, HD programming service. It also confirmed that it would not attempt to supersede any established or proposed regulatory framework. The applicant agreed with Global that the current licensing framework must remain technology neutral and that such a framework must be adhered to by all licensees of Category 2 pay and specialty services. The applicant also noted that there has been no indication that the proposed service would be competitive with analog pay or specialty or existing Category 1 services.

Commission’s analysis and determination

8. 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 *Corrected Appendix 2*, Public Notice CRTC 2000-171-1, 6 March 2001 (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 existing analog pay or specialty or 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.
9. The Commission recognizes Global’s general concerns and notes that it will continue to look at programming content when assessing competitiveness. The Commission also notes that a licence is granted on a case-by-case basis taking into consideration the particulars contained in each application.
10. In *Call for comments on a proposed framework for the licensing and distribution of high definition pay and specialty services*, Broadcasting Public Notice CRTC 2004-58, 6 August 2004 (Public Notice 2004-58), the Commission stated that, “during the transition period, the Commission would continue to consider applications for licences to provide new high definition services. Such applications would, as now, be assessed in accordance with the Commission’s current practices and policies, including those regarding market entry, ownership, licensing and programming, as well as any policies ultimately adopted with regard to minimum amounts of high definition programming.”

11. The Commission is satisfied that the application is in conformity with all applicable terms and conditions announced in Public Notice 2000-171-1 and Public Notice 2004-58. Accordingly, the Commission **approves** the application by John S. Panikkar, on behalf of a corporation to be incorporated, for a broadcasting licence to operate the national English-language Category 2 HD specialty programming undertaking, OasisHD.
12. 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** set out in the appendix to this decision.

Issuance of the licence

13. 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 2 August 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 2005-363

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 English-language Category 2 high definition specialty programming undertaking devoted to urban and wild landscapes by Canadian and international cinematographers.
3. The programming must 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 (a) Analysis and interpretation
 - (b) Long-form documentary
 - 5 (b) Informal education/Recreation and leisure
 - 7 (g) Other drama
 - 11 General entertainment and human interest
 - 12 Interstitials
 - 13 Public service announcements

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.