



Broadcasting Public Notice CRTC 2006-57

Ottawa, 28 April 2006

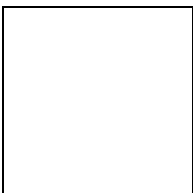
Addition of ProSiebenSat.1 Welt to the lists of eligible satellite services for distribution on a digital basis

*The Commission **approves** the request to add ProSiebenSat.1 Welt, a non-Canadian German-language general interest service, 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 web site at www.crtc.gc.ca under "Industries at a Glance."*

Introduction

1. The Commission received a request dated 26 September 2005 from Ethnic Channels Group Limited (ECGL) to add ProSiebenSat.1 Welt (ProSieben), a non-Canadian service, to the lists of eligible satellite services for distribution on a digital basis (the digital lists). ECGL described the service as follows:

ProSiebenSat.1 Welt is a general interest German-language programming service from Germany. The service offers programming from four different television services operated by a commercial television broadcaster based in Germany. Its programming includes news, documentaries, feature films, dramas, variety and talk shows, lifestyle, and sports programming.
2. With its request, ECGL provided an undertaking from ProSieben that it does not hold, will not obtain, nor will it exercise, preferential or exclusive programming rights in relation to the distribution of programming in Canada. ECGL noted that ProSieben had entered into a programming supply agreement with ECGL that would permit the launch of a Canadian Category 2 German-language service that would include programming from ProSieben, upon receipt of the Commission's approval. ECGL submitted that, until the launch of such a service, ProSieben's programming may be licensed to Canadian programming services for Canadian distribution on a program-by-program basis, without restriction.
3. The Commission subsequently called for comments on ECGL's request in *Call for comments on the proposed addition of ProSiebenSat.1 Welt to the lists of eligible satellite services for distribution on a digital basis*, Broadcasting Public Notice CRTC 2005-113, 30 November 2005.



Positions of parties

4. The Commission received over 900 comments in support of ECGL's request from community associations, business and cultural groups and individuals, including one petition with over 250 signatures.
5. The Canadian Cable Telecommunications Association (CCTA) filed comments in support of ECGL's request, stating that legitimizing carriage of non-Canadian services not only responds to consumer demand for greater choice but provides customers with an incentive to remain a vital part of the Canadian broadcasting system and helps to increase the benefits associated with digital cable television.
6. HerzTV, an applicant for a German-language Category 2 service, filed comments opposing ECGL's request. HerzTV submitted that, contrary to its undertaking, ProSieben holds, or has granted, preferential or exclusive programming rights in relation to the distribution of its programming in Canada. Specifically, HerzTV submitted that ECGL had been granted exclusive, or at least preferential, rights to ProSieben's programming in Canada. HerzTV added that it will require access to much of the same programming and submitted that it is incumbent on the Commission to ensure that Canadian broadcasters, such as itself, have fair access to this type of programming, if ProSieben is permitted to gain access to the Canadian market.
7. HerzTV also noted that the letter from ProSieben submitted in support of ECGL's request made no mention of the details of the agreement concerning access to program rights, contrary to the information requirements applicable to such requests, as set out in the appendix to *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 (Public Notice 2004-96). HerzTV submitted that such information is required in order for the Commission to determine whether the non-Canadian service is currently complying, and will in the future comply, with its undertaking with respect to access to program rights.
8. HerzTV also submitted that approval of the request would be premature, based on the stated intention of ECGL to seek authorization for a Category 2 German-language service that would include programming currently broadcast on ProSieben. HerzTV submitted that it would be wasteful to proceed with the request, and that the "spirit and interest" of Public Notice 2004-96 would be better met by the Commission denying the request to add the non-Canadian service and expediting the approval of ECGL's and HerzTV's applications for German-language Category 2 services.

Sponsor's reply

9. In reply, ECGL noted that its arrangement with ProSieben is similar to the arrangement adopted by Food Network Canada¹ when it first began operations in Canada, replacing TV Food Network, a U.S. service. ECGL also submitted, among other things, that the Commission has not objected to the exercise of exclusive programming rights by Canadian broadcasting licensees, and indeed, that the exercise of such rights is the very basis of business operations for virtually all Canadian programming services.
10. ECGL reiterated that, until its proposed Canadian Category 2 service launches, programming could be licensed by ProSieben to Canadian programming services on a program-by-program basis. ECGL stated its understanding that no agreements are in place for the broadcast of ProSieben programming during such period.
11. ECGL added that its own agreement with respect to ProSieben programming is based on the launch of a licensed Canadian Category 2 service. Once that service is launched, ECGL, as a Canadian licensee, will exercise exclusive programming rights for the programming contained on the Category 2 service, and ProSieben will no longer make its non-Canadian service available in Canada. At that point, the question of whether programming rights are made available to others will no longer be relevant.
12. In response to HerzTV's suggestion that the request was premature, ECGL stated that it has sponsored ProSieben for addition to the digital lists due to the discontinuance of a non-Canadian service called German TV, which provided the only existing source of 100% German-language programming, and to address the immediate need for an alternative source of German-language programming for Canadians.

Commission's analysis and determinations

13. The Commission's approach to the addition of non-Canadian third-language general interest services is set out in Public Notice 2004-96. In that public notice, the Commission stated that, going forward, requests to add non-Canadian third-language general interest services to the digital lists would generally be approved, subject, as appropriate, to new distribution and linkage rules described in that public notice. The Commission also set out the information that Canadian sponsors would be obliged to file in order for the Commission to consider the addition of non-Canadian third-language general interest services to the digital lists.

¹ In *New specialty television service "Food Network Canada" replaces the U.S. service "TV Food Network,"* Decision CRTC 2000-217, 4 July 2000 (Decision 2000-217), the Commission approved an application by Alliance Atlantis Communications Inc., on behalf of a company to be incorporated (Alliance Atlantis), for a broadcasting licence to carry on a specialty service to be known as Food Network Canada. Decision 2000-217 noted that Food Network Canada would replace the American specialty service TV Food Network, which was owned by Television Food Network General Partnership (TVFN) and appeared on the Commission's lists of eligible satellite services. As part of the agreement with Alliance Atlantis, TVFN committed to request the removal of TV Food Network, which was carried by some broadcasting distribution undertakings in Canada, from the lists of eligible satellite services, once the proposed Canadian service was launched.

14. Public Notice 2004-96 also states that, in order to be added to the digital lists, a non-Canadian service must hold all necessary rights to the distribution of its programming in Canada and that it “must not hold, will not obtain, nor will it exercise, preferential or exclusive programming rights in relation to the distribution of programming in Canada.” Sponsors for the addition of a non-Canadian service to the digital lists must provide undertakings from the non-Canadian service to this effect. The Commission notes that these undertakings were provided with ECGL’s request to add ProSieben to the digital lists.
15. Further, the record of the proceeding indicates that ProSieben has entered into, or will enter into, a programming supply agreement with ECGL whereby ProSieben’s programming would be made available as part of the programming offering of a licensed Canadian Category 2 programming service. While the agreement will provide the Category 2 service with exclusive Canadian rights to ProSieben’s programming, the Commission notes that there is nothing in its policies that would prohibit such an arrangement, or that would require that non-Canadian programming services added to the digital lists licence their programming to more than one Canadian programming service. The Commission also notes that the arrangement between ECGL and ProSieben contemplates the removal of ProSieben from the digital lists, at which point the undertakings provided by ProSieben would no longer be relevant.
16. With respect to HerzTV’s submission that further details are needed with regard to the agreement, the Commission is satisfied, based on the information provided, that ProSieben is in compliance with the Commission’s policies with respect to programming rights. The Commission notes that, if any non-Canadian service on the digital lists were found to have exercised preferential or exclusive programming rights in Canada, the Commission could consider removing the service from the digital lists.
17. With regard to HerzTV’s submission that the addition of the service to the digital lists is “premature,” the Commission notes that ECGL’s application for a German-language service was approved in *German TV – Category 2 specialty service*, Broadcasting Decision CRTC 2006-159, 21 April 2006 (Decision 2006-159). The Commission expects, however, that it will take some time before ECGL is able to launch the Category 2 service. Accordingly, in the interests of advancing the availability of German-language programming in the immediate term, the Commission considers it appropriate to proceed with the request to add ProSieben to the digital lists.
18. Based on the record of the proceeding, the Commission is satisfied that ProSieben is a non-Canadian, third-language, general interest service, and is properly subject to the approach for such services set out in Public Notice 2004-96. Accordingly, the Commission **approves** the addition of ProSieben to the digital lists and amends the lists of eligible satellite services accordingly. The lists of eligible satellite services are available on the Commission’s web site at www.crtc.gc.ca under “Industries at a Glance” and may be obtained in hard copy on request. The Commission notes that the distribution of this service 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

Distribution and Linkage requirements for Class 1 and Class 2 licensees, Broadcasting Public Notice CRTC 2005-119, 14 December 2005, and *Linkage requirements for Direct-to-home (DTH) satellite distribution undertakings*, Broadcasting Public Notice CRTC 2005-120, 14 December 2005.

19. In the event that the Canadian German language Category 2 service containing ProSieben programming approved in Decision 2006-159 is launched, and ProSieben ceases to make its non-Canadian service available in Canada, the Commission will expect ECGL to file a request to remove the non-Canadian service from the lists of eligible satellite services, along with written consent from ProSieben for such removal.

Secretary General

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>