



## Broadcasting Decision CRTC 2004-167

Ottawa, 26 April 2004

**Stornoway Communications, General partner,  
and 1403318 Ontario Limited, Limited partner,  
doing business under the name of Stornoway Communications  
Limited Partnership**  
Across Canada

*Application 2003-0989-0  
Broadcasting Public Notice CRTC 2003-63  
19 November 2003*

### **ichannel – Licence amendment**

*In this decision, the Commission **approves in part** the application by Stornoway Communications, General partner, and 1403318 Ontario Limited, Limited partner, doing business under the name of Stornoway Communications Limited Partnership, to amend the conditions of licence of the national English-language Category 1 specialty television service known as ichannel.*

### **Background**

1. The service, ichannel (formerly known as The Issues Channel) is a national English-language Category 1 specialty television service that focuses its programming exclusively on public affairs. It was licensed in 2000 following a competitive process and began operation in September 2001.

### **Nature of service**

2. The licensee's original condition of licence pertaining to its nature of service set out in *The Issues Channel – a new specialty channel*, Decision CRTC 2000-463, 14 December 2000, authorized the service to draw programming exclusively from the following categories, as set out in Schedule I to the *Specialty Services Regulations, 1990*:
  - 2a Analysis and interpretation
  - 2b Long-form documentary
  - 4 Religion
  - 5a Formal education and pre-school
  - 5b Informal education/recreation and leisure

- 7a Ongoing dramatic series
- 7d Theatrical feature films aired on TV
- 11 General entertainment and human interest
- 12 Interstitials
- 13 Public service announcements.

3. The condition also stated that the licensee must not devote more than 8% of its weekly schedule to programming drawn from category 7 (Drama and comedy) and that it may broadcast no more than one feature film (category 7d) during each broadcast week. Feature films must be offered only within the context of an issue being explored by the service.
4. In *Approval of the addition of drama subcategories to the list of authorized programming categories; Denial of the request to increase the amount of drama and feature films broadcast*, Decision CRTC 2001-742, 30 November 2001 (Decision 2001-742), the Commission approved the licensee's request to add the following drama subcategories to the list of those from which it may draw programming:
  - 7b Ongoing comedy series (sitcoms)
  - 7c Specials, mini-series and made-for-TV feature films
  - 7e Animated television programs and films
  - 7f Programs of comedy sketches, improvisations, unscripted works, stand-up comedy
  - 7g Other drama.
5. In Decision 2001-742, the Commission, however, denied the licensee's requests to increase the amount of drama programming broadcast by ichannel and to broadcast two feature films in a given broadcast week. In denying those requests, the Commission noted that the limits on the amount of drama programming that ichannel can broadcast were established following a comprehensive public hearing on the licensee's original licence application as part of a highly competitive process and that the Commission had imposed similar restrictions on other applicants who were also not proposing entertainment formats and who obtained a broadcasting licence at that time. The Commission stated that the limits on drama are intended to ensure that these services provide diversity and do not compete directly with other specialty television services.

**Exhibition of Canadian programming**

6. Currently, the licensee must, by condition of licence, devote a minimum of 60% of the broadcast day, and 50% of the evening broadcast period in each broadcast year to the exhibition of Canadian programs. Beginning in its fifth year of operation and for the remainder of the licence term, ichannel must increase that level to 65% of the broadcast day and 55% of the evening broadcast period.

## **The present application**

7. In the present application, the licensee proposed to add the following categories to the list of program categories from which it may draw its programming:
  - category 3 (Reporting and actualities), with a limit of 20% of the broadcast day and the evening broadcast period, measured during each six-month semester;
  - category 10 (Game shows), with a limit of 10% of the broadcast day and the evening broadcast period, measured during each six-month semester; and
  - category 14 (Infomercials) to be broadcast daily between 2 a.m. and 8 a.m. as well as between 8 a.m. and 11 a.m. on Saturdays and Sundays.
  
8. The licensee also requested authorization to:
  - increase the amount of programming drawn from category 7 (Drama and comedy) from 8% of the broadcast day and the evening broadcast period to 22.5% of the broadcast day and of the evening broadcast period;
  - increase the amount of programming drawn from category 7d (Feature films) in order to broadcast two feature films in each broadcast week; and
  - decrease the percentage of the broadcast day and of the evening broadcast period that must be devoted to the exhibition of Canadian programs to 50% overall and 50% of the evening broadcast period.

## **The licensee's rationale for the application**

9. In support of its application, the licensee submitted that ichannel is currently competing in a new broadcasting environment as a result of the terms authorized for the English- and French-language satellite-to-cable programming services operated by Cable Public Affairs Channel Inc. (CPAC) at the time of their recent licence renewals<sup>1</sup>. The licensee contended that the expanded programming range granted to CPAC in its licence renewals significantly overlaps ichannel's nature of service and programming categories. The licensee also pointed out that CPAC has been authorized to introduce a new monthly subscriber fee and granted mandatory distribution on the basic service of most broadcasting distribution undertakings (BDUs). In the licensee's view, these changes to CPAC's services threaten the unique programming niche licensed to ichannel.

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<sup>1</sup> The Commission renewed the licences for these services in *Licence renewal for CPAC; and issuance of a distribution order*, Broadcasting Decision CRTC 2002-377, 19 November 2002. CPAC's satellite-to-cable programming services provide public affairs programming, which is complementary to its exempt programming service that offers coverage of the proceedings of the House of Commons and its committees.

10. With respect to the proposed changes to ichannel's condition of licence pertaining to its nature of service, the licensee argued that the addition of category 14 would generate more revenues for ichannel while the addition of category 3 would enhance its capacity to offer complete and comprehensive coverage of issues of concern to Canadians. The licensee explained that the addition of category 10 would enable it to broadcast *The Economist Business Challenge*, a program it had acquired based on the assumption that it would qualify under category 5b (Informal education/recreation & leisure). In fact, the program falls under category 10. The licensee further argued that limiting the amount of drama that may be aired on ichannel to 8% of each broadcast week is unduly restrictive and impedes its ability to provide a distinct and attractive public affairs channel. It maintained that such a restriction, prevents it from airing programs such as *Yes, Minister*.
11. With respect to its proposal to decrease the amount of Canadian programming that must be broadcast on ichannel, the licensee argued that there is not enough Canadian programming available that is diverse enough to meet ichannel's needs. The licensee further contended that the original programming created by ichannel is expensive and has a short shelf-life.

### **Interventions**

12. The Commission received a comment by CPAC and interventions by Channel Zero Inc. (Channel Zero) and CHUM Limited (CHUM) in connection with this application. Channel Zero owns two Category 2 specialty television services: Retro TV (formerly known as Channel Zero) and Silver Screen Classics.<sup>2</sup> Among its many other broadcasting holdings, CHUM owns and operates a number of analog and digital specialty television services.
13. While neither supporting nor opposing the application, CPAC stated that it wished to correct the claim that the terms of its recent licence renewals constituted a change in the broadcast environment or made its services directly competitive with ichannel.
14. Both Channel Zero and CHUM opposed the licensee's request to increase the amount of drama programming broadcast by ichannel. The interveners maintained that the Commission's reasons set out in Decision 2001-742 for denying the licensee's previous requests with respect to drama are still valid. They further contended that the licensee did not substantiate its claim that the licence renewals of CPAC's satellite-to-cable services

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<sup>2</sup> The Commission authorized the first service in *Channel Zero*, Decision CRTC 2000-712, 24 November 2000 and 14 December 2000 and the second service in *Silver Screen Classics – Category 2 specialty service*, Broadcasting Decision CRTC 2003-473, 23 September 2003. To date, neither service has commenced operations. The Commission extended the deadline to commence operation of Retro TV until 24 November 2004 in *Deadline to commence operation of Category 2 specialty and pay television services*, Broadcasting Decision CRTC 2003-599, 16 December 2003.

justified changes to ichannel's conditions of licence. In the interveners' view, increasing the drama programming aired on ichannel would significantly change the nature of its service. CHUM also claimed that ichannel's current conditions of licence allow it to broadcast *Yes, Minister*, a program cited by the licensee as an example of the type of drama programming that it is currently prohibited from offering.

15. In addition, Channel Zero opposed the licensee's proposal to reduce the amount of Canadian programming broadcast on ichannel. Channel Zero contended that it would not be equitable to Category 2 licensees to allow a Category 1 licensee to receive the benefits of a Category 1 licence, including mandatory distribution by Class 1 and Class 2 BDUs and direct-to-home satellite distribution undertakings, without requiring that it abide by the commitments it made to the exhibition of Canadian programming in the context of a competitive licensing process. The intervener further claimed that any change to ichannel's conditions of licence in this regard would establish a precedent for future applications by Category 1 licensees.
16. Channel Zero also opposed the licensee's request to add category 10 to the list of ichannel's authorized program categories. The intervener questioned whether game shows provide diversity to the Canadian broadcasting system and submitted that the licensee's error in licensing and airing a program outside its authorized program categories would be better rectified by not airing the program in question.

### **The licensee's response**

17. In response to CPAC, the licensee reiterated its claim that CPAC is now allowed to compete with ichannel's discretionary public affairs service.
18. In response to the concerns raised by Channel Zero and CHUM with respect to the proposed increase in drama, the licensee affirmed that it would continue to adhere to ichannel's licensed mandate and focus its programming exclusively on public affairs. The licensee maintained that the aim of its present application is not to review a previous Commission decision, but to amend ichannel's conditions of licence in response to the new broadcast environment resulting from CPAC's licence renewals. The licensee contended that the current limits on its category 7 programming are overly restrictive and prevent it from presenting issues that are important to all Canadians in a creative, distinct and attractive manner.
19. In response to the other concerns raised by Channel Zero, the licensee stated that the level of Canadian programming required of ichannel under its current condition of licence has proven to be too high and could serve to diminish rather than increase the intended effect of promoting diverse, distinct and attractive Canadian programming. The licensee maintained that game shows, such as *The Economist Business Challenge*, an educational world affairs series that involves questions and problem solving, would contribute to fulfilling ichannel's mandate to provide public affairs programming and would also add to the diversity of the programming available in the Canadian broadcasting system.

## The Commission's analysis and determination

20. In its evaluation of this application, the Commission has taken into consideration the arguments presented by the interveners and the licensee. Based on its analysis of the record, the Commission finds that the licensee did not provide any compelling evidence to justify its contention that the terms of CPAC's licence renewals set out in *Licence renewal for CPAC; and issuance of a distribution order*, Broadcasting Decision CRTC 2002-377, 19 November 2002 have had a negative impact on ichannel.
21. The Commission notes that ichannel has been in operation for less than four years and that it was licensed following a competitive process. In such a situation, the Commission wishes to ensure that a licence amendment does not call into question the integrity of its licensing process. Only under exceptional circumstances would the Commission give favourable consideration to applications which are intended to reduce commitments to Canadian content or which may significantly change the nature of a licensed service.
22. The Commission notes that ichannel's reported average profit before interest and tax in each of its first two years of operation is within the range of those reported by the other Category 1 services licensed in 2000. In terms of the number of subscribers, ichannel ranks fourth out of the sixteen Category 1 services. Based on the foregoing, the Commission finds that ichannel's case is not exceptional compared to other Category 1 services. Accordingly, ichannel's case does not justify a reduction in its Canadian content obligations or a significant change in the nature of the licensed service. The Commission, therefore, **denies** the licensee's proposal to decrease the percentage of the broadcast day and of the evening broadcast period that must be devoted to the exhibition of Canadian programs to 50% overall and 50% of the evening broadcast period.
23. With respect to the licensee's proposed changes to ichannel's condition of licence pertaining to its nature of service, the Commission finds that the addition of programming drawn from categories 3, 10 and 14 will not significantly alter the essence of ichannel's service provided that the programs are consistent with the service's genre. The Commission considers that the limits proposed by the licensee with respect to programming drawn from categories 3 and 10 are appropriate. Since its usual practice is not to place restrictions on category 14 programs, the Commission finds that it is not necessary to impose the limits on such programming proposed by the licensee. Accordingly, the Commission **approves** the proposals to add the following categories to the list of program categories which ichannel is authorized to distribute:
  - category 3 (Reporting and actualities), limited to 20% of the broadcast day and of the evening broadcast period measured during each six-month semester;
  - category 10 (Game shows), limited to 10% of the broadcast day and of the evening broadcast period measured during each six-month semester; and
  - category 14 (Infomercials).

24. The Commission agrees with the interveners that permitting ichannel to devote 22.5% of the broadcast day and of the evening broadcast period to drama would significantly alter its nature of service. The Commission, therefore, **denies** the licensee's request to increase the amount of programming drawn from category 7 (Drama and comedy) from 8% of the broadcast day and of the evening broadcast period to 22.5% of the broadcast day and of the evening broadcast period.
25. With respect to the licensee's request for authority to offer two feature films in each broadcast week, the Commission recognizes that topical films can serve as a basis for discussions of public affairs issues. The Commission considers that allowing ichannel the flexibility to offer an additional feature film in each broadcast week could enhance the attractiveness of its service without changing the genre for which it was licensed. Accordingly, the Commission **approves** the licensee's request to increase the amount of programming drawn from category 7d (Feature films) in order to broadcast two feature films in each broadcast week. The Commission also authorizes the licensee to increase the amount of programming drawn from category 7 from 8% of the broadcast week to no more than 10% of the broadcast week in order to accommodate the broadcast of an additional feature film.
26. The amended condition of licence pertaining to ichannel's nature of service is set out in the appendix to this decision. The Commission reminds the licensee that the programs drawn from the new categories must conform to this condition of licence.

Secretary General

*This decision is to be appended to the licence. It is available in alternative format upon request, and may also be examined at the following Internet site: <http://www.crtc.gc.ca>*

## Appendix to Broadcasting Decision CRTC 2004-167

### Conditions of licence pertaining to ichannel's nature of service

1. (a) The licensee shall provide a national English-language Category 1 specialty television service that will focus its programming exclusively on public affairs. The service will not broadcast news coverage or cover live events. All programs will be offered within a context of the issues of public interest and/or concern.
- (b) The programming must be drawn exclusively from the following categories, as set out in Schedule I to the *Specialty Services Regulations, 1990*:
  - 2a Analysis and interpretation
  - 2b Long-form documentary
  - 3 Reporting and actualities
  - 4 Religion
  - 5a Formal education and pre-school
  - 5b Informal education/recreation and leisure
  - 7a Ongoing dramatic series
  - 7b Ongoing comedy series (sitcoms)
  - 7c Specials, mini-series and made-for-TV feature films
  - 7d Theatrical feature films aired on TV
  - 7e Animated television programs and films
  - 7f Programs of comedy sketches, improvisations, unscripted works, stand-up comedy
  - 7g Other drama
  - 10 Game shows
  - 11 General entertainment and human interest
  - 12 Interstitials
  - 13 Public service announcements
  - 14 Infomercials
- (c) No more than 20% of all programming broadcast over the broadcast day and the evening broadcast period measured during each broadcast semester shall be devoted to material drawn from category 3.
- (d) No more than 8% of all programming broadcast during each broadcast week shall be devoted to material drawn from category 7, except in a broadcast week where the licensee broadcasts two feature films. In those broadcast weeks, the licensee may increase the amount of programming devoted to material drawn from category 7 to 10% of the broadcast week in order to accommodate the broadcast of two feature films (category 7d).



- (e) No more than 2 feature films (category 7d) shall be broadcast during each broadcast week and shall be offered only within the context of an issue being explored by the service.
- (f) No more than 10% of all programming broadcast over the broadcast day and the evening broadcast period measured during each broadcast semester shall be devoted to material drawn from category 10.

For the purpose of these conditions of licence, the term “broadcast semester” shall mean the total number of hours devoted by the licensee to broadcasting during the aggregate of the broadcast months in a six month period, beginning 1 September 2004.