



## Broadcasting Decision CRTC 2006-340

Ottawa, 9 August 2006

### **Ethnic Channels Group Limited** Across Canada

*Application 2004-1312-0*  
*Public Hearing at Québec, Québec*  
*20 March 2006*

### **Chinese Movie Channel – Category 2 specialty service**

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

#### **The application**

1. The Commission received an application by Ethnic Channels Group Limited (ECGL), for a broadcasting licence to operate a national, ethnic Category 2<sup>1</sup> specialty programming undertaking to be known as Chinese Movie Channel.
2. The applicant proposed to offer a third-language, niche service that would be devoted to the Mandarin- and Cantonese-speaking communities. The service would predominantly feature movies. The applicant proposed that not less than 90% of all programming broadcast during the broadcast week would be in the Mandarin and Cantonese languages. The applicant further proposed that not less than 40% of all programming broadcast during the broadcast week would be in the Mandarin language and not less than 40% of all programming broadcast during the broadcast week would be in the Cantonese language.
3. All of the programming would be drawn from the following categories, as set out in Schedule 1 to the *Specialty Services Regulations, 1990*: 2(a) Analysis and interpretation; 2(b) Long-form documentary; 4 Religion; 5(b) Informal education/Recreation and leisure; 6(a) Professional sports; 6(b) Amateur sports; 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; 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 also requested that it be authorized, by condition of licence, to broadcast up to six minutes per hour of local or regional advertising.

### **Interventions**

5. The Commission received interventions in connection with this application by Multivan Broadcast Limited Partnership<sup>2</sup> (Multivan), the licensee of ethnic television programming undertaking CHNM-TV Vancouver, by NMTV inc. (NMTV), the licensee of the national ethnic Category 2 specialty programming undertaking known as NuevoMundo Television, and by Fairchild Television Ltd. (Fairchild). Fairchild is the licensee of Fairchild Television, a national ethnic specialty television service whose service is directed primarily to the Cantonese-speaking communities in Canada. It is also the licensee of Talentvision, a national ethnic specialty service whose primary target audience is the Mandarin-speaking communities of Canada.
6. While Multivan did not oppose the licensing of the proposed service, it did oppose the applicant's request for authority to broadcast local and regional advertising. Multivan contended that the Commission's policy to generally permit new ethnic Category 2 services to broadcast up to six minutes per hour of local advertising would generate additional competition that would impede CHNM-TV's ability to fulfill its regulatory obligations and prevent it from becoming profitable.
7. NMTV commented on the high volume of applications filed with the Commission for new third-language ethnic services and the process involved in the granting of these types of broadcasting licences.
8. Fairchild expressed the opinion that the proposed service should be subject to a condition of licence requiring that not less than 80% of the programming be devoted to programming drawn from categories 7(c) Specials, mini-series or made-for-TV feature films and 7(d) Theatrical feature films aired on TV, failing which the service could easily become a general interest service.
9. Alternatively, Fairchild suggested that the proposed service should be subject to the buy through requirement set out in *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 (Public Notice 2005-104), under which broadcasting distribution undertakings (BDUs) choosing to distribute a general interest, third-language ethnic specialty service operating in Cantonese, Mandarin, Italian, Spanish, Greek or Hindi, must distribute that service only to subscribers who also subscribe to the existing analog third-language ethnic specialty service operating in the same language (the buy-through requirement). Fairchild was of the view that BDUs choosing to distribute this service should be allowed to do so only to subscribers who also subscribe to both Fairchild Television and Talentvision.

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<sup>2</sup> Multivan Broadcast Corporation (the general partner) and 650504 B.C. Ltd., Dougals 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

### **Applicant's replies**

10. In response to Multivan, the applicant maintained that the intervener had not made a compelling case for the Commission to change its practice of generally permitting ethnic Category 2 services to broadcast up to six minutes per hour of local advertising. The applicant further contended that Multivan had not provided any evidence that approval of this application would have any impact on the intervener.
11. The applicant did not respond to NMTV's comment.
12. With respect to Fairchild's intervention, the applicant agreed to a condition of licence requiring that not less than 80% of the programming broadcast on the service each week would consist of programming drawn from categories 7(c) Specials, mini-series or made-for-TV feature films and 7(d) Theatrical feature films aired on TV. ECGL indicated that since the service would provide a niche specialty format, there is no reason to impose a buy through requirement for the carriage of the service.

### **Commission's analysis and determinations**

13. 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.
14. The Commission is satisfied that the application is in conformity with all applicable terms and conditions announced in *Introductory statement – Licensing of new digital pay and specialty services – Corrected Appendix 2*, Public Notice CRTC 2000-171-1, 6 March 2001 (Public Notice 2000-171-1). Furthermore, given that the service will offer more than 90% of its programming in a third language, the Commission is satisfied that the application falls under the definition of a third-language service, established in Public Notice 2005-104. Accordingly, the Commission **approves** the application by Ethnic Channels Group Limited for a broadcasting licence to operate the national, niche, third-language ethnic Category 2 specialty programming undertaking, Chinese Movie Channel.
15. With respect to the request to broadcast up to six minutes per hour of local or regional advertising, the Commission notes that, as set out in Public Notice 2005-104, the Commission generally permits new third-language services to broadcast up to six minutes per hour of local advertising unless an intervener makes a compelling case to the contrary.
16. In the present case, Multivan did not provide any evidence that a negative financial impact would result from permitting the proposed service to broadcast up to six minutes per hour of local or regional advertising.
17. 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.

18. With respect to the Fairchild intervention, the Commission notes ECGL's commitment to accept a condition of licence requiring that not less than 80% of the programming broadcast on the service each week would consist of programming from categories 7(c) Specials, mini-series or made-for-TV feature films and 7(d) Theatrical feature films aired on TV. The Commission is of the view that this condition would ensure that the proposed service remains a niche movie service. The Commission is imposing this commitment as a **condition of licence**, as set out in the appendix to this decision. The Commission further notes that, as a niche service, consistent with Public Notice 2005-104, the proposed service would not be subject to the buy-through requirement.
19. The Commission notes that Chinese Movie Channel will devote at least 90% of its program schedule to programming in the Mandarin and Cantonese languages. In accordance with Public Notice 2005-104, the remainder of the program schedule, i.e., 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.
20. The licence will expire 31 August 2012, and will be subject to the **conditions** set out in Public Notice 2000-171-1, as well as to the **conditions** set out in the appendix to this decision.

### **Issuance of the licence**

21. 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 9 August 2009. 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.

Secretary General

*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 2006-340

### 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 or regional advertising.

2. The licensee shall provide a national, niche, third-language, ethnic Category 2 specialty programming service devoted to the Mandarin- and Cantonese-speaking communities. The service will predominantly feature movies.
3. The programming shall be drawn exclusively from the following categories, as set out in Schedule I to the *Specialty Services Regulations, 1990*, as amended from time to time:

2 (a) Analysis and interpretation

(b) Long-form documentary

4 Religion

5 (b) Informal education/Recreation and leisure

6 (a) Professional sports

(b) Amateur sports

7 Drama and comedy

(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, improvisations, unscripted works, stand-up comedy

(g) Other drama

8 (a) Music and dance other than music video programs or clips

11 General entertainment and human interest

12 Interstitials

13 Public service announcements

14 Infomercials, promotional and corporate videos

4. Not less than 90% of all programming broadcast during the broadcast week shall be in the Mandarin and Cantonese languages.
5. Not less than 80% of the programming broadcast during the broadcast week shall consist of programming from categories 7(c) Specials, mini-series, made-for-TV feature films and 7(d) Theatrical feature films aired on TV.
6. Where the licensee broadcasts religious programming as defined in the 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 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 no. 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.