



Broadcasting Decision CRTC 2006-341

Ottawa, 9 August 2006

Ethnic Channels Group Limited
Across Canada

*Application 2004-1313-8
Public Hearing at Québec, Quebec
20 March 2006*

Chinese News 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 2¹ specialty programming undertaking to be known as Chinese News Channel.
2. The applicant proposed to offer a third-language, niche service that would be devoted to the Mandarin- and Cantonese-speaking communities in Canada. The service would offer news, information, public affairs and financial programming. 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*: 1 News; 2(a) Analysis and interpretation; 2(b) Long-form documentary; 3 Reporting and actualities; 5(b) Informal education/Recreation and leisure; 6(a) Professional sports; 6(b) Amateur sports, 9 Variety; 10 Game shows; 12 Interstitials; 13 Public service announcements; and 14 Infomercials, promotional and corporate videos.
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.

¹ 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.

Interventions

5. The Commission received interventions in connection with this application by Multivan Broadcast Limited Partnership² (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 view that variety and game shows proposed by the applicant are not consistent with the operation of a niche news specialty service, and noted that ECGL had not proposed a specific percentage of the broadcast week that would be devoted to news, information, public affairs and financial programming. Fairchild alleged that without such restrictions, the proposed service could stray beyond its niche news mandate, and thereby have a negative competitive impact on both Fairchild Television and Talentvision. The intervener suggested that the proposed service be subject to a condition of licence requiring that not less than 80% of the broadcast week be devoted to programming drawn from categories 1 News, 2 Analysis and interpretation, and 3 Reporting and actualities. Fairchild further suggested that programs from categories 9 Variety and 10 Game shows should not be included in the list of categories from which the proposed service may draw its programming.
9. Alternatively, Fairchild suggested that the 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

² 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

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.

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 1 News, 2(a) Analysis and interpretation, 2(b) Long-form documentary and 3 Reporting and actualities. In addition, ECGL indicated that it would be willing to accept a condition of licence that not more than 10% of the programming during the broadcast week would be drawn from any programming category other than the categories noted above. 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 News 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, it generally permits new third-language services to broadcast up to six minutes per hour of local advertising unless an intervenor 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. The Commission notes Chinese News Channel 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 1 News, 2(a) Analysis and interpretation, 2(b) Long-form documentary and 3 Reporting and actualities, and a condition of licence ensuring that not more than 10% of the programming broadcast during the broadcast week would be drawn from any other authorized programming category. The Commission is of the view that these conditions would ensure that the proposed service remains a niche news service. The Commission is imposing these commitments as **conditions 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 News 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 2006-341

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 in Canada. The service will offer news, information, public affairs and financial programming.
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:

- 1 News
- 2 (a) Analysis and interpretation
(b) Long-form documentary
- 3 Reporting and actualities
- 5 (b) Informal education/Recreation and leisure
- 6 (a) Professional sports
(b) Amateur sports
- 9 Variety
- 10 Game shows
- 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 1 News, 2(a) Analysis and interpretation, 2(b) Long-form documentary and 3 Reporting and actualities.
6. Not more than 10% of the programming broadcast during the broadcast week shall be drawn from any one of the following program categories: 5(b) Informal education/Recreation and leisure, 6(a) Professional sports, 6(b) Amateur sports, 9 Variety, 10 Game shows, 12 Interstitials, 13 Public service announcements and 14 Infomercials, promotional and corporate videos.

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.