



Broadcasting Decision CRTC 2013-349

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Ottawa, 24 July 2013

Soundview Entertainment Inc.
Across Canada

Applications 2013-0423-7, 2013-0424-5, 2013-0425-3 and 2013-0426-1

Addition of TV Naija, Afrotainment Music HD, Afrotainment HD and Africa Box Office to the *List of non-Canadian programming services authorized for distribution*

*The Commission **approves** applications to add TV Naija, Afrotainment Music HD, Afrotainment HD and Africa Box Office to the List of non-Canadian programming services authorized for distribution (the list) and amends the list accordingly. The revised list is available on the Commission's website at www.crtc.gc.ca under "Broadcasting Sector."*

The applications

1. The Commission received applications from Soundview Entertainment Inc. (Soundview), acting as a sponsor, to add TV Naija, Afrotainment Music HD, Afrotainment HD and Africa Box Office to the *List of non-Canadian programming services authorized for distribution* (the list).
2. Soundview described the proposed services as follows:
 - TV Naija – a 24-hour, English-language niche channel devoted to Nigerian music video and lifestyle programming;
 - Afrotainment Music HD – a 24-hour, English-language niche channel devoted to musical programming and whose unique focus, perspective and programming content bridge Afrocentric, Afro-Caribbean and African-American music;
 - Afrotainment HD – a 24-hour, English-language niche channel devoted to African and African-American entertainment programming and whose unique focus, perspective and programming content bridges the Anglophone African and African-American cultural spheres; and
 - Africa Box Office – a 24-hour, English-language niche channel devoted to movies and series and focusing on "Nollywood", the prolific Nigerian film industry.

3. The target audience for all four services is African-Canadians. For Africa Box Office and TV Naija, the target audience is also Nigerian-Canadians. The programming for all four non-Canadian services will be sourced from the United States.

Interventions and reply

4. The Commission received interventions opposing the present applications from Afromedia Communications Incorporated (Afromedia) and several individuals, to which the applicant replied. The public record for this application can be found on the Commission's website at www.crtc.gc.ca under "Public Proceedings."
5. Afromedia submitted that it had spent the last three and a half years attempting to secure carriage from major broadcasting distribution undertakings (BDUs) for AMET-TV, its national, general interest ethnic Category 2 specialty programming undertaking that targets people of African or Afro-Caribbean backgrounds.¹ In the meantime, it indicated that it had entered into a programming arrangement with Metro 14 Montréal (CJNT-TV) in 2010 to promote AMET-TV, whereby it was required to supply five hours per week of original programming for broadcast on that station.² According to Afromedia, the weekly broadcasts brought it national attention, a growing and loyal audience, as well as considerable acclaim in the community. It added that it had concluded a contract with a small BDU and that it would launch AMET-TV on 1 May 2013.
6. Afromedia further submitted that making these proposed non-Canadian services available in Canada at this time would not enhance the reflection of the African-Canadian community but would likely foreclose carriage opportunities for Canadian services. It questioned why the Commission would add these non-Canadian services to the list when a Canadian service with the same interest has not been carried by any of the major BDUs. Afromedia also expressed concern that it would be difficult to secure content if it had to compete with a larger multi-channel U.S. company capable of concluding exclusive licence agreements with African content suppliers.
7. With respect to the creation of Canadian content programming, Afromedia affirmed its intention to produce music video programs, combining performances from local African-Canadian artists with videos from leading African artists, hosted by Canadians with expertise in the different musical genres. However, if Afrotainment HD were permitted to launch in Canada before it could get established, Afromedia indicated that it would be difficult to offer music videos from the same popular African artists, even if it could get comparable carriage. Similarly, while it intends to produce entertainment talk shows with Canadian talent to accompany the broadcast of popular Nollywood and Afro-Caribbean movies, it would struggle to build an

¹ Approved in Broadcasting Decision 2009-718

² The arrangement ended when Rogers recently purchased CJNT-DT (formerly CJNT-TV) and rebranded it as CityTV Montréal.

audience if these movies were already aired on Africa Box Office, even if it succeeded in securing the rights to these movies. Based on the above, Afromedia concluded that approval of the proposed applications would have an adverse effect on the funding, production and availability of African and Afro-Caribbean Canadian content.

8. One individual submitted that before allowing non-Canadian African channels to operate in Canada, the Commission should encourage and support local African channels that intend to broadcast the same type of content as that of the proposed services but have yet to commence operations. Another individual submitted that if AMET-TV were successful, the creation of new jobs would ensue, and visible minorities would have a station through which they could connect with culture from back home.

Applicant's reply

9. Soundview replied that there are currently no Canadian pay or specialty television services with which any of the proposed services could be considered totally or partially competitive and that no relevant Canadian service has provided evidence of an imminent launch. With respect to AMET-TV, Soundview stated that it has not launched and that it did not file evidence in this proceeding that launch is imminent. It added that Afromedia's intervention relies on AMET-TV's failure to launch and speaks generally about entering into licence agreements with program suppliers and of plans to launch various music or movie programs.
10. Soundview noted that the Commission had authorized AMET-TV as a multilingual general interest service with a broad mandate. It submitted that while AMET-TV should not be considered in this proceeding, it would not, once launched, be directly competitive with any of the proposed services, given its conditions of licence that limit to 15% of the broadcast week the broadcast of programming drawn from category 7(d) Theatrical feature films aired on TV as well as the combined categories 8(a) Music and dance other than music video programs or clips, 8(b) Music video clips and 8(c) Music video programs.
11. With respect to the proposed music services, Afrotainment Music HD and TV Naija, Soundview indicated that direct competition with a single television program has never sufficed for the Commission's direct competitiveness test and that if AMET-TV were to develop a similar program, it would be enhanced, not foreclosed, by the carriage of two African music channels. It further argued that the introduction of African music videos on regulated platforms would only serve to increase the amount of BDU subscribers to such channels and would thereby enlarge the target audience of AMET-TV's music program.
12. As regards the movie channel Africa Box Office, Soundview stated that the massive volume and diffuse distribution industry structure of Nollywood, Gollywood and other African films ensures that the broadcast of African films alone would not create

a level of undue competition for AMET-TV. On the contrary, an increase in African movies on BDUs could help producers catering to these audiences.

13. Finally, Soundview argued that the entertainment service Afrotainment HD, which consists of African movies, music videos, comedies and talk shows, would not be directly competitive with AMET-TV. On the contrary, it appears that Afrotainment HD's talk show programming differs from AMET-TV's planned talk show programming with respect to focus, perspective and programming content.

Commission's analysis and decisions

14. After examining the public record for this application in light of applicable policies and regulations, the Commission considers that the issues it must address are the following:

- Is there evidence of AMET-TV's imminent launch such that it should be considered when determining competitiveness?
- Would the proposed services compete with any Canadian pay or specialty service?

Evidence of AMET-TV's imminent launch

15. In Broadcasting Public Notice 2008-100, the Commission announced that it would no longer take into consideration unlaunched Canadian Category 2 (now Category B) services when assessing the competitiveness of non-Canadian English- or French-language services unless such a Canadian service presented evidence that launch is imminent.
16. Afromedia was authorized to operate AMET-TV in Broadcasting Decision 2009-718. Although the service was given until 25 November 2012 to commence operations, Afromedia received a one-year extension upon request. While AMET-TV stated on the record that it had concluded an agreement with a small BDU, it did not name the BDU or provide evidence of the agreement. This statement, therefore, does not constitute proof of imminent launch. The Commission notes that AMET-TV subsequently informed the Commission separately from the record of this proceeding on 15 May 2013 that it had a distribution agreement in place with ATOP Communications Inc. (ATOP) to broadcast AMET-TV's programming.
17. The Commission notes that although ATOP's application to operate a Class 1 BDU to serve the majority of the Greater Toronto Area was approved in Broadcasting Decision 2010-771, the Commission has not, as of July 2013, been informed that ATOP has commenced operations. ATOP is therefore not a licensed BDU. As such, the Commission considers that an agreement between Afromedia and ATOP would not constitute evidence of AMET-TV's actual or imminent launch with a BDU that is in operation.

Competition with Canadian pay or specialty services

18. The Commission's general approach to the addition of non-Canadian English- and French-language services to the list is set out in Public Notice 2000-173. Under this approach, the Commission assesses such requests in the context of its general policy, which among other things, precludes the addition of a non-Canadian service that can be considered either totally or partially competitive with Canadian pay or specialty television services.
19. In Broadcasting Public Notice 2006-103, the Commission announced that in assessing the competitiveness of a service, it would rely primarily on the comments filed to identify the Canadian pay and specialty services with which a proposed non-Canadian service might be totally or partially competitive, as well as the details provided, such as programming comparison, to support their views. This competitiveness test is based primarily on the extent and significance of any overlap (for instance, due to nature of service, language of operation, target audience and genres of programming). The Commission also considers the extent to which a proposed non-Canadian service may be a program supplier for an authorized Canadian service.
20. As set out in Broadcasting Public Notice 2005-9, the purpose of the competitiveness test is to ensure that licensed Canadian pay and specialty services are in a position to fulfill their commitments and obligations with respect to Canadian programming and other objectives set out in the *Broadcasting Act*, responsibilities that non-Canadian services do not share.
21. The Commission defines niche services as services that are more narrowly focused than general interest services with respect to the nature and genre of programming and are targeted to a more specific audience. The Commission also defines general interest services as services that present a broad variety of programming in a particular language.
22. Even if AMET-TV had shown that it had launched or would imminently launch, the Commission notes that a comparison of AMET-TV's programming with that of the proposed services reveals that:
 - AMET-TV is a general interest service, whereas the four non-Canadian services are niche services;
 - of its programming, AMET-TV is required to offer at most 70% in the English language and 20% in the French language, and at least 10% in various languages spoken across the African continent. On the other hand, all of the programming broadcast by these four non-Canadian services would be in the English language;
 - if AMET-TV were to launch, it would serve a larger audience than the four non-Canadian services given the broad range of program categories from which it is authorized to draw its programming; and

- due to the limitations imposed on AMET-TV regarding category 7(d) as well as the combined categories 8(a), 8(b) and 8(c), it could only broadcast a limited amount of programming from the categories that would overlap with the proposed non-Canadian services.
23. In addition to the fact that AMET-TV is a general interest service, it is difficult for the Commission to assess competitiveness between AMET-TV and the proposed services given that AMET-TV's programming does not yet exist. Afrimedia also did not provide a program schedule for AMET-TV with which the Commission could compare its programming to that of the four proposed non-Canadian services. The Commission examined AMET-TV's initial application and found that its proposed programming samples revealed no programming titles identical to those provided in Soundview's sample weekly program schedules for the four proposed non-Canadian services.
24. The Commission therefore finds that Afrimedia has not provided evidence that the four proposed non-Canadian services are totally or partially competitive with AMET-TV or any licensed Canadian service. The Commission agrees with the applicant that due to the significant amount of African movies to choose from, it is less likely that AMET-TV would offer the same titles as these non-Canadian services. With respect to the proposed music services, the Commission echoes the applicant's statement that African music videos are currently available on many platforms and are never exclusive to any of them. The Commission also notes that AMET-TV has had three and a half years to launch and has yet to do so.
25. Based on the above, the Commission finds that these four non-Canadian niche services are not totally or partially competitive with Afrimedia's authorized general interest service AMET-TV or with any licensed Canadian pay or specialty service.

Conclusion

26. In light of all of the above, the Commission **approves** the applications by Soundview Entertainment Inc. to add TV Naija, Afrotainment Music HD, Afrotainment HD and Africa Box Office to the *List of non-Canadian programming services authorized for distribution* and amends the list accordingly. The list is available on the Commission's website at www.crtc.gc.ca under "Broadcasting Sector" and may be obtained in hard copy on request.

Secretary General

Related documents

- *Class 1 terrestrial broadcasting distribution undertaking to serve the majority of the Greater Toronto Area*, Broadcasting Decision CRTC 2010-771, 19 October 2010
- *AMET-TV – Category 2 specialty service*, Broadcasting Decision CRTC 2009-718, 25 November 2009

- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services – Regulatory policy, Broadcasting Public Notice CRTC 2008-100, 30 October 2008*
- *Call for comments on the proposed addition of Planète Thalassa to the lists of eligible satellite services for distribution on a digital basis -- Streamlined approach to assessing competitiveness – Increased reliance on comments received, Broadcasting Public Notice CRTC 2006-103, 18 August 2006*
- *Distribution of Spike TV by broadcasting distribution undertakings, Broadcasting Public Notice CRTC 2005-9, 27 January 2005*
- *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*