



Broadcasting Decision CRTC 2005-555

Ottawa, 24 November 2005

Ethnic Channels Group Limited Across Canada

Application 2004-1316-2

Public Hearing at Charlottetown, Prince Edward Island

3 October 2005

Gambling 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 Ethnic Channels Group Limited (ECGL) for a broadcasting licence to operate a national, English-language Category 2¹ specialty programming undertaking to be known as Gambling TV.
2. The applicant proposed to offer a general interest service that would be devoted to programs about gaming and gambling. The service would primarily broadcast feature films, documentaries, shorts and Canadian original programs.
3. All of the programming would be drawn from the following categories set out in Schedule I of the *Specialty Services Regulations, 1990* (the Regulations): 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.
4. The applicant stated that 25% of the overall schedule would be devoted to sports programming, and 25% of the broadcast week would be devoted to drama programming.

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

5. An intervention in opposition to this application was filed by CTV Television Inc. (CTV). CTV noted that, with limited exceptions, gaming and gambling are illegal in Canada, and that the Regulations provide that a licensee shall not distribute programming that contains anything in contravention of the law.
6. CTV took issue with the applicant's proposal to air sports programming from categories 6(a) and 6(b) and drama programming from categories 7(a) to (g) inclusive. CTV submitted that the proposed amount of sports programming (25% of the overall schedule) was unprecedented, and that a limit of 10% over the broadcast week would be more appropriate. CTV also contended that ECGL's proposal to devote 25% of its broadcast week to drama programming and its request to air programming from all of the drama sub-categories was excessively high for a non-drama based service. CTV proposed that programming from the drama categories be restricted to 15% of the broadcast week.

Applicant's reply

7. ECGL stated that it is fully aware of the restrictions regarding gambling-related activities contained in the *Criminal Code* as well as the stipulation contained in the Regulations that a specialty service shall not broadcast anything in contravention of the law. The applicant confirmed that all the programming on the service would fully comply with these requirements.
8. The applicant further argued that its proposed service is a thematic one, and not dedicated to a single type of programming, such as news or sports. It added that the drama and sports programming broadcast by the service would be distinctive and directed to a niche audience.
9. With respect to the intervener's concern regarding the proposed sports programming, ECGL submitted that it has proposed a nature of service that would not be directly competitive with The Sports Network, or any other sports service. According to ECGL, its proposed sports coverage would be consistent with the type of sports programming that has already been approved by the Commission for broadcast by similar Category 2 services, without restriction. ECGL noted, as an example, Jackpot TV, which had no restriction placed on the amount of sports programming that could be broadcast on the service. It also noted that, in the case of The Gaming Channel, the only restriction was that the service not broadcast "traditional competitive sports." ECGL stated, however, that it would accept a condition of licence that "no more than 15% of all programming during the broadcast day shall be devoted to coverage of stick and/or ball sports, including hockey, baseball, football, golf, soccer, and tennis (but not including billiards, snooker, and other pool games)."
10. As for CTV's concern regarding the proposed amount of drama programming in each broadcast week, ECGL argued that 25% would compare favourably with the level approved by the Commission for other thematic specialty programming services, including Book Television (30%), Pridevision (no limit), and Biography (20% from

category 7(d) and no limit from category 7(e)). ECGL suggested that, if the Commission were to impose a condition of licence limiting the amount of drama programming, a cap of 30% in each broadcast week would be acceptable.

Commission's analysis and determination

11. 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 Public Notice CRTC 2000-171-1, 6 March 2001 – *Corrected Appendix 2*, (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 analog pay or specialty or existing 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.
12. In the present case, the Commission is satisfied that Gambling TV's proposed nature of service is sufficiently specific to ensure that it will not be directly competitive with any analog pay or specialty or existing Category 1 service. The Commission further notes the applicant's willingness to devote no more than 30% of the schedule during the broadcast week to programs drawn from category 7 Drama and comedy, and to ensure that no more than 15% of all programming during the broadcast day is devoted to coverage of stick and/or ball sports, including hockey, baseball, football, golf, soccer and tennis (but not billiards, snooker and other pool games) from category 6(a) and 6(b). **Conditions of licence** stipulating these restrictions are set out in the appendix to this decision.
13. The Commission has also noted the concern raised in CTV's intervention with respect to the legality of the proposed programming, and is satisfied that the intervener's concerns were addressed in the applicant's reply. The Commission, nevertheless, reminds the applicant that, pursuant to section 3(a) of the Regulations "no licensee shall distribute programming that contains anything in contravention of the law."
14. In light of the above, 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 Ethnic Channels Group Limited for a broadcasting licence to operate the English-language Category 2 specialty programming undertaking, Gambling TV.
15. 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

16. 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 24 November 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 2005-555

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 gaming and gambling. The service will be a general interest service that will broadcast primarily feature films, documentaries, shorts and original Canadian programs about gaming and gambling.
3. The programming shall be drawn exclusively from the following categories set out in 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 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. No more than 30% of all programming broadcast during the broadcast week shall be devoted to programming drawn from category 7.
5. No more than 15% of all programming broadcast during the broadcast day shall be devoted to coverage of stick and/or ball sports, including hockey, baseball, football, golf, soccer, and tennis (but not including billiards, snooker, and other pool games), drawn from categories 6(a) and 6(b).

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.