



## Broadcasting Decision CRTC 2012-637

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Route reference: Part 1 application posted on 13 June 2012

Ottawa, 21 November 2012

### **Rogers Communications Partnership** Across Canada

*Application 2012-0699-6*

### **Addition of MLB Network to the List of non-Canadian programming services authorized for distribution**

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

#### **Introduction**

1. The Commission received an application on 1 June 2012 from Rogers Communications Partnership (Rogers) to add MLB Network, a non-Canadian service originating in the United States, to the *List of non-Canadian programming services authorized for distribution* (the list).
2. Rogers described MLB Network as an English-language sports entertainment service, with a secondary audio programming of 5% in Spanish, that targets male and female baseball fans of all ages in Canada.
3. The Commission's general approach to the addition of non-Canadian English- and French-language services to the list is set out in Public Notice 2000-173. Under this approach, the Commission assesses such requests in the context of its general policy, which, among other things, precludes the addition of a non-Canadian service that can be considered either totally or partially competitive with Canadian pay or specialty television services.
4. The Commission received several interventions in support of the application, as well as an intervention from Bell Media Inc. (Bell Media) commenting on the application. The public record for this application can be found on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Public Proceedings."

#### **Commission's analysis and decision**

5. The Commission relies primarily on the interventions filed to identify the Canadian pay and specialty services with which the service proposed to be added to the list

might be totally or partially competitive and which therefore should be included in the assessment of the competitiveness of the service.

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 are the following:
  - Would the service compete with any Canadian pay or specialty service?
  - Should the Commission implement a regular review process of non-Canadian services already on the list?

#### **Competition with Canadian pay or specialty services**

7. In its intervention, Bell Media indicated that it is not opposed to the addition of MLB Network to the list, but is concerned about the approval of non-Canadian programming services for distribution in Canada in general given the diversity of programming services (from Canadian and non-Canadian sources) already available to consumers.
8. In its reply, Rogers argued that MLB Network would not be competitive with existing Canadian pay or specialty services, as demonstrated by the fact that no broadcasters filed interventions in opposition to its application.
9. In addition to interventions filed to identify licensed Canadian pay and specialty services with which the non-Canadian service proposed to be added to the list might be totally or partially competitive, the Commission's current approach is a competitiveness test that is based primarily on the extent and significance of any overlap (for instance, due to nature of service, language of operation, target audience and genres of programming). The Commission also considers the extent to which a proposed non-Canadian service may be a program supplier for an authorized Canadian service.
10. The Commission notes that MLB Network's niche offering and target audience are comparable to that of other non-Canadian services on the list that are devoted to a single sport, such as NFL Network, Golf Channel and Speed. As indicated by the applicant, of the 2,430 live regular-season games in Major League Baseball (MLB), MLB Network features only up to 150. The Commission notes that there appears to be a great deal of regular-season MLB games still available for broadcast. Furthermore, the Commission notes that MLB is also a program supplier for Rogers'<sup>1</sup> specialty service, Sportsnet, for the programs Quick Pitch and The Best of Intentional Talk, by way of an agreement permitting six hours of programming per week only through 2012.
11. In assessing the potential competitiveness of a non-Canadian service, the Commission notes that its approach does allow for some overlap in programming. Accordingly, the Commission is of the view that, in this instance, the overlap would

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<sup>1</sup> Rogers Sportsnet Inc.

not be significant so as to conclude that the service is competitive with any Canadian pay or specialty service.

12. The Commission further notes that, as mentioned above by Rogers, no licensed Canadian pay or specialty service intervened in opposition. Therefore, it would appear that the addition of MLB Network to the list would not have any impact on an existing Canadian pay or specialty service's ability to fulfil its commitments and obligations.

#### **Implementation of a regular review process**

13. In its intervention, Bell Media requested that the Commission implement a regular review process to ensure that non-Canadian programming services on the list continue to not compete with existing Canadian pay or specialty services.
14. The Commission notes that additions to the list of non-Canadian programming services are always subject to a public process and that these services are not mandatory, but available for carriage by Canadian broadcasting distribution undertakings. Moreover, in Public Notice 1997-96, the Commission reaffirmed that it would consider the removal of non-Canadian services from the list, upon request or following receipt of a complaint, should they undergo a change in format so as to become competitive with a Canadian pay or specialty service. The Commission further notes that in Broadcasting Public Notice 2008-100, it recently reviewed its general approach to authorizing non-Canadian services. Consequently, the Commission finds that Bell Media has not provided sufficient justification to warrant a change to its existing approach for dealing with non-Canadian programming services on the list.

#### **Conclusion**

15. In light of all of the above, the Commission **approves** the addition of MLB Network 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](http://www.crtc.gc.ca) under "Broadcasting Sector" and may be obtained in hard copy on request.

Secretary General

#### **Related documents**

- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services* – Regulatory policy, Broadcasting Public Notice CRTC 2008-100, 30 October 2008
- *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
- *Revised Lists of Eligible Satellite Services*, Public Notice CRTC 1997-96, 22 July 1997