



## Broadcasting Decision CRTC 2008-137

Ottawa, 3 July 2008

**4437080 Canada Inc.**  
Across Canada

*Applications 2008-0257-1 and 2008-0256-3, received 15 February 2008*

### **Change of effective control - The Chinese News Network and The Chinese Television Network**

*The Commission **denies** two applications by 4437080 Canada Inc. (formerly Bhupinder Bola, on behalf of a corporation to be incorporated) for a change in its effective control from Mr. Bhupinder Bola to Mr. Chuck Yeung.*

#### **The applications**

1. The Commission received two applications by 4437080 Canada Inc., formerly Bhupinder Bola on behalf of a corporation to be incorporated (OBCI),<sup>1</sup> for a change in its effective control from Mr. Bhupinder Bola to Mr. Chuck Yeung – one for The Chinese News Network and one for The Chinese Television Network. Mr. Bola has agreed to transfer 90% of the shares of 4437080 Canada Inc. to Mr. Chuck Yeung. Mr. Bola would retain the remaining 10% of the voting shares.
2. 4437080 Canada Inc., a corporation wholly owned and controlled by Mr. Bhupinder Bola, was incorporated on 13 July 2007.
3. The applicant confirmed that the two ethnic Category 2 specialty programming undertakings The Chinese Television Network and The Chinese News Network (collectively referred to as the “Chinese Services”) have not yet been launched.

#### **Commission’s analysis and determination**

4. In its regulatory policy *Diversity of voices* set out in Broadcasting Public Notice 2008-4, the Commission addressed how it would approach issues related to licence trafficking. More specifically, it outlined the principles that it generally applies to changes in the effective control of broadcasting undertakings that occur during the first licence term of an undertaking or shortly following a previous sale. The Commission stated the following:

---

<sup>1</sup> In Broadcasting Decisions 2007-9 and 2007-11, respectively, the Commission approved applications by Bhupinder Bola (OBCI) for broadcasting licences to operate the Category 2 specialty services The Chinese Television Network and The Chinese New Network.

a) Integrity of the licensing process

In order to ensure that the integrity of the initial licensing process for the undertaking is not compromised, the Commission examines:

- the extent to which the licensee has attempted to implement its authority, including financial expenditures and commitments made;
- whether the undertaking is being operated in accordance with its commitments and its promise of performance; and
- whether the purchaser was a party to the competitive process at the time of licensing.

b) Extent of profit

The Commission also examines the extent to which the vendor will profit from the sale.

5. The Commission notes that both applications involve a change in effective control of broadcasting undertakings that have not yet been launched and for which licences have not yet been issued.
6. The applicant stated that it is aware of the Commission's concern when changes in effective control of licensees occur during the first term of their broadcasting licences. The applicant submitted, however, that the proposed transaction is not an instance of trafficking, arguing that the completion of the transaction is necessary to allow the Chinese Services to be launched. It explained that it had taken the necessary steps to move the Chinese Services closer to being launched, but has experienced difficulties in locating funding on satisfactory terms in order to maintain control of the Chinese Services.
7. The Commission has examined the extent to which the applicant has attempted to implement its authority, including financial expenditures and commitments made as a result of the original licensing process. A number of conditions, as outlined in Broadcasting Decisions 2007-9 and 2007-11, remain unfulfilled. In this regard, the Commission notes that the applicant has not entered into a distribution agreement with at least one licensed distributor and has not informed the Commission in writing that it is prepared to commence operations. The Commission has determined that even though the applicant has attempted to implement its authority, it is not in a position to implement the service.
8. The Commission notes that a broadcasting licence is a privilege that is granted as the result of an extensive public process that often involves competitive applications. The decision to award a licence to a specific person is based on the merits of the application. The decision takes into consideration the benefits that will accrue both to the Canadian

broadcasting system and to those who will be served by the proposed broadcasting undertaking. Consequently, the sale of an unlaunched or of a newly licensed broadcasting undertaking also brings into question the original licensing process.

9. In addition, the Commission has considered the fact that, given the licensing process for category 2 services, the purchaser could apply to obtain licences for new category 2 services as opposed to acquiring the shares of a corporation that has not yet been granted broadcasting licences.
10. The Commission has also examined the level of profit that would result from the proposed transaction. The purchase price is \$80,000 for the two unlaunched category 2 Chinese Services. A detailed breakdown of all of the pre-operating costs of \$42,000 incurred by the applicant reveals a profit of \$38,000. The applicant argued that the amount of \$38,000 should not be viewed as profit, but rather as an attempt to compensate the applicant for the lost opportunity to earn revenue from the services in the future. The Commission questions the level of profit resulting from the sale. In addition, the Commission is not satisfied with the applicant's rationale that the \$38,000 should be viewed as an attempt to compensate the applicant for the lost opportunity to earn revenue from the services in the future.
11. In light of the concerns related to licence trafficking set out above, the Commission **denies** the two applications by 4437080 Canada Inc., formerly Bhupinder Bola (OBCI), for a change in its effective control from Mr. Bhupinder Bola to Mr. Chuck Yeung – one for The Chinese News Network and one for The Chinese Television Network.
12. Considering that the services are not yet in operation and no licences have been issued for these undertakings, the Commission reminds the applicant that the licences will only be issued once the applicant has satisfied the Commission that the requirements set out in Decisions 2007-9 and 2007-11 have been met.

Secretary General

#### **Related Documents**

- *Diversity of voices*, Regulatory policy, Broadcasting Public Notice CRTC 2008-4, 15 January 2008
- *The Chinese Television Network (CTN) – Category 2 specialty service*, Broadcasting Decision CRTC 2007-9, 8 January 2007
- *The Chinese News Network – Category 2 specialty service*, Broadcasting Decision CRTC 2007-11, 8 January 2007

*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>.*