



Broadcasting Decision CRTC 2013-139

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Ottawa, 20 March 2013

CityWest Cable & Telephone Corp.
Across Canada

Application 2012-1291-9

Addition of Esperanza TV to the *List of non-Canadian programming services authorized for distribution*

*The Commission **approves** an application to add Esperanza TV to the List of non-Canadian programming services authorized for distribution (the list) and amends the list accordingly. The revised list is available on the Commission's website at www.crtc.gc.ca under "Broadcasting Sector."*

Introduction

1. The Commission received an application dated 11 October 2012 from CityWest Cable & Telephone Corp. (CityWest) to add Esperanza TV, a non-Canadian service originating in the United States, to the *List of non-Canadian programming services authorized for distribution* (the list).
2. CityWest described Esperanza TV as a Spanish-language service that would provide diverse inspirational and educational programming to the Christian community in Canada.
3. In Broadcasting Public Notice 2004-96, the Commission stated that requests to add non-Canadian third-language general interest services to the list would generally be approved, subject to any requirement it deemed appropriate. In the case of non-Canadian third-language services that provide narrowly targeted or "niche" programming, the Commission stated that it would continue to apply a case-by-case assessment to determine whether such services are partially or totally competitive with Canadian pay or specialty services.
4. The Commission received several interventions in support of the present application as well as interventions from Telelatino Network Inc. (Telelatino) and a number of individuals commenting on the application. The public record for this proceeding is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Commission's analysis and decisions

5. In assessing the competitiveness of a service, the Commission relies primarily on the comments filed to identify the Canadian pay and specialty services with which a proposed non-Canadian service might be totally or partially competitive.
6. After examining the public record for this application in light of applicable policies and regulations, the Commission considers that the issues it must address relate to the following:
 - the distinction between niche and general interest services; and
 - distribution and packaging requirements for Esperanza TV.

Distinction between niche and general interest services

7. In Broadcasting Public Notice 2004-50, the Commission defined niche services as services that are more narrowly focused than general interest services with respect to the nature and genre of programming and are targeted to a more specific audience. In that notice, the Commission also defined general interest services as services that present a broad variety of programming in a particular language.
8. CityWest identified Esperanza TV as a Spanish-language general interest service. However, given the description of the service and its predominantly religious programming schedule,¹ the Commission considers that Esperanza TV is in fact a niche service and in particular, a religious one, rather than a general interest service.

Distribution and packaging requirements for Esperanza TV

9. In its intervention, Telelatino submitted that in accordance with section 27(3) of the *Broadcasting Distribution Regulations* (the Regulations), non-Canadian Spanish-language services can be offered only in a package that includes at least one of the existing Canadian third-language services² and cannot be offered as a stand-alone channel or in a stand-alone foreign channel package.
10. Telelatino also submitted that the distribution of any non-Canadian third-language general interest service in the Italian or Spanish language is subject to the buy-through requirement set out in section 27(4) of the Regulations, whereby a licensee that distributes a general interest non-Canadian 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 The applicant indicated that 60.4% of its weekly programming schedule consists of religious programming.

² TLN en Español and Teleniños.

11. The Commission notes that since Esperanza TV is a non-Canadian third-language religious service, it is subject to sections 26 and 27(1) to (3) of the Regulations. As a result, the combined effect of sections 26(2) (packaging of religious services) and 27(3) (packaging of non-Canadian third-language services) is that Esperanza TV may only be distributed as part of a package with other religious services, one or more of which must be a Canadian third-language religious service. Esperanza TV, therefore, cannot be packaged with TLN en Español nor Teleniños since neither of these are religious services.
12. The Commission also notes that since it considers Esperanza TV to be a niche service, it is not subject to section 27(4) of the Regulations, which applies to non-Canadian third-language general interest services.

Conclusion

13. In light of all of the above, and in the absence of opposing interventions, the Commission **approves** the application by CityWest Cable & Telephone Corp. to add Esperanza TV to the *List of non-Canadian programming services authorized for distribution* and amends the list accordingly. The list is available on the Commission's website at www.crtc.gc.ca under "Broadcasting Sector" and may be obtained in hard copy on request.
14. The Commission reminds licensed broadcasting distribution undertakings that, in the absence of a Canadian third-language religious service, those wishing to distribute this non-Canadian third-language religious service in a manner other than described above will be required to apply and obtain a condition of licence in this regard.

Secretary General

Related documents

- *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
- *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, 15 July 2004