



## Broadcasting Decision CRTC 2007-375

Ottawa, 15 October 2007

### **Gordon Culley, on behalf of a corporation to be incorporated Across Canada**

*Application 2007-0220-1, received 12 February 2007  
Public Hearing in the National Capital Region  
27 August 2007*

### **Car TV – Category 2 specialty service**

*The Commission **approves in part** the application by Gordon Culley, on behalf of a corporation to be incorporated for a broadcasting licence to operate a new Category 2 specialty programming undertaking but **denies** the request to broadcast local and regional advertising.*

### **Introduction**

1. Gordon Culley, on behalf of a corporation to be incorporated, filed an application for a broadcasting licence to operate Car TV, a national English-language Category 2 specialty service that would be devoted to the world of cars and the aftermarket industry. Programming would consist of programs related to the review and maintenance of new, used and classic vehicles.
2. The applicant also requested authority to broadcast local and regional advertising.
3. The Commission has implemented a competitive, open-entry approach to licensing Category 2 services. While the Commission does not consider the impact that a Category 2 service might have on an existing Category 2 service, it does seek to ensure that Category 2 services do not compete directly with any existing Category 1 or analog pay or specialty television 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. Where appropriate, in setting conditions of licence, the Commission prevents or limits the broadcast of specific types of programming to ensure that the service is not nor will become directly competitive with any existing Category 1 or analog pay or specialty television service.
4. The Commission received an intervention in connection with the application from Astral Television Networks, a division of Astral Broadcasting Group Inc. (Astral) and CanWest MediaWorks Inc. (CanWest).

5. Astral owns and operates The Movie Network and MPix, two English-language analog pay television programming undertakings that provide general interest theatrical movie-based services in eastern Canada. The intervener noted that the applicant had proposed no restrictions on Category 7 programming. Astral requested that the service be subject, by condition of licence, to a 15% limitation on programs from category 7(d) (Theatrical feature films aired on TV).
6. CanWest noted that the applicant requested authorization to broadcast local and/or regional advertising on its proposed national category 2 service. It further noted that the Commission's policy on advertising for category 2 services prohibits the broadcast of any paid advertising material other than national paid advertising. CanWest indicated that the Commission has on occasion granted exceptions to this policy, namely to ethnic services and regional news services. CanWest opposed the request to broadcast local and/or regional advertising, on the grounds that the proposed service is neither an ethnic nor a regional news service that provides local or regional programming. Moreover, CanWest indicated that policy issues relating to specialty services should be more appropriately discussed during the upcoming announced policy review.

### **Commission's analysis and determinations**

7. The Commission is satisfied that the application is in conformity with all applicable terms and conditions announced in Public Notice 2000-171-1. Accordingly, the Commission **approves** the application by Gordon Culley, on behalf of a corporation to be incorporated, for a broadcasting licence to operate the national, English-language Category 2 specialty programming undertaking Car TV. The terms and **conditions of licence** are set out in the appendix to this decision.
8. However, the Commission is of the view that the applicant's proposed nature of service is not sufficiently defined so as to prevent the proposed service from competing directly with the services provided by Astral. Accordingly, the Commission considers that it would be appropriate to impose a 15% weekly limit on programs to be drawn from category 7(d). A **condition of licence** to that effect is set out in the appendix to this decision.
9. With respect to the applicant's request to be authorized to broadcast local and regional advertising, the Commission noted in Public Notice 2000-171-1 that Category 2 services must not distribute any paid advertising material other than national paid advertising. The Commission has granted exceptions to this approach to the licensees of Category 2 ethnic services and local/regional news services that provide local and regional programming.
10. In the present case, the applicant plans to offer a national service that will not target any particular local market directly. In light of the foregoing, the Commission considers that the applicant's proposal does not warrant an exception to the Commission's approach with respect to the broadcast of advertising by Category 2 services. Accordingly, the Commission **denies** the applicant's request to broadcast local and regional advertising.

Secretary General

**Related document**

- *Introductory statement – Licensing of new digital pay and specialty services – Corrected Appendix 2, Public Notice CRTC 2000-171-1, 6 March 2001*

*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 2007-375

### Terms and conditions of licence for the Category 2 specialty programming undertaking Car TV

#### Terms

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 15 October 2010. 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.

The licence will expire 31 August 2014.

#### Conditions of licence

1. The licence shall 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.
2. The licensee shall provide a national, English-language Category 2 specialty programming service devoted to the world of cars and the aftermarket industry. Programming will consist of programs related to the review and maintenance of new, used and classic vehicles.
3. The programming shall be drawn exclusively from the following categories set out in item 6 of Schedule I to the *Specialty Services Regulations, 1990*, as amended from time to time:
  - 2 (b) Long-form documentary
  - 3 Reporting and actualities
  - 5 (b) Informal education/Recreation and leisure
  - 6 (a) Professional sports

- (b) Amateur sports
  - 7 (c) Specials, mini-series or made-for-TV feature films
  - 7 (d) Theatrical feature films aired on TV
  - 10 Game shows
  - 12 Interstitials
  - 13 Public service announcements
  - 14 Infomercials, promotional and corporate videos
4. In order to ensure that the licensee complies at all times with the *Direction to the CRTC (Ineligibility of non-Canadians)*, P.C. 1997-486, 8 April 1997, as amended by P.C. 1998-1268, 15 July 1998, the licensee shall file, for the Commission's prior review, a copy of any programming supply agreement and/or licence trademark agreement it intends to enter into with a non-Canadian party.
5. Not more than 15% of all programming broadcast during the broadcast week shall be drawn from category 7(d).

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.