



## Broadcasting Decision CRTC 2004-318

Ottawa, 6 August 2004

**4115121 Canada Inc.**  
Across Canada

*Application 2003-1442-7*  
*Public Hearing in the National Capital Region*  
*17 May 2004*

### **4115121 Canada Inc. – Category 2 specialty service**

*In this decision, the Commission **approves** the operation of a new Category 2 specialty television service.*

#### **The application**

1. The Commission received an application by 4115121 Canada Inc. (4115121), for a broadcasting licence to operate a national, ethnic Category 2<sup>1</sup> Russian-language specialty television service. The applicant proposed to offer a programming service targeting the Russian-speaking community, although 10% of all programming would be in the English language.
2. The Commission received two interventions in opposition to this application.

#### **The interventions**

3. The opposing interventions were filed by Ethnic Channel Group Limited (ECGL) and MediaNet Canada Television (MediaNet).
4. ECGL expressed the view that the Commission should delay consideration of any application to operate an ethnic Category 2 service, where the applicant proposes to serve the same audience as an existing Category 2 service, until the two-year launch period established by the Commission has expired.
5. MediaNet submitted that the application was incomplete because 4115121 did not specify whether professional sports programming would be offered as part of the English-language programming, did not address concerns related to cross-media ownership since it owns and/or operates a Russian-language Canadian newspaper, and that the applicant had not formally appointed its agent in the application. MediaNet also indicated that the applicant had not provided evidence that, if licensed, the service would

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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.

be carried by a broadcast distribution undertaking (BDU).

### **The applicant's reply**

6. In its response to ECGL's intervention, the applicant indicated that, in *Licensing Framework Policy for New Digital Pay and Specialty Services*, Public Notice CRTC 2000-6, 13 January 2000 (Public Notice 2000-6), the Commission adopted an open entry approach and did not limit the number of Category 2 services that could be authorized.
7. In reply to MediaNet's concerns, the applicant noted that the intervener does not oppose the approval of an application for a new Russian-language television service, only that such a service might be competitive with existing Category 1 services. The applicant stated that the competitive test for determining whether a Category 2 service will be approved consists of whether the proposed service is "directly competitive with an existing pay or specialty service or with a new Category 1 service". With respect to MediaNet's concern that the proposed service's English-language programming would include professional sports, the applicant indicated that any sports programming that may be carried would be a part of its proposed Russian-language programming. For this reason, the applicant concluded that its service would not be directly competitive with any existing services.
8. With respect to MediaNet's comment on the applicant's failure to disclose that it owned and/or operated a newspaper, the applicant notes that the intervener is correct and that it inadvertently forgot to mention in its application its ownership of a Russian-Canadian newspaper. With regard to the appointment of an agent, 4115121 indicated that it approves and adopts every statement made during the public hearing process, as if it were made directly by itself.
9. With respect to the intervener's concern relating to the assurance of distribution, the applicant stated that, in *Revised procedures for processing applications for new digital Category 2 pay and specialty television services*, Broadcasting Public Notice CRTC 2004-24, 8 April 2004 (Public Notice 2004-24), the Commission indicated that it would no longer require an applicant for a licence to operate a Category 2 service to provide clear evidence of a reasonable likelihood of carriage of the proposed service.

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

10. In Public Notice 2000-6, the Commission implemented a competitive, open-entry approach to licensing Category 2 services. 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, although the Commission does not consider the impact that a new Category 2 service might have on an existing Category 2 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.

11. In the present case, the Commission considers that the applicant's proposed service is not directly competitive with any Category 1, pay or specialty services. In addition, as noted in Public Notice 2004-24, the Commission announced that, before consideration of an application for a category 2 service, it would no longer require evidence of the reasonable likelihood that the proposed service would receive carriage on a licensed BDU.
12. Based on its examination of this application, the Commission is satisfied that it 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). Accordingly, the Commission **approves** the application by 4115121 Canada Inc. for a broadcasting licence to operate a national, Russian-language Category 2 specialty television service.
13. The Commission reminds the applicant that, once the name of the service has been determined, it must be provided to the Commission.
14. The licence will expire 31 August 2010, and will be subject to the conditions set out in Public Notice 2000-171-1, as well as to the **conditions of licence** set out in the appendix to this decision.

### **Issuance of the licence**

15. A licence will be issued once the applicant has satisfied the Commission, with supporting documentation, that the following requirements have been met:
  - 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 6 August 2007. 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 at the following Internet site: <http://www.crtc.gc.ca>*

## Appendix to Broadcasting Decision CRTC 2004-318

### Conditions of licence

1. The licensee shall provide a national, Russian-language Category 2 specialty television service devoted to programming of interest to a Russian-speaking audience.
2. The programming must 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:
  - 1 News
  - 2 (a) Analysis and interpretation  
(b) Long-form documentary
  - 3 Reporting and actualities
  - 4 Religion
  - 5 (a) Formal education and pre-school  
(b) Informal education/Recreation and leisure
  - 6 (a) Professional sports  
(b) Amateur sports
  - 7 Drama and comedy
  - 8 (a) Music and dance other than music video programs or clips  
(b) Music video clips  
(c) Music video programs
  - 9 Variety
  - 10 Game shows
  - 11 General entertainment and human interest
  - 12 Interstitials
  - 13 Public service announcements
  - 14 Infomercials, promotional and corporate videos
3. Not less than 90% of the programming shall be in the Russian language and not more than 10% of the programming shall be in the English language.

For the purposes of the conditions of this licence, *broadcast day* shall have the same meaning as that set out in section 2 of the *Television Broadcasting Regulations, 1987*.