



## Broadcasting Decision CRTC 2006-370

Ottawa, 14 August 2006

### **Ethnic Channels Group Limited** Across Canada

*Application 2004-1333-6*  
*Public Hearing at Québec, Quebec*  
*20 March 2006*

### **South Asian Entertainment TV – Category 2 specialty service**

*In this decision, the Commission **denies** 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 for a broadcasting licence to operate a national, ethnic Category 2<sup>1</sup> specialty programming undertaking to be known as South Asian Entertainment TV.
2. The applicant proposed to offer a general interest service that would be devoted to second-generation South Asian Canadians. The programming would consist of movies in Hindi, Punjabi or Urdu as well as news, sports, infotainment, talk-shows and other entertainment programming in the English-language. Between 60% and 80% of all programming broadcast during the broadcast week would be in the English language and up to 40% would be in the Hindi, Punjabi or Urdu languages.
3. All of the programming would be drawn from the following categories 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; 4 Religion; 5(b) Informal education/Recreation and leisure; 6(a) Professional sports; 6(b) Amateur sports; 7(a) Ongoing drama series; 7(b) Ongoing comedy series (sitcoms); 7(c) Specials, mini-series or made-for-TV feature films; 7(d) Theatrical feature films aired on TV; 7(e) Animated television programs and films; 7(f) Programs of comedy sketches, improvisations, unscripted works, stand-up comedy; 7(g) Other drama; 8(a) Music and dance other than music video programs or clips; 8(b) Music video clips; 8(c) Music video programs; 9 Variety; 10 Game shows; 11 General entertainment and human interest; 12 Interstitials; 13 Public service announcements; and 14 Infomercials, promotional and corporate videos.

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<sup>1</sup> 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.

4. The applicant requested that it be authorized, by condition of licence, to broadcast up to six minutes per hour of local and regional advertising.

### **Interventions**

5. The Commission received interventions in opposition to this application by Multivan Broadcast Limited Partnership<sup>2</sup> (Multivan), CanWest Media Works Inc. (CanWest) and Asian Television Network International Limited (Asian Television). In addition, NMTV inc. (NMTV) filed an intervention commenting on the application.
4. 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.
5. CanWest operates the national, English-language specialty programming undertaking TVTropolis (formerly known as Prime TV), and has ownership interest in the national, English-language Category 1 programming undertakings known as Mystery and Men TV. CanWest noted that, given that the applicant proposed to offer less than 90% third-language ethnic programming, the application would not fall under *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). The intervener added that the application must be assessed for potential competitiveness with any existing analog pay or specialty service, or any Category 1 service, in accordance with *Licensing framework policy for new digital pay and specialty services*, Public Notice CRTC 2000-6, 13 January 2000 (Public Notice 2000-6).
6. CanWest contended that the definition of the nature of service proposed by the applicant contained very few restrictions on programming subcategories and was, therefore, too vague. In CanWest's view, the proposed service could be directly competitive with a number of existing analog pay and specialty services or Category 1 services, including the intervener's own services.
7. Asian Television owns South Asian Television Canada Limited, the licensee of the national, ethnic specialty programming undertaking ATN, which serves the South Asian community in Canada. ATN offers programming in several South Asian languages, including Hindi, Punjabi and Urdu.

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<sup>2</sup> Multivan Broadcast Corporation (the general partner), and 650504 B.C. Ltd., Douglas 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

8. In Asian Television's view, the proposed service would compete directly with ATN. Asian Television also expressed concern that the applicant's commitment to devote 40% of the schedule to programming in Hindi, Punjabi or Urdu without specifically indicating the amount of programming that would be broadcast in each language could result in the proposed service broadcasting a large amount of programming in Hindi.
9. NMTV is the licensee of the national, ethnic Category 2 specialty programming undertaking NuevoMundo Television. NMTV commented on the high volume of applications filed with the Commission for new third-language ethnic services and the process involved in granting these types of broadcasting licences.

#### **Applicant's replies**

10. In response to Multivan, the applicant maintained that the intervener did not make a compelling case for the Commission to change its policy with respect to 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 its service.
11. In response to CanWest, the applicant maintained that the proposed service would not be directly competitive with Mystery TV, Men TV, or TV Tropolis. The applicant contended that services, such as the proposed South Asian Entertainment TV, that offer a substantial amount of third-language programming are already, by their nature, targeted to a specific minority audience, whereas CanWest's services draw upon the entire English-speaking audience as a starting point and then further focus that audience through demographic-directed programming or genre-specific programming.
12. In response to Asian Television, the applicant reiterated that the programming offered in the Hindi, Punjabi or Urdu languages would represent less than 40% of all programming offered.
13. The applicant did not respond to NMTV's comment.

#### **Commission's analysis and determination**

14. In Public Notice 2005-104, the Commission stated that applications proposing new ethnic Category 2 services that would offer less than 90% of their programming in a third-language will continue to be assessed under the case-by-case approach set out in Public Notice 2000-6, as is the case in the present application. Under the framework set out in Public Notice 2000-6, the Commission does not consider the impact that a new Category 2 service might have on an existing Category 2 service, but 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.

15. In *Introductory statement - Licensing of new digital pay and specialty services*, Public Notice CRTC 2000-171, 14 December 2000, the Commission adopted a case-by-case approach in determining whether a proposed Category 2 service should be considered directly competitive with an existing pay, specialty or Category 1 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. The Commission also takes into account the potential impact on conventional television services.
16. In the present case, the Commission finds that South Asian Entertainment TV's proposed definition of nature of service is very broad. As noted in CanWest's intervention, the lack of limitations on the program categories could result in the service being a general interest service, or alternatively, a niche service. Given that the applicant has proposed that no less than 60% of the programming would be in the English language, the proposed service could potentially be directly competitive with a number of existing English-language, pay and specialty services or Category 1 services. Similarly, given the broad range of programming proposed by the applicant, the Commission considers that the proposed service could be directly competitive with ATN, which serves the South Asian communities of Canada.
17. The Commission considers that the proposed nature of service definition would allow the applicant considerable flexibility in the type of programming that could be broadcast by the proposed service as well as in the languages of broadcast. In the Commission's view, the nature of service does not clearly define how the proposed programming would be complementary to existing analog pay and specialty services and Category 1 services, including ATN. Furthermore, the applicant did not provide safeguards, such as limits on specific types or amounts of programming, to ensure that the programming would not be directly competitive to what is currently offered by existing analog pay and specialty services and Category 1 services.
18. In light of the above, the Commission **denies** the application by Ethnic Channels Group Limited for a broadcasting licence to operate the national, ethnic Category 2 specialty programming undertaking, South Asian Entertainment TV.

Secretary General

*This decision 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>*