



Broadcasting Decision CRTC 2006-345

Ottawa, 9 August 2006

Ethnic Channels Group Limited Across Canada

Application 2004-1319-6
Public Hearing at Québec, Quebec
20 March 2006

Greek TV 2 – 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 Greek TV 2.
2. The applicant proposed to offer a third-language, general interest service that would be devoted to the Greek speaking community. The service would consist of news, sports, talk shows, magazine shows, documentaries and music, as well as some general entertainment programming. The applicant proposed that not less than 90% of all programming broadcast during the broadcast week would be in the Greek 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 Odyssey Television Network Inc. (Odyssey). Odyssey is the licensee of the national, ethnic Greek-language specialty television service Odyssey Television Network.
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. Odyssey opposed this application on the grounds that the proposed service would be directly competitive with Odyssey Television Network. It further claimed that approval of this application will create further competition for the acquisition of broadcast rights for Greek-language programming, especially in view of the fact that Odyssey itself has filed applications for two Greek-language Category 2 specialty programming undertakings. In particular, Odyssey noted that, due to a significant increase in licence fees for the programs from Mega, Odyssey had been forced to drop that programming. The intervener stated that it would experience more such situations if ECGL's application were approved.
9. In its intervention, Odyssey also raised a concern regarding the ownership of ECGL. Odyssey noted that ECGL has undergone numerous changes in ownership since 2002 and suggested that ECGL may not be in compliance 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).

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

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. In response to Odyssey's intervention, ECGL stated that the question of competitiveness between third-language services has been dealt with in the context of the Commission's revised policy for the licensing of new third-language Category 2 pay and specialty television services, as set out 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). ECGL expressed its view that the application for Greek TV 2 meets the criteria established by the Commission for general interest, third-language ethnic Category 2 services set out in Public Notice 2005-104.
13. The applicant further stated: "ECGL disputes Odyssey's characterization of the market for Greek-language programming. If there were such a short supply of Greek-language programming, Odyssey would not itself be proposing to launch additional Greek-language services in Canada. The implications of this are that Odyssey's primary motivation is to preserve its close to monopoly status on the distribution of Greek-language programming in Canada".
14. Further, ECGL stated that Odyssey's allegations regarding ECGL's ownership are without merit and that it is aware of no aspect of its ownership or capitalization that would lend credence to Odyssey's contention.

Commission's analysis and determinations

15. 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.
16. 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, 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, general interest, third-language ethnic Category 2 specialty programming undertaking, Greek TV 2.

17. 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.
18. In the present case, 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.
19. 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.
20. The Commission has carefully examined all information related to the ownership of ECGL filed by the applicant. Although certain shares are issued to non-Canadians, the share structure is in compliance with the Direction whereby not less than 80% of all the issued and outstanding voting shares and not less than 80% of the votes are owned and controlled by Canadians. Further, there are no agreements in place that would provide the non-Canadian shareholders with de facto control. Based on information filed with the application, the Commission is therefore satisfied that the applicant is a qualified corporation pursuant to the Direction.
21. The Commission notes that Greek TV 2 will devote at least 90% of its program schedule to programming in the Greek 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.
22. Distribution of this service is subject to the distribution and linkage rules that apply to third-language general interest Category 2 services that offer 40% or more of their program schedule to programming in any of the Cantonese, Mandarin, Italian, Spanish, Greek, or Hindi languages, as set out in *Distribution and linkage requirements for Class 1 and 2 licensees*, Broadcasting Public Notice CRTC 2005-119, 14 December 2005 and *Linkage requirements for direct-to-home (DTH) satellite distribution undertakings*, Broadcasting Public Notice CRTC 2005-120, 14 December 2005, as amended from time to time. These rules require that such Category 2 services only be offered to customers who also subscribe to the analog service operating in the same language.
23. 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

24. 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 9 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 2006-345

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, general interest, third-language ethnic Category 2 specialty programming service, devoted to the Greek-speaking community.
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:

- 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. Not less than 90% of all programming broadcast during the broadcast week shall be in the Greek language.
5. Where the licensee broadcasts religious programming as defined in the *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 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.