



Broadcasting Regulatory Policy CRTC 2009-725

Ottawa, 26 November 2009

Addition of Al Jazeera English to the lists of eligible satellite services for distribution on a digital basis

*The Commission **approves** a request to add Al Jazeera English (AJE) 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 website at www.crtc.gc.ca under "Broadcasting Sector."*

AJE is a 24-hour-a-day, seven-day-a-week English-language international news service currently available in over 100 countries and via the Internet. The Commission notes the substantial support for the addition of AJE to the digital lists and considers that AJE will expand the diversity of editorial points of view in the Canadian broadcasting system. Further, despite concerns expressed by certain parties, there is nothing on the record of the current proceeding that leads the Commission to conclude that AJE would violate Canadian regulations, such as those regarding abusive comment.

A dissenting opinion by Commissioner Marc Patrone is attached.

Introduction

1. The Commission received a request dated 27 February 2009 from Ethnic Channels Group Limited (ECGL) for the addition of Al Jazeera English (AJE), a non-Canadian, English-language satellite service originating in Qatar, to the lists of eligible satellite services for distribution on a digital basis (the digital lists).
2. ECGL described the service as a 24-hour-a-day, seven-day-a-week English-language international news service. It is currently available in over 100 countries and via the Internet.
3. The Commission set out its general approach to the addition of English- and French-language non-Canadian services in Public Notice 2000-173. This approach 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.
4. In Broadcasting Public Notice 2008-100, the Commission reaffirmed its overall approach to authorizing non-Canadian English- or French-language services. However, in regard to non-Canadian news services, the Commission determined that a more open-entry approach would be consistent with the importance that it places on a diversity of editorial points of view. Accordingly, the Commission stated that, "absent clear evidence, as determined by the Commission, that a non-Canadian news service would violate Canadian regulations, such as those regarding abusive comment, the Commission will be predisposed to authorize non-Canadian news services for distribution in Canada."

5. The Commission issued Broadcasting Notice of Consultation 2009-254, calling for comments on the proposed addition of AJE. Consistent with the new approach for non-Canadian news services set out in Broadcasting Public Notice 2008-100, the Commission asked parties submitting that AJE should not be authorized for distribution in Canada as it would violate Canadians regulations to provide detailed support for their position. It added that such support might consist, for example, of transcripts or tapes of actual programs aired on AJE, along with details as to the date or dates on which they aired.

Comments received

6. The Commission received a large number of comments addressing the request to add AJE to the digital lists. Over 2600 parties filed comments in support of the request, approximately 40 parties filed comments in opposition, and 7 offered general comments.
7. Among the many individuals and organizations who filed supporting comments were the National Council on Canada-Arab Relations, Canadians for Justice and Peace in the Middle East, the Canadian Arab Federation, the Arab Canadian Lawyers Association, Independent Jewish Voices, the British Columbia Civil Liberties Association, the Arab Canadian Association of the Atlantic Provinces, Canadian Journalists for Free Expression, the Canada Palestine Support Network, the Service Employees International Union, Member of Parliament for Ottawa Centre Paul Dewar, Member of Parliament for Toronto-Danforth Jack Layton, Member of Parliament for Burnaby-New Westminster Peter Julian, Member of Parliament for Vancouver East Libby Davies, Senator Marcel Prud'homme and Senator Hugh D. Segal.
8. In general, the supporting comments argued that the Commission should approve the request given:
 - the overall high quality of programming on AJE;
 - the impressive international coverage that AJE provides; and
 - the benefits to the Canadian broadcasting system that would result through increased programming diversity and provision of different perspectives on world issues.
9. The opposing comments, all submitted by individuals, were in general concerned that:
 - AJE would violate Canadian regulations such as those prohibiting the broadcast of abusive comment;
 - AJE's reporting is unbalanced; and
 - AJE is incompatible with Canadian values.
10. Some parties, including the Canadian Jewish Congress (CJC), B'nai Brith Canada, and Honest Reporting Canada (HRC), offered comments about the proposed addition of AJE to the digital lists but did not support or oppose the request. B'nai Brith Canada stated that it had been successful in negotiating with the managing director of AJE the launch

of a consultative committee that would allow the Canadian Jewish community as represented by B'nai Brith Canada and the CJC to provide input concerning the content of the AJE broadcasts in Canada. Therefore, although it remains concerned and vigilant, B'nai Brith Canada did not oppose the addition of AJE to the lists.

11. The CJC stated that, while it does not oppose the addition of AJE to the lists, it is still concerned about the service. CJC argued that the Commission should ensure that 1) AJE avoids conveying any Holocaust denial or other form of anti-Semitic statement, 2) AJE remains truly independent from its Arabic-language counterpart, 3) there is a “firewall” between the Qatari government and AJE, and 4) the CJC be invited to participate in a consultative committee.
12. HRC argued that, on different occasions in the past, AJE’s reporting has proven to be unfair, inaccurate and unbalanced. HRC provided two examples of AJE reports that it felt did not comply with Canadian journalistic standards and practices. The first is an AJE report aired on CBC Newsworld on 6 January 2009 concerning complaints from the International Committee of the Red Cross and the United Nations that some of their workers on the Gaza strip were being wounded and killed. During the report, the AJE correspondent stated that United Nations workers had “obviously been targeted” by the Israelis. HRC noted that, after a complaint from HRC, the CBC’s ombudsman noted that this AJE report “did not meet the standards of accuracy and fairness within the CBC’s Journalistic Standards and Practices.”¹
13. The second example provided by HRC is a 2007 CBC Around The World broadcast of an AJE report during which Palestinian prisoners were described as “widely respected fighters against the occupation.” HRC argued that this characterization left the impression that these prisoners were political prisoners, whereas many of them were jailed for conducting terror attacks. HRC concluded that, in the event the Commission authorizes the distribution of AJE, it should at the least implement the same strict provisions for the distribution of AJE that were implemented for Al Jazeera Arabic (AJA) in 2004.
14. One individual also argued that AJE regularly presents biased or unbalanced reporting and submitted four clips from programs aired on AJE to support this view. Two of the clips presented interviews with Israeli officials, and the individual who submitted the comment argued that the interviewer had openly accused his guests of causing the death of innocent people. The two other clips were of AJE reports that the person submitting the comment described as biased because they presented only one side of the story and did not raise questions about Hamas’ actions in Gaza.

¹ HRC provided a copy of the CBC ombudsman’s letter to HRC in response to its complaint about the AJE report.

Reply from the sponsor

15. In reply, ECGL argued that the public process provided no evidence that the programming of AJE would violate any Canadian regulations and that, since the Commission has already announced its predisposition to authorize non-Canadian news services, AJE should be added to the digital lists. ECGL also stated that the wide support received from many Canadians indicates that AJE would bring a valued new perspective to the Canadian broadcasting system. ECGL also confirmed that AJE had agreed to consult with representatives of the leading Jewish community organizations at least twice in the year following the launch of AJE in Canada.
16. ECGL stated that AJE's exemplary track record was evidence that AJE would not convey anti-Semitic content and that the Qatari government would not interfere with the content of the service. In response to the CJC's concerns, ECGL stated that AJE and AJA were distinct services and submitted that it would be inappropriate to consider AJA's broadcast record in order to assess the request to add AJE to the lists, even if they share a common owner.
17. ECGL stated that AJE's Code of Ethics, which includes journalistic values of honesty, fairness, balance, independence and credibility, was taken very seriously by AJE's reporters and management. ECGL also argued that AJE's willingness to meet with members of the Canadian Jewish community demonstrates AJE's good faith and the importance it places on communication.
18. Finally, ECGL argued that the two examples provided by HRC to sustain allegations of unbalanced reporting were flawed or incorrect. The first report cited by HRC, during which an AJE correspondent stated that United Nations workers had "obviously been targeted" by the Israelis, was verifiable, accurate, fair and reasonable, according to ECGL. ECGL stated that the same news was reported by other reputable news organizations, such as the *Jerusalem Post*, the *New York Times* and the *Sydney Morning Herald*. ECGL argued that the CBC Ombudsman's judgment in this case was wrong, since he failed to consult all sides (i.e., AJE was not consulted) before issuing his decision, which is contrary to the CBC's usual practice.
19. ECGL stated that the reporter was misquoted in the second example provided by HRC. In its comment HRC stated that the report referred to prisoners as "widely respected fighters against the occupation." ECGL argued that the report actually said that the men were "widely respected *as* fighters against the occupation." It is ECGL's view that the omission of the word *as* distorted the meaning of the report, since the reporter described the men as respected among the Palestinians, which was essential to understanding why Palestinians were so upset over the men's deaths.

Commission's analysis and determination

20. As noted above, in Broadcasting Public Notice 2008-100, the Commission stated that:
- absent clear evidence, as determined by the Commission, that a non-Canadian news service would violate Canadian regulations, such as those regarding abusive comment, the Commission will be predisposed to authorize non-Canadian news services for distribution in Canada.
21. In Broadcasting Notice of Consultation 2009-254, the Commission referred to this more open-entry approach, reiterating that it considers such an approach to be consistent with the objective of ensuring a diversity of editorial points of view in the Canadian broadcasting system. The Commission stated that parties wishing to submit that AJE should not be authorized for distribution in Canada should provide detailed support for their position.
22. Having considered the record of the proceeding, the Commission is satisfied that AJE should be authorized for distribution in Canada. The Commission notes that, while some parties raised concerns about the possible broadcast of abusive comment on the service, these allegations were not substantiated by evidence such as transcripts or tapes, as mentioned in Broadcasting Notice of Consultation 2009-254. Accordingly, there is nothing on the record of the current proceeding to lead the Commission to conclude that there is a serious risk that abusive comment will be broadcast on AJE. The Commission notes, however, that it has the power to remove AJE or any other non-Canadian service from the digital lists if, after an appropriate process, it is found to have broadcast abusive comment.
23. As to HRC's argument that AJE did not comply with Canadian journalistic standards and practices, and that the Commission should therefore implement the same strict provisions for the distribution of AJE as were implemented for AJA,² the Commission notes that the conditions imposed with respect to the distribution of AJA were warranted by incidents of abusive comment aired on AJA, as substantiated on the record of the proceeding to consider the distribution of the service in Canada.
24. With regard to submissions that AJE's reporting is unbalanced, the Commission notes that, in two of the four clips described above, Israeli officials were given the opportunity to present their points of view on AJE. More generally, the Commission notes that balanced reporting would require a service to offer different points of view over a reasonable period of time, rather than having to present every point of view within one report or one program.³ Hence, evidence of six reports (i.e., the four clips plus the two reports cited by HRC) that were aired between October 2007 and May 2009 is insufficient to permit the Commission to conclude that AJE's reporting as a whole is unbalanced.

² See Broadcasting Public Notice 2004-51.

³ Of course, the balance requirement can also be satisfied if an individual report or program is balanced.

25. The Commission further considers that the willingness expressed by the management of AJE to consult with Canadian Jewish organizations in the year following the launch of AJE in Canada concerning its programming is an indication of its commitment to provide balanced coverage and a variety of points of view.
26. As to AJE's potential contribution to a diversity of editorial viewpoints in the Canadian broadcasting system, the Commission notes the substantial support for the addition of the service and the many positive comments received as to the quality of the service.
27. Accordingly, the Commission **approves** the request to add Al Jazeera English 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 website at www.crtc.gc.ca under "Broadcasting Sector" and are available in hard copy on request.

Secretary General

Related documents

- *Call for comments on the proposed addition of Al Jazeera English to the lists of eligible satellite services for distribution on a digital basis*, Broadcasting Notice of Consultation CRTC 2009-254, 7 May 2009
- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services* – Regulatory policy, Broadcasting Public Notice CRTC 2008-100, 30 October 2008
- *Requests of 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
- *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

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>.

Dissenting opinion by Commissioner Marc Patrone

In approving the addition of the Arabic-language news and public affairs service Al Jazeera to the list of eligible satellite services in Broadcasting Public Notice 2004-51, the Commission imposed ‘monitoring’ conditions considered onerous enough that broadcasting distribution undertakings have, to this day, declined to distribute the service. Some who intervened in that proceeding produced numerous examples of hateful language aired on Al Jazeera. Those references remain part of the record of that proceeding. Based in part on that evidence, the Commission justified its decision to impose strict conditions on the Arabic-language service in the following paragraph:

In the Commission’s view, the objective of its abusive comment regulation justifies limiting the right to freedom of expression. The harms flowing from abusive comment threaten the values of equality and multiculturalism, values enshrined in Canadian broadcasting policy objectives and in sections 15 and 27 of the Charter.

Given the original stark appraisal of Al Jazeera Arabic (AJA) in 2004, one might have expected this most recent application by the same network’s English-language service would have been subject to the most rigorous examination possible—one which included a reconsideration of the entire network’s journalism policies. Regretfully, this hasn’t been the case. While some of the interveners argued that the Commission should consider AJA’s broadcasting record, my colleagues, consistent with the Commission’s usual approach, chose not to do so. The consequence of this decision, in my opinion, is that it did not allow for the kind of comprehensive investigation of Al Jazeera’s entire record that I believe was warranted.

Normally I would consider an approach of considering foreign services independently of any other regardless of common ownership to be a sound one. The merits of one service may differ greatly from another owned by the same group or entity. But in my view, issues fundamental to Canadian values, in this case the potential use of our broadcast system to spread ethnic or religious hatred, are too important to submit strictly to current regulatory convention.

If, as I believe is the case, the approach adopted by my colleagues leaves us vulnerable to “harms flowing from abusive comment (which) threaten the values of equality and multiculturalism,”⁴ then such an approach fails the regulator in terms of its capacity to consider broader questions in play. I believe that’s the case in this particular decision, hence my decision to offer this dissenting opinion.

⁴ Broadcasting Public Notice 2004-51, paragraph 62

Even *if* one were to consider the English-language service independently, there has been evidence presented of editorial ‘biases’ that would not be tolerated for long were they produced by a domestic broadcaster. One intervener, Honest Reporting Canada, pointed out that Al Jazeera English’s (AJE’s) reporting was, on different occasions, unbalanced, unfair, and inaccurate.

In one AJE story aired on CBC, an AJE correspondent stated that United Nations (UN) workers had ‘obviously been targeted’ by Israelis. A subsequent investigation by the CBC Ombudsman found the story “did not meet the standards of accuracy and fairness within the CBC’s Journalistic Standards and Practices”—a fairly damning indictment which did little to sway the Commission’s decision in this case. Al Jazeera’s Canadian promoters Ethnic Channels Group Limited (ECGL) disagreed with the CBC’s finding saying the statement in question about UN workers was “verifiable, accurate, fair and reasonable.”

I would ask that if it *was* ‘verifiable’, than why include the word ‘obviously’ in the reporter’s copy? If it was a ‘fact’ that UN workers had been ‘targeted by Israelis’ then why not simply report it as a ‘fact’? I would suggest that the reason it was not reported as a fact was because the reporter was either unable or unwilling to attribute the information to any ‘verifiable’ or ‘official’ source. What was ‘obvious’ to the reporter was clearly just an interpretation on his/her part, hence the need to bolster the observation that Israel targeted UN workers by using the word ‘obviously.’ To whom was this obvious? I would suggest the reporter was simply expressing a firmly held opinion. Under certain circumstances, (e.g. live hits) ‘opinions’ or ‘impressions’ expressed by reporters are fine provided he/she makes clear it’s an ‘opinion’ or ‘impression’ and not a fact that should be deemed ‘obvious’ to anyone.

Despite this finding by the CBC Ombudsman, the Commission found this was not a compelling enough reason to dismiss the application or even to approve it subject to the distribution conditions set out for AJA in Broadcasting Public Notice 2004-51. Perhaps it wasn’t. I would argue, however, that in order to get a truer picture of whether the service has chronic issues of editorial bias, a much more thorough monitoring of it is necessary than what has been done up to now.

ECGL stated that AJE’s exemplary track record was evidence that the service would not convey anti-Semitic content and that the Qatari government would not interfere with the content of the service. They went on to state that AJE and AJA were *distinct* services and submitted that it would be inappropriate to consider AJA’s broadcast record in order to assess the request to add AJE to the list, even if they share a common owner.

That the applicant is urging the regulator to treat AJE’s ‘exemplary’ track record differently from that AJA is, to my way of thinking, an admission that there are underlying ‘bias’ issues with the Arabic service. Why else would they insist that the English-language service not be ‘tarred with the same brush’? And is ECGL really in a position to insist the Qatari government will maintain a ‘hands off policy’ as it applies to the English-language service?

In the absence of any enforceable powers to ‘regulate’ a foreign service, exactly what tools are at our disposal that might ensure ‘fair’ treatment? Yes, we can process ‘complaints’ *after* the fact but note the arguments made on this point in paragraph 75 of Broadcasting Public Notice 2004-51:

The Commission is not persuaded that these mechanisms are either currently available or, that if they are, they would be effective to deal with abusive comment that may be broadcast on Al Jazeera. First, the Commission notes that the prohibition on abusive comment contained in section 8(1)(b) of the Regulations applies only to programming that a distribution undertaking *originates* and, therefore, would not apply to the Al Jazeera service. Second, membership in the CBSC is not open to non-Canadian broadcasters. Third, the Commission is doubtful that hate and defamation laws would be effective to deal with Al Jazeera programming distributed in Canada. Finally, delisting would be disruptive to subscribers and is too blunt an instrument to be relied upon as the primary method to deal with concerns about a potentially small portion of the programming.

I find the whole view of ECGL that a ‘linguistic firewall’ exists between the two services unrealistic to say the least. The sharing of resources, be they ‘video’ story ideas, tips, scripts, ‘live hits’ or otherwise, between services operated by one ownership group is standard operating practice wherever I’ve worked and I imagine they are no different at Al Jazeera.

The antecedent to the decision to approve the AJE application can be found in Broadcasting Public Notice 2008-100 wherein the Commission determined that a more or less ‘open-entry approach’ should be applied in authorizing non-Canadian English- or French-language news services. In recommending AJE for approval, the Commission has reasoned that it is not reasonable to expect non-Canadian services to adhere to Canadian broadcasting codes of conduct governing journalistic practices. The Commission further reasoned that there was nothing on the record of the proceeding that would lead it to conclude that there was a *serious risk* that abusive comments will be broadcast on AJE, thereby implying that there may be some risk that AJE will broadcast abusive comments. It considered that such a risk is worth taking given the possible contributions that the said service might make to the Canadian broadcasting system in the form of increased diversity.

I respectfully disagree that any such ‘risk’ is worth taking. And while it is true that Canada cannot expect other countries to adhere to our standards of journalistic objectivity, I would argue it is incumbent on this country, through its regulator, to do what it can to encourage other jurisdictions to adopt such standards themselves rather than to lower our standards to accommodate foreign services. What we are in effect saying with this decision is that since it’s impractical to demand that others adopt our high standards, we will tolerate journalistic bias by others that we would not tolerate from services originating here.

This will only create a journalistic double standard in our news offerings that undermines our capacity to demand storytelling excellence from our domestic services thereby cheapening our overall broadcasting system. It's also a missed opportunity to send a message internationally about levels of journalistic standards and codes that we consider important enough to demand from all news broadcasters who wish to operate in this country. Adding diversity is necessary, but not at any price.

It is worthy of note that foreign broadcasters are not required to become members of the Canadian Broadcast Standards Council. Perhaps it would be helpful if they were required to do so.

All this said, I've no doubt that Al Jazeera has many fine and capable journalists who would take great exception to the idea that their standards are not up to the level of Canada's regulator. They no doubt take great pride in the work they do and are perfectly justified in doing so. I make no argument with their capabilities per se. I take exception rather to the rationale inherent in our decision—the suggestion that we should accept less in the way of journalistic 'ethics' in exchange for more diversity.

A further area of concern with the decision taken by my colleagues relates to ownership issues. More specifically, my concern relates to the fact that the issue of ownership did not form any part of my colleagues' deliberations. However, this concern is by no means restricted to the application forming the basis of this decision. In weighing the merits of all foreign services, the regulator should be particularly sensitive to 'state-owned' or 'state-financed' services originating from nations with radically different attitudes towards freedom of speech and democracy in general. Let's not ignore the fact there are broadcasters financed by heads of state who have very strong views on controversial international issues. Such broadcast entities may have extreme views and thus be prone to paying lip service to issues of editorial fairness and ethical portrayals of groups by selectively applying them only where they feel they absolutely have to, not as a guiding principle. Such attitudes should render these services, regardless of language, anathema to Canada's broadcast system. By not including any consideration of ownership as a criterion for entry by foreign services, the 'open door' policy introduced with Broadcasting Public Notice 2008-100 has few safeguards or 'screens' in place and hence offers little in the way of protections from such elements.

In processing the application of this English-language news service, I would suggest it should have taken place within the framework of a reconsideration of the conditions placed on the Arabic-language one. Canada's regulator could re-examine Al Jazeera's record as a 'whole' network since 2004. Any abuses in Arabic should be considered a stain on the record of the English-language service and vice versa. Again, the issue of 'abusive comment' is important enough to warrant an exception in the way foreign services are considered for entry here in Canada.

If, on further examination of both the Arabic- and English-language services, the CRTC were to find that only one of the two services met standards related to such matters, then both should be rejected on principle. Such a decision may have little impact in terms of affecting editorial policies in a foreign service but the message would nonetheless be clear. If on the other hand, the Arabic-language service were deemed to have ‘cleaned up its act’ since the 2004 decision, then perhaps both services could be approved without issue.

With this decision, we’re saying in effect that the English-language service can be trusted while the Arabic-language one can only be broadcast subject to 24/7 surveillance by the distributor in order to ensure it remains free of abusive comment. This differentiated treatment of the two services by the Commission could be challenged by some as discriminatory on linguistic grounds.

In summing up, I would impress upon my Commission colleagues that Canada has, through the judicious application of its internal regulatory policies, a responsibility beyond its own borders. It has the opportunity to be a global conscience on issues of freedom of speech and fair and equitable portrayals of all groups and persons.

While this decision faithfully executes the regulatory regime under which we currently operate, it fails on the bigger question of adopting an ethical position on issues which we can and should be playing a leadership role. It’s understandable that our approach up to now has tended to be entirely insular from a regulatory standpoint. But given how small the world has become thanks to digital satellite technology and live wall-to-wall news coverage, we may no longer have the luxury of treating all our decisions in complete isolation of what’s going on around us especially given the current volatile international dynamic within which Canada is intrinsically part.