



Broadcasting Decision CRTC 2011-666

PDF version

Route reference: 2011-336

Ottawa, 26 October 2011

Fabienne Colas, on behalf of a corporation to be incorporated Across Canada

Application 2011-0411-6, received 26 February 2011
Public hearing in the National Capital Region
18 July 2011

Diversité TV – Specialty Category B service

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

The application

1. Fabienne Colas, on behalf of a corporation to be incorporated, filed an application for a broadcasting licence to operate Diversité TV, a national, French-language Category 2¹ specialty programming undertaking that would offer programming relating primarily to lifestyles, cultures and concerns of different cultural communities as well as to intercultural relations within our society. Diversité TV would broadcast entertainment, information, debate, education and inspirational programming, and would focus as much on the interests and needs of cultural communities and first-, second- and third-generation immigrants as on francophones and francophiles of the host society who are open to other cultures, to the world and to interculturalism.
2. The applicant is a corporation owned and controlled by Ms. Fabienne Colas.
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, 5(a), 5(b), 6(a), 6(b), 7(a), 7(b), 7(c), 7(d), 7(e), 7(f), 7(g), 8(a), 8(b), 8(c), 9, 10, 11,² 12, 13 and 14.

¹ As set out in Broadcasting Regulatory Policy 2011-455, as of 1 September 2011, Category 2 services are renamed Category B services.

² In Broadcasting Regulatory Policy 2011-401, the Commission formally announced that it had amended program category 11 to add a new category 11(b) Reality television. Consistent with this change, the Commission has added an authorization to broadcast programming from both 11(a) General entertainment and human interest and the new 11(b) program category.

4. The applicant indicated that it would accept conditions of licence according to which no more than:
 - 15% of all programming broadcast during the broadcast month would be drawn from program category 2(b). These programs would be independent documentaries that are not broadcast on other channels and that directly address the realities and concerns of cultural communities living here and abroad.
 - 15% of all programming broadcast during the broadcast month would be drawn from program category 6(a). These programs are mostly soccer games and championships taking place in the countries of origin of cultural communities (Latin America, Africa, Europe, the Caribbean, North America) and Canada.
 - 10% of all programming broadcast during the broadcast month would be drawn from each of program categories 7(d) and 7(e).
 - 15% of all programming broadcast during the broadcast month would be drawn from program categories 8(b) and 8(c) combined. These programs would only be music and video clips from around the world that are not broadcast by the French-language music services, including black or urban music, Latin, Arabic, Asian, South Asian, Eastern, hip hop, rap, rhythm and blues, soul, reggae, zouk, rai, soca, calypso, Haitian roots, compa, bossa nova, reggaeton, merengue, salsa, bachata, samba, rumba, jive and mambo.
5. The Commission received numerous interventions in support of the application, as well as interventions in opposition from Channel Zero Inc. (Channel Zero), l'Autre TV Inc. and an individual, 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 decisions

6. After examining the public record for this application in light of applicable regulations and policies, the Commission considers that the issues it must address are the following:
 - Would Diversité TV be directly competitive with existing Category A services?³

³ 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.

- Are the limits proposed by the applicant for certain program categories appropriate?

Would Diversité TV be directly competitive with existing Category A services?

7. 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.
8. 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.
9. In its intervention, Channel Zero submitted that due to the proposed nature of service, Diversité TV would be in direct competition with its digital over-the-air service, Metro14 Montréal. This service already serves first-, second- and third-generation immigrant groups as well as cultural communities, by broadcasting ethnic programs in at least 15 different languages, including French, each month.
10. In its reply to Channel Zero, the applicant submitted that Diversité TV would not be in direct competition with Metro14 Montréal. It stated that this service is a free conventional channel that serves only Montréal, whereas Diversité TV is a specialty channel serving all of Canada. Moreover, the applicant stated that Metro14 Montréal broadcasts in English and in 15 third languages, and that one hour of French-language programming is broadcast weekly, whereas the programming of Diversité TV would be 100% French-language programming.
11. In accordance with the approach set out in Public Notice 2000-6, the Commission is of the view that Diversité TV will not compete directly with a Category A service. Given that Metro14 Montréal is not a Category A service, but a digital over-the-air service, the Commission considers that there is no need to assess the potential impact of Diversité TV on Metro14 Montréal.

Are the limits proposed by the applicant for certain program categories appropriate?

12. The Commission notes that the applicant's proposed programming limitations in regard to each of program categories 2(b) and 6(a), as well as 8(b) and 8(c) combined, do not adhere to the limitations set out in Broadcasting Public Notice 2008-100. However, the Commission finds that the proposed nature of service definition, combined with the proposed restrictions on programming noted above, are sufficient to ensure that Diversité TV will not compete directly with any existing Category A services. The Commission reminds the applicant that all programming broadcast by Diversité TV must be consistent with its nature of service, as defined in its conditions of licence.

Other matter

13. In their interventions, l'Autre TV Inc. and the individual requested that the Commission deny the application, claiming that the applicant plagiarized the proposal for the specialty service l'Autre TV (for which the Commission has not yet received an application). L'Autre TV Inc. also submitted that the applicant is in violation of the *Copyright Act*, and stated that the applicant had been served a formal demand to withdraw its application to the Commission.
14. In its reply to l'Autre TV Inc. and the individual, the applicant submitted that addressing the issue of alleged plagiarism is not the responsibility of the Commission.
15. The Commission notes the interveners' concerns regarding the alleged resemblance of the proposed service to another projected service. However, because these issues are beyond the Commission's jurisdiction, the Commission will not take them into account in the examination of the present application.

Conclusion

16. 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. Accordingly, the Commission **approves** the application by Fabienne Colas, on behalf of a corporation to be incorporated, for a broadcasting licence to operate the national, French-language specialty Category B service Diversité TV.

Reminder

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

Secretary General

Related documents

- *Amendments to the Broadcasting Distribution Regulations and other Commission Regulations*, Broadcasting Regulatory Policy CRTC 2011-455, 29 July 2011
- *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
- *Amendments to certain Regulations made under the Broadcasting Act to add a new program category “Reality television”*, Broadcasting Regulatory Policy CRTC 2011-401, 30 June 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
- *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 2011-666

Terms and conditions of licence for the specialty Category B service Diversité TV

Terms

A licence will be issued once the applicant has satisfied the Commission with supporting documentation that the following requirements have been met:

- an eligible Canadian corporation has been incorporated in accordance with the application in all material respects;
- 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.
2. The licensee shall provide a national, French-language specialty Category B service that would offer programs related primarily to lifestyles, cultures and concerns of different cultural communities as well as intercultural relations within our society. The service shall broadcast entertainment, information, debate, education and inspirational programming, and focus as much on the interests and needs of cultural communities and first-, second- and third-generation immigrants as on francophones and francophiles of the host society who are open to other cultures, to the world and to interculturalism.
3. 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:
 - 1 News
 - 2 (a) Analysis and interpretation
(b) Long-form documentary
 - 3 Reporting and actualities
 - 4 Religion

- 5 (a) Formal education and pre-school
(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 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
(g) Other drama
 - 8 (a) Music and dance other than music video programs or clips
(b) Music video clips
(c) Music video programs
 - 9 Variety
 - 10 Game shows
 - 11 (a) General entertainment and human interest
(b) Reality television
 - 12 Interstitials
 - 13 Public service announcements
 - 14 Infomercials, promotional and corporate videos
4. The licensee shall devote no more than 15% of all programming broadcast during the broadcast month to programming drawn from program category 2(b). These programs shall be independent documentaries that are not broadcast on other channels and that directly address the realities and concerns of cultural communities living here and abroad.
 5. The licensee shall devote no more than 15% of all programming broadcast during the broadcast month to programming drawn from program category 6(a). These programs shall be mostly soccer games and championships taking place in the countries of origin of cultural communities (Latin America, Africa, Europe, the Caribbean, North America) and Canada.
 6. The licensee shall devote no more than 10% of all programming broadcast during the broadcast month to programming drawn from each of program categories 7(d) and 7(e).
 7. The licensee shall devote no more than 15% of all programming broadcast during the broadcast month to programming drawn from program categories 8(b) and 8(c) combined. These programs shall only be music and video clips from around the world that are not broadcast by the French-language music services, including black or urban music, Latin, Arabic, Asian, South Asian, Eastern, hip hop, rap, rhythm and blues, soul, reggae, zouk, rai, soca, calypso, Haitian roots, compa, bossa nova, reggaeton, merengue, salsa, bachata, samba, rumba, jive and mambo.

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

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 no 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.