



Broadcasting Public Notice CRTC 2006-167

Ottawa, 22 December 2006

Addition of Phoenix InfoNews Channel to the lists of eligible satellite services for distribution on a digital basis

*The Commission **approves** a request to add Phoenix InfoNews Channel to the lists of eligible satellite services for distribution on a digital basis and amends the lists of eligible satellite services accordingly. The revised lists are available on the Commission's Web site at www.crtc.gc.ca under "Industries at a Glance."*

Introduction

1. The Commission received a request dated 23 February 2006 from Rogers Cable Communications Inc. (Rogers) for the addition of Phoenix InfoNews Channel (Phoenix InfoNews), a non-Canadian third-language service, to the lists of eligible satellite services for distribution on a digital basis (the digital lists). Rogers described the service as follows:

Phoenix InfoNews Channel is a 24-hour niche news service based in Hong Kong providing a comprehensive menu of news and information on world events, current affairs, and financial developments in Mandarin. It offers programming from the following categories: news, analysis and interpretation, long-form documentary, reporting and actualities, information education, sports, recreation and leisure. Approximately 85% of the service's programming schedule consists of programming that is within the news, analysis and interpretation genres.

2. The Commission subsequently issued *Call for comments on the proposed addition of Phoenix InfoNews Channel to the lists of eligible satellite services for distribution on a digital basis*, Broadcasting Public Notice CRTC 2006-39, 30 March 2006.

Positions of parties

3. The Commission received one comment from an individual in support of Rogers' request. In addition, Fairchild Television Ltd. (Fairchild) and 13 individuals filed comments opposing the addition of the service.
4. Fairchild stated that Rogers' request should be denied, arguing that Phoenix InfoNews would be competitive with Fairchild's Mandarin-language service, Talentvision. Fairchild noted that the Commission should not underestimate the importance of news programming to Talentvision's viability as a Canadian ethnic service. According to Fairchild, news and magazine programs are Talentvision's "bread and butter," making up

almost 30% of this service's programming. Fairchild contended that, given that news and magazine programs also form the "core" of Phoenix InfoNews' programming service, and given Talentvision's precarious financial situation, the addition of Phoenix InfoNews to the digital lists would have a significant negative competitive impact on Talentvision.

5. Alternatively, Fairchild considered that the Commission, should it approve the addition of Phoenix InfoNews, should make the service subject to the buy-through requirements set out in *Improving the diversity of third-language television services – A revised approach to assessing requests to add non-Canadian third-language television services to the lists of eligible satellite services for distribution on a digital basis*, Broadcasting Public Notice CRTC 2004-96, 16 December 2004 (Public Notice 2004-96).
6. Finally, Fairchild submitted that the Commission should require Phoenix InfoNews to refrain from soliciting advertising from Canadian advertisers.
7. The comments filed by the individuals opposing the addition of the service contained allegations that Phoenix InfoNews is controlled by the Chinese government. They submitted that the service's coverage is not fair and objective, but rather serves as a propaganda instrument, and that the service incites hatred against targeted groups. These individuals referred to news stories – such as stories regarding SARS, the China-Taiwan relationship, and organ harvesting among inmates in Chinese prisons – in which the facts were allegedly distorted by Phoenix InfoNews, or were conspicuous by their omission.

Reply from Rogers and Phoenix Satellite Television Co. Ltd. (Phoenix Satellite)

8. Rogers included with its reply a response from Phoenix Satellite Television Co. Ltd. (Phoenix Satellite), the provider of Phoenix InfoNews. In response to submissions made by Fairchild that Phoenix InfoNews would be competitive with Talentvision, Phoenix Satellite provided a comparison of the amount of non-Canadian Mandarin-language news on its service and the amount of such news on Talentvision. The comparison indicated that only 10% of Talentvision's schedule is composed of non-Canadian Mandarin-language news. Further, the non-Canadian news is scheduled by Talentvision in a time slot that accommodates subscribers in the Pacific time zone (i.e., the Eastern time zone does not have news in prime time). In addition, Phoenix Satellite indicated that Talentvision carries drama programming (22% of Talentvision's schedule) and variety programming (13.64% of Talentvision's schedule), two programming genres not carried on Phoenix InfoNews.
9. Rogers submitted that the addition of Phoenix InfoNews to the digital lists would be consistent with the goals and criteria established under the Commission's policies. In terms of making Phoenix InfoNews subject to a buy-through requirement with regard to Talentvision, Rogers stated that, given that Phoenix InfoNews would not have a material impact on any licensed Canadian service, there is no need to place additional packaging or other restrictions on it.

10. With respect to content issues, Rogers stated that disagreement with editorial, political, or ideological content is not a relevant basis on which to oppose the addition of a proposed service. Rogers also indicated that Phoenix InfoNews will respect the same broadcast codes followed by Canadian broadcasters. In its response, Phoenix Satellite stated that the record of the proceeding does not contain anything that should cause the Commission concern with respect to the Phoenix InfoNews service. Phoenix Satellite noted that the interveners provided “no hard facts or tapes” and that most of the interveners “lament what they perceive to be either insufficient coverage or the lack of coverage of events they deem more deserving of airtime.”

Commission’s analysis and determinations

Competitiveness issue

11. In Public Notice 2004-96, the Commission set out its revised approach to the assessment of requests to add non-Canadian third-language television services to the digital lists. In that public notice, the Commission also set out specific information that Canadian sponsors must file in support of their requests.
12. In Public Notice 2004-96, the Commission stated that, going forward, requests to add non-Canadian, third-language, general interest services to the digital lists would generally be approved, subject, as appropriate, to new distribution and linkage requirements. In the case of non-Canadian third-language services that provide narrowly targeted or “niche” programming, the Commission stated that it would continue to apply a case-by-case assessment to determine whether the service is partially or totally competitive with Canadian pay or specialty services.
13. The Commission also stated in Public Notice 2004-96 that, in applying the competitiveness test to these non-Canadian services, it would not take into consideration unlaunched ethnic Category 2 services, unless the prospective operator of such a service presented compelling evidence that launch of the service is imminent. The Commission added that such evidence could include distribution agreements or ongoing negotiations with distributors, programming contracts or negotiations with non-Canadian program suppliers, or licence fees paid to Canadian content suppliers.
14. In undertaking its competitiveness assessment, the Commission generally considers factors such as the nature of the service, the genre of programming it offers, its target audience and language, as well as 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 relevant Canadian pay or specialty services and the sponsored non-Canadian service in order to determine the amount of overlap between the services, and thus the extent to which the non-Canadian service might compete with the Canadian service.

15. With respect to the possible competitiveness of Phoenix InfoNews with Talentvision, the Commission considers that there are significant differences between the two services. As set out in *Talentvision – Licence renewal*, Broadcasting Decision CRTC 2004-301, 30 July 2004 (Decision 2004-301), Talentvision provides a national ethnic specialty service, consisting of programming directed to the Mandarin-, Vietnamese- and Korean-speaking communities of Canada (that is, not less than 60% of its programming must be in these languages). Further, as set out in Decision 2004-301, Talentvision “shall, in each broadcast year, devote to the distribution of feature films in English, French or a native Canadian language not more than 25% of the total programming time permitted for the distribution of programs in those languages.” Finally, Talentvision’s programming schedule indicates that it is a general interest service with programming covering a wide variety of genres.
16. By contrast, Phoenix InfoNews is a 100% Mandarin-language service devoted exclusively to the Mandarin-speaking community, offering a niche programming schedule containing primarily news and information programming.
17. In addition, the record of the proceeding demonstrates that non-Canadian Mandarin language news makes up only a small portion of Talentvision’s overall schedule. Although Fairchild refers to Talentvision’s news programming as “core” programming, the record indicates that this programming is shown outside of prime time periods in the eastern part of the country, where cities such as Toronto have a significant Mandarin-speaking community. While the Commission acknowledges that there is a small amount of overlap with respect to non-Canadian Mandarin-language news, the Commission considers that this is insufficient to support a finding that Phoenix InfoNews is totally or partially competitive with Talentvision.
18. The Commission received no submissions from unlaunched Category 2 services providing evidence that they would be launching in the near future and arguing that Phoenix InfoNews would be competitive with them. In light of the above, the Commission concludes that there are no Canadian pay or specialty services with which this non-Canadian service would be totally or partially competitive.

Advertising issue

19. With regard to Fairchild’s request that the addition of Phoenix InfoNews to the digital lists be subject to explicit requirements with respect to Canadian advertising, the Commission considers such requirements to be unnecessary since, if Phoenix InfoNews were to solicit advertising in Canada, the Commission would consider it a strong indicator that the service was carrying on a broadcasting undertaking in Canada, without a licence, contrary to the *Broadcasting Act*. In this regard, the Commission notes that, pursuant to *Direction to the CRTC (Ineligibility of Non-Canadians)*, P.C. 1997-486, 8 April 1997, as amended by P.C. 1998-1268, 15 July 1998, non-Canadians are not eligible to hold broadcasting licences, which are required in order to carry on such undertakings.

Content issues

20. The record of the proceeding contains allegations from individuals stating that Phoenix InfoNews provides news coverage that is inaccurate or that is not fair and objective, and that the service airs propaganda on behalf of the Chinese government. In addition, there was some suggestion that the service airs abusive comment.
21. Regarding the airing of abusive comment, the Commission notes that no parties provided concrete evidence on which the Commission could base the conclusion that Phoenix InfoNews Channel has or would be likely to air abusive comment or abusive pictorial representations that, when taken in context, would tend to or be likely to expose an individual, group or class of individuals to hatred or contempt on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, age, or mental or physical disability. Specifically, none of the opposing parties provided concrete evidence such as transcripts or tapes of actual programs aired on the service, with information such as the name of the program segment and the date or dates on which it was aired. Similarly, none of the parties provided details, such as specific quotations, to lend credibility to their assertions.
22. The Commission also notes the statement by Phoenix Satellite that its Phoenix InfoNews service will comply with the provisions of the relevant codes that govern Canadian broadcasters.

Conclusion

23. In light of all of the above, the Commission **approves** the addition of Phoenix InfoNews Channel to the digital lists and amends the lists of eligible satellite services accordingly. The lists of eligible satellite services are available on the Commission's Web site at www.crtc.gc.ca under "Industries at a Glance" and may be obtained in hard copy on request.

Secretary General

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