



Broadcasting Public Notice CRTC 2007-35

Ottawa, 3 April 2007

Addition of Planète Thalassa to the lists of eligible satellite services for distribution on a digital basis

*In this notice, the Commission **approves** the addition of Planète Thalassa to the lists of eligible satellite services for distribution on a digital basis.*

The request

1. The Commission received a request dated 29 May 2006 from Videotron Ltd. (Videotron) for the addition of Planète Thalassa, a non-Canadian service, to the lists of eligible satellite services for distribution on a digital basis (the digital lists). Videotron described the service as follows: [translation]

Planète Thalassa is a non-Canadian service from France, entirely in the French language. This channel offers seven days a week of programming dedicated to the marine world, including magazine programs and documentaries. No programs are subtitled.

2. The Commission subsequently issued *Call for comments on the proposed addition of Planète Thalassa to the lists of eligible satellite services for distribution on a digital basis*, Broadcasting Public Notice CRTC 2006-103, 18 August 2006 (Public Notice 2006-103).

Comments received

3. The Commission received 24 comments in support of the request. Most of these comments were from individuals, several of whom commented that Planète Thalassa would provide an enhancement to the line-up of French-language channels available exclusively on a digital basis. The Commission also received comments from the Académie canadienne du cinéma et de la télévision indicating that Planète Thalassa's programming service would not be competitive with Canadian services, but rather would complement current programming and could be a source of inspiration.
4. TV5 Québec Canada (TV5) and Canal Évasion filed comments opposing the addition of Planète Thalassa to the digital lists. Canal Évasion considered that the programming offered by Planète Thalassa would be in direct competition with that offered by Canal Évasion, largely because of the travel and tourism aspects of the two services. Canal Évasion also noted that it originates a number of programs linked directly to the marine world, and that these have always been among the most watched programs it offers.

5. TV5 indicated that almost 30% of Planète Thalassa's programming is the same as that of TV5. Thus, the addition of the service to the digital lists would be contrary to the Commission's policy stating that a non-Canadian service will generally not be added to the lists if it would be totally or partially competitive with any Canadian specialty or pay service. As an example, TV5 noted that the Planète Thalassa program called *Thalassa* has been broadcast on TV5 since 1988 and is among the ten most popular programs on the service. *Faut pas rêver* is another Planète Thalassa show that has been broadcast on TV5 for many years, and is among the five most-watched programs on TV5. A third program, *La carte aux Trésors*, which was scheduled to start in the fall of 2006 on TV5, is another Planète Thalassa program upon which TV5 places great importance.

Reply from Sponsor

6. In reply to Canal Évasion, Videotron submitted that the Commission establishes the level of competitiveness in light of the request in its entirety, and in so doing, identifies services where at least 10% of the programming is similar. According to Videotron, in order to establish this level of competitiveness, the following criteria must be taken into account, cumulatively:
 - the treatment of the theme should be largely similar;
 - the service should bear principally on the same genre;
 - the target audience should be the same or very similar.
7. Videotron stated, among other things, that Planète Thalassa's programming is focused on the marine world, while Canal Évasion focuses its programs on tourism, adventure and travel. Thus, the two services have different approaches or themes. Videotron also considered that Planète Thalassa targets a narrower audience than Canal Évasion, since the marine world is much more specific than tourism, adventure and travel.
8. In response to TV5's concerns, Videotron submitted that Planète Thalassa is a thematic service whose mandate and target audience differ significantly from those of TV5. Videotron also indicated that, according to its calculations, the three programs that TV5 carries amount to a total of 24.5% of its overall schedule, and not 30%. However, Videotron stated that, in order not to compete with TV5, Planète Thalassa would be willing to lower the percentage of similar shows to less than 10%. To this end, Videotron submitted a revised Planète Thalassa programming grid. Videotron also indicated that, when advised in advance, Planète Thalassa would be willing to adapt to the Canadian market and adjust its programming accordingly. Videotron added that, to further reassure TV5, Planète Thalassa promised to respect the exclusive programming windows of opportunity generated by co-production agreements involving Canadian broadcasting and production companies.

The Commission's analysis and determinations

9. 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 all proposals for the inclusion of a non-Canadian service on the lists will be assessed in the context of the Commission's policy that generally precludes the addition of new non-Canadian satellite services if the Commission determines them to be either totally or partially competitive with Canadian specialty or pay television services. The Commission stated that, in applying this policy, it would take into account all specialty and pay television programming undertakings whose licence applications have been approved by the Commission.
10. In assessing competitiveness, the Commission applies a case-by-case approach, taking into account such factors as 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, in order to determine the degree of overlap that might exist to make the non-Canadian service partially or totally competitive with any Canadian pay or specialty services.
11. In Public Notice 2006-103, the Commission stated that, commencing with this proceeding, it would rely primarily on the comments filed to identify the Canadian pay and specialty services with which non-Canadian services, such as Planète Thalassa, might compete, and which therefore should be included in its assessment of the competitiveness of the service. Parties commenting in the proceeding, and who were of the view that Planète Thalassa would be competitive, were asked to name the specific Canadian pay or specialty services with which they consider Planète Thalassa would compete, and provide details, such as a programming comparison, to support their views.
12. As to the comments filed by TV5, the Commission acknowledges that there is a degree of overlap with respect to the programming offered by TV5 and that offered by Planète Thalassa. However, the Commission considers that this overlap must be assessed in the context of the purposes for which TV5 was licensed and the nature of the service it provides.
13. In this regard, the Commission notes that TV5 was licensed in 1987 in large part as a vehicle for bringing international French-language programming to French-speaking Canadians. Specifically, in *Consortium de télévision Québec Canada – "TV5 Québec Canada" – 871228300*, Decision CRTC 87-895, 1 December 1987, the Commission stated that "TV5 has a double objective with respect to Canada. It will serve as this country's French-language window on the world in exchange for introducing programs from other francophone nations to Canadians."¹ The Commission noted in particular the applicant's submission that among the main advantages of its proposal for the Canadian

¹ In licensing the service, the Commission noted that approximately 80% of the programming of this service would "consist of programs from three of the television networks in France, from networks in Belgium and Switzerland, and from certain French-speaking African countries."

broadcasting system were that TV5 would “add a measure of diversity by providing a broader vision of the francophone world as reflected in a wide variety of programs,” and that it would “help to reduce the appeal of English-language television services by offering French-speaking Canadian audiences high quality complementary programming and scheduling.”

14. Further, to this end, the service was authorized and continues to operate with a broad nature of service, which imposes few constraints as to the genres and categories of programming it may offer. The condition of licence regarding TV5’s nature of service was specified as follows:

The licensee shall offer a national French-language specialty television service that focuses on French-speaking communities around the world. At least 90% of the programming shall consist of original French-language programs from various French-speaking countries, and programs from Canadian sources shall reflect the diversity of French-speaking communities in Canada.

15. As a result of this nature of service, TV5 is in a position to offer a wide range of programming, more akin in many respects to a general interest service than to a typical English- or French-language specialty service.
16. Given the broad range of programming offered by TV5, and its mandate to bring international programming from a variety of francophone nations, the Commission considers it likely that all but the most narrowly targeted non-Canadian French-language services would be found to have some overlap with TV5, and thus to compete at least partially with it. Thus, a strict application of the competitiveness test would have the unfortunate and unintended effect that a service licensed to increase the diversity of programming available to French-speaking Canadians would serve as a barrier to a potential increase in the availability of such programming.
17. As to the comments of Canal Évasion, the Commission notes that this service is licenced to provide “a national, French-language specialty television service that is dedicated exclusively to tourism, adventure and travel.” To this end, it is authorized to offer programming from a broad range of categories. As with TV5, the Commission acknowledges that there may be some overlap between the programming offered by Canal Évasion and that offered by Planète Thalassa. However, the Commission considers that there is a difference in emphasis between the two services, in that Canal Évasion focuses on tourism, adventure and travel while Planète Thalassa places a special emphasis on marine themes. Given this difference in emphasis, the Commission is not persuaded that the services target the same audience or that the degree of overlap between them is otherwise significant enough to warrant a finding that Planète Thalassa would compete to any significant degree with Canal Évasion.

18. In light of all the above, the Commission **approves** the addition of Planète Thalassa 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 website at www.crtc.gc.ca under "Industries at a Glance" and may be obtained in hard copy on request.

Other matters

19. The Commission notes that, in the reply filed in this proceeding, Videotron submitted that, in assessing competitiveness, the Commission [translation] "identifies services where at least 10% of the programming is similar." For the guidance of parties, the Commission points out that it has never specified a particular percentage of similar programming for use as a benchmark for assessing the potential competitiveness of non-Canadian services with Canadian pay and specialty services. In fact, the Commission has found a non-Canadian service not to be competitive when there has been a higher percentage of programming overlap.
20. The Commission also notes that its determinations in this proceeding are based on the programming schedule originally filed by Videotron in support of its request. As indicated earlier, with its reply, Videotron filed revisions to this programming schedule intended to lower the percentage of similar programming to 10% in order not to compete with TV5. Videotron further indicated that Planète Thalassa would be prepared to [translation] "adapt to the realities of the Canadian market and adjust its international programming schedule accordingly." Also for the guidance of parties, the Commission notes that for Planète Thalassa to tailor its international feed to fit the Canadian market would raise the possibility that Planète Thalassa was, in fact, carrying on an undertaking in whole or in part in Canada. Entities carrying on such undertakings in Canada require a licence, for which only Canadian entities are eligible.²

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>

² Unless the undertaking can operate pursuant to an exemption order. However, the majority of the Commission's exemption orders specify that the entity must be licensable.