



Broadcasting Public Notice CRTC 2008-78

Ottawa, 5 September 2008

Regulatory policy

Addition of Big Ten Network to the lists of eligible satellite services for distribution on a digital basis.

*The Commission **approves** a request to add Big Ten Network 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 website at www.crtc.gc.ca under "Industries at a Glance."*

Introduction

1. The Commission received a request dated 9 January 2008 from Shaw Communications Inc. (Shaw) for the addition of Big Ten Network (BTN), a non-Canadian, English-language satellite service originating in the United States, to the lists of eligible satellite services for distribution on a digital basis (the digital lists).
2. Shaw described BTN as a full-time video service dedicated to the Big Ten Conference, primarily focused on sports and ancillary programming related to that organization, as well as additional National Collegiate Athletic Association (NCAA) programming.
3. The Commission's approach to the addition of English- and French-language non-Canadian services is set out in Public Notice 2000-173. Under this approach, proposals for the inclusion of a non-Canadian service on the lists are 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, including all specialty and pay television programming undertakings whose licence applications have been approved by the Commission.
4. The Commission uses a case-by-case approach to determine whether or not a non-Canadian service proposed for addition to the lists would be competitive with an authorized Canadian service. Factors considered by the Commission in its assessment of the competitiveness of a non-Canadian service include the nature of the service, language of operation, the genres of programming provided, and the target audience. The Commission also considers relevant the extent to which a proposed non-Canadian service may be a program supplier for an authorized Canadian service.
5. The Commission assesses the factors noted above in order to determine the amount of overlap between the sponsored non-Canadian service and the relevant Canadian services and thus the extent to which the non-Canadian service might compete with the Canadian

services. The more significant the overlap, the more likely it is that the non-Canadian service will be found to be competitive with the Canadian services.

6. In Broadcasting Public Notice 2008-33, the Commission called for comments on the proposed addition of BTN to the digital lists. The Commission stated that it would rely primarily on the comments filed to identify the Canadian pay and specialty services with which BTN might be totally or partially competitive and which therefore should be included in the assessment of the competitiveness of the service. The Commission asked that parties wishing to argue that BTN would be competitive name the specific Canadian pay or specialty service(s) with which they considered the service would compete and provide details to support their views, such as comparisons as to nature and genre of service, programming schedule, programming sources and supply, and target audience.

Comments received

7. The Commission received comments in opposition to the addition of the service to the digital lists from the Canadian Film and Television Production Association (CFTPA), the Canadian Association of Broadcasters (CAB) and CTVglobemedia Inc. (CTVgm).
8. The CFTPA argued that the creation and licensing of a Canadian college or university sports television service that would broadcast Canadian as well as U.S. and other non-Canadian collegiate/university sports programming would do more to advance the objectives of the *Broadcasting Act* than a non-Canadian service. The CFTPA also stated that Shaw's request in no way demonstrates consumer demand for this particular service.
9. CTVgm stated that BTN appears to be partially competitive with Canadian services already offering amateur college sports programming. To support this argument, CTVgm stated that amateur college sports programming is already available in varying amounts through licensed Canadian sports services, including TSN.
10. The CAB opposed the request but did not indicate any specific Canadian pay or specialty service with which BTN might compete.
11. The CAB and CTVgm both submitted that limited channel capacity should be allocated first to Canadian services before the addition of further non-Canadian services is contemplated.
12. All three parties recommended that, since a decision is pending regarding the test that the Commission should apply when assessing requests to add new non-Canadian services to the lists, the Commission impose a moratorium on additions to the lists of eligible satellite services until such time as it confirms its existing policy with respect to authorizing non-Canadian programming services for distribution in Canada or sets a new policy.

Reply from the sponsor

13. Shaw stated that the addition of high-quality non-Canadian services is essential to ensure the ongoing strength and relevance of the Canadian broadcasting system in that it maximizes choice and programming diversity. In Shaw's view, choice and diversity are essential tools in order to face competition from unregulated and illegal sources.
14. Shaw also referred to an Ipsos-Reid survey that states that Canadians object to artificial regulatory restrictions on choice and want more non-Canadian services.
15. Shaw stated that the parties that submitted comments have not provided any compelling evidence that BTN would be totally or partially competitive with any licensed Canadian pay or specialty service. Shaw noted that the Commission approved the addition of College Sports Television (CSTV) in Broadcasting Public Notice 2007-120 on the following basis: "Given that CSTV's sports coverage is limited to collegiate sports, the opportunity for overlap with sport services presenting a wide array of professional and amateur sports is minimal." Shaw argued that the nature of service provided by BTN is even more targeted than that offered by CSTV and that, as such, any overlap with TSN, The Score or any other Canadian sports service is virtually non-existent.
16. Shaw objected to the proposals of CAB, the CFTPA and CTVgm advocating a moratorium on the addition of non-Canadian services, describing such a measure as an anti-consumer proposal that would undermine consumers' confidence in the openness of the system and the fairness of the regulator.
17. Shaw stated that it must be able to allocate scarce capacity to services that deliver the greatest value to their customers, or else they will turn to other media alternatives.

Commission's analysis and determinations

18. The submissions by the CFTPA, the CAB and CTVgm all opposed Shaw's request, but only CTVgm's submission specifically argued that BTN would be competitive with any particular Canadian pay or specialty service. However, CTVgm's submission did not provide any supporting details with regard to competitiveness, stating only that "amateur college sports programming is already available in varying amounts by licensed Canadian sports services, including TSN."
19. Based on the record of the proceeding, the Commission concludes that BTN is a very "niche" service, broadcasting U.S. collegiate sports from only one conference (11 American universities). With regard to its nature of service, BTN is similar to CSTV, a 24-hour American network devoted exclusively to broadcasting college sports programming. The Commission added CSTV to the lists in 2007 based on the rationale that, when sports coverage is limited to collegiate sports, the opportunity for overlap with sport services presenting a wide array of professional and amateur sports is minimal. In the Commission's view, the same rationale applies with respect to BTN. In fact, in BTN's case, the opportunity for overlap would appear to be even smaller since it only broadcasts a fraction of available collegiate sports programming, i.e., collegiate sporting

events from the Big Ten Conference. Accordingly, in the Commission's view, BTN is not competitive with any Canadian pay or specialty service.

20. In Broadcasting Notice of Public Hearing 2007-10, the Commission called for comment on possible changes to the existing approach for the addition of non-Canadian services to the lists. In doing so, the Commission did not find it necessary to impose a general moratorium with respect to requests for the addition of services until issuance of its determinations in that proceeding. Accordingly, Shaw's request was filed, and comment was requested with respect to it, under the existing approach. In light of the above, and having considered the comments filed, the Commission sees no reason to delay a determination with regard to the specific request to add BTN.
21. The Commission notes that capacity issues are not generally taken into account in the assessment of whether a non-Canadian service should be added to the lists of eligible satellite services. Rather, other rules, such as access rights for specialty services, the definition of "available channel" and, the preponderance rule, apply to ensure that BDUs dedicate most of their capacity to the distribution of Canadian services.
22. In light of the above, the Commission **approves** the addition of BTN 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 website at www.crtc.gc.ca under "Industries at a Glance" and may be obtained in hard copy on request.

Secretary General

Related documents

- *Call for comments on the proposed addition of Big Ten Network to the lists of eligible satellite services for distribution on a digital basis – Notice of consultation, Broadcasting Public Notice CRTC 2008-33, 18 April 2008.*
- *Review of the regulatory frameworks for broadcasting distribution undertakings and discretionary services, Broadcasting Notice of Public Hearing CRTC 2007-10, 5 July 2007*
- *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*

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>.