



Broadcasting Decision CRTC 2005-391

Ottawa, 10 August 2005

**John S. Panikkar, on behalf of a corporation to be incorporated
Across Canada**

*Application 2004-1392-2
Public Hearing in the National Capital Region
16 May 2005*

15 DegreesHD – Category 2 specialty service

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

The application

1. The Commission received an application by John S. Panikkar, on behalf of a corporation to be incorporated, for a broadcasting licence to operate a national English-language Category 2¹ high definition (HD) specialty programming undertaking to be known as 15 DegreesHD.
2. The applicant proposed to offer a non-fiction HD programming service that would showcase the world's ordinary people in all their diversity, complexity and cultural distinctiveness. The service would “reflect what is unique about each and every one of us, yet what we all share, in terms of life, location and aspirations.... Canadians and all others – from all walks of life – will speak in their own, unfiltered words about what they do, what they think, where they live, and what they dream for their children.” ... “It will examine how we interact with each other and how where we live affects us in cultural, ethnological, geographical and technological terms”.
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; 5(b) Informal education/Recreation and leisure; 7(g) Other drama; 11 General entertainment and human interest; 12 Interstitials; and 13 Public service announcements.

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

4. The Commission received several interventions in support of this application and one comment from Global Television Network Inc. (Global).
5. Global expressed concern that the applicant was using HD as the only or the primary element to differentiate its proposed service from existing services. Global stated that HD programming content, in and of itself, does not constitute a separate genre. The programming content, and not the technology behind the signal, is what makes one service directly competitive with another.
6. Global indicated that the “directly competitive” test must remain technology neutral. It added that the sheer level of HD content should not override the fundamental principle of genre protection.

Applicant’s reply

7. The applicant stated that its application does not rest solely on the basis that the proposed service would be Canada’s first 24-hour, seven-days-a-week, HD programming service. It also confirmed that it would not attempt to supersede any established or proposed regulatory framework. The applicant agreed with Global that the current licensing framework must remain technology neutral and that such a framework must be adhered to by all licensees of Category 2 pay and specialty services. The applicant also noted that there has been no indication that the proposed service would be competitive with analog pay or specialty or existing Category 1 services.

Commission’s analysis and determination

8. In *Licensing framework policy for new digital pay and specialty services*, Public Notice CRTC 2000-6, 13 January 2000 (Public Notice 2000-6), the Commission implemented a competitive, open-entry approach to licensing Category 2 services and noted that it “expects that category 2 services will include services offering niche programming to particular audiences, services that provide multiple viewing opportunities for particular types of programming, and services that repackage existing programming in creative ways.” In *Introductory statement – Licensing of new digital pay and specialty services*, Public Notice CRTC 2000-171, 14 December 2000, and *Corrected Appendix 2*, Public Notice CRTC 2000-171-1, 6 March 2001, the Commission adopted a case-by-case approach in determining whether a proposed Category 2 service should be considered directly competitive with an existing analog pay or specialty or Category 1 service, although not with an existing Category 2 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. Furthermore, the Commission stated in *Revised procedures for processing applications for new digital Category 2 pay and specialty television services*, Broadcasting Public Notice CRTC 2004-24, 8 April 2004, that it may deny Category 2 applications in the following circumstances:

- where there is a well-supported intervention demonstrating that a service would be directly competitive with an existing service, and where the applicant has not persuaded the Commission to the contrary;
- where an applicant, even in the absence of such an intervention, has not satisfied the Commission that its proposed service would not be directly competitive with an existing service.
- where an applicant has not demonstrated that it meets the ownership requirements.

10. In the present case, the Commission considers that the applicant's definition of 15 DegreesHD's proposed nature of service is very broad. Given the broad definition of the proposed nature of service and the programming flexibility that it would allow, the Commission considers that the applicant has not satisfied the Commission that 15 DegreesHD would be a sufficiently narrowcast service to prevent it from being directly competitive with an analog pay or specialty or existing Category 1 service.
11. Accordingly, the Commission **denies** the application by John S. Panikkar, on behalf of a corporation to be incorporated, for a broadcasting licence to operate a national English-language Category 2 HD specialty programming undertaking to be known as 15 DegreesHD.

Secretary General

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