



## Broadcasting Regulatory Policy CRTC 2009-97

Route reference:  
Broadcasting Public Notice 2008-98

Ottawa, 26 February 2009

### **Addition of five non-Canadian third-language television services to the lists of eligible satellite services for distribution on a digital basis**

*The Commission **approves** a request to add five non-Canadian, third-language television services – Star India Plus, Star Chinese Channel, Channel [V] Taiwan, Star India Gold and Star Chinese Movies 2 – to the lists of eligible satellite services for distribution on a digital basis and amends the lists accordingly. The revised lists are available on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under “Broadcasting Sector.”*

#### **Introduction**

1. The Commission received a request dated 30 June 2008 from Asian Television Network International Limited (ATN) for the addition of five non-Canadian, third-language satellite services to the lists of eligible satellite services for distribution on a digital basis (the digital lists).
2. ATN provided the following descriptions of the services:

Star India Plus is a Hindi-language general entertainment channel that covers daily soaps, comedies, dramas, Bollywood blockbusters, game shows, lifestyle, and kids' programming.

Star Chinese Channel is a Mandarin-language general entertainment channel that covers a wide range of programming from costume drama to contemporary series, cartoons, news, lifestyle, talk and variety shows.

Channel [V] Taiwan is a Mandarin-language trend-setting niche music channel that features the latest Asian chart-topping music videos, large-scale music events and compelling original programs.

Star India Gold is a Hindi-language niche movie channel that brings audiences Bollywood blockbuster films.

Star Chinese Movies 2 is a Mandarin-language niche film channel that brings viewers some of the best Chinese movies from the 1970s to the 1990s.

3. In Broadcasting Public Notice 2008-98, the Commission called for comments on the proposed addition of these five non-Canadian services to the digital lists. The Commission received an opposing intervention from Fairchild Television Ltd. (Fairchild) on the addition of three of these services: Star Chinese Channel (SCC), Channel [V] Taiwan (CVT), and Star Chinese Movies 2 (SCM2). The Commission also received a comment from LS Times (LS) on the addition of SCM2. The Commission did not receive any comments on the addition of Star India Plus (SIP) and Star India Gold (SIG).

### **Commission's general approach**

4. In Broadcasting 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 and specified the information that Canadian sponsors must file in support of their requests. Pursuant to that public notice, requests to add non-Canadian third-language general interest services to the digital lists are generally approved, subject, as appropriate, to new distribution and linkage requirements pertaining to the packaging and offering of third-language services. 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 a proposed service would be partially or totally competitive with Canadian pay or specialty services.
5. With respect to niche services, factors considered by the Commission in its assessment of potential competitiveness include the nature of the service, language of operation, the genres of programming provided, and the target audience. The Commission also considers relevant the extent to which a proposed non-Canadian service may be a program supplier for an authorized Canadian service. The more significant the overlap between services with regard to these factors, the more likely it is that the non-Canadian service will be found to be competitive with the Canadian services.<sup>1</sup>

### **Comments received**

6. Fairchild, the licensee of TalentVision, an analog national specialty service, argued that the addition of more non-Canadian Mandarin-language general interest services would fragment the Mandarin-language audience, thereby diluting the regulatory value of the "buy-through" requirement for TalentVision to the extent that it would no longer serve the purpose for which it was designed.

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<sup>1</sup> In Broadcasting Public Notice 2008-100, the Commission retained its approach to the authorization of non-Canadian general interest third-language services. Further, the Commission expanded this approach to apply to niche third-language services, effective 1 September 2011. Effective that date, the current distribution and linkage rules, applicable to general interest third-language services, will be replaced by a general rule that non-Canadian third-language services (including niche services) can only be offered in a package with Canadian ethnic/third-language services in the same language(s) if one exists, in a ratio of one Canadian service to up to three non-Canadian services.

7. Fairchild also stated that a package of niche services (e.g., one news, one music, and one film channel) could become a purchasing alternative for subscribers to a primarily Mandarin-language general interest service such as TalentVision.
8. LS, the licensee of an unlaunched Category B national ethnic specialty service, proposed that the following conditions of licence should accompany the addition of SCM2 to the digital lists:
  - Programming must be consistent with the current service description provided by ATN: i.e., Mandarin-language Chinese films produced in the 1970s – 1990s.
  - SCM2 should provide all necessary documents verifying its non-preferential and non-exclusive rights to all its feature films programming.
  - ATN should bear all legal responsibility in case of copyright infringement against the Canadian rights holder.
  - In the event of copyright infringement or in the case where SCM2 is found to be exercising preferential or exclusive rights, SCM2 should be immediately removed from the lists.

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

9. Fairchild was concerned that the addition of SCC, a Mandarin-language general interest service, would fragment the audience for TalentVision. The Commission notes that the more open approach to the authorization of general interest third-language services was adopted after the Commission concluded that third-language communities in Canada were generally under-served. This more open approach to authorization, combined with new requirements as to the packaging and offering of third-language services, was considered to be an appropriate balance between contributing to the objective of increasing the number of services available to these under-served communities and ensuring that Canadian third-language services were afforded sufficient protection to meet their programming obligations. In the Commission's view, Fairchild has not provided a persuasive argument that the addition of SCC would upset this balance, and that a departure from the approach set out in Broadcasting Public Notice 2004-96 is warranted.
10. As to the niche services, CVT and SCM2, Fairchild presented no specific arguments as to how these services would be competitive. Rather, Fairchild argued that a package of niche services could serve as an alternative to a general interest service such as TalentVision, leading to audience fragmentation. The Commission notes that its approach to the authorization of such services relies on specific comparisons as to competitiveness. However, in response to Fairchild's more general concern, the Commission notes that it has put in place other mechanisms to ensure that Canadian services are not unduly harmed by factors such as audience fragmentation. These mechanisms include access requirements for certain services, a requirement that

subscribers receive a preponderance of Canadian services, and priorities as to the use of capacity so as to require BDUs with limited capacity to drop non-Canadian services in order to meet their access requirements for Canadian services.

11. The Commission concludes, based on the record of the proceeding, that the niche Mandarin-language services would not compete with Canadian pay and specialty services.
12. LS proposed conditions for the addition of SCM2 that pertained primarily to rights issues and to a possible format change by SCM2.
13. In regard to the rights issues, sponsors of non-Canadian services are required to provide written assurance from the non-Canadian service that they have acquired all the necessary rights for the distribution of their programming in Canada. Sponsors must also provide assurance from the non-Canadian service that it will not exercise, or seek to obtain, preferential or exclusive programming rights. The Commission notes that both types of assurances have been provided for all the services at issue here. Further, these are also on-going requirements for a non-Canadian service to remain on the lists. The Commission could remove a service from the lists if, after due process, it was found to have violated these requirements.
14. In regard to a possible format change to SCM2, the Commission notes that, under the current approach, if a non-Canadian service on the digital lists were to change its format so as to become competitive with a Canadian service, the Commission could remove the service from the lists, after conducting a public process. In addition, it would be open to the Commission, after a suitable process, to find that a service has changed to such an extent that it is no longer the same service that was originally added to the lists. Such a finding would necessitate a reassessment as to whether or not the service should be eligible for distribution in Canada.
15. As noted above, the Commission received no comments with respect to the proposed addition of SIP (described as a “general entertainment channel”) or SIG (described as a “niche film channel”) to the lists. With respect to the latter, the Commission stated that it would rely primarily on the comments filed to identify the Canadian pay and specialty services with which the proposed services might be totally or partially competitive and which therefore should be included in the assessment of the competitiveness of the service. The Commission asked that parties wishing to argue that these non-Canadian services would be competitive should therefore name the specific Canadian pay or specialty service(s) with which they considered the services would compete and provide details to support their views, such as comparisons as to nature and genre of service, programming schedule, programming sources and supply, and target audience. Having received no comments, the Commission concludes that, based on the record of the proceeding, SIG would not compete with any Canadian pay or specialty service.

16. In light of the above, the Commission **approves** the addition of the five non-Canadian services – Star India Plus, Star Chinese Channel, Channel [V] Taiwan, Star India Gold, and Star Chinese Movies 2 – to the digital lists and amends the lists of eligible satellite services accordingly. The revised lists are available on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Broadcasting Sector" and may be obtained in hard copy on request.
17. The Commission notes that the distribution of SIP and SCC is subject to the distribution and linkage rules that apply to third-language general interest services added to the digital lists after 16 December 2004, as set out in Broadcasting Public Notices 2007-51 and 2007-52.

Secretary General

#### **Related documents**

- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services*, Broadcasting Public Notice CRTC 2008-100, 30 October 2008
- *Call for comments on the proposed addition of five non-Canadian third-language television services to the lists of eligible satellite services for distribution on a digital basis*, Broadcasting Public Notice CRTC 2008-98, 22 October 2008
- *Linkage requirements for direct-to-home (DTH) satellite distribution undertakings*, Broadcasting Public Notice CRTC 2007-52, 16 May 2007
- *Distribution and linkage requirements for Class 1 and Class 2 licensees*, Broadcasting Public Notice CRTC 2007-51, 16 May 2007
- *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

*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>.*