



Broadcasting Public Notice CRTC 2007-15

Ottawa, 13 February 2007

Addition of BabyFirstTV to the lists of eligible satellite services for distribution on a digital basis

The Commission approves a request to add BabyFirstTV 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 23 June 2006 from Rogers Cable Communications Inc. (Rogers) for the addition of BabyFirstTV, 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:

BabyFirstTV is a 24-hour-per-day commercial-free television channel which provides programming created specifically for the unique needs and abilities of viewers between six months and 3 years old. Eighty percent of the programming is original, designed by leading experts in child development, education and psychology. BabyFirstTV offers a safe and positive learning environment with an emphasis on enriching baby-parent interaction. There is no violence, no inappropriate content and no over-sensory stimulants.

2. The Commission subsequently issued *Call for comments on the proposed addition of BabyFirstTV to the lists of eligible satellite services for distribution on a digital basis*, Broadcasting Public Notice CRTC 2006-117, 8 September 2006 (Public Notice 2006-117).

Positions of parties

High Fidelity HDTV Inc.

3. High Fidelity HDTV Inc. (High Fidelity) filed the only comment, dated 10 September 2006, relating to Rogers' request to add BabyFirstTV to the digital lists. High Fidelity stated that it was awaiting the Commission's decision on its application for an English-language Category 2 high definition specialty television service to be known as BabyHD (Application number 2006-0376-3), which had been placed on the agenda of the 11 September 2006 public hearing.

4. High Fidelity stated that BabyFirstTV would be totally or partially competitive with BabyHD, and that BabyFirstTV had targeted “the exact same audience with the exact same types of programming.” High Fidelity compared the information provided in the request to add BabyFirstTV to the digital lists with the information in its own application for BabyHD, and submitted that “many of the concepts described by BabyFirstTV are repeated in the BabyHD application.”
5. High Fidelity stated that it would not launch BabyHD if the Commission added BabyFirstTV to the digital lists because “the Canadian marketplace is clearly not large enough to support multiple television services that target the babies and toddlers niche.” Further, High Fidelity submitted that BabyHD would not be able to compete with BabyFirstTV since BabyFirstTV, as a non-Canadian service, would not be subject to the conditions of licence that would be applied to BabyHD.
6. High Fidelity further argued that, if the Commission added BabyFirstTV to the digital lists, a unique and distinctive programming audience and genre would be served by a non-Canadian standard definition satellite service, without benefit to the Canadian production community and with only limited benefits to Canadian audiences and to the Canadian broadcasting system as a whole.

Rogers’ reply

7. In its reply dated 19 October 2006, Rogers submitted that, given that the application for BabyHD had not been approved, no existing Canadian specialty or pay television service, nor any approved but unlaunched Canadian service, had intervened to oppose its request to add BabyFirstTV to the digital lists. Rogers deemed “the lack of opposition to be a critical factor in terms of meeting the Commission’s test of assessing whether a non-Canadian service can be considered either totally or partially competitive with Canadian specialty or pay television services.”
8. Rogers noted that the notice of public hearing that included High Fidelity’s application for BabyHD had been gazetted nearly one month after Rogers filed its request to add BabyFirstTV and months after sponsorship discussions had taken place with BabyFirstTV. Rogers indicated that it considers the issue of timing is not a minor procedural point but rather an issue that goes to the integrity of the process. Rogers stated that “it is dismayed at the possibility that the public process could be manipulated in such a way” and that “while the broadcasting system should support Canadian entities, it must not do so in a way that raises questions of fairness, due process and lack of good faith.” In Rogers’ view, “to ignore the fact that it sponsored BabyFirstTV, consistent with the Commission’s policies and the criteria that apply to the addition of new services to the digital lists, would be an injustice.”

9. Rogers rejected High Fidelity's assertion that BabyFirstTV and BabyHD have targeted exactly the same audience with the exact same kinds of programming. In terms of target audience, Rogers noted that BabyFirstTV's intended audience is babies and toddlers under the age of three, and that less than four percent of its schedule is specifically targeted to parents. Rogers noted that BabyHD's service description states that it is specifically targeted to infants and toddlers less than 2.5 years old *and* the parents of caregivers of infants and toddlers. Further, Rogers noted that, while High Fidelity had identified these two target audiences, it had given no indication of the proportion of the programming schedule that would be directed to each.
10. Finally, Rogers noted that BabyHD's description of its nature of service does not set out any restriction limiting the amount of programming that can be drawn from any of the Commission's 21 program categories, giving it an almost unprecedented degree of flexibility for a specialty channel targeted to a niche audience. Rogers stated that, by contrast, BabyFirstTV draws its programming from only two programming categories. Rogers added that BabyFirstTV's intended audience has no interest in watching programming in categories such as news, movies, documentaries, and stand-up comedy, since BabyFirstTV's audience is much too young for these types of programming.

Commission analysis and determinations

11. 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 2000-173, 14 December 2000 (Public Notice 2000-173), the Commission stated that all proposals for the inclusion of a non-Canadian service on the lists will 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.
12. The Commission notes that the application for BabyHD was considered as a non-appearing item at the 11 September 2006 public hearing. The Commission approved the High Fidelity's application in *BabyHD –Category 2 specialty service*, Broadcasting Decision CRTC 2006-654, 30 November 2006. BabyHD had not been authorized on 8 September 2006, the date on which the Commission launched the proceeding with regard to Rogers' request to add BabyFirstTV to the digital lists, nor had it been authorized on 10 October 2006, the deadline for the filing of comments with respect to Rogers' request. Accordingly, it is the Commission's view that it would not be appropriate for it to consider the competitiveness of BabyFirstTV and BabyHD in the context of the current request. In light of the foregoing, the Commission finds there are no Canadian pay or specialty services, including launched or unlaunched Category 2 services, with which BabyFirstTV might be totally or partially competitive.

13. Accordingly, the Commission **approves** the addition of BabyFirstTV 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.

Secretary General

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