



## Broadcasting Decision CRTC 2007-68

Ottawa, 20 February 2007

### **Cosmopolitan Television Canada Company** Across Canada

*Application 2006-1022-1*  
*Public Hearing in the National Capital Region*  
*18 December 2006*

### **Cosmopolitan Television – Category 2 specialty service**

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

#### **The application**

1. The Commission received an application by Cosmopolitan Television Canada Company (Cosmopolitan Television) for a broadcasting licence to operate a national, English-language Category 2<sup>1</sup> specialty programming undertaking to be known as Cosmopolitan Television.
2. The applicant proposed to offer a service that would be devoted to entertaining young Canadian women with programming about beauty, lifestyle, relationships, travel, trends and style. These themes would be reflected through movies, series and reality programs of special interest to young women. The programming would explore topics and ideas that are central to *Cosmopolitan*, a world-renowned magazine.
3. All of the programming would be drawn from the following categories set out in item 6 of Schedule I to the *Specialty Services Regulations, 1990*: 2(a) Analysis and interpretation; 2(b) Long-form documentary; 5(b) Informal education/Recreation and leisure; 7(a) Ongoing drama series; 7(b) Ongoing comedy series; 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; 9 Variety; 10 Game shows; 11 General entertainment and human interest; 12 Interstitials; 13 Public service announcements; and 14 Infomercials, promotional and corporate videos.

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<sup>1</sup> 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 indicated its willingness to accept conditions of licence requiring that:
  - any program related to health and wellness issues would be directed to women;
  - not more than 10% of programming during the broadcast week would be devoted to programs about travel;
  - style-related programming would focus on style as reflected in *Cosmopolitan*, and not on runway footage; and
  - not more than 10% of the programming broadcast during the broadcast year would be drawn from categories 8(b) and 10.
5. According to the applicant, these proposed conditions of licence would ensure that its service would not be competitive with any existing analog pay or specialty or Category 1 service.

### **Interventions**

6. The Commission received interventions in opposition to this application by CHUM Limited (CHUM), Alliance Atlantis Communications Inc. (Alliance Atlantis) and Mr. Rod MacMillan. Astral Television Network (Astral), a division of Astral Broadcasting Group Inc., filed an intervention that commented on the application.
7. Among other broadcast holdings, CHUM is the licensee of the specialty programming undertaking Star!-TV (Star), and of the Category 1 specialty programming undertaking Fashion Television. Star's main purpose is to inform its audience on all aspects of the entertainment industry. Fashion Television is dedicated to fashion, beauty, style, art, architecture, photography and design.
8. Alliance Atlantis owns a number of licensed specialty undertakings including the specialty programming undertakings Home and Garden Television (HGTV) and Life Network as well as the Category 1 specialty programming undertaking Discovery Health Channel. HGTV provides advice and instruction about homes and gardens, Life Network offers lifestyle programming consisting primarily of useful, reliable and entertaining information and documentaries while Discovery Health Channel is entirely devoted to providing useful, practical, reliable and entertaining programming related to health.
9. Both CHUM and Alliance Atlantis contended that the proposed Cosmopolitan Television service could be directly competitive with their respective services noted above. The interveners pointed out that such a situation would be contrary to the Commission's policy that Category 2 services should not be directly competitive with existing analog pay or specialty or Category 1 services.

10. CHUM argued that, since the applicant proposed to offer programming from a wide range of topics, it would be difficult to ascertain Cosmopolitan Television's nature of service. Nevertheless, CHUM noted that a major component of Star's schedule consists of celebrity profiles. According to CHUM, the public has an increasing interest in celebrities, an interest that is reflected in *Cosmopolitan's* increased coverage of celebrities. Accordingly, CHUM expressed concern that Cosmopolitan Television, which would mimic *Cosmopolitan*, would broadcast programming similar to Star.
11. CHUM also indicated that about 35% of Fashion Television's program schedule consists of runway footage and that the remainder, or about 65%, is made up of programming that would fall within Cosmopolitan Television's nature of service. CHUM submitted that, because the applicant did not provide any information about how much of its programming would be related to beauty, style and trends, most of Cosmopolitan Television's service could look identical to and consequently compete directly with Fashion Television.
12. For its part, Alliance Atlantis also contended that the applicant did not clearly define a programming genre and therefore did not clarify how the proposed service would not be directly competitive with Life Network and Discovery Health. Alliance Atlantis maintained that it was unclear how much of Cosmopolitan Television's schedule would be comprised of health and wellness programming. In Alliance Atlantis' opinion, the applicant's commitment to target the programming to women was not adequate to ensure that the proposed service would not be directly competitive with Discovery Health.
13. Alliance Atlantis noted that *Cosmopolitan* is a general interest lifestyle magazine that covers a number of themes. According to Alliance Atlantis, a television network that adhered to *Cosmopolitan's* spirit would be a broad, general interest service with great potential for duplication of programming that is already available. Moreover, the intervener cited decisions<sup>2</sup> in which the Commission denied similar lifestyle applications because the Commission determined that the definitions of nature of service proposed by the applicants were too broad. The Commission also found that the applicants did not sufficiently demonstrate how their services would not directly compete with existing specialty services.
14. Alliance Atlantis submitted that, if the Commission were to approve the present application, it should impose conditions of licence in order to define the nature of service more clearly so as to ensure that Cosmopolitan Television would not be directly competitive with existing Category 1 services. Specifically, Alliance Atlantis proposed that the Commission require the applicant to ensure that:
  - not more than 25% of all programming broadcast during the broadcast week would be from any one programming genre, including fashion, beauty, relationships and sexual matters;

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<sup>2</sup> 15 *DegreesHD – Category 2 specialty service*, Broadcasting Decision CRTC 2005-391, 10 August 2005; *Art and Design Television – Category 2 specialty service*, Broadcasting Decision CRTC 2004-319, 6 August 2004; and *Zoomer – Category 2 specialty service*, Broadcasting Decision CRTC 2003-503, 15 October 2003

- all style-related programming has fashion as its central theme;
  - no programming would be comprised of genres related to food, home and garden, health or alternative health and wellness; and
  - no programming would be broadcast from category 7.
15. Mr. MacMillan opposed the application because, in his view, the proposed programming would not present a good role model to young women.
16. Astral noted that the applicant proposed to broadcast programming drawn from the following categories without restrictions: 2(a), 2(b), 5(b), 7(a), 7(b), 7(c), 7(d), 7(e), 7(f), 7(g), 8(a), 8(b), 9, 10, 11, 12, 13 and 14. Astral suggested that the Commission impose a condition of licence restricting category 7(d) programming to no more than 15%.

#### **Applicant's replies**

17. In response to CHUM and Alliance Atlantis, the applicant argued that the Commission's policy places the onus on the opposing intervener to demonstrate that the proposed service would be directly competitive with an existing analog pay or specialty service or Category 1 service at the time of the filing of the application. The applicant claimed that, because Cosmopolitan Television would be targeted to a niche audience, it would be distinctive from, and not directly competitive with, any such service. The applicant added that Cosmopolitan Television would offer programming about subjects that women discuss among themselves when they are not in company of men and that the topics explored on the interveners' channels are not covered in the proposed service.
18. The applicant maintained that the programming broadcast by Cosmopolitan Television would be drawn from different categories than those of the interveners' services and that it would be presented in a distinctive style. Specifically, the applicant noted that, unlike Star, Cosmopolitan Television would not offer any programs drawn from categories 1 News, 3 Reporting and actualities, or 8(c) Music video programs, but would offer programs drawn from categories 5(b), 7(a), 7(b), 7(e), 7(f), and 7(g). The applicant submitted that, while news reporting about the various industries that it covers is a key element of Star's programming, Cosmopolitan Television would not offer any of this type of programming and consequently would not compete for gossip news. The applicant added that, unlike Fashion Television, Cosmopolitan Television would not offer any programming drawn from categories 3 and 8(c), but would offer programming drawn from category 7(c).
19. The applicant also stated that programming offered by Cosmopolitan Television would overlap with that offered by Discovery Health in only three categories, namely 2(a), 2(b), and 5(b), and with that offered by Life Network in only four categories, namely 2(a), 2(b), 5(b) and 9. In the applicant's view, Cosmopolitan Television would therefore not be competitive with either Discovery Health or Life Network.

20. The applicant further indicated that it would adhere to conditions of licence specifying that:
- not more than 25% of the broadcast year would be devoted to programming drawn from category 7(d); and
  - not more than 15% of the broadcast year would be devoted to programming about fashion.

### **Commission's analysis and determination**

21. 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 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 service or any existing pay or specialty service other than a Category 2 service.
22. 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 Category 1 service or an existing pay or specialty service other than a 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.
23. Furthermore, the Commission stated in *Revised procedures for processing applications for new digital Category 2 pay and specialty television services*, Broadcasting Public Notice CRTC 2004-24, 8 April 2004, that it may deny Category 2 applications in the following circumstances:
- where there is a well-supported intervention demonstrating that a service would be directly competitive with an existing service, and where the applicant has not persuaded the Commission to the contrary;
  - where an applicant, even in the absence of such an intervention, has not satisfied the Commission that its proposed service would not be directly competitive with an existing service;
  - where an applicant has not demonstrated that it meets the ownership requirements.

24. In the present case, given the very broad nature of service and the programming flexibility that the proposed definition would allow, the Commission considers that the applicant did not propose and establish sufficient safeguards to prevent the proposed service from becoming directly competitive with the analog specialty television service, Star, and the Category 1 specialty service, Fashion Television.
25. Accordingly, the Commission **denies** the application by Cosmopolitan Television Canada Company for a broadcasting licence to operate the national, English-language Category 2 specialty programming undertaking, Cosmopolitan Television.

Secretary General

*This decision 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>*