



Broadcasting Decision CRTC 2012-129

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Route reference: 2011-595

Additional reference: 2011-595-2

Ottawa, 2 March 2012

Ethnic Channels Group Limited

Across Canada

Application 2011-1012-1, received 4 July 2011

Public hearing in the National Capital Region

21 November 2011

Bollywood SD – Hindi Movie Channel – Specialty Category B service

*The Commission **approves** an application for a broadcasting licence to operate a specialty Category B service.*

*The Commission also **approves** the applicant's request relating to the broadcast of local advertising.*

The application

1. Ethnic Channels Group Limited (ECGL) filed an application for a broadcasting licence to operate Bollywood SD – Hindi Movie Channel, a national, niche third-language ethnic specialty Category B service that would be devoted predominantly to Hindi movies and would target the Hindi-speaking community in Canada.
2. ECGL is controlled by Slava Levin. The distribution agreement does not affect the control of the proposed service.
3. The applicant proposed to draw programming from the following program categories set out in Item 6 of Schedule I to the *Specialty Services Regulations, 1990*, as amended from time to time: 1, 2(a), 2(b), 3, 4, 7(a), 7(b), 7(c), 7(d), 7(e), 7(f), 7(g), 8(a), 8(b), 9, 11(a), 11(b), 12, 13 and 14.
4. In its application, the applicant indicated that it would accept to abide by the following condition of licence:

At least 50% of all programming broadcast each broadcast week shall be devoted to programming drawn from program categories 7(d) or 7(e).

5. The applicant proposed to devote not less than 90% of its programming broadcast during the broadcast week to programming in the Hindi language.
6. The applicant requested that, of the 12 minutes of advertising material permitted during each clock hour, it be authorized to broadcast up to 6 minutes of local and regional advertising.¹
7. The Commission received one intervention in opposition to the application from Asian Television Network International Limited (ATN), licensee of the national ethnic specialty service South Asian Television Network (SATV), to which the applicant replied. The public record for this proceeding can be found on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Commission's analysis and decision

8. After examining the public record for this application in light of applicable regulations and policies, the Commission considers that the issue it must address is whether the proposed service would be directly competitive with existing Category A services.
9. In Public Notice 2000-6, the Commission implemented a competitive, open-entry approach to licensing Category 2 (Category B) services. While the Commission does not consider the impact that a Category B service might have on an existing Category B service, it does seek to ensure that Category B services do not compete directly with any existing Category A services.²
10. In Public Notices 2000-171 and 2000-171-1, the Commission adopted a case-by-case approach to determining whether a proposed Category B service should be considered directly competitive with an existing Category A 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.
11. In its intervention, ATN argued that the proposed service would be in direct competition with SATV and that its nature of service description is too broad for the service to qualify as niche.
12. In reply, ECGL argued that the proposed nature of service clearly defines Bollywood SD – Hindi Movie as a niche service. However, to dispel any doubt, ECGL stated that it would accept a nature of service with fewer program categories. Specifically,

¹ "Local advertising" is advertising that does not fall within the definition of national or regional advertising, i.e., advertising to persons who provide goods or services in more than one market and/or province.

² In accordance with Broadcasting Public Notice 2008-100, as of 31 August 2011, Canadian analog and Category 1 pay and specialty services—services with access rights—are known as Category A services. The term "Category A" is used in this decision to encompass Category 1 or analog pay or specialty services.

ECGL agreed not to draw programming from the following categories: 1, 2(a), 3, 4, 9 and 11(b).

13. The Commission considers that the nature of service and the limitations proposed by ECGL in its application along with its proposal not to draw programming from certain categories are sufficient to ensure that the proposed service will be a niche service and that the programming will consist mostly of movies and movie-related programming. Accordingly, the Commission is satisfied that the proposed service will not be in direct competition with SATV or any other Category A service.

Conclusion

14. The Commission is satisfied that the application complies with all applicable policies, terms and conditions, including those set out in Public Notice 2000-6, Broadcasting Public Notice 2008-100, and Broadcasting Regulatory Policies 2010-786 and 2010-786-1. Furthermore, given that the service will offer no less than 90% of its programming during the broadcast week in Hindi, the Commission is satisfied that the service falls under the definition of a third-language service set out in the *Broadcasting Distribution Regulations* (the Regulations).
15. Accordingly, the Commission **approves** the application by Ethnic Channels Group Limited for a broadcasting licence to operate the national, niche third-language ethnic specialty Category B service Bollywood SD – Hindi Movie. The Commission also **approves** the applicant's request for authority to broadcast up to six minutes per hour of local advertising. The terms and **conditions of licence** are set out in the appendix to this decision.
16. The Commission notes that Bollywood SD – Hindi Movie will devote at least 90% of its program schedule to programming in Hindi. In accordance with Broadcasting Public Notice 2005-104, the remainder of the program schedule (up to 10%) may be in one or both official languages. The Commission encourages the applicant to ensure that all such programming serves to promote Canada's linguistic duality.

Reminder

17. The Commission reminds the applicant that the distribution of this service is subject to the requirements set out in the Regulations.

Secretary General

Related documents

- *Standard conditions of licence, expectations and encouragements for Category B pay and specialty services – Corrected Appendices 1 and 2*, Broadcasting Regulatory Policy CRTC 2010-786-1, 18 July 2011

- *Standard conditions of licence, expectations and encouragements for Category B pay and specialty services*, Broadcasting Regulatory Policy CRTC 2010-786, 25 October 2010
- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services* – Regulatory policy, 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
- *Introductory statement - Licensing of new digital pay and specialty services*, Public Notice CRTC 2000-171, 14 December 2000
- *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.*

Appendix to Broadcasting Decision CRTC 2012-129

Terms, conditions of licence and encouragement for the specialty Category B service Bollywood SD – Hindi Movie

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 and has provided the Commission with a launch date for the service. The undertaking must be operational at the earliest possible date and in any event no later than 48 months from the date of this decision.

The licence will expire 31 August 2018.

Conditions of licence

1. The licence will be subject to the conditions set out in *Standard conditions of licence, expectations and encouragements for Category B pay and specialty services – Corrected Appendices 1 and 2*, Broadcasting Regulatory Policy CRTC 2010-786-1, 18 July 2011, except for condition 7d), which will not apply, and condition 7a), 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.

For the purposes of this condition of licence, “local advertising” is advertising that does not fall within the definitions of national and regional advertising, i.e., advertising to persons who provide goods or services in more than one market and/or province.

2. a) The licensee shall provide a national, niche third-language ethnic specialty Category B service devoted predominantly to Hindi movies and targeted to the Hindi-speaking community in Canada.

b) The programming shall be drawn exclusively from the following program categories set out in Item 6 of Schedule I to the *Specialty Services Regulations, 1990*, as amended from time to time:
 - 2 (b) Long-form documentary
 - 7 (a) Ongoing dramatic 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, improvisation, unscripted works, stand-up comedy
- 8 (a) Music and dance other than music video programs or clips
- (b) Music video clips
- 11 (a) General entertainment and human interest
- 12 Interstitials
- 13 Public service announcements
- 14 Infomercials, promotional and corporate videos

c) The licensee shall devote at least 50% of all programming broadcast each broadcast week to programming drawn from program categories 7(d) or 7(e).

d) The licensee shall broadcast no less than 90% of all programming during the broadcast week in the Hindi language.

3. The service approved hereby is designated as a Category B service.

For the purposes of the conditions of this licence, “broadcast day” refers to the 24-hour period beginning each day at 6 a.m. or any other period approved by the Commission.

Encouragement

The Commission encourages the licensee to ensure that the portion of the service’s program schedule that is broadcast in the English and/or French languages serves to promote Canada’s linguistic duality.