



Broadcasting Decision CRTC 2005-485

Ottawa, 11 October 2005

**Multivan Broadcast Corporation (the general partner)
and 650504 B.C. Ltd., Douglas M. Holtby,
Geoffrey Y. W. Lau, Robert H. Lee, Joseph Segal and
RCG Forex Service Corp. (the limited partners),
carrying on business as Multivan Broadcast Limited Partnership
Vancouver, British Columbia**

Application 2004-0952-5

Broadcasting Public Notice CRTC 2005-41

29 April 2005

CHNM-TV Vancouver – Licence amendment

*The Commission **denies** the application to amend the broadcasting licence for the multilingual ethnic television station CHNM-TV Vancouver, which is generally known as Channel M. The licensee had proposed to replace Channel M's conditions of licence that restrict the number of hours of programs it may broadcast in South Asian languages and in Chinese languages, with a condition of licence that restricts the number of hours of programs it may broadcast in any one third-language.*

The application

1. The Commission received an application by the partners of Multivan Broadcast Limited Partnership¹ (Multivan) to amend the broadcasting licence for the multilingual ethnic television programming undertaking CHNM-TV Vancouver, which is generally known as Channel M.
2. Channel M is currently subject to the following conditions of licence:
 4. The licensee shall not devote more than 20 hours per week during the period 6:00 a.m. to midnight, to the broadcasting of programs in South Asian languages.
 - 1.
 5. The licensee shall not devote more than 20 hours per week during the period 6:00 a.m. to midnight, to the broadcasting of programs in Chinese languages.

¹ Multivan Broadcast Corporation (the general partner) and 650504 B.C. Ltd., Douglas M. Holtby, Geoffrey Y. W. Lau, Robert H. Lee, Joseph Segal and RCG Forex Service Corp. (the limited partners), carrying on business as Multivan Broadcast Limited Partnership

3. Multivan requested that the Commission replace its current conditions of licence nos. 4 and 5 with the following condition of licence:

During the 2004-2005 broadcast year, the licensee shall not devote more than 15% of the total number of hours broadcast during each broadcast month, to the broadcasting of programs in any one third-language. Beginning in the 2005-2006 broadcast year, this level may increase by 1% each year, to a maximum of 19% of each broadcast month, during the broadcast year 2008-2009.

Background

4. Following a competitive process, the Commission authorized the operation of Channel M in *New multilingual ethnic television station to serve Vancouver*, Broadcasting Decision CRTC 2002-39, 14 February 2002 (Decision 2002-39)². As part of that process, the Commission received opposing interventions from the following licensees expressing concern about potential competition between the proposed over-the-air service and their services: Fairchild Television Ltd. (Fairchild), the licensee of the national ethnic specialty services Fairchild Television (Fairchild TV) and Talentvision, which primarily serve Mandarin- and Cantonese-speaking communities in Canada, and South Asian Television Canada Limited, the licensee of the national ethnic specialty service ATN, which serves South Asian communities in Canada. In response to the concerns raised by these opposing interveners, Multivan indicated its willingness to accept limits on programs broadcast in South Asian and Chinese languages. The Commission determined that limits on such programming were appropriate and imposed conditions of licence nos. 4 and 5.

Licensee's rationale

5. In support of its current application, Multivan stated that, with the exception of the multilingual ethnic television station CJMT-TV (OMNI.2) Toronto³, no other ethnic programming service is subject to a condition of licence that restricts the broadcasting of programs in a particular language. The licensee added that the proposed condition of licence mirrors the condition applicable to OMNI.2.
6. Multivan submitted that the proposed licence amendment would enable Channel M to better reflect its core communities, principally the South Asian and Chinese communities. According to the licensee, the proposed condition of licence would also broaden Channel M's programming to various communities by applying its programming restrictions to specific individual third-languages rather than to South Asian and Chinese language groupings. The licensee pointed out that Channel M

² Channel M began operation in June 2003.

³ The Commission licensed OMNI.2 in *New multilingual ethnic television station to serve Toronto*, Broadcasting Decision CRTC 2002-82, 8 April 2002.

would still be subject to conditions of licence requiring that, in each month, it broadcast ethnic programs to a minimum of 22 distinct ethnic groups in a minimum of 22 different languages, and that all of the programs broadcast between 8:00 p.m. and 10:00 p.m. be ethnic programming.

7. Multivan noted that in *Fairchild Television – Licence renewal*, Broadcasting Decision CRTC 2004-302, 30 July 2004 (Decision 2004-302), the Commission authorized Fairchild TV to broadcast a limited amount of separate local programming in place of its national service to affiliated broadcasting distribution undertakings. Multivan argued that Fairchild TV's local programming inserts in Vancouver had created a competitive imbalance in that city's ethnic television market and that the proposed amendment would allow Channel M to compete on a more equitable basis in Vancouver's highly competitive market.

Interventions

8. The Commission received an intervention by Fairchild in opposition to the present application.
9. Fairchild submitted that approval of this application would result in a fundamental change in the nature of Channel M's licensed service early in its first licence term and thus bring into question the integrity of the Commission's licensing process. Fairchild pointed out that currently only 15% (20 hours) of Channel M's weekly program schedule can be comprised of Mandarin-language programming, Cantonese-language programming, or a combination thereof, and submitted that the relief sought could result in an immediate doubling of the amount of programs in Mandarin and Cantonese that Channel M is permitted to offer with further increases over the licence term. According to Fairchild, by the seventh year of the licence term, up to almost 40% (50 hours 24 minutes) of Channel M's program schedule could be devoted to programs in Cantonese and Mandarin, respectively, altering the station's programming orientation and having a negative impact on Fairchild TV and Talentvision.
10. Fairchild further contended that the level of Channel M's service to Vancouver's various ethnic communities would be diminished if it were to fully utilize its allowance for third-language programming with programs in Mandarin and Cantonese and continue to fill 40% of its schedule with English-language programming. In this scenario, each of the other ethnic groups that Channel M must serve would, on average, have access to 1.3 hours per week of programming directed to its particular community. Fairchild submitted that there "remains a need to ensure that Channel M's programming complements rather than duplicates that offered by existing licensees in order to ensure that all of the multiethnic groups in Vancouver remain well served, and to avoid overlap in programming in the Chinese and South-Asian languages."

11. Fairchild submitted that the Toronto ethnic television market and the Vancouver ethnic television market are not similar and that there is, therefore, no basis to Multivan's contention that Channel M's conditions of licence should be similar to OMNI.2's conditions of licence. Accordingly, Fairchild argued that the Commission should consider the circumstances specific to the Vancouver ethnic television market in its evaluation of the present application.
12. Fairchild also took issue with Multivan's claim that the Commission's decision to allow Fairchild TV to provide local programming inserts had created a competitive imbalance in the Vancouver ethnic television market. The intervener stated that Vancouver advertising revenues for Fairchild TV had declined by 0.5% in the eight months since it was authorized to provide local programming inserts. Moreover, Fairchild noted that Fairchild TV's local advertising is restricted to a maximum of six minutes per hour and that its service targets a more specialized audience than Channel M.

Licensee's reply

13. In response, Multivan argued that the proposed amendment would constitute a minor change in Channel M's nature of service because the language restriction requested in the present application simply mirrors that already in place for the multilingual ethnic television station OMNI.2. Multivan stated that, at the time of the licensing of its Vancouver ethnic television station, it had accepted restrictions on programs broadcast in South Asian and Chinese languages given the circumstances that existed in the market at the time, including the fact that Fairchild TV was not authorized to provide local programming. Multivan submitted that the authority granted to Fairchild TV in Decision 2004-302 to provide local programming inserts has had a significant negative impact on Channel M.
14. Multivan cited a statement made by the Commission in Decision 2004-302, addressing the potential impact of Fairchild's proposed amendment on ethnic stations in Vancouver and Toronto. The Commission stated that the "new ethnic television stations approved in 2002 for Vancouver and Toronto are now implemented and have had sufficient time to establish themselves in their respective markets." In Multivan's view, the Commission's statement was evidence that it was not too early in Channel M's licence term for the licensee to request licence amendments.
15. Multivan argued that, if it were to increase the amount of Chinese-language programs Channel M broadcasts to the levels suggested by the intervener, the station could not operate in compliance with its regulatory requirements under the *Television Broadcasting Regulations* to devote a minimum of 60% of the broadcast year to Canadian programs, and to devote at least 50% of the time between 6:00 p.m. and midnight to Canadian programs. The licensee further contended that Fairchild had not substantiated its claim that approval of the proposed amendment would have a negative impact on Fairchild TV.

Commission's analysis and determination

16. With respect to the licensee's claim that the proposed new condition of licence simply mirrors the condition of licence imposed on Toronto's multilingual ethnic television station OMNI.2, the Commission notes that, in its licensing decisions for Channel M and OMNI.2, it imposed conditions of licence on each station that reflect the particular circumstances of the market it would serve. The South Asian and Chinese communities in Vancouver have the largest populations of the ethnic groups in that city and are therefore the most attractive ethnic groups for advertisers. In comparison, Toronto's overall population is much larger than Vancouver's overall population, and there are many ethnic communities in that city, which have large populations and which are consequently attractive to advertisers. In the Commission's view, the fundamental differences in the Toronto and Vancouver markets significantly attenuate the relevance and appropriateness of OMNI.2's condition of licence to Channel M's circumstances.
17. The Commission is also concerned that, given the strong presence of South Asian and Chinese communities in Vancouver, approval of Multivan's application could result in the station substantially increasing the number of programs it offers in Punjabi, Mandarin, and Cantonese, with a decrease in programming offered to the remaining ethnic groups that Channel M is required to serve.
18. In Decision 2002-39, the Commission noted Multivan's willingness to accept limits on the programs it would broadcast in South Asian and Chinese languages in response to the concerns raised by the opposing interveners. The Commission stated that it had "determined that limits on such programming are appropriate", that it was "satisfied that these limits are generally consistent with the amounts of such programming contained in the licensee's proposed programming schedule", and imposed conditions of licence requiring that during the period 6:00 a.m. to midnight, the licensee devote not more than 20 hours to programs in South Asian languages, and not more than 20 hours to programs in Chinese languages. These conditions of licence were based on commitments made by the licensee in a competitive licensing process. To allow a licensee to reduce significant commitments during the first licence term would, in the Commission's view, absent special circumstances, bring into question the integrity of the licensing process.
19. In light of all of the above, the Commission **denies** the application by Multivan Broadcast Corporation (the general partner) and 650504 B.C. Ltd., Douglas M. Holtby, Geoffrey Y. W. Lau, Robert H. Lee, Joseph Segal and RCG Forex Service Corp. (the limited partners), carrying on business as Multivan Broadcast Limited Partnership.

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>