



Broadcasting Decision CRTC 2005-105

Ottawa, 16 March 2005

Global Television Network Inc.
Across Canada

*Application 2004-0465-8
Broadcasting Public Notice CRTC 2004-85
9 November 2004*

COOL-TV – Licence amendment

*The Commission **approves** the application to amend the licence of the national Category 2 specialty programming undertaking known as COOL-TV with respect to the level of music video clips that it broadcasts.*

The application

1. The Commission received an application by Global Television Network Inc. (Global) to amend the licence of the national Category 2 specialty programming undertaking known as COOL-TV, which was originally licensed as The Jazz Channel.
2. In *The Jazz Channel*, Decision CRTC 2000-563, 24 November 2000 and 14 December 2000, the Commission imposed the following condition of licence, which relates to the nature of service that The Jazz Channel could provide:
 - c) A minimum of 25% of all programming broadcast during the broadcast week shall be devoted to the exhibition of programming featuring music video clips (category 8b).
3. Global proposed to replace condition of licence c) with the following:
 - c) A minimum requirement of 25% of all programming broadcast during the broadcast week shall be devoted to the exhibition of programming from categories 8a (music and dance other than music video programs or clips), 8b (music video clips) and 8c (music video programs).
4. Global stated that very few jazz performers have recorded music video clips and that the short-form jazz music video clip is an underdeveloped part of the industry. As a result, Global submitted that adherence to the current condition of licence was extremely difficult without resorting to an unreasonable amount of repetition.

Interventions

5. The Commission received interventions from the Canadian Independent Record Production Association (CIRPA) and from Community Independent Television (CIT).

CIRPA

6. CIRPA expressed surprise at the licensee's submission that recent research had identified a problem with respect to the availability of jazz and jazz-related music video clips. Given that jazz was the crux of its original application for a licence, CIRPA considered it strange that the applicant had just discovered that short-form jazz music video clips are an underdeveloped part of the industry. CIRPA was of the view that Global should have conducted this research prior to applying for a licence and presented options to address the issue.
7. CIRPA proposed that the Commission impose a funding mechanism to support Canadian music video clips similar to funding programs in place for Bravo!, MuchMusic, MuchMoreMusic, Country Music Television, MusiquePlus and MusiMax, as part of any amendments to the licence for COOL-TV. CIRPA also stated that it hoped that Global would focus on music video clips and programs that feature Canadian artists.

CIT

8. CIT opposed the application, submitting that it was not credible and that the suggested shortage of music video clips resulted from Global's decision to provide a narrow program format that features smooth jazz. CIT argued that, by choosing to limit its format in this way, Global also limits the number of music videos that are suitable for the service. Furthermore, CIT argued that the original licence was for a music video specialty service and that the proposed change would alter the nature of the service that COOL-TV provides. CIT also submitted that the applicant should have realized that jazz video clips were an underdeveloped part of the industry before the original licence was granted.

The licensee's replies

9. The licensee submitted that the purpose of the proposed amendment was not to fundamentally alter the nature of COOL-TV's service, but to give it some flexibility. Global stated that, at the time that the original application was filed, it was well aware that there were many jazz and jazz-related music programs available, but that it was only later that it determined that there were not enough jazz music video music clips to reach the 25% minimum requirement without the need for excessive repetition.

10. Regarding the development of a funding program for music video clips, Global submitted that the specialty services referred to by CIRPA are analog services that are required to be carried by distributors on analog cable and DTH satellite services. COOL-TV, on the other hand, is a Category 2 digital specialty service that is available only to viewers who subscribe to digital distribution services. Global submitted that, given that the penetration of digital services is still low and that the subscription rate to Category 2 services is even lower, it is not in a position to subsidize a new fund. The applicant stated that it hoped that its proposed amendment would make the service more attractive to distributors and consumers and lead to wider distribution of COOL-TV.
11. In response to the issues raised by CIT relating to the service's music format, Global submitted that smooth jazz is a sub-genre of jazz that clearly falls under its approved nature of service. It argued that approval of the proposed amendment would simply allow COOL-TV to expand on the jazz-related programming that it broadcasts.

The Commission's analysis and determination

12. 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. While the Commission does not consider the impact that a new Category 2 service might have on an existing Category 2 service, it does seek to ensure that newly-licensed Category 2 services do not compete directly with any existing pay or specialty television service, including any Category 1 service.
13. Consistent with its policy, the Commission has examined the application to determine whether the proposed change would make COOL-TV competitive with any existing specialty, pay or Category 1 service. The Commission has determined that approval of the proposed licence amendment would not make COOL-TV directly competitive with any of these services. The Commission is further of the view that approving the proposed amendment would allow Global to improve its service by offering a more diversified array of jazz-related programming and by avoiding excessive repetition of video clips. Accordingly, the Commission **approves** the application by Global Television Network Inc. to amend the licence of COOL-TV by replacing condition of licence c) with the following:
 - c) A minimum requirement of 25% of all programming broadcast during the broadcast week shall be devoted to the exhibition of programming from categories 8a (music and dance other than music video programs or clips), 8b (music video clips) and 8c (music video programs).
14. The Commission reminds the licensee that all programs broadcast on the service must comply with all elements COOL-TV's conditions of licence that set out its nature of service.

15. The Commission does not consider that it is appropriate to impose a mechanism for the funding of music video clips on COOL-TV, given its status as a Category 2 service.

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>