



Broadcasting Decision CRTC 2007-141

Ottawa, 16 May 2007

**Bhupinder Bola, on behalf of a corporation to be incorporated
Across Canada**

*Application 2006-1215-2, received 27 September 2006
Public Hearing in the National Capital Region
27 March 2007*

The Filipino “E” Channel (FEC) – Category 2 specialty service

*The Commission **denies** an application for a broadcasting licence to operate a new
Category 2 specialty programming undertaking.*

Introduction

1. Bhupinder Bola, on behalf of a corporation to be incorporated, filed an application for a broadcasting licence to operate The Filipino “E” Channel (FEC), a national, English-language Category 2 specialty programming undertaking targeting the Canadian Filipino community. The proposed service would draw its programming from all of the categories set out in item 6 of Schedule I to the *Specialty Services Regulations, 1990*, with the exception of category 15 (Filler programming), which the Commission has stated should not be included in the nature of service definitions of specialty services.
2. 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.
3. In the present case, the Commission received an intervention opposing the application from CanWest MediaWorks Inc. (CanWest), as well as a comment from Astral Television Networks (Astral), a division of Astral Broadcasting Group Inc. CanWest has ownership interests in the English-language analog specialty service TVTropolis and the

English-language Category 1 services Mystery and Men TV. Astral 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.

4. After considering the positions of the applicant and the interveners, the Commission considers that the issue to be determined in its evaluation of this application is whether the proposed service would be directly competitive with the above-noted services from CanWest and Astral or with other existing Category 1 or analog pay or specialty services.

Would The Filipino “E” Channel (FEC) be directly competitive with existing Category 1 or analog pay or specialty services?

5. The Commission notes that though the applicant indicated in its reply to Astral’s intervention that it would, as requested by Astral, accept a condition of licence limiting the proposed service’s programming from category 7(d) (Theatrical feature films aired on TV), the applicant proposed no safeguards, such as a condition of licence, to address CanWest’s concern that the proposed service’s nature of service as described in the application and the absence of limitations on its programming categories would result in its competing directly with any number of Category 1 or analog pay and specialty services, including CanWest’s TVTropolis, Mystery and Men TV. In its reply to CanWest’s intervention, the applicant submitted that such safeguards were not necessary as the source of 90% of the proposed station’s programming would be the English-language Filipino marketplace in Asia and North America rather than the “mainstream” English-language market. The applicant also identified other Category 2 services currently licensed in the English language serving third-language groups with some similar programming that are considered to be non-competitive with Category 1 and analog pay and specialty services.
6. However, the Commission notes that the Category 2 services referred to by the applicant are focused on sports, predominantly on cricket, as well as soccer and rugby, and consequently are not general interest services such as that proposed by the applicant. Further, the Commission is of the view that the applicant has not sufficiently defined the source of its programming to ensure that it would not enter into direct competition with the above-noted services by CanWest or with other existing Category 1 and analog pay and specialty services.

Conclusion

7. Based on the foregoing, the Commission concludes that the proposed Category 2 service would compete directly with the existing television services of CanWest, as well as with other existing Category 1 and analog pay and specialty services. Accordingly, the Commission **denies** the application by Bhupinder Bola, on behalf of a corporation to be incorporated, for a broadcasting licence to operate a national, English-language Category 2 specialty programming undertaking to be known as The Filipino “E” Channel (FEC).

Secretary General

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