



## Broadcasting Public Notice CRTC 2004-53

Ottawa, 15 July 2004

### **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**

*The Commission calls for comments on various questions related to its assessment of requests to add non-Canadian third-language services to its lists of eligible satellite services for distribution on a digital basis. The procedure for filing comments is set out at the end of this notice.*

#### **Introduction**

1. The Commission publishes lists of eligible satellite services (the lists) that set out various Canadian and non-Canadian programming services received via satellite that may be distributed by broadcasting distribution undertakings. 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 and *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, the Commission announced its determinations related to requests received by the Commission from three Canadian sponsors to add 15 non-Canadian third-language<sup>1</sup> services to the lists of eligible satellite services for distribution on a digital basis (the digital lists). Nine such services were approved for addition to the digital lists, one under specific conditions. However, also included in these public notices were denials of requests to add six such services to the digital lists because they were either partially or totally competitive with Canadian third-language specialty television services.
2. The volume of requests to add non-Canadian third-language services to the digital lists, as well as the many points of view expressed in comments from individuals, community, business and cultural organizations, and from parties within the broadcasting industry, demonstrated a clear demand for additional non-Canadian third-language services. At the same time, several parties expressed a concern for the continued fostering of Canadian third-language services to ensure that third-language communities continue to have access to programming from a Canadian point of view in their language of comfort.

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<sup>1</sup> Third languages are languages other than English, French or the languages of the Aboriginal peoples of Canada.

3. Statistics Canada data indicates that Canada's already considerable level of ethnocultural diversity will continue to grow.<sup>2</sup> The Commission therefore considers that it is essential to ensure that the Canadian broadcasting system provides adequate service to Canada's increasingly diverse population, particularly those communities that may not have sufficient access to programming in third languages. The Commission further considers that the availability of additional third-language services within the Canadian broadcasting system could serve to reduce the appeal of services offered through the grey and black markets, which offer services from distributors unauthorized to operate in Canada.
4. In this public notice, the Commission calls for comments on its approach with respect to requests for additions of non-Canadian third-language services to the digital lists. It wishes to determine whether there are ways to improve access by Canadians to non-Canadian third-language programming, while continuing to foster Canadian third-language and other ethnic<sup>3</sup> services, in accordance with the objectives set out in the *Broadcasting Act* (the Act).

## **Background**

### **The role of third-language services in meeting the multicultural objective of the Act**

5. Section 3(1)(d)(iii) of the Act states that 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.
6. To ensure that this objective is met, the Commission has adopted a multifaceted approach to ensure that the Canadian broadcasting system reflects Canada's multicultural and multiracial nature. A key component of its approach is the licensing of programming undertakings that specifically target ethnic communities by providing ethnic programming under the framework set out in *Ethnic Broadcasting Policy*, Public Notice CRTC 1999-117, 16 July 1999 (the Ethnic Policy). As a result, the current ethnic broadcasting landscape consists of a variety of licensed Canadian ethnic services, including 5 over-the-air television stations, 17 radio stations, 10 specialty audio services, 5 analog specialty services and 11 launched Category 2 digital specialty services. All of these services devote all or part of their schedules to third-language programming. In addition, the Commission has approved applications for approximately 50 Category 2 ethnic services that have yet to be launched.

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<sup>2</sup> See, for example, *Canada's Ethnocultural Portrait: The Changing Mosaic, 2001 Census*, 21 January 2003, Statistics Canada.

<sup>3</sup> Ethnic services offer programming directed to any culturally or racially distinct group other than one that is Aboriginal Canadian, or from France or the British Isles. Such programming may be in any language or combination of languages.

7. In cases where a particular genre of programming is not provided by a Canadian ethnic service, the Commission considers that non-Canadian third-language services can act as an appropriate complement to Canadian services. As a result, the Commission has, in the past, approved requests to add to the lists 6 non-Canadian third-language services for distribution, on a discretionary basis, on both an analog and digital basis, as well as 13 such services for digital distribution only, including those services authorized today.

**The Commission's approach to assessing requests to add non-Canadian third-language services to the digital lists**

8. In addition to the objective set out in section 3(1)(d)(iii) of the Act that was cited above, the Commission's approach to the addition of non-Canadian services to the lists, including third-language services, reflects a number of other Canadian broadcasting policy objectives set out in section 3(1) of the Act, including the following:
- 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 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)).
9. The Commission's approach to authorizing the distribution of non-Canadian services in Canada aims to strike a balance among the objectives of the Act.
10. *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), the Commission stated that it would consider new requests to add non-Canadian programming services to the lists for distribution on a digital basis only. Consistent with the requirements set out by the Commission in earlier calls for proposals to amend the lists, the Commission stated that any such requests must include the following:*

- 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.
11. The Commission's policy precludes the addition of non-Canadian services to the lists if the Commission determines them to be either partially or totally competitive with Canadian specialty or pay television services. This serves to ensure that the Canadian licensed services are in a position to fulfil their commitments and obligations regarding the airing of Canadian programming, a responsibility that their non-Canadian competitors do not have.
12. In Public Notice 2000-173, the Commission stated that, in its assessment of whether a non-Canadian service is totally or partially competitive with a Canadian service, it would take into account all specialty and pay television services whose licence applications have, to date, been approved by the Commission. This would include all Category 1 and Category 2 pay and specialty services<sup>4</sup>, whether or not those services have been launched.
13. When it deals with requests to add non-Canadian services to the lists, the Commission takes a case-by-case approach in assessing competitiveness. Many factors are taken into account. Such factors include the nature and genre of programming, the target audience, the language or languages in which the programming is broadcast, the source of programming and any relevant competitive concerns raised by parties during the proceeding. 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.

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<sup>4</sup> Category 1 services are digital pay and specialty services that make a strong contribution to the development, diversity, and distribution of Canadian programming. Broadcasting Distribution Undertakings (BDUs) that offer programming services using digital technology must distribute all Category 1 services as provided under the *Broadcasting Distribution Regulations*. Category 2 services are digital pay and specialty services that are competitive with one another and are licensed on a more open entry basis. BDUs are not required to carry Category 2 services.

14. 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 or languages. Some Canadian third-language general interest services have made commitments to serve more than one language community, which broadens the potential audience served by their programming. There are, therefore, circumstances in which a non-Canadian third-language general interest service could be considered to be partially competitive with a Canadian third-language service, even if the non-Canadian service targets only one of the language groups served by a Canadian service.

### **Questions for consideration**

15. The Commission seeks comments on the following basic question:
- Does the Commission’s existing approach, which involves the assessment of partial and total competitiveness, strike the appropriate balance between ensuring that there is an adequate level of service to third-language communities and fostering Canadian third-language services, in light of the objectives set out in the Act? If not, what other test might be appropriate?

### **Additional questions**

#### *Application of the competitiveness test*

16. As described above, the Commission’s policy precludes the addition of new non-Canadian services to the digital lists if the Commission determines them to be either totally or partially competitive with Canadian specialty or pay television services.
17. The competitiveness test is the primary tool that the Commission uses to assess whether the addition of a non-Canadian service to the lists (a) will contribute to the fulfilment of the objectives set out in section 3 of the Act, and (b) whether it will negatively affect existing Canadian services’ ability to operate and serve their audiences. The main factors that the Commission considers in assessing competitiveness of non-Canadian services with Canadian services are set out in paragraph 13.
18. In practice, if the Commission receives a request to add a non-Canadian third-language service that provides narrowly targeted or “niche” programming in a single language and serves a specific audience, application of the competitiveness test is relatively straightforward because of the focused nature of the programming of the non-Canadian service. Assessing competitiveness becomes more complex in cases where the non-Canadian service is a general interest service that provides a broad range of programming to a single language group.
19. The assessment can become more complicated in two instances: first, when the non-Canadian service is assessed against an existing Canadian general interest service targeting the same language group, and second, when the non-Canadian service is assessed against an existing Canadian general interest service targeting more than one language group.

20. In the first instance, the challenge arises in attempting to come to a fair conclusion as to whether there is an overlap between the two services' general interest program offerings that is sufficient to conclude that the services are partially or totally competitive. For example, while a non-Canadian service might describe itself as a general interest service, an examination of its program schedule might reveal that it tends to be dominated by one type of programming, such as news and information. In such a case, the overlap with a Canadian general interest service could be less significant.
21. In the second instance, the notion of partial competitiveness must be assessed in the context of a non-Canadian service that targets one of several language groups targeted by a Canadian general interest service. In such a case, the non-Canadian service could still be deemed partially competitive with the Canadian service, even though the Canadian service devotes a portion of its schedule to programming in languages other than those of the non-Canadian service.
22. The determinations described above become even more complicated when the Canadian third-language service against which the non-Canadian service is being assessed has been authorized but is not yet in operation<sup>5</sup>.
23. In light of the above, the Commission invites comments on the following questions:
  - If a non-Canadian third-language general interest service targets one of the linguistic groups served by a Canadian third-language general interest service that provides programming in two or more languages, what factors other than that overlap, if any, should be taken into account for the Commission to find that the non-Canadian service is competitive with the Canadian service?
  - Is there any other information, in addition to that currently required by the Commission for proposals to authorize distribution of non-Canadian third-language services, as set out in paragraph 10, that the Commission could obtain from sponsors and consider when applying the competitiveness test? If so, what additional information should the Commission obtain?
  - Should the Commission, when applying the competitiveness test, continue to take into account Canadian Category 2 third-language services that have been approved but have not been launched, after a certain period of time? If so, what should such a time period be? What impact would this have on the potential for such services to launch?

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<sup>5</sup> At present, there are approximately 50 Canadian Category 2 ethnic specialty services targeted to a variety of third-language groups that have not yet launched.

*The assessment of financial impact*

24. As described above, the Commission currently applies the competitiveness test by assessing overlaps in the programming and target audiences of Canadian and non-Canadian services. Such overlaps, however, may not necessarily mean that the addition of a non-Canadian service would have a financial impact on a Canadian service that is material enough to prevent a Canadian service from meeting its programming obligations. In such circumstances, it may be possible to add a competitive non-Canadian service to the digital lists thereby increasing the programming choice available to viewers. In light of the above, the Commission invites comments on the following questions:

- Should the Commission scrutinize the financial impact of a non-Canadian third-language service on a Canadian service when applying the competitiveness test, in order to determine whether there is likely to be a material financial impact? If so, what factors and what information should be taken into account when making such an assessment?
- Should the amount of revenue garnered by the Canadian service from the language group that would be served by the non-Canadian service be taken into consideration?
- What level of adverse impact should be sufficient to trigger denial? How should adverse impact be measured?

*Packaging non-Canadian third-language services with Canadian third-language services*

25. In comments filed in connection with its request to add certain non-Canadian services to the digital lists, Vidéotron ltée stated that there could be benefits in providing packages of Canadian and non-Canadian services that target third-language groups. A possible approach to such packages would be to approve the addition of non-Canadian third-language services that are competitive with Canadian third-language services to the digital lists, under the condition that both the Canadian and competitive non-Canadian services were offered together in a package. Such a packaging arrangement could result in the availability of additional programming services targeted to third-language communities without having a significant negative effect on the viability of licensed Canadian services.

26. The Commission requests comment on the following questions related to the packaging of Canadian and non-Canadian third-language services, on a digital basis only:

- Would it be appropriate to permit the distribution of a totally or partially competitive non-Canadian third-language service under the condition that it be packaged with the existing Canadian third-language service with which it would compete? If so, under what conditions could such a packaging approach operate to ensure greater access to non-Canadian services while minimizing the negative impact on Canadian third-language services?

- What criteria should be applied to determine the Canadian third-language service or services with which a competitive non-Canadian third-language service would be packaged?
- What would be the impact of such a packaging scenario on licensed Canadian third-language services, in terms of the potential impact on subscriber revenues, advertising revenues and the costs of acquisition of non-Canadian programming?

*Access to third-language services*

27. The Commission is also interested in determining if there is a relationship between the demand for non-Canadian third-language services and the distribution that Canadian third-language services now receive. Accordingly, it invites comments on the following questions:
- Are broadcasting distribution undertakings offering Canadian third-language services licensed prior to 2000 (i.e. Telelatino, Fairchild, Talentvision, SATV and Odyssey) in a manner that optimizes opportunities for access to those services?
  - If not, and should the Commission decide to change the existing competitiveness tests with respect to non-Canadian third-language services, should the Commission also consider changes to distributors' obligations with respect to the carriage of the Canadian third-language services licensed prior to 2000?

**Other proposals**

28. The Commission further invites parties to submit other proposals that relate to the authorization of non-Canadian third-language services for distribution in Canada in a manner that would continue to foster Canadian ethnic and third-language specialty services. The Commission will only consider proposals that pertain to the addition of non-Canadian third-language services to the digital lists.

**Other matters**

29. The Commission will not process any new requests to add non-Canadian third-language services to the digital lists prior to completion of the proceeding initiated by this public notice.

**Call for comments**

30. The Commission invites comments that address the issues and questions set out in this notice. The Commission will accept comments that it receives on or before **13 October 2004**.



31. The Commission will not formally acknowledge comments. It will, however, fully consider all comments and they will form part of the public record of the proceeding, provided that the procedures for filing set out below have been followed.

### **Procedures for filing comments**

32. Interested parties can file their comments to the Secretary General of the Commission by using ONE of the following formats:
- Intervention/Comments form  
available from the Commission's web site by indicating and selecting the public notice number under the *Decisions, Notices and Orders* section

OR

  - **by electronic mail to**  
procedure@crtc.gc.ca

OR

  - **by mail to**  
CRTC, Ottawa, Ontario K1A 0N2

OR

  - **by fax at**  
(819) 994-0218
33. Submissions longer than five pages should include a summary.
34. Please number each paragraph of your submission. In addition, please enter the line \*\*\*End of document\*\*\* following the last paragraph. This will help the Commission verify that the document has not been damaged during transmission.
35. The Commission will make comments filed in electronic form available on its web site at [www.crtc.gc.ca](http://www.crtc.gc.ca) but only in the official language and format in which they are submitted. Such comments may be accessed in the *Public Proceedings* section of the CRTC web site. Copies of all comments, whether filed on paper or in electronic form, will also be placed on the public examination file.
36. The Commission encourages interested parties to monitor the public examination file and the Commission's web site for additional information that they may find useful when preparing their comments.

**Examination of public comments and related documents at the following  
Commission offices during normal business hours**

**Central Building**

Les Terrasses de la Chaudière  
1 Promenade du Portage, Room G-5  
Gatineau, Quebec K1A 0N2  
Tel: (819) 997-2429 - TDD: 994-0423  
Fax: (819) 994-0218

**Metropolitan Place**

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Secretary General

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