



Broadcasting Decision CRTC 2013-474

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Ottawa, 6 September 2013

Telelatino Network Inc.
Across Canada

Application 2013-0180-4

Complaint by Telelatino Network Inc. against TELUS Communications Company regarding the non-distribution of Italian-language specialty Category B services

Following its examination of a complaint filed on 25 January 2013 by Telelatino Network Inc. (TLN) against TELUS Communications Company (TELUS) in regard to the non-distribution of Canadian Italian-language services, the Commission finds that the wording of section 27(2) of the Broadcasting Distribution Regulations (the Regulations) does not accurately reflect its policy regarding the distribution of and linkage rules for third-language services. The Commission intends to initiate, in the near future, a proceeding to amend section 27(2) of the Regulations in order to have it reflect the policy established in Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services – Regulatory policy, Broadcasting Public Notice CRTC 2008-100, 30 October 2008, which was intended to apply to both Canadian ethnic and Canadian third-language services.

The Commission finds merit in the complaint filed by TLN. However, it does not consider it appropriate, in light of the above-noted future proceeding, to deal with the remedy that it is seeking, specifically, to mandate the distribution of at least one of TLN's related Italian-language Category B services known as Mediaset Italia and Sky TG24, as well as its Italian-language Category A service known as Telelatino, to all TELUS subscribers subscribing to RAI Italia, a general-interest Canadian third-language service.

The parties

1. Telelatino Network Inc. (TLN) is the licensee of the ethnic Category A service Telelatino, which is required by condition of licence to broadcast a minimum of 75% of its programming in either Italian or Spanish. It is also the licensee of the specialty Category B services Mediaset Italia and Sky TG24. Since these Category B services

are required by condition of licence to provide at least 90% of their programming in the Italian language, they qualify as third-language services.¹

2. TELUS Communications Company² (TELUS) is the licensee of terrestrial broadcasting distribution undertakings (BDUs) collectively known as Optik TV, which serve parts of British Columbia, Alberta and Quebec. TELUS distributes Teletatino as well as RAI Italia, a general interest³ non-Canadian Italian-language service.

Regulatory background

3. The distribution requirements pertaining to third-language services, which are set out in section 27 of the *Broadcasting Distribution Regulations* (the Regulations), are as follows:
 - (2) Except as otherwise provided under a condition of its licence, a licensee shall, for every one to three non-Canadian third-language services that it distributes to its subscribers, distribute – to the extent that they are available in the same principal language⁴ – at least one Canadian third-language service.
 - (3) Except as otherwise provided under a condition of its licence, a licensee that distributes a non-Canadian third-language service in accordance with subsection (2) shall only distribute that service to its subscribers as part of a package with one or more Canadian third-language services.
 - (4) Except as otherwise provided under a condition of its licence, a licensee that distributes a general interest non-Canadian third-language service or a general interest Category B third-language service to subscribers shall also distribute an ethnic Category A service to them if one is available in the same principal language.

¹ As set out in the *Broadcasting Distribution Regulations*, “third-language service” refers to a programming service that provides at least 90% of its programming over the broadcast week in one or more languages other than English or French, exclusive of secondary audio programming and subtitles.

² TELUS Communications Inc., and 1219823 Alberta ULC and Emergis Inc. in partnership with TELUS Communications Inc. in TELE-MOBILE Company, partners in a general partnership carrying on business as TELUS Communications Company

³ As set out in the *Broadcasting Distribution Regulations*, the expression “general interest,” in respect of programming, means programming from a broad spectrum of program genres and categories.

⁴ As set out in the Regulations, the expression “principal language” means a language in which 40% or more of the programming of a programming service is provided over the course of a broadcast week.

The complaint

4. On 25 January 2013, TLN filed a complaint against TELUS in regard to the non-distribution of Canadian Italian-language services. According to TLN, sections 27(2) and 27(4) of the Regulations mandate the distribution of at least one of its Italian-language Category B services Mediaset Italia or Sky TG24 (the only Canadian Italian-language third-language services) as well as Telelatino (the only ethnic Italian-language Category A service) to all TELUS subscribers subscribing to RAI Italia (a general interest non-Canadian third-language service). Given that TELUS is not distributing either Mediaset Italia or Sky TG24 in addition to Telelatino, TLN alleged that TELUS's practices are not compliant with section 27(2) of the Regulations.
5. TLN noted that Telelatino is not a third-language service given that it offers only 75% of its programming in languages other than English or French, and consequently does not meet the 90% threshold set out in the Regulations. Accordingly, TLN expressed the view that distributing Telelatino to subscribers to RAI Italia does not place TELUS in compliance with section 27(2) of the Regulations, and that only by distributing Mediaset Italia or Sky TG24 would it be in compliance with that section of the Regulations.
6. Accordingly, TLN requested that the Commission issue a directive to TELUS requiring it to distribute at least one Canadian Italian-language third-language service (i.e., either Mediaset Italia or Sky TG24) to all subscribers subscribing to RAI Italia in accordance with section 27(2) of the Regulations, in addition to continuing the distribution of Telelatino to those subscribers, in accordance with section 27(4) of the Regulations.

TELUS's answer

7. TELUS stated that its current distribution of Telelatino to RAI Italia subscribers places it in compliance with the 1:3 distribution requirement set out in section 27(2) of the Regulations. It further stated that TLN's interpretation of that section is inconsistent with the Commission's policy regarding the distribution and linkage rules for third-language services, which is set out in Broadcasting Public Notice 2008-100.
8. In paragraph 136 of that public notice, the Commission stated that "a simple packaging requirement of one Canadian ethnic/third-language service, if one exists, with up to three non-Canadian third-language services in the same language(s) would provide BDUs with an incentive to create attractive packages including popular non-Canadian services and the appropriate Canadian services." In paragraph 138, it announced that one of the amended rules for ethnic/third-language services would consist of the following:

Non-Canadian third-language 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 (1) Canadian service to up to three (3) non-Canadian services.

9. According to TELUS, when the Commission established those rules, its use of the slashed phrase “Canadian ethnic/third-language service” was a clear indication that either ethnic or third-language services could be used for the purposes of complying with the 1:3 distribution requirement, which would later be set out in section 27(2) of the Regulations. It submitted that the requirement set out in that section must therefore be read as applying to all Canadian services for which the principal language of operation is a language other than English or French – including ethnic Category A services such as Telelatino – and not just third-language services.
10. TELUS further submitted that TLN’s interpretation of section 27(2) of the Regulations would transform the 1:3 distribution requirement into a 2:3 requirement for Italian-language services, and would therefore be contrary to the policy set out in Broadcasting Public Notice 2008-100. It argued that by accepting TLN’s interpretation, the Commission would be rewarding Telelatino for being the only ethnic Category A service with a level of third-language programming lower than 90%.⁵ Furthermore, it would be discriminatory against the Italian and Spanish linguistic communities as they would be the only ones required to subscribe to two Canadian third-language services before being able to subscribe to a non-Canadian service in the same principal language. Other linguistic communities served by ethnic Category A services could continue to subscribe to only one Canadian service before being able to subscribe to a non-Canadian service in the same principal language.
11. Accordingly, TELUS submitted that the Commission should dismiss TLN’s complaint. In the event that the Commission approves TLN’s interpretation of section 27(2) of the Regulations, TELUS requested that it be granted a condition of licence allowing it to consider ethnic Category A services as “third-language services” for the purposes of complying with that section of the Regulations.

Interventions

12. The Commission received interventions in opposition to the application from Cogeco Cable Inc. (Cogeco), Rogers Communications Partnership (Rogers), Comitato degli Italiani all’Estero (Comites of Toronto), the General Council of Italians Abroad (CGIE), Patronato Inca-Cgil and the Dante Alighieri Society. In its reply to TELUS’s answer, TLN addressed the interventions by Rogers and Cogeco. The public record for this proceeding can be found on the Commission’s website at www.crtc.gc.ca under “Public Proceedings.”
13. Rogers and Cogeco echoed TELUS’s arguments regarding the use of the terms “ethnic” and “third-language,” as well as its concerns over the potential impact of

⁵ All other ethnic Category A services – Odyssey, ATN, Talentvision and Fairchild – broadcast no less than 90% third-language programming.

approving TLN's interpretation of section 27(2) of the Regulations. For their part, all of the Italian-Canadian interest groups that intervened argued that it would be unfair for Italian-Canadians to be required to pay more in order to receive RAI Italia, especially since they already have to subscribe to Telelatino. They submitted that such a result would only be in the interest of the broadcaster, TLN, and not consumers.

Commission's analysis and decisions

14. After examining the public record for this application in light of applicable regulations and policies, the Commission considers that the issue it must address is whether the wording of section 27(2) of the Regulations accurately reflects its policy regarding the distribution and linkage rules for third-language services set out in Broadcasting Public Notice 2008-100.
15. The Commission acknowledges that the wording of section 27(2) of the Regulations limits the application of this section to Canadian third-language services, which Telelatino is not. It considers, however, that the policy established in Broadcasting Public Notice 2008-100 was intended to apply to both Canadian ethnic and Canadian third-language services, as demonstrated by the use of both terms in that public notice. The Commission notes that when it called for comments on the implementation of the amended Regulations (see Broadcasting Notice of Consultation 2010-931), the reference to "ethnic services" had been omitted from the wording of the proposed section 27(2).
16. Furthermore, in Broadcasting Regulatory Policy 2011-455, in which the Commission announced the amendments made to the Regulations, the Commission reiterated that, under the new rules, "non-Canadian third-language services could 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 (1) Canadian service to up to three (3) non-Canadian services." Accordingly, the Commission considers that the absence of the term "ethnic" in section 27(2) was the result of an omission.
17. Finally, in regard to the interventions received, the Commission agrees that TLN's interpretation of section 27(2) would place the Italian-speaking community of Canada at a disadvantage vis-à-vis other ethno-linguistic communities that are not required to subscribe to two Canadian programming services in order to receive one non-Canadian third-language service.

Conclusion

18. In light of the above, the Commission finds that the wording of section 27(2) of the Regulations does not accurately reflect its policy regarding the distribution of and linkage rules for third-language services. The Commission intends to initiate, in the near future, a proceeding to amend section 27(2) of the Regulations in order to have it reflect the policy established in Broadcasting Public Notice 2008-100, which was intended to apply to both Canadian ethnic and Canadian third-language services.

19. The Commission finds merit in the complaint filed by TLN. However, it does not consider it appropriate, in light of the above-noted future proceeding, to deal with the remedy that it is seeking, specifically, to mandate the distribution of at least one of either Mediaset Italia or Sky TG24, as well as Telelatino, to all TELUS subscribers to RAI Italia.

Secretary General

Related documents

- *Amendments to the Broadcasting Distribution Regulations and other Commission Regulations*, Broadcasting Regulatory Policy CRTC 2011-455, 29 July 2011
- *Call for comments on amendments to the Broadcasting Distribution Regulations*, Broadcasting Notice of Consultation CRTC 2010-931, 10 December 2010
- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services – Regulatory policy*, Broadcasting Public Notice CRTC 2008-100, 30 October 2008