



Broadcasting Decision CRTC 2021-213

PDF version

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Ottawa, 30 June 2021

McCarthy Tétrault LLP

Across Canada

Public record for this application: 2021-0108-8

Addition of Jewelry Television to the *List of non-Canadian programming services and stations authorized for distribution*

In accordance with the *Direction to the Canadian Radio-television and Telecommunications Commission Respecting the Implementation of the Canada–United States–Mexico Agreement*, the Commission **approves** an application to add Jewelry Television to the *List of non-Canadian programming services and stations authorized for distribution* (the [list](#)), and amends the list accordingly. The revised list can be found on the Commission's [website](#).

Application

1. The Commission received an application from McCarthy Tétrault LLP (McCarthy Tétrault), acting as the Canadian sponsor, to add Jewelry Television (JTV), a non-Canadian service, to the *List of non-Canadian programming services and stations authorized for distribution* (the list).
2. JTV is a U.S.-based teleshopping service that originates from Knoxville, Tennessee.
3. McCarthy Tétrault described JTV as an English-language, 24-hour, general interest teleshopping service offering programming content that features gemstone information and education, jewelry fashion tips and trends, and guest experts. The service offers fashionable and collectible jewelry products for purchase by its target audience, which is primarily composed of women over the age of forty.
4. The Commission received interventions from individuals in support of and in opposition to this application. JTV submitted a reply, in which it responded to each of the interventions, on 5 April 2021, that is, four days after the 1 April 2021 deadline for any such reply.

Background

5. The Commission's general approach to the addition of non-Canadian English- and French-language services to the list is set out in Broadcasting Public Notice 2008-100, and reiterated in Broadcasting Regulatory Policy 2015-96. 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 competitive with Canadian discretionary services. The objective of this policy is to provide a measure of support to Canadian services so that they can fulfill their commitments and obligations.

6. In recent history, the Commission has rendered two decisions addressing a similar application that requested the addition of QVC, another U.S.-based teleshopping service, to the list.
7. In Broadcasting Decision 2016-122, the Commission denied an application by VMedia Inc. (VMedia) to add QVC to the list. The Commission found that the lawful distribution of QVC required either the issuance of a broadcasting licence or authorization pursuant to an exemption order. Since QVC is a non-Canadian entity, the Commission determined that it could not issue a broadcasting licence for the service. Further, the Commission determined that QVC was ineligible to operate pursuant to the Exemption Order Respecting Teleshopping Programming Service Undertakings set out in the appendix to Broadcasting Public Notice 2003-11.¹
8. VMedia appealed the Commission's decision, and the Federal Court of Appeal, on 15 September 2017, referred the matter back to the Commission for reconsideration. Subsequently, in a letter dated 28 December 2017, VMedia stated that it wished to proceed with its application.
9. On 30 November 2018, Canada, the United States of America and the United Mexican States signed a Protocol for the new Canada-United States-Mexico Agreement (CUSMA) to replace the North American Free Trade Agreement. CUSMA, which entered into force on 1 July 2020, includes a pronouncement relating to access by U.S.-based teleshopping services to the Canadian broadcasting system, specifically, paragraph 4 of Annex 15-D to Chapter 15 of the Protocol, which reads as follows:

Home Shopping Programming Services

4. Canada shall ensure that U.S. programming services specializing in home shopping, including modified versions of these U.S. programming services for the Canadian market, are authorized for distribution in Canada and may negotiate affiliation agreements with Canadian cable, satellite, and [Internet Protocol Television] distributors.
10. On 29 April 2020, the Governor in Council issued the *Direction to the Canadian Radio-television and Telecommunications Commission Respecting the Implementation of the Canada–United States–Mexico Agreement* (the Direction) directing the Commission to implement, by appropriate means, the above-mentioned paragraph of CUSMA.

¹ This exemption order was subsequently revised in Broadcasting Regulatory Policy 2020-192 and Broadcasting Order 2020-193.

11. In Broadcasting Decision 2020-191, the Commission confirmed with additional reasons Broadcasting Decision 2016-122. Despite this, and despite finding both that QVC would be competitive with a Canadian service and that the potential harm of adding QVC to the list outweighed the potential benefit to Canadians and to the Canadian broadcasting system, the Commission, in light of the Direction, added QVC to the list.

Commission's analysis and decisions

12. 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:

- whether JTV's reply to the interveners should be included in the record of this proceeding;
- whether the Commission is obligated to add JTV to the list; and
- whether the addition of JTV or any other U.S.-based teleshopping service to the list would be reassessed in the event of future changes to CUSMA or the Direction.

JTV's reply

13. Given that, as mentioned above, JTV submitted its reply four days after the deadline for any reply to the interventions, the Commission must determine whether it will accept JTV's reply, which requires consideration of whether the reply will be prejudicial to the parties and/or contribute to a more fulsome record.

14. The supporting intervention was filed by an individual who submitted that approval of this application would be consistent with paragraph 4 of Annex 15-D of CUSMA. JTV agreed with this assertion.

15. One of the opposing interventions was submitted by an individual who expressed the opinion that there are enough shopping channels already. The intervener also requested that JTV, if permitted to operate in Canada, operate only as a subscription pay TV service. In its reply, JTV disagreed with the intervener's opinion. JTV added that it was not applying to operate as a subscription pay service, that carriage arrangements would be negotiated with the carriers, and that it would not be financially viable to operate a shopping service as a subscription pay service.

16. The third intervention, which was labelled as being in opposition, was submitted by an individual who stated that he had conducted an informal survey of seven Canadian women, none of whom expressed any interest in JTV. He added that, in light of CUSMA, despite any objections, JTV, like QVC, must be carried. The intervener therefore requested that the Commission, in this decision, address what purpose the comment phase serves if there is no choice but to allow the addition of such services to the list. In its reply, JTV submitted that the above-mentioned informal survey was not statistically valid, and indicated that it has had uniformly positive preliminary

conversations with Canadian broadcasting distribution undertakings, whose perspectives differ substantially from those of the respondents to the intervener's informal survey.

17. Given the nature of JTV's reply, the Commission is of the view that this reply could have only a limited impact on the outcome of this proceeding, that its acceptance would not be prejudicial to the parties, and that it would contribute to a more fulsome record.
18. In light of the above, the Commission accepts JTV's reply as part of the record of this proceeding.

Whether the Commission is obligated to add JTV to the list

19. Pursuant to the Direction, the Commission must implement, by appropriate means, paragraph 4 of Annex 15-D of CUSMA.
20. As established above, and as mentioned by some interveners, the Commission does not currently have the discretion to reject the addition of a U.S.-based teleshopping service to the list.
21. In light of the above, and as required pursuant to the Direction, the Commission determines that it must add JTV to the list.

Potential impact of future changes to CUSMA or the Direction

22. The Commission considers it appropriate to address the validity of such authorizations in the event of any future amendment to or rescindment of CUSMA or the Direction.
23. In light of the fact that the addition of U.S.-based teleshopping services to the list is granted solely because it is required by CUSMA and the Direction, the Commission considers it appropriate to require that such undertakings reapply to be authorized for distribution in Canada should CUSMA be amended in a manner that affects the requirement to authorize distribution of these services.
24. Upon receipt of any such application, the Commission would consider whether the service should be authorized for distribution in Canada in accordance with the regulatory framework in effect at that time.
25. Given that any such reassessment could result in service disruption to subscribers, the Commission considers it appropriate to allow for a grace period during which services affected by any future changes to CUSMA or the Direction could reapply for authorization to be distributed in Canada. As a result, any U.S.-based teleshopping services which are authorized for distribution by virtue of the requirement set out in CUSMA or the Direction are required to reapply for authorization within 90 days of any changes to either which affect the requirement to authorize distribution of those services.

Conclusion

26. In light of the above, the Commission **approves** the application by McCarthy Tétrault LLP, acting as the Canadian sponsor, to add Jewelry Television to the *List of non-Canadian programming services and stations authorized for distribution*, and amends the list accordingly. The revised [list](#) can be found on the Commission's website at www.crtc.gc.ca and may be obtained in hard copy on request.
27. This approval relies on the existence of both the Canada-United States-Mexico Agreement and the *Direction to the Canadian Radio-television and Telecommunications Commission Respecting the Implementation of the Canada–United States–Mexico Agreement*, and it may be invalidated by any future amendment to either that would affect the requirement to authorize distribution of U.S.-based teleshopping services.

Secretary General

Related documents

- *Revised Exemption Order Respecting Teleshopping Programming Service Undertakings*, Broadcasting Regulatory Policy CRTC 2020-192 and Broadcasting Order 2020-193, 15 June 2020
- *Reconsideration of the decision relating to the addition of QVC to the List of non-Canadian programming services and stations authorized for distribution*, Broadcasting Decision CRTC 2020-191, 15 June 2020
- *Addition of QVC to the List of non-Canadian programming services and stations authorized for distribution*, Broadcasting Decision CRTC 2016-122, 4 April 2016
- *Let's Talk TV – A World of Choice – A roadmap to maximize choice for TV viewers and to foster a healthy, dynamic TV market*, Broadcasting Regulatory Policy CRTC 2015-96, 19 March 2015
- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services – Regulatory policy*, Broadcasting Public Notice CRTC 2008-100, 30 October 2008
- *Review of exemption orders respecting experimental video-on-demand programming undertakings, video games programming service undertakings and teleshopping programming service undertakings*, Broadcasting Public Notice CRTC 2003-11, 6 March 2003