



Broadcasting Public Notice CRTC 2004-14

Ottawa, 18 March 2004

Distribution of Spike TV – Call for comments

The Commission has received a submission from the Canadian Association of Broadcasters (the CAB) concerning the potential competitive impact on Canadian specialty services of a recent change in the programming format of a non-Canadian satellite service being distributed in Canada. The CAB stated that this service, which appears on the Commission's lists of eligible satellite services as TNN: The Nashville Network (TNN), has changed its programming format to that of a men's lifestyle service, re-branded as Spike TV. In light of this change, the CAB has asked the Commission to consider whether the authorization that broadcasting distribution undertakings have for the distribution of TNN in Canada can be applied to Spike TV. Accordingly, the Commission seeks comments on possible options to address this matter.

Background

1. The Commission periodically publishes lists¹ of eligible satellite services which set out various Canadian and non-Canadian programming services received via satellite that may be distributed by broadcasting distribution undertakings (BDUs). Since 1984, these lists have included TNN: The Nashville Network (TNN) among the non-Canadian services that BDUs may distribute.
2. In May 2000, TNN was acquired by Viacom International Inc. (Viacom), and was included as part of Viacom's MTV network of services. In September 2000, Viacom announced that it was changing the programming format of TNN from a format oriented to country music and the country music industry to a general entertainment format, and stated that, while the call letters would remain as TNN, the service would be known as TNN: The National Network.
3. On 15 April 2003, Viacom announced that TNN: The National Network would be re-named Spike TV: The First Network for Men (Spike TV), and that the service would be re-branded as a men's lifestyle programming service reflecting a wide range of men's interests. Spike TV was launched in August 2003.

¹ For the most recent lists, see *Revised lists of eligible satellite services*, Broadcasting Public Notice CRTC 2003-43, 5 August 2003.

Position of the CAB

4. On 2 June 2003, the CAB wrote to the Commission expressing concern that the change in programming format that accompanied the re-branding of TNN as Spike TV would result in the service becoming directly competitive with a number of existing Canadian pay and specialty services, including Men TV, CTV Travel, ROBTv, Discovery Health Network, TSN, The Score and Sportsnet. In light of these concerns, the CAB requested that the Commission initiate a public proceeding to determine whether Spike TV should be removed from the lists of eligible satellite services.
5. In subsequent correspondence dated 15 August 2003, the CAB concluded that, in addition to having the same target audience, Spike TV draws from program categories that are similar to those from which Men TV is authorized to draw programming. The CAB expressed concern that, with the two services targeting the same audience and offering programming from similar program categories, Spike TV is in direct competition with Men TV for the acquisition of programming.
6. In its letter of 15 August, the CAB maintained its position that Spike TV, because of the broad scope of its programming is also partially competitive with many other Canadian services, including CTV Travel, ROBTv and Discovery Health Network.
7. The only remedy to the current situation, according to the CAB, is the removal of TNN from the lists of eligible satellite services, which would, in turn, lead to the deletion of Spike TV from the channel line-up of all BDUs that currently distribute the service. The CAB was of the view that TNN, the service originally authorized for distribution by the Commission, no longer exists and that the service that replaced it, now branded as Spike TV, is a completely different service in that it is owned and operated by a different company and provides programming bearing no relationship or similarity to the programming service authorized by the Commission. For these reasons, the CAB argued that the existing authorization to distribute TNN in Canada does not extend to Spike TV.
8. The CAB also submitted that the onus should be on Spike TV and a Canadian sponsor to provide evidence that the service does not compete either wholly or partially with Canadian pay and specialty services. In the absence of a formal request by a Canadian sponsor to amend the lists of eligible satellite services to replace TNN with Spike TV, the CAB was of the view that the Commission could quite properly remove TNN from the lists of eligible satellite services.

Commission policies concerning the authorization non-Canadian services

9. The decision to authorize the distribution of a non-Canadian service by Canadian BDUs is made on a case-by-case basis. The Commission has, however, addressed this matter in several policy statements. In *Specialty Programming Services*, Public Notice CRTC 1984-81, 2 April 1984 (Public Notice 1984-81), the Commission stated that it would not be in the interest of the Canadian broadcasting system to allow the carriage of non-Canadian specialty programming services that, in the Commission's opinion, could be considered either totally or partially competitive with Canadian discretionary services. In *Revised List of Eligible Satellite Services*, Public Notice CRTC 1997-96, 22 July 1997, the Commission reaffirmed the approach set out in Public Notice 1984-81 and stated that it would consider the removal of a non-Canadian service from the lists of eligible satellite services if that service should undergo a change in format so as to become competitive with a Canadian pay or specialty service.
10. In *Structural Public Hearing*, Public Notice CRTC 1993-74, 3 June 1993 (Public Notice 1993-74), the Commission set out an additional option for dealing with non-Canadian services that undergo a change in programming format so as to become competitive with a Canadian pay or specialty service. In Public Notice 1993-74, the Commission stated that the Commission may, on a case-by-case basis, place such a service on Section "B" of the Part II list, for linkage exclusively with Canadian pay television services, rather than delete it entirely from the Part II list of eligible satellite services. The linkage requirements are to ensure that non-Canadian services are distributed in conjunction with licensed Canadian services. The current linkage requirements are set out in *Distribution and linkage requirements for Class 1 and Class 2 licensees*, Public Notice CRTC 2000-155, 8 November 2000, and are updated periodically.
11. 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, the Commission stated that it would only consider those requests for non-Canadian services to be added to the lists of eligible satellite services which include evidence that such services have agreed to be sponsored by a Canadian party. It is the role of a Canadian sponsor to file such requests for addition to the lists on behalf of a non-Canadian service. Such requests must include a brief description of the non-Canadian service, a copy of the program schedule, a statement that the service has obtained all necessary rights for the distribution of its programming in Canada, and a statement that the non-Canadian service does not hold, will not obtain, and will not exercise preferential or exclusive programming rights in relation to the distribution of programming in Canada.

Call for comments

12. The CAB has submitted that Spike TV is wholly or partially competitive with a number of Canadian pay and specialty services. It has further submitted that the current authorization to distribute TNN in Canada does not extend to Spike TV. The Commission invites comments on the position of the CAB.
13. The Commission further invites comments on what actions would be appropriate should the Commission find that Spike TV is wholly or partially competitive with one or more Canadian pay and specialty services, and/or that the current authorization to distribute TNN in Canada does not extend to Spike TV.
14. The Commission will accept comments that it receives on or before **17 May 2004**. 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

15. 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
16. Submissions longer than five pages should include a summary.
17. 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.

18. The Commission will make comments filed in electronic form available on its web site at 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.
19. 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

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Secretary General

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