Canadian Communications Reports
Analyzing the Evolution of Broadcast Distribution in Canada

Volume 30, Issue 20 **October 22, 2004**

CRTC can't change policy on third-language services in middle of game: Ethnic Channels

Canadian-owned Ethnic Channels Group has big plans to eventually bring 30 third-language channels into Canada, but a wrench could be thrown into its scheme if the CRTC makes policy changes. The commission is currently reviewing its approach to granting foreign-owned third-language services entry into the country, with both a Canadian Heritage-appointed panel (CCR, Oct. 7/04) and the Canadian Cable Telecommunications Commission (CCTA) calling for a liberalization of the one-channel-per-genre policy (CCR Update, Oct. 15/04).

"It (a policy change) will hurt our business tremendously. It will hurt any Canadian ethnic broadcaster out there – in fact, any Category 2 broadcaster today. In our case, it will hurt our business quite a bit because we gear our business to a specific community. If that community has an opportunity to bring in a foreign service, which has no obligations but to deliver a service to the distributor, without having any Canadian content obligations, it puts us behind the eight ball," says Ethnic Channels Group owner Slava Levin. "I think the way that the CRTC is regulating (now) is correct. But if they are going to change the rules, it should not be free access."

Ethnic Channels Group has launched four ethnic channels in digital on Rogers Cable thus far, and has licences for 11 more services, and another eight licences in the works. Next week, Ethnic Channels will launch an Arabic-language channel, and a second Russian channel, Russian TV Two, to bring its total operational channels to six.

Levin tells *Canadian Communications Reports* that even without a policy change, Ethnic Channels has already felt the effects of the entry of a non-Canadian owned channel. He points out that the second Russian channel to be programmed by Ethnic Channels "lost four months of revenues" because it didn't launch with the company's Russian TV One channel after Rogers changed its mind and launched in its place the U.S.-owned Russian service, WMNB-TV: Russian-American Broadcasting Company. WMNB-TV is on the list of services eligible for carriage in Canada. Eventually, he said he was able to convince Rogers to add Russian TV Two as a third Russian channel to its lineup.

> "They are not paying Canadian taxes, and they are not hiring Canadian staff. We have 15 people employed at our company. And this company came and basically took our spot, as I call it, on Rogers Cable. Is it fair?"
>
> **Slava Levin, Ethinc Channels Group**

"We built our infrastructure for two Russian channels. Rogers, for whatever reason, changed their mind and launched them instead (of Russian TV Two). Today, the money that subscribers pay (for WMNB) is being funneled out of the country – half goes to Rogers and half goes to the United States," he notes. "They are not paying Canadian taxes, and they are not hiring Canadian staff. We have 15 people employed at our company. And this company came and basically took our spot, as I call it, on Rogers Cable. Is it fair? I don't think so. We're directly competing with a company that doesn't have to spend a dime to deliver their channel into Canada. How can we compete with a company like that?"

He points out that letting in more foreign third-language channels, which have no Canadian content requirements or costly reporting to file with the CRTC, could kill Canadian businesses such as Telelatino and the Asian Television Network. The CRTC process was initiated and the Canadian Heritage panel appointed after controversy arose when Italian public broadcaster RAI International was refused entry into Canada because it was deemed competi-

Ethnic channels, continued on page 2...

...*Ethnic channels,* cont'd from page 1

tive with Telelatino.

"From my perspective RAI shouldn't be allowed in," he states. "Telelatino has built them (RAI) in this country as a big force of Italian programming. [Telelatino has acquired and airs RAI programming on its station]. Why should RAI now take the plunge and ride on the coattails of Telelatino? It's the same for us. If we bring in an Israeli channel here, and we build them up to be the prominent Israeli-Canadian service here, and then they want to come in here on their own. How does that work? Does that mean I lose my (program) rights? Does that mean that Rogers replaces them for me?"

Levin says that he is not opposed to competition, but believes that the playing field has to be even. He adds that he has no problem competing with other Category 2 Russian diginets, such as MediaNet Canada Ltd.'s Russian Television, which has not yet launched. "We don't want to monopolize the market," Levin says, "But I do have a problem when the competition is not on fair grounds."

Levin is adamant that the CRTC cannot change the rules at this late date and that his plans to eventually launch 30 ethnic stations will help meet consumer demand. "You can't change them (the rules) in the middle of the game. Because when you are playing poker, there's only one rule, and that's that you can't change the rules in the middle," he notes. "We spent hundreds of thousands of dollars for legal (counsel) to get these Category 2 licences. Why did we have to spend this money if they are going to be changing the rules and regulations?"

Ethnic Channels has also invested more than $1 million in a state-of-the-art broadcast facility in the North York section of Toronto. Along with expanding its channel offering, the company is also expecting to sign on more distributors. Ethnic Channels is currently in advanced carriage talks with satellite TV distributor Bell ExpressVu and cableco Vidéotron ltée as well as TELUS Corp., which hasn't yet launched its TV service.

"You can't change the rules in the middle of the game. Because when you are playing poker, there's only one rule, and that's that you can't change the rules in the middle. We spent hundreds of thousands of dollars for legal counsel to get these Category 2 licences. Why did we have to spend this money if they are going to be changing the rules and regulations?"

Slava Levin, Ethinc Channels Group

Levin's views are echoed by others in the ongoing CRTC process, including by Telelatino and the Canadian Association of Broadcasters (CAB). The CAB notes in its October 13 submission that the approval of additional non-Canadian third-language services to the lists of eligible satellite services would have an impact on Canadian third-language services in terms of competition for programming rights, fragmentation of a narrow subscriber base, fragmentation of a narrow advertising base and undermining the launch of new Canadian third-language services. The CAB suggests that the CRTC, rather than adapting a new policy, refine the old one. For example, the CAB recommends criteria for the competitive test, spelling out that when a Canadian third-language service devotes 25% or more of its programming schedule to a generalist approach in any one language, any general interest non-Canadian service in that same language should be considered directly competitive with the Canadian service in question. In its October 8 filing, Telelatino writes that it "would be extremely concerned if, as a result of this proceeding, the CRTC were to alter its policies so as to allow RAI, or any other foreign ethnic service that is substantially competitive with a Canadian service, entry to the (eligibility) lists." It points out that there are 50 unlaunched ethnic Category 2 services and that adding more non-Canadian third-language channels would "undoubtedly make the birth of these Canadian services much more difficult and their achievement of distribution far more problematic."

Not surprisingly, the cable industry supports more flexible regulations. Cogeco Cable Inc. states in its submission that the current competitiveness test is neither fair nor practicable. "First, the use of the 'partially competitive' concept is not practicable because programming services are inevitably at least partly competitive with each other for talent, program content, audience, promotion, advertising and subscription revenue," reads the submission. Cogeco recommends that the proper test for denying eligibility should be irreparable harm reasonably likely to cause an existing fully-operating incumbent Canadian programming service to cease its operation and exit the Canadian broadcasting system. The onus, suggests Cogeco, should be on the incumbent Canadian programming service to provide conclusive evidence of such harm.

Shaw Communications Inc. notes that the Canadian broadcasting system will find itself at an increasingly serious competitive disadvantage to black and grey market providers if Canadian distributors are prevented from expanding their viewing choices. It wants the CRTC to discard the "partially competitive test" and adopt objective competitive measures to evaluate "total" competition.

CCR