



Broadcasting Public Notice CRTC 2007-8

Ottawa, 25 January 2007

Addition of Baby TV to the lists of eligible satellite services for distribution on a digital basis and retention of German TV

*The Commission **approves** a request to add Baby TV to the lists of eligible satellite services for distribution on a digital basis and amends the lists of eligible satellite services accordingly. In addition, the Commission has determined that German TV will remain on the lists of eligible satellite services for distribution on a digital basis. 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 23 February 2006 from Rogers Cable Communications Inc. (Rogers) for the addition of Baby TV, a non-Canadian satellite service, to the lists of eligible satellite services for distribution on a digital basis (the digital lists). Rogers described the service as follows:

Baby TV is a 24-hour non-commercial television channel dedicated to infants and toddlers under 3 years of age. Daytime programming consists of 2 to 8 minute episodes, which are educational and entertaining. Evening programming consists of soft music with gentle images providing a soothing atmosphere. The service does not include any commercials, advertisements or promotions. The service will be offered to Canadian distributors in both English-language and French-language versions, so that the second language can be carried on a secondary audio program (SAP).
2. The Commission subsequently issued *Call for comments on the proposed addition of Baby TV to the eligible lists of satellite services for distribution on a digital basis, and on the removal of German TV*, Broadcasting Public Notice CRTC 2006-38, 30 March 2006 (Public Notice 2006-38).
3. In that public notice, the Commission also called for comments on the possible deletion of German TV from the digital lists. It was the Commission's understanding that German TV had ceased to operate on 31 December 2005.

Addition of Baby TV to the digital lists - Positions of parties

4. The Commission received 20 comments concerning the addition of Baby TV to the digital lists. Nineteen individuals submitted comments in support of Rogers' request, many of which indicated that the service would fulfil a need for educational and entertaining programming for children in the targeted age group. Some of those who filed comments in support also welcomed the fact that Baby TV would be a commercial-free service.
5. High Fidelity HDTV Inc. (High Fidelity) filed a comment opposing Rogers' request. High Fidelity stated that it filed an application (2006-0376-3) for a proposed Category 2 national English-language high definition (HD) specialty service tentatively called BabyHD, four days after the Commission issued Public Notice 2006-38. High Fidelity contended that its proposed BabyHD service would not be viable if the request to add Baby TV to the digital lists was granted, as there would be no room in Canada for both services to operate successfully.
6. High Fidelity further submitted that, if Baby TV was added to the digital lists, "a unique and distinctive programming genre and audience that have not been addressed or served to date in Canada [would] be satisfied by a non-Canadian standard definition satellite service, without any benefits whatsoever resulting to the Canadian production community and with only limited benefits resulting to Canadian audiences and the Canadian broadcasting system as a whole." High Fidelity provided a copy of its Category 2 application for BabyHD so that "all interested persons [would] have the opportunity to understand what we are committing to build with BabyHD and to compare the proposals for BabyHD and Baby TV."
7. Finally, in a copy of a letter it sent to Baby Network Limited (BNL), the rights owner to Baby TV, dated 25 April 2006, High Fidelity stated that it was interested in purchasing, for its BabyHD Category 2 service, Baby TV programming from BNL.

Reply from Rogers

8. In its reply, Rogers acknowledged the strong expression of support for Baby TV, as expressed on the record. Rogers also noted that no existing Canadian specialty or pay television services opposed its request to add Baby TV to the digital lists.
9. Along with its reply, Rogers filed comments from BNL, in which BNL noted that the Commission's policies set out in *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 (Public Notice 2000-173), provide that the Commission, in performing its competitiveness assessment, will take into account all specialty and pay television programming services whose licence applications have been approved by the Commission, including all launched and unlaunched Category 1 and Category 2 specialty and pay services. BNL further noted that High Fidelity's application for BabyHD had not

yet been approved by the Commission. BNL considered that the Commission should not unduly delay consideration of Rogers' request and should evaluate the request for the addition of Baby TV to the digital lists on its own merits.

10. In addition, BNL stated that Baby TV was created much earlier than BabyHD (i.e., early 2003), which, in BNL's view, raised questions as to whether BabyHD was conceived and developed independently or whether it had been modelled on the existing and successful Baby TV service, with the addition of the HD format. To support this concern, BNL provided examples of similarities between Baby TV and BabyHD in regard to program descriptions.
11. With respect to the acquisition of Baby TV's programming by High Fidelity, BNL stated that it is open to entering into discussions with High Fidelity with respect to program licensing, but questioned High Fidelity's level of interest and commitment. BNL noted that no discussions regarding program acquisition had taken place and that High Fidelity's letter was sent to Baby TV only on 25 April 2006, after Baby TV's application had been filed and only one day before High Fidelity filed its intervention in the proceeding to consider Rogers' request to add Baby TV to the digital lists.

Commission's analysis and determinations

12. In Public Notice 2000-173, the Commission stated that all proposals for the inclusion of a non-Canadian service on the lists would be assessed in the context of the Commission's policy that generally precludes the addition of new non-Canadian satellite services if the Commission determines them to be either totally or partially competitive with Canadian specialty or pay television services. Further, the Commission stated that, in applying this policy, it would take into account all specialty and pay television programming undertakings whose licence applications have been approved by the Commission.
13. In regard to the present case, the application for BabyHD, dated 5 April 2006, was not filed until approximately one week after the publication of Public Notice 2006-38, calling for comments with respect to Rogers' request to add Baby TV to the digital lists. Further, the record of the proceeding to consider Rogers' request closed on 15 May 2006, some time before the notice of public hearing that included the BabyHD licence application was published on 13 July 2006. The Commission approved the licence for BabyHD in *BabyHD – Category 2 specialty service*, Broadcasting Decision CRTC 2006-654, 30 November 2006.
14. Given that BabyHD was not authorized either at the time the Commission launched the proceeding with regard to Baby TV or during the public comment period with respect to Rogers' request to add Baby TV to the digital lists, it is the Commission's view that it would not be appropriate for it to consider the competitiveness of Baby TV with respect to BabyHD. In light of the foregoing, the Commission concludes that there are no Canadian pay or specialty services, including launched or unlaunched Category 2 services, with which Baby TV would be totally or partially competitive.

15. As to Baby TV as a possible source of programming for High Fidelity (or other Canadian programming service providers), the Commission notes that, for a non-Canadian service to be added to the digital lists, the sponsor of the non-Canadian service must provide an undertaking from the non-Canadian service provider 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. The Commission notes that Rogers, the sponsor of Baby TV, filed such an undertaking from the non-Canadian service provider.
16. In light of all the above, the Commission **approves** the addition of Baby TV 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.

Retention of German TV on the digital lists

17. In Public Notice 2006-38, the Commission also proposed to delete German TV from the digital lists. German TV, originally sponsored by the Canadian Cable Telecommunications Association, was added to the digital lists on 15 July 2004, as announced in *Requests to add non-Canadian third-language services to the lists of eligible satellite services for distribution on a digital basis*, Broadcasting Public Notice CRTC 2004-50, 11 July 2004. It was the Commission's understanding that German TV had ceased to operate on 31 December 2005. In order to keep the lists up to date, the Commission requested comment on whether the service should be removed from the digital lists.
18. In response to Public Notice 2006-38, in a letter dated 27 April 2006, Deutsche Welle, one of the partners involved with German TV (the others being Germany's public broadcasting services, ARD and ZDF¹), informed the Commission that it had been obliged to temporarily suspend German TV "due to significant media legal changes and modifications in Germany." Deutsche Welle stated, however, that "it is confident that it can resume the service in a few months", and asked the Commission to retain German TV on the digital lists. It is the Commission's understanding that, to date, German TV has yet to re-launch.
19. In the Commission's view, given that Deutsche Welle has indicated its intention to re-introduce German TV, it would be inappropriate at this time to remove the service from the digital lists. In the event that German TV does not come back on air within a reasonable period of time, the Commission may issue a new public notice calling for comment on the deletion of this service from the digital lists.

¹ ARD: Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten Deutschlands; ZDF: Zweiten Deutschen Fernsehen

20. In light of the above, the Commission determines that German TV will remain on the lists of eligible satellite services for distribution on a digital basis.

Secretary General

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