



Broadcasting Decision CRTC 2004-317

Ottawa, 6 August 2004

Korea Television Corporation Across Canada

Application 2003-0882-6
Public Hearing in the National Capital Region
17 May 2004

KTV - Korea Television – 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 Korea Television Corporation (Korea TV), for a broadcasting licence to operate a national, Korean-language Category 2¹ specialty television service to be known as KTV - Korea Television (KTV). The applicant proposed to offer an ethnic programming service that would target the Korean community in Canada.
2. The Commission received one intervention in opposition to this application.

The intervention

3. The opposing intervention was filed by All TV – The Spirit of Korea (All TV), licensee of an ethnic Category 2 specialty service known as All TV. The intervener's opposition is based on its perceived difficulty for Category 2 services to secure distribution, the lack of evidence that the applicant holds programming rights, and the lack of protection for other Category 2 ethnic specialty services.
4. All TV believes that Korea TV has not provided sufficient evidence that, if licensed, KTV would be carried by a broadcast distribution undertaking (BDU). The intervener stated that while its application was approved in 2000, to date it had not secured national distribution. All TV also expressed the view that KTV's nature of service could not assured, since the applicant had not provided evidence of the acquisition of specific programming rights.

¹ 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.

5. In addition, All TV requested that the Commission provide some level of protection for ethnic Category 2 specialty services, due to the presence in Canada of a number of unauthorized foreign satellite services that cause financial harm to legitimate services.

The applicant's reply

6. In its reply, Korea TV indicated 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 announced 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. Korea TV also indicated that, while the Commission's licensing policy for Category 2 specialty services requires that a proposed service not be competitive with any Category 1 service, analog pay or specialty service, it permits direct competition between Category 2 specialty services.
7. With respect to the intervener's request for protection of other Category 2 services, due to market conditions, Korea TV noted that, while the Commission's policy allows the licensing of qualified Category 2 applicants regardless of market fragmentation, it intends to repatriate viewers from unauthorized services.

The Commission's analysis and determination

8. 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. 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.
9. The Commission examines each application in detail, taking into consideration the proposed nature of service and the unique circumstances of the genre in question.
10. In the Commission's view, the applicant's proposed service would not be directly competitive with any existing pay, specialty or Category 1 service. In addition, in Public Notice 2004-24, the Commission announced that, before consideration of an application for a new Category 2 service, it would no longer require evidence of the reasonable likelihood that the proposed service would receive carriage on a licensed BDU.

11. 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 Korea Television Corporation for a broadcasting licence to operate the national, Korean-language Category 2 specialty television service to be known as KTV - Korea Television.
12. 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

13. 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 provided executed copies of the Shareholders Agreement and the amended Article 4.02 of the by-laws;
 - 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 2004-317

Conditions of licence

1. The licensee shall provide a national, ethnic Category 2 specialty television service targeting the Korean-language community in Canada.
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 85% of the programming shall be in the Korean language and not more than 15% of the programming shall be in the English language.
4. Not more than 5% of the broadcast week shall be dedicated to live major-league professional baseball games.
5. Not more than 5% of the broadcast week shall be devoted to programming in the English language drawn from category 7.

For the purposes of the conditions of this licence, *broadcast day* refers to the 18-hour period beginning at 6:00 a.m. each day.