



## Broadcasting Decision CRTC 2004-319

Ottawa, 6 August 2004

**Mark Campbell, on behalf of a corporation to be incorporated  
Across Canada**

*Application 2003-1570-7  
Public Hearing in the National Capital Region  
17 May 2004*

### **Art and Design Television – Category 2 specialty service**

*In this decision, the Commission **denies** the application for a licence to operate a new Category 2 specialty television service.*

#### **The application**

1. The Commission received an application by Mark Campbell, on behalf of a corporation to be incorporated, for a broadcasting licence to operate a national, English-language Category 2<sup>1</sup> specialty television service to be known as Art and Design Television.
2. The applicant proposed to offer a service that would be devoted entirely to the celebration, study and practice of art, craft and design, ranging from performances to artist profiles.

#### **Interventions**

3. The Commission received one intervention in support of this application from Mr. Paul Greenhalgh, President of The Nova Scotia College of Art and Design and one in opposition from CHUM Limited (CHUM), on behalf of the national English-language specialty television services known as Bravo! and Fashion Television.
4. According to CHUM, the proposed service would compete directly with Bravo! and Fashion Television. CHUM submitted that Art and Design Television's broad nature of service would duplicate the programming of both Fashion Television and Bravo!. Fashion Television is dedicated to fashion, beauty, style, art, architecture, photography and design, while Bravo! is dedicated to performance and drama programming, as well as documentary and discussion. CHUM further added that most of the proposed programs cited as examples in the Art and Design Television application have either already been broadcast on Bravo! or would be suitable for Bravo!.

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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.

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

5. In response to CHUM's concerns, the applicant argued that the proposed service would not compete with Fashion Television. The applicant submitted that over 50% of Fashion Television's programming is devoted to fashion and fashion-related subjects, and up to 15% of its programming is devoted to home or garden design, which leaves only 35% of its programming to art and design forms such as photography and architecture. Moreover, the applicant stated that, if the Commission deems it appropriate, it would accept as a condition of licence that no more than 15% of the programming on Art and Design Television would feature programs devoted to fashion.
6. The applicant also argued that the proposed service would not compete with Bravo!. It submitted that, while Bravo!'s "mainstream" analog nature of service allows the service to broadcast "more lucrative syndicated programs" such as *Law & Order*, *NYPD Blue*, and *Sex and the City*, Art and Design Television's nature of service, devoted entirely to the celebration, study and practice of art, craft and design, would not permit it to broadcast such programs.

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

7. 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 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.
8. 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.
9. Furthermore, the Commission noted in Public Notice 2000-6 that it "expects that Category 2 services will include services offering niche programming to particular audiences, services that provide multiple viewing opportunities for particular types of programming, and services that repackage existing programming in creative ways."
10. In the present case, the Commission considers that the applicant's proposed definition of Art and Design Television's nature of service is very broad. Although the Commission acknowledges that some of the proposed programming does not currently exist on the television spectrum, 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 the existing specialty television service, Bravo!, and the Category 1 specialty service, Fashion Television.

11. Accordingly, the Commission **denies** the application by Mark Campbell, on behalf of a corporation to be incorporated, for a broadcasting licence to operate a national, English-language Category 2 specialty television service to be known as Art and Design Television.

Secretary General

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