



Broadcasting Decision CRTC 2004-320

Ottawa, 6 August 2004

Montesano Corporation
Across Canada

Application 2003-1178-8
Public Hearing in the National Capital Region
17 May 2004

Phenomenon TV – 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 Montesano Corporation for a broadcasting licence to operate an English-language Category 2¹ specialty television service to be known as Phenomenon TV (Phenomenon).
2. The applicant proposed to offer a service that would be devoted to exploring the mysteries and unexplained phenomenon of nature, science, spirituality, and the human experience.

Interventions

3. The Commission received interventions from 2953285 Canada Inc. (CTV), licensee of The Discovery Channel (Discovery), and from Global Television Network Inc. (Global), co-owner of Mystery, in opposition to this application. Both of these services are national, English-language specialty television services.

CTV

4. According to CTV, the proposed service would compete directly with Discovery. CTV submitted that, “with the exception of some spiritual programming, Phenomenon would appear to be largely duplicative of Discovery Channel in almost all respects.” CTV stated that both the nature of service and the programming proposed by the applicant are very similar to Discovery’s “long-standing programming mandate,” which focuses on the exploration of science, technology, nature, environment and human adventure. CTV further contended that the proposed service would target the same audience as Discovery, given the similarities between the proposed programming and Discovery’s programming.

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.

Global

5. In its intervention, Global noted that the Commission had adopted an approach whereby “an application for a Category 2 service would generally be approved where it met the minimum criteria and all applicable policies and regulations, and *provided the applicant demonstrated that the service would not be directly competitive with existing Category 1 or analog pay and specialty services*” [Global’s emphasis]. In this regard, Global submitted that the applicant did not demonstrate that Phenomenon would not be directly competitive with Mystery.
6. Global argued further that, given that the applicant did not propose any restrictions on programming categories or subcategories, the proposed service could become directly competitive with many of the Category 1 or analog pay and specialty services. In Global’s view, the absence of programming category restrictions could place Mystery and other services at a competitive disadvantage. Global pointed out that Category 1 services generally have greater regulatory obligations with regard to Canadian content and expenditures on Canadian programming than Category 2 services.

The applicant’s reply

7. The applicant did not reply to the interventions.

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 (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.
9. 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.
10. 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.”

11. In the present case, the Commission considers that the applicant's proposed definition of Phenomenon's nature of service 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 the existing specialty service, Discovery, and the Category 1 service, Mystery.
12. Accordingly, the Commission **denies** the application by Montesano Corporation for a broadcasting licence to operate the English-language Category 2 specialty television service to be known as Phenomenon TV.

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>