



Broadcasting Decision CRTC 2005-162

Ottawa, 19 April 2005

Hola! Canadian Hispanic TV Network Inc. Across Canada

*Application 2003-1816-4
Public Hearing in the National Capital Region
9 August 2004*

Hola! Canadian Hispanic TV Network – Category 2 specialty service

In Hola! Canadian Hispanic TV Network – Category 2 specialty service, Broadcasting Decision CRTC 2004-464, 21 October 2004 (Decision 2004-464), the Commission pronounced on the above application. However, the Commission inadvertently failed to take into consideration the applicant's reply to the intervention filed by Telelatino Network Inc. (TLN). In light of this, the Commission has examined the complete record, including the applicant's reply, on a de novo basis.

The Commission's decision, set out below, replaces Decision 2004-464.

The application

1. The Commission received an application by Hola! Canadian Hispanic TV Network Inc. (Hola! Network), for a broadcasting licence to operate a national, ethnic Category 2¹ specialty programming undertaking to be known as Hola! Canadian Hispanic TV Network (Hola!).
2. The applicant proposed to offer a service that would be devoted to programs of interest to the Spanish-speaking community in Canada, with not less than 90% of all programming in the Spanish language and 10% in the English or French language. Hola! Network also proposed to limit, to 10% of all programming, programs of music and dance, and music videos.

Interventions

3. The Commission received a large number of interventions in connection with this application, including form letters and petitions of signatories. Interventions filed in support indicated that a need exists for more Spanish-language television services in Canada.

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.

4. The intervention in opposition filed by Telelatino Network Inc. (TLN) expressed the view that the applicant's proposed service would be directly competitive with its specialty service Telelatino, which offers programming targeted to Italian- and Spanish-speaking audiences.
5. According to TLN, Spanish-language programming currently occupies 52.5% of Telelatino's schedule, representing at least 12 hours of its daily programming. In TLN's view, as a general-interest service, Hola! would "provide the same programming genres to the same target audience" that is served by Telelatino.
6. TLN also expressed its concern that Hola! would compete with Telelatino for the same national and retail advertisers that are interested in reaching Hispanic Canadians. According to TLN, the size of the targeted television market is limited. TLN stated that:

... more than 50% of Spanish-speaking people are concentrated in the Toronto/Hamilton and Montreal areas which are served by a number of print and broadcasting outlets devoted wholly or partially to Hispanic/Spanish audiences. TLN is heavily reliant on these two markets, and on the Toronto market in particular, from which TLN draws most of its viewing and advertising revenue for its Spanish programming.
7. TLN submitted that, in *Licence renewal for the specialty television service Telelatino*, Broadcasting Decision CRTC 2002-388, 28 November 2002 (Decision 2002-388), which renewed Telelatino's licence until 31 August 2009, the Commission imposed a condition of licence requiring TLN to provide a minimum of 25% Hispanic-directed programming in the evening broadcast period. TLN stated that, in response to this condition, it had introduced a broad variety of new programming directed to its Hispanic audience, as described in a report that TLN submitted to the Commission on 1 December 2003. TLN also noted that, in Decision 2002-388, the Commission required increases to Canadian programming expenditures and Canadian content on Telelatino. TLN indicated that, if Hola! were to be licensed, it would have a negative impact on TLN's continued ability to meet those new commitments.
8. In light of the fiercely competitive environment for subscribers and advertising revenue, especially among ethnic services which have smaller potential audiences than those enjoyed by English-language services, TLN requested that the Commission deny this application. TLN expressed the view that it is vital in these circumstances that the Commission adhere strictly to its licensing policy for new Category 2 specialty programming undertakings.

The applicant's reply

9. In its letter of 25 July 2004 in reply to TLN's intervention, Hola! Network focused on three issues: whether Hola! would be directly competitive with Telelatino, what financial impact Hola! would have on Telelatino, and the need for additional Spanish-language programming.

10. With respect to the issue of whether Hola! would be directly competitive with Teletatino, Hola! Network expressed the opinion that there would be “a significant difference between a service that is licensed to provide a minimum of 45% Spanish-language service and one that provides 100% of its programming aimed at the Canadian Hispanic audience with a minimum of 90% in Spanish.”
11. Hola! Network indicated that “the real test of what the nature of a service is can be found in what is aired in prime time, when the majority of the audience is available.” The applicant noted that 100% of the Hola! prime time schedule would be devoted to Canadian Hispanic communities, while Teletatino offers only 25% of such programming during the same time period. Hola! Network indicated that, in its view, Hola! would offer “four times the amount of programming to the Hispanic audience...and more Canadian content Spanish-language programming in prime time” than Teletatino offers. Further, Hola! Network stated that Teletatino’s “schedule does not as a rule include any full-length Spanish-language programs in the heart of prime time (8 to 11 pm), nor any Canadian programs.” The applicant indicated that, in contrast, Hola! would “provide a Canadian news magazine each day in prime time to reflect the events, concerns and opinions of the dynamic Hispanic community in Canada.”
12. The applicant disputed TLN’s assertion that Hola! would have a serious financial impact on Teletatino. In the applicant’s view, such an impact would be unlikely, given Teletatino’s subscribership of over three million and its healthy pre-tax profit margin. Since newly-launched Category 2 services generally have few subscribers and pre-tax losses larger than their revenues, the applicant expressed the opinion that, even if it should reach its projected long term goal of reaching 50,000 subscribers, Hola! would present no serious competition to Teletatino for advertising revenue.
13. The applicant further stated that Teletatino’s large revenue base would always give TLN the ability to outbid small digital channels for attractive foreign-produced programming. Hola! Network indicated that its own strategy would be built upon lower-cost international programming, supplemented with high-quality, community-based Canadian programming.
14. In *Requests to add non-Canadian third-language services to the lists of eligible satellite services for distribution on a digital basis*, Broadcasting Public Notice CRTC 2004-50, 15 July 2004, the Commission set out its decision to add five non-Canadian Spanish-language services to its lists of eligible satellite services for distribution on a digital basis. While the applicant stated that the decision implicitly recognizes “the need by the Canadian Hispanic community for increased diversity in programming beyond the 45% of one channel previously available,” and that the new channels will be “welcome by many in our community,” community members “will still not have access to a service that reflects their day-to-day lives, where the programming choices are made by Canadians from their community to reflect their feedback.”

The Commission's analysis and determination

15. 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. 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.
16. In *Introductory statement – Licensing of new digital pay and specialty services*, Public Notice CRTC 2000-171, 14 December 2000, and Public Notice CRTC 2000-171-1, 6 March 2001 – *Corrected Appendix 2* (Public Notice 2000-171-1), the Commission adopted a case-by-case approach in determining whether a proposed Category 2 service should be considered directly competitive with an analog pay or specialty or existing 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.
17. The Commission considers that Hola!'s proposed nature of service, that of one targeted exclusively to Spanish-speaking audiences in Canada, would be an important factor in distinguishing it from Teletatino. In this regard, the Commission notes that Hola! would provide a service directed entirely to a Spanish-speaking audience, with 90% of all programming to be offered in the Spanish language, as compared to Teletatino's schedule, approximately half of which is directed to other than the Spanish-speaking community.
18. The Commission considers prime time to be an important part of any television service's program schedule, as this viewing period typically attracts the greatest number of viewers. In this regard, the Commission notes that Hola!'s entire prime time programming schedule, including a daily Canadian news magazine, would be devoted to the Spanish-speaking audience. A majority of that prime time programming would be offered in the Spanish language, compared to that of Teletatino, which is required to provide a minimum of 25% of Spanish-language programming during the evening broadcast period. The applicant's plans for the broadcast of significant amounts of Spanish-language Canadian programming in prime time would further differentiate Hola! from Teletatino.
19. In light of the above, the Commission is satisfied that the service proposed by Hola! Network would be sufficiently different from that offered by Teletatino that it would be complementary to, rather than directly competitive with, Teletatino.
20. Based on its examination of this application, the Commission is further satisfied that it is in conformity with all applicable terms and conditions announced in Public Notice 2000-171-1. Accordingly, the Commission **approves** the application by Hola! Canadian Hispanic TV Network Inc. for a broadcasting licence to operate the national ethnic Category 2 specialty programming undertaking to be known as Hola! Canadian Hispanic

TV Network.

21. The licence will expire 31 August 2011, 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

22. 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 19 April 2008. 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 in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>

Appendix to Broadcasting Decision CRTC 2005-162

Conditions of licence

1. The licence will be subject to the **conditions** set out 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), as well as to the following conditions of licence:
2. The licensee shall provide a national, ethnic Category 2 specialty programming undertaking to be known as Hola! Canadian Hispanic TV Network. The service will be targeted entirely to Spanish-speaking communities in Canada, offering Canadian Spanish-language programs in prime-time that will reflect the lifestyles, concerns and opinions of the Hispanic community in Canada.
3. 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
4. Not less than 90% of all programming broadcast during the broadcast week shall be in the Spanish language.
5. Not more than 10% of all programming broadcast during the broadcast week shall be drawn from Category 8(a) Music and dance other than music video programs or clips and 8(b) Music video clips.

6. With respect to the condition of licence relating to advertising, as set out in Public Notice 2000-171-1:

- condition 4d) with respect to national paid advertising will not apply.
- condition 4a) will be replaced by:

Except as otherwise provided in subparagraphs b) and c), the licensee shall not distribute more than 12 minutes of advertising material during each clock hour, no more than 6 minutes of which may consist of local or regional advertising.

For the purposes of the conditions of this licence, including condition of licence no. 1, *broadcast day* shall have the same meaning as that set out in the *Television Broadcasting Regulations, 1987*.