



## Broadcasting Decision CRTC 2007-58

Ottawa, 12 February 2007

### **Black Walk Corporation** Across Canada

*Application 2006-1025-5*  
*Public Hearing in the National Capital Region*  
*18 December 2006*

### **TOTAL 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 Black Walk Corporation (Black Walk) for a broadcasting licence to operate a national, English-language Category 2<sup>1</sup> specialty programming undertaking to be known as TOTAL TV.
2. The applicant proposed to offer a service that would consist of a variety of programming related to unconventional ways of improving the mind, body and spirit. The applicant stated that the service would be a “health and wellness” channel, dedicated to offering a modern take on natural life practices, including organic food and products, non-medicinal therapies, and spirituality. It would provide information, advice, and options, through lifestyle programs and documentaries, as well as entertainment through movies and television series.
3. All of the programming would be drawn from the following categories set out in item 6 of Schedule I to the *Specialty Services Regulations, 1990*: 2(a) Analysis and interpretation; 2(b) Long-form documentary; 3 Reporting and actualities; 5(b) Informal education/Recreation and leisure; 7(c) Specials, mini-series or made-for-TV feature films; 7(d) Theatrical feature films aired on TV; 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.

## Interventions

4. The Commission received three interventions in connection with this application, including one offering general comments, submitted by Astral Broadcasting Group Inc. (Astral), and two in opposition, submitted by ONE: The Body, Mind and Spirit Channel Inc. (ONE), and by Alliance Atlantis Communications Inc. (Alliance Atlantis).
5. Astral proposed that the licensee be subject, by condition of licence, to a 15% limitation on programs from Category 7(d) Theatrical feature films aired on TV.
6. ONE opposed the service, arguing that it would be directly competitive with its Category 1 service. Based on the nature of service definition for the proposed channel, ONE stated that there is a clear conflict with the service it is already authorized to provide: whereas Black Walk stated that the proposed service would focus on wellness of “mind, body and spirit”, ONE already serves Canadians interested in holistic wellness of “body, mind and spirit”.
7. ONE expressed concern that, based on the proposed service’s extremely similar nature of service definition to that of its own service, and based on the overlap of program categories between them, it is reasonable to conclude that the proposed service would compete with ONE to acquire program content from Canadian and foreign distributors.
8. ONE submitted that the applicant had failed to demonstrate that the proposed service would not compete with ONE, and that since the proposed service falls squarely within the same niche as ONE, the application should therefore be denied as the approval of it would be inconsistent with the Commission’s “one per genre” policy.
9. Alliance Atlantis, the owner of Discovery Health Channel Canada ULC, licensee of the Category 1 service Discovery Health, stated that it is clear from TOTAL TV’s proposed nature of service that there would be a great deal of latitude for it to develop into a service dedicated to more traditional health and wellness or a service dedicated to holistic approaches to wellness. In the first instance, the service would compete directly with Discovery Health, and in the second instance, it would compete directly with ONE. Furthermore, the proposed nature of TOTAL TV’s service is so broad and lacking in restrictions that the proposed service would have the flexibility to easily evolve into a service focused on traditional western health or home and garden themes, if it so desired.
10. According to Alliance Atlantis, the applicant has not made a convincing argument that TOTAL TV would offer a narrow, niche service that would not be directly competitive with existing services.

### **Applicant's reply**

11. The applicant did not reply to the interventions.

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

12. In *Licensing framework policy for new digital pay and specialty services*, Public Notice CRTC 2000-6, 13 January 2000, the Commission implemented a competitive, open-entry approach to licensing Category 2 services. While the Commission does not consider the impact that a new Category 2 service might have on an existing Category 2 service, it 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.
13. 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.
14. In the present case, the Commission considers that the applicant's proposed nature of service definition is very similar to the nature of service definition of the Category 1 service known as ONE: The Body, Mind and Spirit Channel.
15. The Commission licensed ONE in *Wisdom: Canada's Body, Mind & Spirit Channel - a new specialty channel*, Decision CRTC 2000-450, 14 December 2000. The nature of service definition for the service is as follows:

The licensee shall provide a national English-language Category 1 specialty television service providing programming that discusses, reveals and explores the interconnectedness between body, mind and spirit. The programming will include holistic approaches to wellness, but not traditional, Western, medical theory or practices.

16. Further, the Commission is of the view that the nature of service definition proposed by Black Walk is very broad. Given the programming flexibility that the proposed definition would allow, the Commission considers that the applicant did not establish sufficient safeguards to prevent the proposed service from becoming directly competitive with either the Category 1 specialty service, ONE: The Body, Mind and Spirit Channel or the Category 1 service Discovery Health.

17. Accordingly, the Commission **denies** the application by Black Walk Corporation for a broadcasting licence to operate a national, English-language Category 2 specialty programming undertaking, TOTAL 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>*