



Broadcasting Decision CRTC 2009-217

Route reference:

Broadcasting Notice of Public Hearing 2008-14

Ottawa, 24 April 2009

Fairchild Television Ltd.

Across Canada

Application 2008-1110-1, received 19 August 2008

Public Hearing in Orillia, Ontario

26 January 2009

Fairchild Television II – Category 2 specialty service

*The Commission **approves** an application for a broadcasting licence to operate a new national third-language ethnic Category 2 specialty programming undertaking.*

1. Fairchild Television Ltd. (Fairchild) filed an application for a broadcasting licence to operate Fairchild Television II, a national third-language general interest ethnic Category 2 specialty service. Fairchild Television II would offer a wide array of information and entertainment television programs broadcast predominantly in the Cantonese language. Fairchild submitted that most of the programming planned for airing on its new specialty service could not be scheduled for airing on the current analog service due to its already fully occupied airtime capacity. Fairchild proposed to broadcast 90% or more of its programming in the Cantonese-language and no more than 10% of its programming in English-language, Mandarin-language and/or other Chinese dialects. The applicant also requested authority to broadcast up to six minutes per hour of local and regional advertising. There was one intervention in opposition to this application.
2. Fairchild is controlled by Mr. Thomas Fung through his various holding companies.
3. 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.
4. In an opposing intervention, Mr. Gilbert Kan submitted that alongside the other television and radio services that Fairchild already owns, approval of this application would create a monopoly for Fairchild in the market for Chinese-speaking viewers and listeners. He also noted that Fairchild owns a number of other businesses and submitted

that the news reporting by its various programming undertakings makes favourable comments with regard to those businesses and does not remain neutral.

5. In reply Fairchild submitted that, although its Vancouver radio services, CJVB and CHKG-FM, broadcast most of their programming in Cantonese and Mandarin, they must, by condition of licence, broadcast programming in 23 and 15 languages directed to 23 and 20 ethnic groups, respectively. In addition to this, Fairchild pointed out that there are radio and television services owned by other licensees in Vancouver, Toronto, and Alberta that all provide Chinese language programming that is not produced nor provided by Fairchild.

Commission's analysis and determinations

6. With respect to Mr. Kan's intervention, the Commission is satisfied with Fairchild's reply. Specifically, the Commission notes that there are numerous other foreign Chinese-language programming undertakings available to subscribers.
7. The Commission is satisfied that the application is in conformity with the framework set out in Public Notice 2000-6 and with all applicable terms and conditions set out in Public Notice 2000-171. Given that the service will offer not less than 90% of its programming in a third language, the Commission is further satisfied that the application falls under the definition of a third-language service established in Broadcasting Public Notice 2005-104. Accordingly, the Commission **approves** the application by Fairchild Television Ltd. for a broadcasting licence to operate the national, third-language general interest ethnic Category 2 specialty programming undertaking, Fairchild Television II. The licence will be subject to the terms and **conditions** announced in the appendix of this decision.
8. With respect to the request to broadcast up to six minutes of local and regional advertising, the Commission notes that, as set out in Broadcasting Public Notice 2005-104, the Commission generally permits new ethnic specialty services to broadcast up to six minutes per hour of local advertising unless an intervener makes a compelling case to the contrary. In the present case, there were no interventions opposing the proposal to broadcast local advertising. 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.

Reminder

9. The Commission reminds the applicant that distribution of this service is subject to the new distribution rules that apply to third-language services distributed by broadcasting distribution undertakings, as set out in Broadcasting Public Notice 2008-100.

Secretary General

Related documents

- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services*, Broadcasting Public Notice CRTC 2008-100. 30 October 2008
- *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
- *Introductory statement – Licensing of new digital pay and specialty services – Corrected Appendix 2*, Public Notice CRTC 2000-171-1, 6 March 2001
- *Licensing framework policy for new digital pay and specialty services*, Public Notice CRTC 2000-6, 13 January 2000

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 2009-217

Terms, conditions of licence and encouragement for the Category 2 specialty programming undertaking Fairchild Television II

Terms

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 24 April 2012. 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.

The licence will expire 31 August 2015.

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 advertising.
2. The licensee shall provide a national, general interest third-language ethnic Category 2 specialty programming service devoted to a wide array of information and entertainment TV programs broadcast predominantly in the Cantonese language, most of which cannot be scheduled for airing on the current analog Fairchild service due to its already fully occupied airtime capacity.
3. The programming shall be drawn exclusively from the following categories set out in item 6 of 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 dramatic series
 - (b) Ongoing comedy series (sitcoms)
 - (c) Specials, mini-series and made-for-TV feature films
 - (d) Theatrical feature films aired on television
 - (e) Animated television programs and films
 - (f) Programs of comedy sketches, improvisations, unscripted works, stand-up comedy
 - (g) Other drama
 - 8 (b) Music video clips
 - 9 Variety
 - 10 Game shows
 - 11 General entertainment and human interest
 - 12 Interstitials
 - 13 Public service announcements
 - 14 Infomercials, promotional and corporate videos
4. The licensee shall broadcast no less than 90% of its programming in the Cantonese-language.
 5. The licensee shall caption 100% of its English or French language programs over the broadcast day, consistent with the approach set out in *A new policy with respect to closed captioning*, Broadcasting Public Notice CRTC 2007-54, 17 May 2007.
 6. In order to ensure that the licensee complies 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 licensee shall file, for the Commission's prior review, a copy of any programming supply agreement and/or licence trademark agreement it intends to enter into with a non-Canadian party.
 7. Where the licensee broadcasts religious programming as defined in *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 the provision of 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 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.

Encouragement

The Commission encourages broadcasters to work on solutions for making third-language programming more accessible, and to caption third-language programming whenever possible. The licensee will be asked to report on its progress in providing third-language closed-captioning at the time of licence renewal.