Canadian Radio-television and Telecommunications Commission
Conseil de la radiodiffusion et des télécommunications canadiennes

Broadcasting Decision CRTC 2005-544

Ottawa, 18 November 2005

TVN Niagara Inc.
St. Catharines, Ontario

Application 2003-1498-0
Public Hearing in Niagara Falls, Ontario
6 June 2005

English-language television station in St. Catharines

The Commission ***denies*** *an application for a broadcasting licence to operate an English-language commercial television station to serve St. Catharines and the Niagara region.*

Introduction

1. The Commission received an application by TVN Niagara Inc. (TVN) for a broadcasting licence to operate an English-language commercial television programming undertaking in St. Catharines, Ontario. TVN proposed that the new station would operate on channel 22C with an effective radiated power of 401,000 watts and would provide programming designed to serve St. Catharines and the Niagara region.

2. Consistent with the procedure generally followed by the Commission in such cases, the Commission issued a call for applications from other parties, and directed that any such applications be filed no later than 7 February 2005.[1] The Commission did not receive any applications in response to the call.

3. The Commission considered the application by TVN at a public hearing commencing 6 June 2005 in Niagara Falls, Ontario.

The application

4. TVN is a commercial corporation with share capital that does not currently own any broadcasting undertakings. TVN proposed to establish the first over-the-air television station specifically designed to serve St. Catharines and other parts of the Niagara region of Southern Ontario. The main studio would be located in St. Catharines, with others in Welland, Niagara Falls and Oshweken. The applicant indicated that its proposed station would primarily target "baby boomers" between the ages of 47 and 53, as well as older

[1] *Call for applications for a broadcasting licence to carry on a television programming undertaking to serve the Niagara region*, Broadcasting Public Notice CRTC 2004-84, 8 November 2004.

viewers between the ages of 54 and 69. Although primarily a station for viewers in the Niagara region, TVN's business plan anticipated that the proposed television station would receive priority carriage by broadcasting distribution undertakings (BDUs) serving most of the Toronto extended market.

5. TVN's Canadian programming would consist mainly of programs produced in St. Catharines and the Niagara region. Its proposed schedule would include 34.5 hours of original programming per week reflecting local needs and interests, including 19.5 hours of original station-produced news. TVN's local programming other than news would include a variety of programs designed to reflect different aspects of the Niagara region, including its ethnic communities, economic foundations, institutions of higher learning, sports sector and leisure pursuits. A program called *Six Nations Report* would be produced by the Oshweken First Nations Aboriginal community, and one called *Village Square* would reflect the various multicultural communities in the Niagara region. TVN indicated that it would spend a total of $3.96 million on local programming in the first year of operations, including $2.4 million on news. Most of the remaining Canadian programming would consist of repeats of the original local programming described above.

6. The applicant further proposed, beginning in its second broadcast year of operations, to broadcast 55 original hours each year of priority programming as defined in *Definitions for new types of priority programs; revisions to the definitions of television content categories; definitions of Canadian dramatic programs that will qualify for time credits towards priority programming requirements*, Public Notice CRTC 1999-205, 23 December 1999. This programming would be funded by expenditures of at least $1 million per year from the Niagara Priority Programming Fund.

7. TVN's non-Canadian programming would focus on the presentation of classic movies, which it described as movies at least seven years old. TVN projected that its movie programming would receive a rating of 0.5 for viewers between 25 and 54 years of age that reside in the Toronto extended market.[2] The classic movies would be introduced by program hosts and would be presented at various times during the week, including evenings beginning at 7 p.m. The applicant indicated that the rights for classic movies could be obtained at a price of approximately $5,000 per movie, which, when amortized over three to five plays, would result in an average hourly cost for movie programming of about $770. The revenues derived from the classic movies would be used to support TVN's local Canadian programming. TVN's total budget for movies in the first year of operations would be $2 million.

8. The applicant estimated that 45% of its advertising revenues would come from local advertisers who would be primarily interested in advertising on TVN's local programming such as the 10 p.m. newscast. The remaining 55% of its advertising

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[2] A rating is the average quarter hour audience for a program, expressed as a percent of the population in a particular demographic group that resides in a geographically defined area. The Toronto extended market is a geographic area defined by BBM Canada that includes Metropolitan Toronto, as well as Durham, Dufferin, Hamilton, Niagara and Haldimand.

revenues would come from national advertisers who would be attracted primarily by the ratings generated by TVN's classic movies in the Toronto extended market. The applicant indicated that it expected that national sales would lag until national advertisers were convinced of the station's ability to generate a significant audience. TVN would therefore focus on obtaining local advertising revenue in the early years of the licence term.

9. TVN also stated that it would produce all of its programming using digital high-definition production equipment, and that it would obtain high-definition digital versions of the movies that it acquires. TVN indicated that, upon approval of the current application, it would apply for a licence for a transitional digital television undertaking without delay.

Interventions

10. The Commission received numerous interventions in support of TVN's application, including interventions from local councils, representatives of municipal governments, Niagara businesses and business associations, educational institutions, program producers and potential viewers. Many interveners were of the view that existing television stations in Toronto and Hamilton did not provide adequate coverage of the Niagara region, and that a local television station with a strong mandate to provide local news coverage was essential. Mr. Timothy Rigby, the Mayor of the City of St. Catharines stated:

> The presence of TVN Niagara in our community would provide a valuable opportunity for Niagara to tell its own story and to develop a communications infrastructure that would benefit and validate our business community and social fabric immensely.

11. Other parties commented on the application, including licensees of various cable BDUs serving the Toronto extended market, who submitted, among other things, that the addition of an over-the-air television station to their basic service would disrupt current channel line-ups. The City of Hamilton also submitted an intervention in which it expressed concern that the licensing of a television station to serve the Niagara region could take revenues from the Hamilton region, making it difficult to establish another television station that would focus solely on Hamilton.

12. Opposing interventions were submitted by CTV Television Inc. (CTV), CHUM Limited (CHUM), Rogers Broadcasting Limited (Rogers), Crossroads Television System (CTS), CanWest MediaWorks Inc. (CanWest)[3] and Quebecor Media Inc. (Quebecor) (collectively, the Toronto market broadcasters), all of which are involved in the ownership of conventional television stations serving the Toronto extended market.

[3] The intervention was filed by Global Television Network Inc. However, Global Television Network Inc., Global Communications Limited, CanWest Media Inc. and some other CanWest subsidiaries amalgamated on 1 September 2005, to continue as CanWest MediaWorks Inc.

13. The Toronto market broadcasters submitted that, although TVN proposed to orient its service to the Niagara region, its application was predicated on its signal being received and attracting audience and revenues from the Toronto extended market. The Toronto market broadcasters noted that the Commission had licensed two new Toronto television stations in 2002[4] and argued that the market had not yet adjusted to the introduction of those new stations. They noted recent declines in viewing levels, revenues and profitability for Toronto television stations, and argued that the introduction of a new station at this time would have a negative impact on Toronto conventional television stations, which would decrease those stations' ability to fulfil their programming obligations.

14. Quebecor submitted that its station CKXT-TV (SUN TV),[5] which had been originally owned by Craig Media Inc. (Craig), had experienced a net loss of approximately $21 million in its first year of operations and was still losing money. Quebecor argued that SUN TV would be particularly hard hit by TVN's proposed station, since SUN TV also relies on the presentation of older movies. CTS argued that a TVN station would have a negative impact on its station since both stations would target older viewers. CanWest stated that in 2004, following the launch of SUN TV, market revenues had declined significantly while programming expenses continued to rise as a result of a new competitor in the market bidding for programs. CanWest submitted that these factors had resulted in a decline in CHCH-TV Hamilton's financial performance from a modest profit to a significant loss between 2000 and 2004.

15. The Toronto market broadcasters also argued that TVN's business plan was unrealistic and unsustainable, given the competition that TVN would face in the Toronto extended market. CHUM and Quebecor argued that the amounts proposed by TVN to acquire the rights for classic movies were far too low to enable TVN to offer movie packages that would attract enough viewers to achieve a 0.5 rating. Based on its long history of programming movies in prime time and during other periods, CHUM argued that a broadcaster in the Toronto extended market would need to spend a minimum of $15,000 per title, or $1,700 to $1,800 per hour, to achieve a 0.5 rating. Quebecor also expressed doubt that TVN could achieve a 0.5 rating for its classic movies in the Toronto extended market at an hourly cost of $770.

16. CHUM, CTV and CanWest were all of the view that TVN's proposal for local programming was seriously under funded. CHUM stated that the applicant's projections were one-half to one-third of the realistic costs of such programming. CTV submitted that CKCO-TV in Kitchener, a market of comparable size to the Niagara region, spends almost twice the amount projected by TVN for news, even though CKCO-TV broadcasts only 15.5 hours of local news each week. For its part, CanWest submitted that, for the 36.5 hours of local programming broadcast on CHCH-TV, it spends almost four times the amount that TVN has projected to spend on the 34.5 hours of original local programming that would be broadcast on its proposed station.

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[4] *New television station for Toronto/Hamilton*, Broadcasting Decision CRTC 2002-81, 8 April 2002, and *New multi-lingual ethnic station to serve Toronto,* Broadcasting Decision CRTC 2002-82, 8 April 2002.
[5] SUN TV was formerly known as Toronto One.

17. The Toronto market broadcasters also argued that TVN's local advertising projections were unrealistic. CTS, for example, contested TVN's belief that 45% of its advertising revenues would be local, given that the current average for Ontario television stations is 15%, as reported in the Television Bureau of Canada time sales report. Rogers submitted that its OMNI stations, which are strongly oriented to local ethnic communities, generate less than 20% of their total revenues from local advertisers. CanWest stated that, although CHCH-TV provides a regional service that focuses on local communities, local advertising constituted only 12% of CHCH-TV's total advertising revenues in 2004.

18. CHUM expressed concern that the $19.5 million of start-up funding available to TVN was likely to be insufficient. It submitted that Craig's accumulated losses and investment in SUN TV were in the order of $60 million and that, as a consequence, Craig had had to sell the station. CHUM was concerned that, if TVN were initially unsuccessful, it might abandon its original plan to focus on the Niagara region and shift its focus to the Greater Toronto Area.

19. Finally, CanWest argued that CHCH-TV already serves the Niagara region. It submitted that 10% to 15% of the news stories covered by CHCH-TV are specific to the Niagara region, and that one reporter and one camera operator are located in St. Catharines. As well, CanWest stated that CHCH-TV dispatched general assignment reporters to the Niagara region from Hamilton as necessary.

Applicant's position on concerns of opposing interveners

20. In reply to concerns about the possible impact of its proposed station on the Toronto market broadcasters, TVN argued that any weakness in the Toronto extended market is a short-term phenomenon. TVN submitted that national spot sales in the Toronto extended market were $600 million annually, of which it expected to receive only about $6.4 million. As regards its possible impact on SUN TV, TVN submitted that SUN TV competes for the same type of movies as are shown by CITY-TV, whereas TVN would broadcast classic movies, which would attract an older demographic group. TVN submitted that its proposed station would not be competitive with CTS, since the latter operates a religious television station.

21. Concerning the potential appeal of its classic movies, TVN argued that a classic movie format had been responsible for the initial success of several American superstations, and that CHCH-TV had enjoyed success with a movie-oriented format under previous ownership. TVN submitted that its analysis of movie programming in the Toronto market over the past three years indicated that movies achieved ratings ranging from 0.7 to 2.9, and that its projected rating of 0.5 for classic movies was therefore conservative.

22. With regard to its budget for local programming, TVN stated that it proposed to operate very efficiently. TVN indicated that it would use the same staff to produce both its 6 p.m. and 10 p.m. newscasts and that its local programming would be designed to appeal to the Niagara region rather than the competitive Toronto market. TVN also submitted that its use of high-definition digital production equipment would allow it to produce local

programming for less than it costs existing broadcasters to produce programming in analog format. TVN stated, “We believe TVN will be a model for a new generation of cost-effective local and regional television stations using modern broadcast technology to operate at costs substantially lower than has been possible to date.”

23. As to the comparatively high proportion of advertising that would be derived from local advertising, TVN argued that other stations in smaller Ontario markets as well as in Saskatchewan generate significant amounts of local advertising revenues. The applicant submitted that 1,800 local businesses in the Niagara region had stated that they would definitely advertise on the new station. TVN further submitted that its experienced staff would be able to produce local commercials at low cost.

24. In reply to statements about the adequacy of its start-up financing, TVN indicated that its financing totalled approximately $19.5 million, including $5.5 million in lease financing to acquire technical equipment, $8.945 million in shareholder financing and $5.0 million in the form of an operating line of credit, to be used if necessary. In addition, TVN stated that shareholders have a legal obligation to contribute an additional 20% of their respective original equity investment in the event of a cash call. This 20% represents approximately $1.9 million in additional equity.

25. As to the service provided to the Niagara region by CHCH-TV, the applicant submitted that CHCH-TV covers Niagara with one reporter, and focuses on major crime stories. TVN, however, would devote 25 people, including news and technical support, to covering all aspects of the region’s news and current affairs.

Commission’s analysis and determinations

26. The Niagara region is located between the major television markets of Toronto and Buffalo and the program schedules of all American and Canadian networks are receivable over the air throughout the region. Numerous other Canadian and non-Canadian television stations, as well as pay and specialty services, are also widely available through BDUs. While the Commission issued a call for applications to provide service to the Niagara region, no competitive applications to the one by TVN were filed. The Commission considers that this may be in part a recognition that a new television station located in the Niagara region would operate in an extremely competitive marketplace.

27. The Commission acknowledges that approval of the TVN application would provide the Niagara region with a television station that would be dedicated to reflecting its particular needs and interests. This is evidenced by the many supporting interventions outlining the benefits that would flow to the Niagara region as a result of the establishment of the proposed station.

28. TVN's proposed television station would offer locally produced Canadian programming that would be strongly oriented to the Niagara region, complemented by non-Canadian programming consisting of classic movies, obtained at a modest price, targeted to viewers throughout the Toronto extended market. The revenues obtained from the advertising contained in the movie programming would be used to subsidize the production of TVN's local Canadian programming. TVN has thus proposed a model that is quite different from that used by most Canadian English-language conventional television stations, which compete aggressively to acquire attractive high-priced non-Canadian original television productions that are also aired on U.S. stations, and then augment the audience for such programming through simultaneous substitution, whenever possible.

29. While the Commission recognizes that TVN has put forward an innovative approach to providing a television service for the Niagara region, it is concerned about several aspects of TVN's business plan. The Commission considers that evidence at the hearing supports TVN's position that it is possible for movies to achieve a rating of 0.5 in the Toronto extended market. It is, however, seriously concerned with the budget that TVN has allocated for the acquisition of the classic movies that it proposed to broadcast. Given the experience of other stations in the market in the acquisition and scheduling of movies, the Commission is concerned that the applicant's projected cost of $770 per hour is far too low to achieve a 0.5 rating in the Toronto extended market and that a failure to achieve that rating would seriously compromise its business plan.

30. The Commission is also concerned about the ability of TVN to produce its extensive line-up of attractive local programs, given the budget that it has proposed. The cost-per-hour of local programming proposed by TVN is not only substantially lower than that of the Toronto market stations but also, according to annual returns submitted to the Commission, substantially lower than that of other television stations located in urban markets of comparable size to St. Catharines and the Niagara region. While the Commission acknowledges that some savings may be realized through the use of high-definition digital production equipment, the extent of such savings is difficult to assess at this point because this equipment is only now beginning to come into extensive use.

31. The Commission further notes that a new television station, particularly one that competes for audience and revenues in a major market, usually experiences much greater than anticipated losses in the early years of operation. As CHUM noted, Craig was forced to sell SUN TV after it experienced initial losses that were far greater than expected. TVN's operating line of credit combined with the cash call provisions of its shareholders agreement provide modest additional financing to address revenue shortfalls or cash

overruns. However, the experience of other television stations, including that of CIVI-TV Victoria, a recently-licensed station that orients its local programming to Vancouver Island but also competes for audience in the Vancouver extended market, indicates that it may become necessary for TVN to seek substantial additional financing in the early years of operation. The Commission considers that securing additional financing in those circumstances would prove difficult and costly for TVN and would compromise its ability to implement its business plan.

32. In addition, the Commission notes that two new television stations, SUN TV and OMNI.2, were licensed to operate in the Toronto extended market in 2002, and that conventional television stations in the market, taken as a whole, have experienced declines in advertising sales and viewership since those stations began operations. As noted by Global, CHCH-TV moved from a modest profit to a significant loss between 2000 and 2004. As well, as noted by Quebecor, SUN TV experienced a net loss in the order of $21 million in its first year of operations and is still losing money. Given these developments, the Commission is concerned that the introduction of a new competitor in the Toronto extended market could compromise the ability of existing conventional television stations to fulfil their programming commitments.

33. In light of all of the above, the Commission **denies** the application by TVN Niagara Inc. for a broadcasting licence to operate an English-language commercial television programming undertaking in St. Catharines, Ontario.

Service to the Niagara region by CHCH-TV

34. During this proceeding, several participants expressed concern about the type and level of coverage provided by CHCH-TV of events occurring in the Niagara region. The Commission recognizes that, because of its wide coverage area, CHCH-TV has a responsibility to cover events not only in the Niagara region but also in Hamilton and other surrounding areas. The Commission considers, however, that the regular coverage of news and events in the Niagara region is an important part of CHCH-TV's mandate. The Commission notes that CHCH-TV's independent advisory board files annual reports with the Commission on the station's performance. In order that it may monitor CHCH-TV's performance with respect to coverage of the Niagara region, the Commission expects future reports from CHCH-TV's independent advisory board to include a listing of all news stories and other events covered by CHCH-TV that relate directly to the Niagara region, broken down on a monthly basis.

Secretary General

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