



Broadcasting Decision CRTC 2006-593

Ottawa, 13 October 2006

Toro TV Corporation, on behalf of a corporation to be incorporated
Across Canada

Application 2005-1511-6
Public Hearing at Edmonton, Alberta
19 June 2006

POPTV – Category 2 specialty service

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

The application

1. The Commission received an application by Toro TV Corporation, on behalf of a corporation to be incorporated, for a broadcasting licence to operate a national, ethnic Category 2¹ specialty programming undertaking to be known as POPTV.
2. The applicant proposed to offer a third-language, niche service that would be devoted to general entertainment for Spanish-speaking children in Canada. The applicant proposed that not less than 90% of all programming broadcast during the broadcast week would be in the Spanish language.
3. All of the programming would be drawn from the following categories set out in Schedule 1 to the *Specialty Services Regulations, 1990*: 2(b) Long-form documentary; 5(b) Informal education/Recreation and leisure; 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; 11 General entertainment and human interest; 12 Interstitials; 13 Public service announcements; and 14 Infomercials, promotional and corporate videos.
4. The applicant also requested that it be authorized, by condition of licence, to broadcast up to six minutes per hour of local advertising.

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.

Intervention

5. The Commission received an intervention in opposition to this application from NMTV Inc., the licensee of a national, Spanish-language, ethnic Category 2 specialty programming undertaking known as Nuevo Mundo Television. The intervener expressed concern that the approval of more Spanish-language, ethnic Category 2 specialty services would harm the fledgling Hispanic market. In its view, the Hispanic community in Canada is too small to accommodate the number of Spanish-language, ethnic Category 2 specialty services that have been approved to serve this community. In support of its argument, the intervener pointed to the Hispanic community in the U.S., which it stated is much larger than that in Canada, but is served by a much smaller number of Hispanic television services. It also noted that, although the Francophone community is much larger than the Hispanic community in Canada, there are close to the same number of television stations serving the Francophone community as there are Category 2 services approved to serve the Hispanic community.

Applicant's reply

6. In response, the applicant noted that the intervener did not comment on its application specifically, but rather expressed concerns with the Commission's policy for a more open-entry approach to licensing new third-language, ethnic Category 2 services as set out in *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). Furthermore, the applicant stated that the intervener did not present any evidence to support its position that the approval of the application would have a negative impact on the Nuevo Mundo Television service.

Commission's analysis and determinations

7. The Commission is satisfied with the applicant's response to the intervention. The Commission is also satisfied that the application is in conformity with all applicable terms and conditions announced in *Introductory statement – Licensing of new digital pay and specialty services – Corrected Appendix 2*, Public Notice CRTC 2000-171-1, 6 March 2001 (Public Notice 2000-171-1). Furthermore, given that the service will offer more than 90% of its programming in a third language, the Commission is satisfied that the application falls under the definition of a third-language service, established in Public Notice 2005-104. Accordingly, the Commission **approves** the application by Toro TV Corporation, on behalf of a corporation to be incorporated, for a broadcasting licence to operate the national, niche, third-language, ethnic Category 2 specialty programming undertaking, POPTV.

8. With respect to the request to broadcast up to six minutes of local advertising, the Commission notes that, as set out in Public Notice 2005-104, the Commission generally permits new third-language services to broadcast up to six minutes per hour of local advertising unless an intervener makes a compelling case to the contrary. In the present case, there were no interventions opposing the proposal to broadcast local advertising. The Commission therefore **approves** the applicant's request for authority to broadcast up to six minutes per hour of local advertising. A **condition of licence** to that effect is set out in the appendix to this decision.
9. The Commission notes that POPTV will devote at least 90% of its program schedule to programming in Spanish. In accordance with Public Notice 2005-104, the remainder of the program schedule, i.e., up to 10%, may be in one or both official languages. The Commission encourages the applicant to ensure that all such programming serves to promote Canada's linguistic duality.
10. The licence will expire 31 August 2013, and will be subject to the **conditions** set out in Public Notice 2000-171-1, as well as to the **conditions** set out in the appendix to this decision.

Issuance of the licence

11. 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. The undertaking must be operational at the earliest possible date and in any event no later than 36 months from the date of this decision, unless a request for an extension of time is approved by the Commission before 13 October 2009. In order to ensure that such a request is processed in a timely manner, it should be submitted at least 60 days before that date.

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>

Appendix to Broadcasting Decision CRTC 2006-593

Conditions of licence

1. The licence will be subject to the conditions set out in *Introductory statement – Licensing of new digital pay and specialty services – Corrected Appendix 2*, Public Notice CRTC 2000-171-1, 6 March 2001, except for condition 4d), which will not apply, and condition 4a), which is replaced by the following:

Except as otherwise provided in subparagraphs b) and c), the licensee shall not broadcast more than twelve (12) minutes of advertising material during each clock hour, no more than six (6) minutes of which may consist of local advertising.

2. The licensee shall provide a national, niche, third-language, ethnic Category 2 specialty programming service devoted to general entertainment for Spanish-speaking children in Canada.
3. The programming shall be drawn exclusively from the following categories, as set out in Schedule I to the *Specialty Services Regulations, 1990*, as amended from time to time:
 - 2 (b) Long-form documentary
 - 5 (b) Informal education/Recreation and leisure
 - 7 Drama and comedy
 - (a) Ongoing drama 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, improvisations, unscripted works, stand-up comedy
 - (g) Other drama
 - 11 General entertainment and human interest
 - 12 Interstitials
 - 13 Public service announcements
 - 14 Infomercials, promotional and corporate videos
4. Not less than 90% of all programming broadcast during the broadcast week shall be in the Spanish language.

For the purposes of the conditions of this licence, including condition of licence no. 1, *broadcast day* refers to the 24-hour period beginning each day at 6 a.m., or any other period approved by the Commission.