



## Broadcasting Decision CRTC 2016-265

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Reference: Part 1 application posted on 5 January 2016

Ottawa, 13 July 2016

**Atop Broadband Corp.**  
Across Canada

*Application 2015-1398-7*

### **Addition of ONE World Sports to the *List of non-Canadian programming services and stations authorized for distribution***

*The Commission **approves** an application to add ONE World Sports to the List of non-Canadian programming services and stations authorized for distribution ([the list](#)), and amends the list accordingly. The revised list can be found on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca).*

*The Commission is of the view that the addition of this service meets policy objectives regarding the entry of non-Canadian services into Canada, as it does not compete with Canadian pay or specialty services and will benefit Canadians by adding diversity to the availability of sports programming in Canada.*

#### **Application**

1. Atop Broadband Corp. (Atop), acting as the Canadian sponsor, filed an application to add ONE World Sports to the *List of non-Canadian programming services and stations authorized for distribution* (the list).
2. The applicant described ONE World Sports as a 24-hour niche service (100% English-language) that provides live programming and that consists almost entirely of global sporting events. Its target audience is men and women between the ages of 18 and 45 interested in sports and niche sports from around the world. The service originates from Stamford, Connecticut, while its programming originates from over 25 countries including Great Britain, Australia and China.

#### **Interventions**

3. The Commission received interventions in opposition to the application from Bell Media Inc. (Bell) and Rogers Media Inc. (Rogers), to which the applicant replied. The public record for this application can be found on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) or by using the application number provided above.

### **Intervention by Rogers**

4. Rogers opposed the application, stating that ONE World Sports competes directly with Sportsnet World, one of its specialty Category B services. Rogers pointed out that Sportsnet World and ONE World Sports are both English-language services devoted primarily to the coverage of soccer and that both services target the same audience, namely adults within the 18 to 49 age group.
5. Rogers also indicated that there is direct programming overlap between Sportsnet World and ONE World Sports. In particular, both programming services broadcast soccer matches from the Barclays Premier League and the Bundesliga, English and German professional soccer leagues, respectively. Rogers indicated that it holds exclusive live broadcast rights to the Barclays Premier League (along with Bell) and to the Bundesliga in Canada, and that it broadcasts every match for which it has the rights on Sportsnet World both as a live game and as a replay. Rogers therefore argued that ONE World Sports would be required to black out any live or otherwise protected games if it were authorized for distribution.
6. Further, upon examination of ONE World Sports' December 2015 programming schedule submitted as part of the application, Rogers submitted that ONE World Sports broadcast 68 Barclays Premier League matches and 22 Bundesliga matches that month, all of which were also broadcast on Sportsnet World, with the exception of the Barclays Premier League games for which Bell holds the exclusive broadcast rights in Canada.
7. Rogers added that ONE World Sports provides a magazine-style soccer program called *Football Review* that is similar to numerous soccer-focused, magazine-style programs aired on Sportsnet World. It also argued that the overall overlap between ONE World Sports and Sportsnet World is more far-reaching than the overlap between the Category B service radX and the U.S.-based service FUEL TV, whose addition to the list the Commission denied in *Addition of FUEL TV to the lists of eligible satellite services for distribution on a digital basis*, Broadcasting Regulatory Policy CRTC 2011-289, 3 May 2011 (Broadcasting Regulatory Policy 2011-289) because the sports programming genres on the service matched nearly 20% of radX's programming.

### **Intervention by Bell**

8. Bell opposed the application, stating that ONE World Sports would compete directly with its specialty Category C service The Sports Network (TSN). It disputed Atop's assertion that ONE World Sports would not pose a competitive threat to Canadian licensed sports services given that its programming originates from outside Canada.
9. Bell submitted that international programming has a broad appeal in Canada and that TSN broadcasts numerous live sporting events that originate outside Canada and that are hugely popular with viewers (e.g., Barclays Premier League Soccer, Champions League Soccer, International Rugby, Grand Slam and ATP Tennis).

10. According to Bell, TSN has in recent years lost programming rights due to multi-territory deals signed by competitors similar to ONE World Sports without being given an opportunity to submit a bid for them. Bell is concerned that allowing a service such as ONE World Sports, which operates on a multi-territory basis, into the Canadian marketplace would result in Canadian sports programming services being more frequently denied the possibility of acquiring rights to valuable international sports programming, since there is nothing preventing them from acquiring the digital rights for Canada.
11. In addition, Bell submitted that the Commission must be more proactive in monitoring non-Canadian programming services that have been approved for distribution in Canada. According to Bell, the current complaint-triggered review mechanism does not sufficiently ensure that programming services on the list continue to not compete, partially or wholly, with licensed Canadian services. Bell proposed that the Commission implement a regular review of the eligibility of each of the services included on the list.

#### **Atop's reply to Rogers' intervention**

12. In reply to Rogers' intervention, Atop indicated that ONE World Sports' programming, although delivered in English, is often attractive to specific ethnic or national groups. In response to Rogers' argument that ONE World Sports targets the same audience as Sportsnet World (adults from the 18 to 49 age group), Atop submitted that it makes sense for ONE World Sports and a majority of networks to target this age range since, according to Nielsen reports, it is the largest age group in the United States with approximately 136M people (42% of the U.S. population). Atop therefore considered that target audience should not be a determining factor in concluding whether ONE World Sports competes with Sportsnet World.
13. Atop also submitted that the soccer programming carried on ONE World Sports differs significantly from that carried on Sportsnet World. By its calculations, while 49% of ONE World Sports' programming is soccer, only 52% of that content is soccer from the Barclays Premier League or Bundesliga, and none of the matches are carried live. ONE World Sports does not hold rights to live matches from any European league and instead has club channel rights for two soccer teams in the Barclays Premier League and one in the Bundesliga. Club channels provide behind-the-scenes footage, interviews, player/fan features and repeats of soccer matches on a minimum 48-hour delay, in accordance with the Union of European Football Association (UEFA) rules. According to Atop, this prevents ONE World Sports from interfering with the rights held by Rogers and Bell. Atop insisted that since ONE World Sports abides by its contracts with the individual clubs, it would never be in danger of violating programming rights held by Rogers or Bell.
14. Atop also reiterated that 51% of ONE World Sports' programming is devoted to sports other than soccer and that there are no mainstream North American sports leagues included in the programming. For example, the service offers KHL hockey (from Russia), CBA basketball (from China) and Nippon League baseball

(from Japan). Further, according to Atop, ONE World Sports would add a diversity of sports coverage from around the world.

15. In response to Rogers' objection to the magazine-style program *Football Review*, Atop argued that the program amounts to less than 2% of ONE World Sports' overall programming. Atop indicated that the service would be willing to delete the program, should it be considered a determining factor in the approval of its application.

#### **Atop's reply to Bell's intervention**

16. In its reply to Bell's intervention, Atop argued that ONE World Sports does not compete with TSN for the following reasons:

- over 40% of its programming is drawn from sports groups not targeted by TSN;
- a large amount of its programming originates from a number of overseas countries and is not otherwise carried in North America;
- it does not hold rights to any Barclays Premier League or Bundesliga live soccer matches, but rather has club channel agreements including a secondary window delayed from live/replay rights; and
- a large part of its soccer component falls outside these two leagues.

Atop also indicated that there is a significant difference in the value and appeal of a live broadcast, a replay and a 48-hour delay.

17. Moreover, Atop claimed that Bell's assertion that international programming has a broad appeal in Canada is an exaggeration and that, at best, international programming has significant niche appeal in Canada. Further, it indicated that ONE World Sports does not compete with TSN for distribution rights because it specifically targets programming outside that sought by TSN on the international stage.

18. With respect to Bell's claim that TSN has lost programming rights due to multi-territory deals from competitors similar to ONE World Sports without having an opportunity to submit a bid for them, Atop argued that Bell failed to provide any examples of such situations.

19. Finally, Atop submitted that Bell's objection to the application on the grounds that ONE World Sports might seek exclusive rights in Canada is hypothetical and that the perceived absence of enforcement should be insufficient to deny the application.

#### **Commission's analysis**

20. The Commission's approach with regard to the entry of non-Canadian services into Canada is to authorize the distribution of services that do not compete with Canadian pay or specialty services. This approach reflects the objectives of the *Broadcasting Act*

in that it gives priority to the distribution of Canadian services while recognizing the diversity that can be added to the system through the availability of non-Canadian programming services. This approach provides a measure of support to Canadian services so that they can fulfill their commitments and obligations, and encourages alliances between Canadian and non-Canadian services in similar genres, while at the same time increasing the variety and diversity of programming choices for Canadians.

21. In assessing requests to authorize English- and French-language non-Canadian services for distribution in Canada, the Commission examines factors such as the genre and nature of service, the language of operation, the target audience and the extent to which the non-Canadian service may be a program supplier for a Canadian pay or specialty service. The Commission's general policy with respect to the entry of non-Canadian services in Canada is to authorize the distribution of such services that do not compete in whole or in part with Canadian pay or specialty services. In assessing the potential competitiveness of a non-Canadian service with Canadian pay or specialty services, the Commission's approach does allow for some overlap in programming and assesses the extent and significance of such overlap on a case-by-case basis, examining the specific facts of each case and relying on the comments filed to make a determination.
22. In the past, the Commission has both denied and approved other non-Canadian services that had some overlap in programming, considering specific facts such as market sustainability, the niche aspect of programming and notable difference in emphasis, among other contextual factors. The Commission has never specified a particular percentage of similar programming for use as a benchmark for assessing the potential competitiveness of non-Canadian services with Canadian pay and specialty services.
23. After examining the public record for this application in light of this approach and the interventions received, the Commission considers that it must determine whether ONE World Sports would compete with Sportsnet World or TSN.

### **Competition with Sportsnet World**

24. Rogers submitted that ONE World Sports is competitive with Sportsnet World due to the significant overlap of identical and similar programming between the two services, particularly with respect to soccer programming. While ONE World Sports does broadcast a significant amount of soccer, as noted, it does not own the rights to the live broadcasts and the replay broadcast windows (48 hours after the live broadcast) owned by Sportsnet World for Barclays Premier League and Bundesliga matches. It can only show these matches after the expiration of the rights held by Sportsnet World.
25. Although there is clearly an overlap to the soccer programming broadcast by Sportsnet World and ONE World Sports, the fact that ONE World Sports does not have access to live broadcasts or first replays of soccer matches is an important difference that must be considered. Sports programming significantly loses its value

to viewers after the initial live broadcast, let alone the third broadcast, which is the broadcast window for which ONE World Sports buys the rights. In that respect, it is unlikely that Sportsnet World would lose a significant number of soccer viewers for this programming to ONE World Sports. Accordingly, while the amount of overlap in programming may appear to be significant, in the Commission's view, its impact would not be significant due to the combination of the broadcast windows awarded to ONE World Sports and the ephemeral value of sports programming.

26. The Commission notes that ONE World Sports also broadcasts soccer matches from leagues not covered by Sportsnet World. For example, 45% of its soccer component is from other various international leagues (North America division II, Australia, Asia and Italy) and its magazine-style programs about soccer are different from those shown on Sportsnet World.
27. Finally, ONE World Sports does not include programming from North American mainstream sports leagues, but rather hockey, basketball and baseball originating from Russia, China and Japan, respectively—programming not broadcast by Sportsnet World.

### **Competition with TSN**

28. In opposing the ONE World Sports application, Bell submitted that the non-Canadian service posed a threat to any licensed Canadian sports service like TSN. Specifically, Bell claimed that TSN has lost programming rights due to multi-territory deals from competitors similar to ONE World Sports. Bell, however, provided no examples to support this claim or any examples as to how ONE World Sports, in particular, has competed with TSN for the same programming rights or audiences. Bell also failed to identify if there was any programming overlap between the two services. Instead, Bell expressed a general concern that Canadian sports programming services will be more frequently denied the possibility of acquiring rights to valuable international sports programming.
29. The Commission considers that there is no evidence that Canadian sports-based channels are currently having difficulty acquiring programming for their channels. Bell's concerns are focused on the potential for ONE World Sports to become a bigger competitor in the future by acquiring exclusive programming rights in Canada. However, one of the conditions for being authorized for distribution in Canada is that providers of the non-Canadian service must not hold, try to obtain, nor exercise preferential or exclusive programming rights in relation to the distribution of programming in Canada.
30. Moreover, if a non-Canadian service on the list changes its format so as to become competitive with a Canadian service, the Commission can remove the service from the list after conducting the appropriate public process. In addition, again after a suitable process, it is open to the Commission to find that a service has changed to such an extent that it is no longer the same service that was originally added to the

list. Such a finding would necessitate a reassessment as to the competitiveness of the service and whether or not it should remain authorized for distribution in Canada.

31. In light of this, the Commission is of the view that the concerns expressed by Bell are unfounded.

## **Conclusion**

32. In light of all of the above, the Commission **approves** the application by Atop Broadband Corp. to add ONE World Sports to the *List of non-Canadian programming services and stations authorized for distribution*, and amends the list accordingly. The revised [list](#) can be found on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) and may be obtained in hard copy on request.

## **Other matters**

33. The Commission considers that Bell's request that the Commission replace its current complaint-triggered review process for authorized non-Canadian services with a regular review of the eligibility of each service on the list falls outside the scope of this application. If Bell wishes to bring this matter before the Commission, it should file a separate application accordingly.

Secretary General