



Broadcasting Decision CRTC 2006-481

Ottawa, 7 September 2006

Canadian Ethnic Broadcasting Corporation Across Canada

*Application 2004-1582-9
Public Hearing in the National Capital Region
1 May 2006*

Jamaican 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 Canadian Ethnic Broadcasting Corporation (CEBC), for a broadcasting licence to operate a national, ethnic Category 2¹ specialty programming undertaking to be known as Jamaican TV.
2. The applicant proposed to offer an English-language service that would be devoted to the Jamaican community. 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(a) Formal education and pre-school; 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.
3. 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.

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

4. An intervention in opposition to this application was submitted by CanWest MediaWorks Inc. (CanWest). CanWest operates the national English-language specialty television service Prime TV, and also has an ownership interest in the national English-language Category 1 specialty television services Mystery and Men TV.
5. CanWest argued that the applicant had failed to demonstrate that the proposed service would not be directly competitive with existing pay, specialty or Category 1 services. The intervener noted that, as part of this public process, CEBC indicated that all non-Canadian programming would originate in Jamaica. CanWest requested that this commitment be the subject of a condition of licence, because otherwise the applicant would not be obligated to adhere to it.
6. CanWest further stated that, under the Commission's revised approach for the consideration of broadcasting licence applications proposing new third-language ethnic Category 2 pay and specialty services, a third-language ethnic Category 2 service must commit to devote at least 90% of the program schedule of the service to programming in languages other than English or French. The intervener submitted that the proposed service is not a third-language ethnic service as defined in the Commission's revised approach and feels that competitiveness must be determined on a non-ethnic basis.
7. CanWest further contended that the definition of the nature of service proposed by the applicant contained very few restrictions on programming subcategories except professional sports, and was therefore too broad. CanWest argued that CEBC could become a general interest service, or alternatively, a powerful niche service and that, as a result, the proposed service could become directly competitive with a number of existing analog pay and specialty services or Category 1 services.

Applicant's reply

8. In response to CanWest's intervention, the applicant stated that the proposed ethnic service is targeted at a specific cultural audience which will add to the diversity and representative nature of the Canadian broadcasting system. CEBC expressed the opinion that Jamaican culture in Canada is not adequately reflected in the Canadian broadcasting system, and stated that Jamaican TV would be an ethnic service defined by its target audience rather than its language of service.
9. CEBC confirmed that it would accept a condition of licence requiring that 85% of the programming broadcast by the service would originate from Jamaica. The applicant further stated that it had committed to limit the amount of professional sports to no more than 5% of each broadcast week, and that it would not provide coverage of traditional competitive sports.
10. CEBC submitted that the programming to be offered by Jamaican TV would not be directly competitive with Mystery, Men TV or Prime TV because it would not compete directly for either target audience or specific programming.

11. The applicant added that there would be no overlap between the programming on Men TV, Mystery or Prime TV and Jamaican TV. It further indicated that Canadian programming on the service would mainly consist of interviews with Jamaican personalities visiting Canada and the promotion of local Jamaican-Canadian talent such as musical groups.

Commission's analysis and determinations

12. 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. While the Commission does not consider the impact that a new Category 2 service might have on an existing Category 2 service, it does seek to ensure that newly licensed Category 2 services do not compete directly with any existing pay or specialty television service, including any Category 1 service.
13. 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.
14. In the present case, the Commission is satisfied that the applicant's target audience is sufficiently limited to ensure that the service would not directly compete with any analog pay or specialty or existing Category 1 service, including the services offered by CanWest and identified in its intervention. More specifically, the Commission notes that the applicant is willing to accept a condition of licence that 85% of all programming broadcast during the broadcast week shall originate in Jamaica. In addition, the applicant has committed to limit the percentage of professional sports and the type of traditional competitive sports to be featured on the service. The Commission is imposing all these commitments as **conditions of licence** as set out in the appendix to this decision.
15. 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 Canadian Ethnic Broadcasting Corporation for a broadcasting licence to operate the national, ethnic Category 2 specialty programming undertaking, Jamaican TV.

16. With respect to the request to broadcast up to six minutes per hour of local or regional advertising, the Commission notes that, 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, it generally permits new services to broadcast up to six minutes per hour of local advertising unless an intervener makes a compelling case to the contrary.
17. 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.
18. The applicant has indicated that the service will feature adult programming in late night time slots and has submitted its internal policy on adult programming in accordance with the *Industry Code of programming standards and practices governing pay, pay-per-view and video-on-demand services* (the Industry Code) appended to Broadcasting Public Notice CRTC 2003-10, 6 March 2003 (Public Notice CRTC 2003-10). The Commission expects the applicant to adhere to its internal policy on adult programming, in addition to complying with the condition of licence, as set out in the appendix to this decision, requiring adherence to Section D.3 of the Industry Code.
19. 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.
20. 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

21. 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 7 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 2006-481

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, English-language ethnic Category 2 specialty programming service devoted to the Jamaican 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 (a) Formal education and pre-school

(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. All non-Canadian programming broadcast during the broadcast week shall originate from Jamaica.
5. Not more than 5% of all programming broadcast during the broadcast week shall consist of professional sports and this programming shall originate in Jamaica.
6. The service shall not broadcast coverage of traditional competitive sports such as baseball, basketball, football, hockey, tennis and golf.
7. The licensee shall adhere to Section D.3 of the *Industry code of programming standards and practices governing pay, pay-per-view and video-on-demand services*, appended to Broadcasting Public Notice CRTC 2003-10, 6 March 2003.
8. 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.