



Broadcasting Public Notice CRTC 2004-50

Ottawa, 15 July 2004

Requests to add non-Canadian third-language services to the lists of eligible satellite services for distribution on a digital basis

*In this public notice, the Commission **approves** the addition of eight non-Canadian third-language services, consisting of five mainly Spanish-language services, one German-language service, one Romanian-language service, and one Arabic-language service, to its lists of eligible satellite services for distribution on a digital basis (the digital lists). The Commission also **denies** requests to add six other non-Canadian, third-language services.*

The Commission further addresses the addition of non-Canadian third-language services to the digital lists in three other public notices issued today. In Requests to add Al Jazeera to the lists of eligible satellite services for distribution on a digital basis, Broadcasting Public Notice CRTC 2004-51, 15 July 2004 (Public Notice 2004-51), the Commission approves the addition of the Arabic-language service Al Jazeera to the digital lists, subject to conditions set out in that public notice.

In Revised lists of eligible satellite services, Broadcasting Public Notice CRTC 2004-52, 15 July 2004, the Commission sets out revised lists of satellite services reflecting the determinations in this public notice and in Public Notice 2004-51. These lists replace those contained in Revised lists of eligible satellite services, Broadcasting Public Notice CRTC 2003-43, 5 August 2003, and reflect the addition of nine non-Canadian third-language services to the lists of Part 2 and Part 3 eligible satellite services for digital distribution and to Section C of the list of DTH eligible satellite services.

Finally, in Review of the approach to assessing requests to add non-Canadian third-language services to the lists of eligible satellite services for distribution on a digital basis – Call for comments, Broadcasting Public Notice CRTC 2004-53, 15 July 2004, the Commission initiates a review of its policy with respect to assessing requests to add such services to the digital lists in order to determine whether there are ways to improve access to non-Canadian third-language programming while continuing to foster Canadian ethnic and third-language services.

The sponsors' requests

1. The Commission received requests from three Canadian sponsors to add a total of 15 non-Canadian third-language programming services to the lists of eligible satellite services for distribution on a digital basis (the digital lists).

2. Vidéotron Itée (Vidéotron) filed a request dated 12 February 2003 to add nine primarily Spanish-language services and three Arabic-language services to the digital lists, as described below.
3. The nine primarily Spanish-language services are:

Azteca 13 Internacional: A privately owned programming service originating in Mexico, with general interest programming in Spanish, featuring sports, entertainment, children's programming, music, documentaries and soap operas.

Canal SUR: A privately owned programming service providing Spanish-language programming that originates directly from independent broadcasters in a variety of Latin American countries. Programming consists of news, sports reports, talk shows, variety shows, children's programming and live coverage of events in Latin America, such as elections and major news events.

CineLatino: A programming service in Spanish offering commercial-free programming consisting of Spanish or Latin American films from Mexico, Argentina, Spain, Columbia, Chile, Venezuela and Peru.

Eurochannel: A privately owned programming service originating from France, with programming consisting mainly of films. The films shown are primarily from Spain, France, the United Kingdom (U.K.) and Italy, as well as films that have participated in major European film festivals. The programming is shown in the language of origination and subtitled in either Spanish or Portuguese. Eurochannel also presents programs on fashion, travelogues, European design shows and music programs from Europe.

GOL TV: A privately owned programming service that broadcasts primarily programming related to soccer, including live broadcasts or rebroadcasts of over 800 games per year, talk shows, soccer news and interviews. The programming originates from Mexico, Spain, the United States and other countries where major league soccer games are played. The service offers 60% of its programming in both Spanish and English, with Spanish on the primary audio track and English on the secondary audio track.

Grandes Documentales de TVE: A programming service from Spain's public broadcaster that offers original programming from Spain consisting of documentaries related to nature, history, literature, travel, technology and science, biography, arts and society.

TV Chile: A programming service that originates from Chile consisting of general interest programming in Spanish, including family-oriented programming, news, dramas, sports and documentaries.

TVE Internacional: A programming service from Spain's public broadcaster providing general interest programming in Spanish. Programming includes films, dramas, news, documentaries, sports, music and children's programming.

Utilisima: A service originating from Argentina, with programming in Spanish targeted primarily to women, on such topics as fashion, cooking, decorating, beauty and health.

4. The three Arabic-language services are:

Al Jazeera: A privately owned programming service in Arabic produced in Qatar and broadcast to North America from Rome. This service specializes in news and public affairs programming, including newscasts, talk shows, documentaries, scientific, sports and educational programs.

ART Movies: A privately owned programming service that is part of the Arab Radio and Television Network, with headquarters in Saudi Arabia. ART Movies offers Arabic-language programming from Egypt, Lebanon and different regions of the Middle East. While it specializes in broadcasting movies, ART Movies also presents live events concerning the making of cinema, and celebrity interview shows focusing on Middle Eastern film stars.

LBC America: A programming service based in Lebanon featuring Arabic-language general interest programming such as movies, sports, mini-series, talk shows and news.

5. The Canadian Cable Television Association (CCTA) filed a request dated 2 April 2003 to add the following services to the digital lists:

Romanian Television International (RTVI): A programming service from Romania's public broadcaster offering general interest programming. The majority of programming is in Romanian, with about 3% subtitled in English. RTVI also presents some French-language films and documentaries.

German TV: A 24-hour general interest German-language service consisting of programming that includes news and public affairs, dramas, movies, soap operas, and children's programming. German TV is a service of the international broadcasting network Deutsche Welle, and is jointly formed by the two major German public network broadcasters, German Public Television & Radio Association (ARD) and Zweites Deutsches Fernsehen (ZDF).

6. The CCTA also requested the addition of the same three Arabic-language services sponsored by Vidéotron.

7. Finally, the Commission received a request dated 7 April 2003 from Rogers Cable Inc. (Rogers) to add an Italian-language service to the digital lists:

Radiotelevisione Italiana (RAI International): The 24-hour international Italian-language programming service of Italy's public broadcaster, RAI Radiotelevisione Italiana. Rogers described RAI International as "a generalist broadcasting service that provides a broad range of programs, including dramas, feature films, sports, news and news commentary, cooking, human interest programs, entertainment programs, Italian music and dance as well as religious programs."

8. Rogers stated that the signal distributed in Canada would be RAI International 2. As a result, Canadians would receive the same RAI International programming as viewers in the United States, Central America and most of Latin America.
9. In support of their respective requests, the three sponsors submitted, among other things, that the addition of the services in question would add diversity to the Canadian broadcasting system, respond to consumer demand, provide multicultural communities with increased viewing choices, increase digital set-top box penetration and assist in combating signal theft.
10. In this public notice, the Commission sets out its analysis and determinations related to all of the requested services set out above, with the exception of the request to add Al Jazeera. The Commission notes that, unlike the other services requested by the sponsors, the Al Jazeera service raised concerns by parties related to the alleged broadcast of abusive comment. Given that the request to add Al Jazeera may be differentiated in this manner, the Commission finds it appropriate to address that service in a separate public notice entitled *Requests to add Al Jazeera to the lists of eligible satellite services for distribution on a digital basis*, Broadcasting Public Notice CRTC 2004-51, also issued today (Public Notice 2004-51).

The proceeding

11. In *Call for comments on proposals for the addition of non-Canadian satellite services to the list of services eligible for digital distribution*, Broadcasting Public Notice CRTC 2003-36, 11 July 2003 (Public Notice 2003-36), the Commission called for comments, to be filed by 11 August 2003, on the requests described above.¹ In Public Notice 2003-36, the Commission noted that it was satisfied that the sponsors had provided the supporting information required in order for it to consider the requests, as set out in *Call for proposals to amend the lists of eligible satellite services through the inclusion of additional non-Canadian services eligible for distribution on a digital basis only*, Public Notice CRTC 2000-173, 14 December 2000 (Public Notice 2000-173), as follows:

¹ In *Extension of the deadline for submission of replies*, Broadcasting Public Notice CRTC 2003-36-1, 16 July 2003, the Commission indicated that the sponsors could file replies to any comments submitted by 15 September 2003.

- evidence that the non-Canadian service has agreed to be sponsored by the Canadian party filing the proposal;
 - a statement from the service provider that it has obtained all necessary rights for distribution of its programming in Canada;
 - a brief description of the service;
 - a copy of the current program schedule;
 - evidence of potential demand, as gathered through discussions with distributors; and
 - an undertaking from the non-Canadian service provider that it does not hold, will not obtain, nor will it exercise, preferential or exclusive programming rights in relation to the distribution of programming in Canada.
12. In Public Notice 2000-173, the Commission also stated that it intended to assess requests for the addition of non-Canadian services to the digital lists in the context of its policy regarding additions to any of its lists of eligible satellite services, which precludes the addition of new non-Canadian satellite services that can be considered either totally or partially competitive with Canadian specialty or pay television services. The Commission added that, in applying this policy, it would take into account all specialty and pay television services whose licence applications have been approved to date, including all Category 1 and Category 2 specialty and pay television services, whether or not those services have been launched.

The Commission's approach to assessing the sponsors' requests

13. As stated above, the Commission's long-standing approach precludes the addition of non-Canadian services to the digital lists that would be either totally or partially competitive with authorized Canadian specialty or pay television services. In the Commission's view, this approach has appropriately balanced the following objectives set out in section 3(1) of the *Broadcasting Act* (the Act):
- the Canadian broadcasting system should serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada (section 3(1)(d)(i));
 - the Canadian broadcasting system should encourage the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity, by displaying Canadian talent in entertainment programming and by offering information and analysis concerning Canada and other countries from a Canadian point of view (section 3(1)(d)(ii));
 - the Canadian broadcasting system should through its programming and the employment opportunities arising out of its operations, serve the needs and interests, and reflect the circumstances and aspirations, of Canadian men, women and children, including equal rights, the linguistic duality and multicultural and multiracial nature of Canadian society and the special place of aboriginal peoples within that society (section 3(1)(d)(iii));

- the programming provided by the Canadian broadcasting system should be varied and comprehensive... (section 3(1)(i)(i));
- the programming provided by the Canadian broadcasting system should be drawn from local, regional, national and international sources (section 3(1)(i)(ii));
- the programming provided by the Canadian broadcasting system should provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern (section 3(1)(i)(iv)); and
- distribution undertakings should give priority to the carriage of Canadian programming services... (section 3(1)(t)(i)).

14. Since the inception of its lists of eligible satellite services, the Commission has used a case-by-case approach in assessing whether or not a non-Canadian service proposed for addition to the lists would be competitive with an authorized Canadian service. Factors included in the Commission's assessment of competitiveness include the nature of the service and genre of programming provided by the relevant Canadian and non-Canadian services and the target audience, taking into account the language of the service. The Commission also considers relevant the extent to which a proposed non-Canadian service may be a program supplier for an authorized Canadian service. The Commission compares these factors as they relate to the relevant Canadian services and the sponsored non-Canadian service in order to determine the amount of overlap between the services, and thus the extent to which they might compete with each other.
15. For an authorized Canadian service, the Commission bases its analysis of the factors primarily on information contained in the service's condition of licence that sets out its nature of service. This condition of licence provides a description of the service's programming, and generally identifies the language of the service and/or the target audience, and specifies any limits on the program categories that may be broadcast. The Commission also examines the relevant Canadian service's program grid, which identifies the programs that are broadcast at particular times, if such a grid is available. The Commission's analysis of a non-Canadian service is based primarily on information provided by the sponsor, as set out in Public Notice 2000-173, which includes the program schedule and a description of the service.
16. The Commission also takes into account competitiveness concerns raised by parties submitting comments.
17. In assessing the requests addressed in this public notice, the Commission has relied on the factors set out above to determine the extent to which each proposed non-Canadian service would overlap with authorized Canadian services. The more significant the overlap in terms of the nature of service, including the genre of programming, target audience, language and program source, the more likely it is that the non-Canadian service will be found to be competitive with a Canadian service.

18. The Commission notes that the majority of Canadian third-language pay and specialty services are general interest services, presenting a broad variety of programming in a particular language. Some Canadian general interest services have made commitments to serve more than one language community, which broadens the potential audience served by their programming. There is, therefore, a strong likelihood that general interest services, because they tend to offer a similar mix of programming, will overlap and thus be found to be competitive with each other. In the past, the Commission has denied requests to add non-Canadian third-language general interest services that would be competitive with a Canadian general interest service aimed at the same third-language community.
19. Not all Canadian third-language services are general interest services. Some services are more narrowly focused with respect to the nature and genre of programming, and are targeted to a more specific audience. They may be referred to as “niche services.” A non-Canadian niche service that is directed to a particular audience within a language community is not generally competitive with a Canadian general interest service in the same language. This is because the type of programming broadcast by a non-Canadian niche service would, in the majority of cases, overlap only slightly with the type of programming provided by the Canadian general interest service. However, under the Commission’s approach, a non-Canadian niche service would generally be considered to be competitive with an authorized Canadian service occupying the same programming niche, that is, a service operating in the same language and aimed at the same particular audience within the broader third-language community or communities.

Overview of comments

20. In response to Public Notice 2003-36, the Commission received over 3,100 comments. The comments fell into three broad categories: (a) comments dealing primarily with the addition of non-Canadian services to the digital lists in general and/or the Commission’s approach to such additions, (b) comments focusing on a particular group of services, by language or by ethno-cultural group, and (c) comments related to specific services. Below, the Commission summarizes the general comments that it received and then discusses the specific services that the sponsors proposed be added to the digital lists, including comments received in relation to those services.

General comments

21. A significant number of comments came from multicultural and third-language community organizations or from individuals calling for the Commission to authorize a greater diversity of programming services for the Spanish, German, Arabic and Italian language communities by authorizing the distribution of additional non-Canadian services in these languages.
22. The Commission also received comments from parties who opposed the addition of some or all of these non-Canadian services to the digital lists, including comments from individuals, community associations and licensees of Canadian ethnic specialty services.

23. In its submission, the Canadian Association of Broadcasters (CAB) stated that it is important to recognize that, first and foremost, licensed Canadian programming services have the greatest ability to make meaningful and relevant contributions to cultural diversity within the Canadian broadcasting system. In the CAB's view, the Commission should proceed carefully when considering the authorization of additional non-Canadian services for distribution in Canada, in view of the minimal contributions that such services would make to the system and the potential disruption they could cause.
24. Both Odyssey Television Network Inc. (OTN) and Asian Television Network International Limited (ATN) opposed the addition of any of the sponsored non-Canadian services to the digital lists. These parties argued, among other things, that authorized Canadian services benefit from business and programming relationships with non-Canadian services, and that there is little incentive for non-Canadian services to partner with Canadian services or to otherwise continue to supply programming to Canadian services, if they can instead seek authorization for distribution on their own.
25. In its reply, the CCTA argued that non-Canadian third-language services contribute to the multicultural objectives of the Act, provide Canadian viewers with the opportunity to see global and cultural issues through a different lens, and complement Canadian licensed services. The CCTA further submitted that the Canadian broadcasting system is founded on ensuring the promotion of Canadian programming and culture, while at the same time providing viewers with the diversity and choice that they demand.
26. In its reply, Vidéotron stated that, while a non-Canadian service may not by itself add a great deal to the Canadian economy, the Commission must consider other factors. It suggested, for example, that adding non-Canadian third-language services to the digital lists could provide a lift for Canadian ethnic services that are trying to convince customers to pay up to \$20 per month for their service while an entire tier of services might be available at a comparable price from an American distributor not authorized to operate in Canada, via the "grey market." Vidéotron also noted that Canadian services already enjoy priority over non-Canadian services.

Spanish-language services

Positions of parties

General views on the addition of Spanish-language services

27. Vidéotron requested that the Commission add nine services targeted to Spanish speaking communities to the digital lists.
28. A significant majority of those who filed comments supported Vidéotron's request. Most of these parties were individuals who argued, among other things, that the addition of these services would:
 - improve access to Spanish-language information and programming;

- provide an opportunity to share with Canadians the culture of the various countries from which these services originate, in an effort to create a better understanding of these parts of the world; and
 - provide those who immigrated to Canada the opportunity to obtain news and information from their former homeland, and to offer their children the opportunity to learn more about the language and culture of their parents' birthplace.
29. Telelatino Network Inc. (TLN) and the Canadian Hispanic Congress (CHC) each filed an intervention opposing the addition of any of the Spanish-language services. In TLN's view, these services would be competitive with its specialty service Telelatino,² which offers programming in Spanish, Italian and English, and with TLN's unlaunched Spanish-language Category 2 digital services HTV Canada, Telemundo Canada and TV Chile Canada. TLN also submitted that there would be no tangible benefits, but rather a net loss of benefits to the Canadian broadcasting system, if the requests to add the sponsored services to the digital lists were approved.
30. The CHC, which described itself as a national organization representing the 700,000 to 1,000,000 Spanish speaking people who now live in Canada, expressed concern that the addition of non-Canadian Spanish-language services would undermine any existing Canadian service that has been approved, but is as yet unlaunched. Further, the CHC stated that, if the Commission were to add these non-Canadian services when Canada's own third-language communities are not ready to be licensed and produce content themselves, it would effectively silence the voice of the Canadian Hispanic community. In its view, the Commission should wait for the Canadian Hispanic community "to strengthen enough to compete in the broadcast arena."
31. M.C. Romero stated that there is a need for international Spanish-language programming, but only if it is offered in conjunction with Hispanic-Canadian produced programming. In Romero's opinion, "to enrich ourselves and our children in a bilingual context, we should ensure that our stories and news are presented on an equal footing with programming from our countries of origin."

² TLN was licensed in 1984 with a mandate to serve two language communities, the Italian community and the Spanish community. TLN's service, known as Telelatino, is a general interest service offering a broad variety of programming including news, sports, children's programming, religious, music and variety programs. According to the conditions of licence set out in *Licence renewal for the specialty television service Telelatino*, Broadcasting Decision CRTC 2002-388, 28 November 2002, TLN is required to provide a minimum of 90 hours per week of ethnic programming, of which a maximum of 55% will be directed to Italian audiences and a minimum of 45% will be directed to Hispanic/Spanish audiences. By condition of licence Telelatino must, in the current broadcast year, devote at least 26% of its total hours of programming to Canadian programs. This minimum percentage will increase by 1% per year until it reaches 30% for the broadcast year that begins 1 September 2007.

32. In response to TLN, Vidéotron, among other things, acknowledged that a non-Canadian service cannot inform and entertain Canadian Hispanic audiences about events in Canada or Canadian culture. However, it submitted that opportunities to package TLN's services with non-Canadian services could increase TLN's revenues, thus supporting TLN's Canadian programming, resulting in an increased contribution to the Canadian system.
33. In response to the suggestion of the CHC that the Commission should delay the addition of non-Canadian Spanish language services, Vidéotron noted the availability of illegal U.S. satellite services, and submitted that it would be inappropriate to delay the addition of services until third-language communities had "completely bypassed the system." Vidéotron also submitted that Hispanic voices would not be silenced by the offering of a Spanish-language tier of services and, further, that "a strong Canadian Spanish-language community would not settle for non-Canadian signals only."

Comments related to GOL TV

34. Global Television Network Inc. (Global TV) opposed the addition of GOL TV, arguing that GOL TV would be directly competitive with its already-launched Category 2 digital service, Fox Sports World Canada, which devotes 87% of its schedule to soccer and soccer-related programming. Global TV also contended that GOL TV would actively bid for the same programming as Fox Sports World Canada. Finally, Global TV stated that GOL TV is not an ethnic service, but is instead an international soccer channel. In Global TV's view, the addition of GOL TV would have a disproportionately negative effect on Fox Sports World Canada's ability to generate subscriber fees and advertising revenues.
35. The Sports Network Inc. (TSN) contended that GOL TV does not have English-language rights to distribute a number of its programs in Canada, and that GOL TV is competitive with its service. Absent the provision of assurances by GOL TV that it would not attempt to acquire English rights to programming that TSN wishes to continue to acquire in the future, TSN stated that the competitive nature of GOL TV is clear.
36. In response, Vidéotron stated that GOL TV had provided documentation indicating that it holds the rights for distribution of its programming in the Spanish language in Canada. Vidéotron agreed that GOL TV would be competitive if it were to attempt to acquire the rights to distribute its programming in English in Canada. Vidéotron described GOL TV as a "national U.S. soccer service" that, in some circumstances, will buy North American rights. However, Vidéotron stated that, if GOL TV incidentally obtained rights for distribution of English-language programming in Canada but was approved for distribution in Canada only as a Spanish-language service, GOL TV would sell the rights to the English-language programming if it needed to exploit them.

37. Vidéotron further stated that, although GOL TV provides an English secondary audio program (SAP) with some of its Spanish language programming, as well as some programming with the primary audio track in English, Vidéotron would undertake to distribute only the Spanish language soundtrack. Vidéotron added that, if the Commission were to authorize GOL TV for distribution in Canada only in Spanish, GOL TV would not be able to distribute any programming in English in Canada. Vidéotron stated that GOL TV distributed in Spanish would not compete with TSN.

Comments related to Eurochannel

38. Rogers Broadcasting Limited (RBL) opposed the addition of Eurochannel to the digital lists. In light of Eurochannel's emphasis on non-Canadian third-language films, RBL was of the view that it would be directly, or at least partially, competitive with RBL's unlaunched Category 2 service, The International Film Festival Channel (IFFC). In its application for a licence, RBL stated that IFFC would offer a service consisting of 85% ethnic programming that showcases a wide variety of non-U.S. movies. IFFC would serve no fewer than 20 different ethnocultural groups each month. No less than 90% of the programming would be in languages other than English or French, and 75% of third-language movies would be subtitled in English or French.³ RBL also expressed concern that Eurochannel would take steps to secure exclusive rights for film titles, making them no longer available to the IFFC.
39. In response, Vidéotron noted that the IFFC is a Category 2 service that has had close to three years to launch but has not yet done so. Vidéotron stated that RBL did not provide an expected launch date in its submission and contended that the Commission did not issue promises of licences for the purpose of depriving the Canadian public of access to international programming. Further, Vidéotron noted that Eurochannel generally offers movies subtitled in Spanish or Portuguese of the following origins: 50% from France, 20% from Britain, 15% from Italy, 12% from Spanish-speaking countries and 3% from other countries. Vidéotron concluded that the programming on Eurochannel would not be competitive with that presented by IFFC. Finally, Vidéotron affirmed Eurochannel's commitment that it would not hold any exclusive programming rights for Canada and does not intend to secure any in the future.

The Commission's analysis and determinations with respect to Spanish-language services

40. Upon examination of program schedules and service descriptions and after considering the record of this proceeding, the Commission considers that the following Spanish-language non-Canadian services are general interest services, presenting a wide variety of types of programming appealing to a broad Spanish-speaking audience:
- Azteca 13 Internacional
 - TV Chile
 - TVE Internacional

³ See *International Film Festival Channel (IFFC)*, Decision CRTC 2000-513, 14 December 2000.

41. The Commission also notes that the following Canadian services are general interest services, directed at a Spanish-speaking audience: Telelatino and the two unlaunched Category 2 digital services, Telemundo Canada and TV Chile Canada. The Commission concludes that the three non-Canadian general interest services noted in the preceding paragraph would overlap materially with these Canadian services and would thus be competitive with them. Accordingly, the Commission **denies** Vidéotron's request that Azteca 13 Internacional, TV Chile and TVE Internacional be added to the digital lists.
42. Upon examination of program schedules and service descriptions, the Commission considers that the following non-Canadian services would each fill a niche not currently filled by an authorized Canadian service:
- Canal SUR – Spanish-language predominantly news and non-fiction service⁴
 - CineLatino – Spanish-language movie service
 - Grandes Documentales de TVE – Spanish-language documentary service
 - Utilisima – Spanish-language programming service directed to women
 - Eurochannel – Spanish and Portuguese subtitled European movie service
43. With regard to RBL's submission that Eurochannel would compete with IFFC, the Commission is of the view that, due to the different countries from which their programming originates, the different languages used in subtitling, and the different target audiences, Eurochannel and the IFFC would not overlap to any material degree.
44. In light of the above, the Commission concludes that Canal SUR, CineLatino, Grandes Documentales de TVE, Utilisima and Eurochannel are not competitive with launched or unlaunched Canadian services. Accordingly, the Commission **approves** Vidéotron's request to add these services to the digital lists. These lists are set out in *Revised lists of eligible satellite services*, Broadcasting Public Notice CRTC 2004-52, also issued today (Public Notice 2004-52).
45. In the case of GOL TV, the Commission notes that the 126 hour weekly schedule provided by the sponsor indicates that, while approximately 35% of GOL TV's weekly programming is offered either in Spanish or in Spanish with an English SAP, approximately 65% of its weekly programming schedule consists of programming in English. The Commission notes that Fox Sports World Canada is a launched Category 2 service that devotes 87% of its schedule to soccer and soccer-related programming. Since GOL TV occupies the same programming niche and provides programming in English targeted to the North American soccer fan, the Commission concludes that there is a material overlap between its programming and that of Fox Sports World Canada and that GOL TV would therefore be competitive with Fox Sports World Canada.

⁴ The programming schedule provided by the sponsor indicated that approximately three-quarters of Canal SUR's programming is news and non-fiction programming.

46. Vidéotron, GOL TV's Canadian sponsor, offered to remove the English-language SAP and to broadcast only GOL TV's Spanish-language programming without an English-language soundtrack. Vidéotron also suggested that the Commission authorize the distribution of the service only in Spanish. The Commission notes that it is generally not its practice to add a non-Canadian programming service to the digital lists with the requirement that the competitive elements of the service be removed.
47. In light of the above, the Commission **denies** the request to add GOL TV to the digital lists.

Arabic-language services

Positions of parties

48. Vidéotron and the CCTA each requested that the Commission add three Arabic-language services to the digital lists. As noted above, the Commission's determination with respect to the Arabic-language news and public affairs service, Al Jazeera, is set out in Public Notice 2004-51, also issued today. In the current public notice, the Commission addresses the addition of the Arabic-language services LBC America and ART Movies.
49. The majority of those who commented on the sponsored Arabic-language services supported the addition of these two services to the digital lists. ATN, however, filed a comment in which it opposed the addition of any of the Arabic-language services. ATN took the position that any non-Canadian Arabic-language service would be totally competitive with its Arabic-language service, Arab TV Network, which is an unlaunched Category 2 service. ATN stated that, as a Canadian licensee, it seeks affiliation with any non-Canadian service that is a program supplier. In ATN's view, to authorize a non-Canadian service that is a potential supplier of non-Canadian programming would remove the incentive to launch the Canadian service and stifle the potential of that service.
50. With their respective replies, Vidéotron and the CCTA provided a submission from Reach Media Inc., the North American representative of the sponsored Arabic services. In general, Reach Media Inc. submitted that none of these sponsored services would offer direct competition to any Canadian specialty service. In support of this submission, Reach Media Inc. argued that the licensed and unlaunched Canadian services provide programming from an abundance of program categories and are all general interest services. Reach Media Inc. further noted that none of the authorized Arabic-language Category 2 services is a news and public affairs service or a movie channel, and none offers specifically Lebanese programming. Reach Media Inc. added that the addition of these services would permit distributors to offer a diversified Arabic-language tier.

The Commission's analysis and determinations with respect to Arabic-language services

51. Based on the record of the proceeding, the Commission concludes that LBC America is a general interest service and that its programming is sufficiently broad that it would attract Arabic-speaking viewers both inside and outside of the Lebanese community. The Commission is of the view LBC America's programming would likely overlap with the programming of the five unlaunched general interest Arabic-language Category 2 services, specifically, Ana Canada, Arab TV Network, Arabic TV, Canadian Arabic Television Network and Arabic Television Network and that it would therefore be competitive with those Canadian services.
52. The Commission considers that ART Movies is a niche movie service in Arabic. In the Commission's view, the potential is minimal that programming on ART Movies would overlap materially with programming on any of the five general interest, Arabic-language unlaunched Category 2 services that have been authorized. Accordingly, the Commission concludes that ART Movies would not compete with any authorized Canadian service.
53. In light of the above, the Commission **approves** the request to add ART Movies to the digital lists set out in Public Notice 2004-52. The request to add LBC America to the digital lists is **denied**.

Romanian Television International (RTVI)

Positions of parties

54. The CCTA requested that RTVI be added to the digital lists. The vast majority of those who commented with respect to this service supported the CCTA's request. However, in an attachment to its general comment, OTN listed RTVI as potentially competitive with Balkan Express, an unlaunched Category 2 service.
55. In response, the CCTA stated that OTN did not provide any details as to why RTVI would be partially or totally competitive with Balkan Express, and submitted that simply listing the name of a Canadian service does not constitute an argument as to why a non-Canadian service should not be added to the list.

The Commission's analysis and determinations with respect to RTVI

56. The Commission notes that Balkan Express is a general interest service authorized to offer programming in a range of Balkan languages, including Serbo-Croatian, Bosnian, Bulgarian, Romanian, Macedonian, Slovenian, Albanian and Turkish. Balkan Express did not submit a comment in this proceeding and thus did not provide the Commission with any indication as to how much programming it plans to offer in Romanian. Based on the multilingual nature of the service, it is difficult to assess whether any one of the Balkan languages would dominate the service of Balkan Express.

57. Although RTVI is also a general interest service, the majority of its programming is in Romanian. Therefore, in the Commission's view, RTVI targets a significantly narrower audience, and there is no evidence to suggest that there would be a significant potential for overlap in programming between it and Balkan Express. Further, there is no equivalent Canadian general interest service authorized to provide service primarily in Romanian. Accordingly, based on the record of the proceeding, the Commission concludes that RTVI would not be competitive with any authorized Canadian service.
58. In light of the above, the Commission **approves** the CCTA's request to add RTVI to the digital lists.

German TV

Positions of parties

59. The CCTA requested that German TV be added to the digital lists. The vast majority of those who commented with respect to this service supported the CCTA's request, and no comments were submitted in opposition. The majority of supporting comments were from individuals and German community groups, including the Canadian German Chamber of Industry and Commerce, the German Canadian Congress and the Concordia Club. In general, these parties argued that German TV would help to preserve the cultural heritage of the German speaking ethnic group and that the service would be useful as a training tool for those learning the German language. In addition, the Canadian Cable Systems Alliance (CCSA) filed an intervention in support of German TV, as did various distributors, including Mountain Cablevision Ltd., Source Cable and Wireless Ltd., Monarch Cablesystems Ltd., the Bell ExpressVu Limited Partnership and Rogers.
60. In its reply, the CCTA stated that there was no specific opposition to German TV, that a wide cross section of Canadians clearly supports the introduction of German TV and that German TV would complement existing Canadian services.

The Commission's analysis and determination with respect to German TV

61. The Commission notes that there is no authorized equivalent Canadian German-language pay or specialty service with which German TV would be competitive. Accordingly, the Commission **approves** the CCTA's request to add German TV to the digital lists.

RAI International

Positions of parties

62. Rogers requested that the Commission add RAI International to the digital lists, specifically, the RAI International 2 signal provided in the U.S., Central America and most of Latin America.

63. As noted earlier, Rogers described RAI International as “a generalist broadcasting service that provides a broad range of programs, including dramas, feature films, sports, news and news commentary, cooking, human interest programs, entertainment programs, Italian music and dance as well as religious programs.”
64. Rogers submitted, among other things, that RAI International would add significant diversity to Canada’s broadcasting system, ensure the presence of high-quality programming drawn from international sources within the Canadian broadcasting system, and increase the availability of ethnocultural programming in Canada. Furthermore, Rogers contended that the approval of its proposal would enrich the lives of Italian Canadians and would help curb signal theft.
65. Rogers stated that RAI International wants to be added to the digital lists for reasons that include the following:
- RAI International is dissatisfied with the editing of and interruptions to its programming when it is aired on the Canadian ethnic specialty service, Telelatino;
 - recent changes in Italian electoral legislation permit individuals around the world with an Italian passport to vote in Italy’s general elections, heightening the need to bring RAI International to Canada; and
 - as a public broadcaster, RAI International has a duty to all Italian citizens to provide and promote Italian culture among the 200 million Italians that live in all corners of the world; in its view, there are no Canadian specialty or pay television services that provide Italian-language programming with a public broadcasting mandate.
66. In its original request, Rogers indicated that RAI International would “continue to make its programming available to other Canadian programming services, and in particular Telelatino.” Rogers referred to a letter attached to its original request in which the Director of RAI International stated the following:
- ...we would like to confirm that in the event that the CRTC approves Rogers’ proposal, RAI will not hold, obtain, nor will it exercise any preferential or exclusive programming rights in relation to the distribution of programming in Canada. RAI will continue to make available its programs to other Canadian programming services, and in particular Telelatino after August 31, 2003.

67. The Commission received approximately 355 comments in support of the addition of RAI International to the digital lists. These comments were primarily from individuals, Members of Parliament and community groups. In addition, the Committee for Italians Abroad (Comités) submitted a petition signed by approximately 100,000 individuals expressing strong support for the addition of RAI International, “in order to give Italian Canadians the same cultural, social, and political opportunities that Italians have in all the other countries around the world, and other ethnic communities have within Canada.”
68. The National Congress of Italian Canadians (NCIC) supported the addition of RAI International, stating among other things that it favours “a more comprehensive and greater diffusion of Italian programming in Canada.”
69. The Association of Italian Canadian Writers also expressed support for the addition of RAI International, stating that the availability of the service in Canada would permit its members “to keep abreast of international events with RAI providing the European/Italian perspective not found on any other venue.”
70. Some of the key points raised in other supporting interventions include the following:
- there is a need for more Italian language programming in the Canadian system;
 - RAI International would provide a much needed window on the Italian way of life, culture, language and business opportunities;
 - RAI International is an uninterrupted 24-hour-a-day Italian-language programming service; and
 - adding RAI International to the digital lists would help curb the demand for obtaining the service through the grey market.
71. The Commission received approximately 235 comments opposing the addition of RAI International to the digital lists. The vast majority of these comments were submitted by individuals and community groups. Generally, these parties raised concerns with respect to:
- the possibility of losing Telelatino, if it had to compete with RAI International;
 - the potential for losing RAI programming on Telelatino, and having to pay additional amounts to view these programs on RAI International; and
 - the need for the Commission to give Canadian services priority over competitive non-Canadian services.

72. Parties also expressed appreciation for Telelatino's commitment to local community coverage and its Italian-Canadian perspective, which is not found on RAI International.
73. In its intervention opposing the addition of RAI International, TLN expressed concern with what it referred to as "the unwillingness of RAI International to make all of its programming available" to Telelatino, its licensed ethnic specialty service.
74. TLN submitted that, for nearly 20 years, the Italian-language component of Telelatino has been almost exclusively identified with RAI programming. TLN stated RAI International notified it, by letter dated 20 November 2002, that its program supply agreement with Telelatino would be terminated effective 31 August 2003. TLN submitted that RAI International had expressed a willingness to entertain an annual negotiation of specific programs on a title-by-title basis, but that RAI International was not prepared to give it any real assurance that the previous quantity and variety of programming would continue to be available to TLN. TLN stated that, as a "stop gap measure," it had obtained alternative sources of Italian-language programming for Telelatino. However, it submitted that Telelatino remains primarily dependent on RAI International programming, and requires continued supply of at least core RAI programming. TLN also stated that "notwithstanding the statements made by RAI International in the proposal regarding RAI's willingness to continue to supply programming to TLN, its refusal to entertain a long term agreement ensuring TLN similar quality and continuity to that currently in place and RAI's statements made in other forums, both in Italy and in Canada, throw grave doubt on this assurance." TLN further submitted that denial of Rogers' request to add RAI International to the digital lists might create an incentive for RAI International officials to resolve the current dispute over program supply.
75. TLN also argued that, if RAI International were added to the digital lists, Telelatino would suffer a significant negative impact as a result of having to compete with RAI. TLN stated that its potential audience for Italian television is neither large nor growing, and consists of 470,000 Canadians whose mother tongue is Italian, of which 217,000 report Italian as the language most often spoken at home. TLN provided financial forecasts, and submitted, among other things, that it would suffer significant revenue erosion that would result in an estimated decrease of more than \$3.8 million in its Canadian programming expenditures over its licence term if RAI International were added to the digital lists. Further, TLN stated that the market for Italian language programming is well-served by existing Canadian players, including Canadian conventional ethnic television stations CJNT-TV Montréal; CFMT-TV (OMNI.1) Toronto, Ottawa and London; and CHNM-TV (Channel M) Vancouver.
76. In addition, TLN argued that RAI International would also compete with its approved but as yet unlaunched Category 2 services RAI Canada, Network Italia, TV Italy, SITCOM Canada and Video Italia Canada.

77. Among individuals who filed interventions, Nino Ricci opposed the request to add RAI International to the digital lists, stating: "I feel that RAI International's stated intent to cut or curtail its supply of RAI programming to Telelatino in order to establish its own digital channel would work to undermine the viability of Telelatino while also restricting the availability of RAI programming to Italian Canadian viewers or forcing them to pay a premium for that programming."
78. Another opposing intervener, the Toronto District chapter of the National Congress of Italian Canadians (NCIC-TD), opposed the addition of RAI International, expressing concern about the detrimental cultural impact that the loss of RAI programming would have on Telelatino's operations and its place in the community. The NCIC-TD further stated: "Telelatino makes a tangible contribution to our community on a grassroots level, something RAI International has yet to commit to and will most likely be unable to do given the sheer scope of its broadcast audience around the globe. While the arrival of RAI International will bring more Italian programming to our community, it will ultimately do so at the expense of local content and culture."
79. Salt and Light Television (formerly Inner Peace Television Network), an ethnic Category 2 specialty service offering religious programming targeting Italian, Spanish, Portuguese, Polish, Filipino, English and French-speaking audiences, also opposed the addition of RAI. In its view, "the risk of so many people losing the opportunity to continue watching a substantial number of their favourite RAI programs on TLN is too great and not in the best interest of Canadian national programming."
80. In response to concerns that RAI International would no longer make its programming available to TLN if it were added to the digital lists, Rogers again referred to the letter provided with its original request in which the Director of RAI International stated that RAI would continue to make available its programs to other Canadian programming services, and in particular to Telelatino after August 31, 2003.
81. Rogers also referred to a proposal in which RAI International offered to supply TLN with "most of the core programs identified as such by TLN" and to give TLN the rights to such programs for at least three years. Rogers stated that although this program supply proposal "does not include all of the RAI programs that TLN wishes to broadcast, it does include most of the best of RAI's programs that have been made available to TLN in the past."
82. Rogers also responded that RAI International would not be competitive either in whole or in part with Telelatino or RAI Canada. Rogers stated that RAI International is a 24-hour-a day Italian-language service directed to Italians outside of Italy that has a public broadcasting mandate, while Telelatino dedicates between 45% and 55% of its weekly schedule to Italian-language programming, is increasing its English-language programming and has a commercial mandate.

83. Rogers added that RAI International is not prepared to proceed with an agreement for the operation of a Canadian service branded with the RAI name. Consequently, Rogers stated that a licence for RAI Canada would not be sought from the Commission, nor would the RAI Canada service launch. Rogers also argued that RAI International would not be competitive with Network Italia or TV Italy, two other unlaunched Italian-language Category 2 services, since “these niche services” would be completely different from RAI International and would be commercial broadcasting services that would obtain their programming from a myriad of private sources.
84. Rogers stated that, under its proposal, RAI International would be distributed in Canada on a digital basis only. Rogers therefore considered that RAI would have little, if any, impact on Telelatino, since RAI International would be entering far fewer homes than Telelatino, which is distributed primarily on an analog basis.⁵
85. With respect to TLN’s expected financial losses, Rogers submitted that TLN provided projections only, and not concrete evidence of financial loss. Rogers considered it unlikely that RAI International would have a significant impact on the advertising revenues of Telelatino, given that none of the advertisements on RAI International would be local advertisements, but would consist of advertisements placed by large institutions targeting the North, Central and part of the South American market. Rogers also submitted that TLN had increased the amount of English-language programming on Telelatino over the past year, which in its view, should increase the advertising revenues available to the service.
86. Finally, Rogers challenged statements made by TLN concerning the availability of Italian-language television services in Canada and the size of the Canadian Italian-language market. Rogers argued that the other sources of Italian programming from existing Canadian players including conventional ethnic television stations is minimal, given the size of the Italian-language market. With regard to the size of that market, Rogers stated that marketing materials posted on TLN’s web site state that Telelatino reaches almost three and a half million households across Canada, suggesting that Telelatino’s Italian-language audience is larger than the 470,000 individuals mentioned in TLN’s submission.

The Commission’s analysis and determinations with respect to RAI International

87. The Commission notes that Rogers described RAI International as “a generalist broadcasting service that provides a broad range of programs, including dramas, feature films, sports, news, and news commentary, cooking, human interest programs, entertainment programs, Italian music and dance as well as religious programs.” The Commission further notes that the Italian-language portion of Telelatino’s service offers

⁵ In support of this submission, Rogers cited Mediastats data from June 2003.

similar general interest programming appealing to a broad audience within the Italian community, including dramas, films, sports, news, entertainment and religious programming. The Commission concludes that there is a substantial overlap between Teletatino and RAI International in terms of the genre and type of programming presented, as well as the target audience.

88. In addition, the record indicates that, historically, Teletatino's main supplier of Italian language programming has been RAI International, confirming a substantial overlap in the type of programming presented by the two services. Both Rogers and TLN provided evidence, including a one week schedule from March 2003, indicating that approximately 25% of TLN's overall schedule contained RAI programming and that over 85% of TLN's prime time schedule (i.e., between 8:00 p.m. and 11:00 p.m. Monday to Friday) consisted of RAI programming.
89. At the time of the request, there were also four unlaunched general interest Category 2 digital services, each with 85% of its programming directed to the Italian community. These services are RAI Canada, SITCOM Canada, Network Italia, and TV Italy. In the case of RAI Canada, despite statements from Rogers that it was RAI International's position that RAI Canada will not be launched, the Commission notes that its Canadian owner, Corus Entertainment Inc. (OBCI), requested and has been granted an extension until November 2004 to launch the service.
90. In light of the above, the Commission considers that RAI International would be competitive with Teletatino and with the unlaunched Category 2 services named above. Further, based on the record of the proceeding, the Commission is not persuaded that RAI International would not hold, obtain, nor would it exercise preferential or exclusive rights to at least some of its programming if its service were added to the digital lists. In light of all of the above, the Commission **denies** Rogers' request for the addition of RAI International to the digital lists.

Policy review – The appropriate balance

91. As described earlier in this public notice, the Commission seeks to foster the contribution that can be made by third-language Canadian services. At the same time, the Commission has recognized that there is a place for non-Canadian third-language services, particularly in program genres in which a Canadian service is unlikely to be developed.
92. The Commission notes that this is the first time it has been asked to consider the addition of such a number and range of non-Canadian third-language services. As a result of this proceeding, the Commission is approving the addition of nine such services to the digital lists. The revised digital lists are set out in *Revised lists of eligible satellite services*, Broadcasting Public Notice CRTC 2004-52, 15 July 2004. The Commission acknowledges the strong support from various third-language communities for the addition of non-Canadian third-language services. The Commission also notes the arguments presented by opposing parties that the addition of non-Canadian third-

language services can reduce incentives for the development of Canadian services that will combine non-Canadian programming with Canadian programming that reflects Canadian society. In order to ensure that its approach to authorizing the distribution of non-Canadian third-language services best reflects the objectives of the Act set out earlier in the public notice, the Commission is initiating a proceeding to review certain aspects of that approach, as set out in *Review of the approach to assessing requests to add non-Canadian third-language services to the lists of eligible satellite services for distribution on a digital basis – Call for comments*, Broadcasting Public Notice CRTC 2004-53, also issued today.

Secretary General

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