



## Broadcasting Public Notice CRTC 2006-81

Ottawa, 30 June 2006

### **Addition of ATV Home Channel (America) to the lists of eligible satellite services for distribution on a digital basis**

*The Commission **approves** a request to add ATV Home Channel (America) 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](http://www.crtc.gc.ca) under "Industries at a Glance."*

#### **The request**

1. The Commission received a request dated 23 September 2005 from the Canadian Cable Telecommunications Association (CCTA) that ATV Home Channel (America) (ATV), a non-Canadian service, be added to the lists of eligible satellite services for distribution on a digital basis (the digital lists). The CCTA described ATV's service as follows:

ATV Home Channel (America) is a 24-hour, general interest service from Hong Kong offering programming primarily in the Cantonese language with a small amount of programming in Mandarin. The mix of programming on ATV Home Channel (America) includes news, documentaries, infotainment, drama, variety and children's programming.

2. The Commission subsequently issued *Call for comments on the proposed addition of ATV Home Channel (America) to the lists of eligible satellite services for distribution on a digital basis*, Broadcasting Public Notice CRTC 2005-123, 16 December 2005.
3. On 13 February 2006, Rogers Cable Communications Inc. advised that, with the dissolution of the CCTA announced on 10 February 2006, it would take over as the Canadian sponsor of ATV.

#### **Positions of parties**

4. The Commission received comments from more than 900 individuals, petitions containing more than 6800 names, and further comments from numerous Chinese community organizations and business associations regarding the above request. The vast majority of these submissions supported the addition of ATV to the digital lists. Some supporters stated that the addition of ATV would increase the relatively small amount of Chinese-language programming currently available in Canada. Various groups, such as the Conference of Independent Schools of Ontario (CISO), also expressed support for the addition to the digital lists of nine other Chinese-language services, which are operated by China International Television Corporation (CITVC), itself owned by China Central Television. These other services were the subject of *Call*

*for comments on the proposed addition of non-Canadian Chinese-language services to the lists of eligible satellite services for distribution on a digital basis*, Broadcasting Public Notice CRTC 2005-124, 16 December 2005 (Public Notice 2005-124). According to the CISO, the addition of ATV and of the nine CITVC services would “meet a demand from both Canadians of Chinese ancestry and countless non-Chinese Canadians with a professional or personal connection to the Orient.”

5. The Commission also received submissions from more than ten individuals and community organizations who indicated that they were opposed to the addition of ATV to the digital lists. In most instances, these parties also expressed opposition to the addition to the digital lists of the nine CITVC services that were the subject of Public Notice 2005-124. The parties generally confined their substantive comments to concerns with respect to the CITVC services, including matters touching on the editorial, political or ideological content of their programming. Certain parties also alleged that the programming of the CITVC services contained abusive comment.
6. One individual who expressed specific opposition to the addition of ATV to the digital lists asked that the Commission “protect what little we have left of Canadian-content stations.” Another individual asked that the Commission “ensure that Canadian-based programming isn’t replaced and lost in the mix.”
7. Fairchild Television Ltd. (Fairchild) also filed comments opposing the addition of ATV to the digital lists. Fairchild is the licensee of Fairchild TV, a national ethnic specialty television service that offers programming primarily in the Cantonese language. Fairchild stated that the addition of ATV would fragment viewing to Fairchild TV’s service. In Fairchild’s view, the Commission must balance its open entry approach for non-Canadian third-language services against the impact that such entry will have on existing licensees offering programming in the same language. Fairchild argued further that it would be premature to add another Chinese-language service to the digital lists until such time as a proper assessment can be completed as to the impact of the recent addition of two other non-Canadian Chinese-language services to the digital lists, Phoenix North American Chinese Channel and New Tang Dynasty Television.<sup>1</sup>
8. Further, should ATV be added to the digital lists, Fairchild asked the Commission to clarify that the distribution of ATV to subscribers would be 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).

---

<sup>1</sup> These two non-Canadian, third-language general interest services broadcast programming primarily in Mandarin. They were added to the digital lists in *Revised lists of eligible satellite services*, Broadcasting Public Notice CRTC 2005-105, 24 November 2005.

### **CCTA's reply**

9. In its reply of 30 January 2006, the CCTA submitted that the addition of ATV to the digital lists would be wholly consistent with the Commission's approach set out in Public Notice 2004-96. In the CCTA's view, concerns about the impact of non-Canadian third-language services on Canadian third-language services were fully addressed by the Commission through its inclusion in that notice of specific "buy-through" and "must-offer" provisions with respect to Canadian third-language services.
10. According to the CCTA, Fairchild's request that the Commission deny the addition of ATV to the digital lists on the grounds that other non-Canadian Chinese-language services have recently been added was, in effect, a request that the Commission reach a decision that would be inherently discriminatory and in direct conflict with the philosophy and rationale underlying the open entry approach adopted in Public Notice 2004-96.
11. The CCTA emphasized that any allegations of abusive comment in the submissions filed by interested parties were made only with regard to the CITVC services. It also argued that, to the extent that the further concerns of parties regarding the editorial, political or ideological content of programming might have been addressed to ATV, disagreement with such content is not a relevant basis on which to oppose the proposed addition of a service. The CCTA stressed in this regard that ATV has committed to comply with the provisions of the relevant codes governing Canadian broadcasters.

### **Commission's analysis and determinations**

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 rules described in that notice. The Commission also identified the information that a Canadian sponsor would be obliged to file in order for the Commission to consider a request for the addition of such a service to the digital lists.
13. The Commission has examined the material filed in support of the request to add ATV to the digital lists. It is satisfied that the service is as described by its sponsor, i.e., a general interest, third-language service operating primarily in Cantonese, with a small amount of programming in Mandarin (i.e., less than 2% of its programming per week). Thus, the service is one whose addition to the digital lists is appropriately considered by the Commission in accordance with the approach set out in Public Notice 2004-96.

14. In the Commission's view, any impact that the addition of ATV to the digital lists might have on Canadian Chinese-language services is effectively addressed through application of the provisions contained in Public Notice 2004-96. Specifically, as part of its approach to the addition of general interest non-Canadian third-language services, the Commission stated in that notice that, where such a service offers 40% or more of its programming in any of the Cantonese, Mandarin, Italian, Spanish, Greek or Hindi languages, it may only be distributed to customers who also subscribe to the Canadian service approved under the analog licensing framework that operates in the same language. In addition, any broadcasting distribution undertaking (BDU) wishing to distribute the non-Canadian service is also required to make available a general interest Category 2 service in the same principal language, provided that one has been launched. These rules were subsequently incorporated in the distribution and linkage rules set out in *Distribution and Linkage requirements for Class 1 and Class 2 licensees*, Broadcasting Public Notice CRTC 2005-119, 14 December 2005, and *Linkage requirements for Direct-to-home (DTH) satellite distribution undertakings*, Broadcasting Public Notice CRTC 2005-120, 14 December 2005.
15. Pursuant to the distribution and linkage rules mentioned above, as ATV is a general interest service offering over 98% of its programming in Cantonese, subscribers who wish to receive this service must also subscribe to Fairchild Television. Further, BDUs offering ATV must also make available at least one Canadian Cantonese-language general interest Category 2 service, provided that one has been launched.
16. The Commission notes that many of the concerns expressed by individuals and organizations who filed comments opposed to the addition of ATV to the digital lists were, in fact, related to the political, editorial or ideological content of the programming provided by the nine state-owned CITVC services that are the subject of the proceeding announced in Public Notice 2005-124.<sup>2</sup>
17. Based on the record of the current proceeding, the Commission's understanding is that ATV is a Hong Kong-based programming service. None of the parties who had concerns with respect to program content raised any issues specifically related to ATV, nor did they provide any evidence that would lead the Commission to conclude that the request to add ATV to the digital lists should be treated other than according to the Commission's general approach to the addition of non-Canadian third language services.
18. In light of the above, the Commission **approves** the addition of ATV Home Channel (America) 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](http://www.crtc.gc.ca) under "Industries at a Glance" and may be obtained in hard copy on request.

---

<sup>2</sup> The deadline for the submission of comments in the proceeding announced in Public Notice 2005-124 was extended, from 16 January 2006 to 3 May 2006, in *Call for comments on the proposed addition of nine non-Canadian Chinese-language services to the lists of eligible satellite services for distribution on a digital basis – Re-opening of proceeding to permit the filing of evidence*, Broadcasting Public Notice CRTC 2005-124-1, 31 March 2006.

19. The Commission will, in due course, issue a separate determination with respect to the request for the addition of nine CITVC services announced in Public Notice 2005-124 and Public Notice 2005-124-1.

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>*