



Broadcasting Decision CRTC 2006-276

Ottawa, 30 June 2006

Aliant Telecom Inc., on behalf of itself and of Câblevision du Nord de Québec inc.

Saint-John/Moncton, New Brunswick; Halifax, Nova Scotia; Rouyn-Noranda, Val d'Or and Poularies, Quebec

Application 2006-0258-3

Public Hearing in Edmonton, Alberta

19 June 2006

Broadcasting distribution undertakings – Acquisition of assets and change in ownership

The Commission approves, subject to the conditions and filing requirements set out below, the application by Aliant Telecom Inc. (Aliant), on behalf of itself and Câblevision du Nord de Québec inc. (Câblevision), to implement an intra-corporate reorganization involving the broadcasting distribution undertakings of Aliant and Câblevision. Further, the Commission will issue new broadcasting licences to Wireline GP (described below), the general partner and a limited partner, and Bell Canada and Aliant Subco (described below), the other limited partners, carrying on business as Wireline Limited Partnership (Wireline LP), upon surrender of the licences issued to Aliant.

The application

1. The Commission received an application by Aliant Telecom Inc. (Aliant), on behalf of itself and Câblevision du Nord de Québec inc. (Câblevision) to implement an intra-corporate reorganization involving the broadcasting distribution undertakings (BDUs) of Aliant and Câblevision.
2. The stated purpose of the reorganization is to ensure that the BDUs are operated in a manner that is efficient from a structure and a tax planning perspective.
3. The applicant requests that new broadcasting licences be issued to continue the operation of the BDUs currently operated by Aliant. The Commission notes that the Aliant BDUs include the recently approved regional broadcasting licence to operate Class 1 cable BDUs to serve Region 5, which includes the provinces of New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador (*Cable broadcasting distribution undertakings*, Broadcasting Decision CRTC 2006-184, 5 May 2006, as amended by *Erratum*, Broadcasting Decision CRTC 2006-184-1, 6 June 2006).
4. The Commission did not receive any interventions in connection with this application.

Aliant – Acquisition of assets

5. Aliant is the licensee of two BDUs serving Saint-John/Moncton, New Brunswick and Halifax, Nova Scotia and a Class 1 cable BDU to serve Region 5, which includes the provinces of New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador. Aliant is a wholly-owned subsidiary of Aliant Inc., a corporation controlled by Bell Canada through its subsidiaries 3588378 Canada Inc. and 3810208 Canada Inc.
6. The proposed transactions involving Aliant and its BDUs are as follows:
 - The amalgamation of Aliant Inc. and its wholly-owned subsidiaries, including Aliant, to form Aliant Amalco.
 - The transfer of the assets of the BDUs to the partners of a limited partnership to be formed, Wireline Limited Partnership (Wireline LP). Aliant Amalco will be the general partner and a limited partner in Wireline LP. Bell Canada together with a wholly-owned subsidiary of Aliant Amalco to be incorporated (Aliant Subco) will be the other limited partners.
 - The purchase of some of the common shares of Aliant Amalco by a trust to be formed (Parent Trust). Parent Trust will then transfer these common shares of Aliant Amalco to a second trust to be formed under Parent Trust (Holdings Trust).
 - The formation of another limited partnership, Holdings Limited Partnership (Holdings LP), with Holdings Trust as a limited partner and a corporation to be incorporated (GP Co.), as the general partner. BCE Inc. (BCE) and Bell Canada will then transfer the remaining common shares of Aliant Amalco held by them in exchange for limited partnership units of Holdings LP. In addition, Bell Canada will obtain a number of common shares of GP Co. The other shareholder of GP Co. will be Holdings Trust.
 - The issuance by Parent Trust of a number of units of Parent Trust, to be designated as “Special Voting Units”, to BCE and Bell Canada. The other units will be publicly held. More specifically, BCE and Bell Canada will hold special voting units representing a 73.5% fully diluted interest in Parent Trust. This interest is expected to be reduced to approximately 45% through a distribution of BCE’s special voting units to its shareholders (the “spin off”).
 - The transfer of the common shares to be held by Holdings Trust to Holdings LP, which, in turn, will transfer the common shares to a corporation to be incorporated as a wholly-owned subsidiary of Holdings LP (Acquisitionco).
 - The amalgamation of Aliant Amalco with Acquisitionco to form Wireline GP, the general partner and a limited partner of Wireline LP.
7. Following these transactions, the common shares of Wireline GP will be held by Holdings LP, through GP Co., as the general partner, and the assets of Aliant’s BDUs will be held by Wireline LP.

8. Accordingly, consistent with Commission practice, upon surrender of the licences issued to Aliant, new licences will be issued to Wireline GP, general and limited partner, and Bell Canada and Aliant Subco, limited partners, all partners in a limited partnership carrying on business as Wireline LP.

Câblevision du Nord – Change in ownership

9. Câblevision is the licensee of BDUs serving Rouyn-Noranda and Val d'Or, Quebec, and a multipoint distribution system (MDS) serving Poularies, Quebec. It is owned by Télébec, Limited Partnership (Télébec LP), for which Bell Nordiq Group Inc. (BNG), as the general partner, holds 63.4% of the partnership interest, and Bell Nordiq Trust, as the limited partner, holds 36.6% of the partnership interest.
10. As a result of the proposed reorganization, BNG's common shares will be transferred to Holdings LP. The licensee will continue to be Câblevision.

Control of Aliant and Câblevision's BDUs

11. The applicant stated that the proposed ownership structure will not result in a change in the ultimate control of Aliant and Câblevision's BDUs. Ultimate control of both licensees' BDUs will remain with BCE.
12. BCE's control will be derived in the following manner:
 - a) BCE will control GP Co. by virtue of its ability to nominate a majority of the board of directors of GP Co. pursuant to the terms of a Securityholders' Agreement, discussed more fully below.
 - b) GP Co. will be the general partner of Holdings LP, and BCE and Holdings Trust will be limited partners.
 - c) All of the units of Holdings Trust will be held by Parent Trust, a trust whose units are to be widely and publicly held. The board of trustees for both Holdings Trust and Parent Trust are to be selected by the board of directors of GP Co.
 - d) Holdings LP will hold all of the common shares of BNG.
 - e) Holdings LP will also own all of the common shares of Wireline GP (the general partner and a limited partner of Wireline LP).
 - f) In a limited partnership structure, the general partner exclusively operates and controls all aspects of the limited partnership's undertaking. As a result, the general partner of Holdings LP, GP Co., will control the undertaking and assets of Holdings LP, which includes both the common shares of Wireline GP and BNG. As Wireline GP controls Wireline LP, GP Co., as general partner of Holdings LP, will have direct control over Aliant's BDUs as well as the common shares of BNG and, thus, indirect control over the BDUs of Câblevision.

13. Pursuant to the Securityholders' Agreement to be entered into by BCE, Bell Canada, Parent Trust, Holdings Trust, GP Co., Holdings LP, Wireline LP and Wireline GP, BCE will be granted certain rights, including the following:
- i) BCE will be entitled to nominate up to a majority of the board of directors of GP Co., provided that BCE and Bell Canada, directly or indirectly, hold not less than 30% of Parent Trust units;
 - ii) BCE will be entitled to nominate its proportionate share of the board of directors of GP Co. based on its fully diluted ownership of Parent Trust units, while it holds less than 30% of Parent Trust units (on a fully diluted basis);
 - iii) The trustees of Parent Trust will be nominated by the board of directors of GP Co. The same principles regarding the appointment of directors of GP Co. will apply to the selection of the trustees of Parent Trust. Accordingly, BCE will control both Parent Trust and GP Co.; and
 - iv) The composition of the board of directors of Wireline GP and the board of trustees of Holdings Trust, will be the same as the board of directors of GP Co. The chair of GP Co. will also be the chair of the respective boards of Wireline GP and of Holdings Trust.

Compliance with the *Direction to the CRTC (Ineligibility of Non-Canadians)*

14. The applicant contended that the proposed ownership structure of Wireline LP will comply with the *Direction to the CRTC (Ineligibility of Non-Canadians)*¹ (the Direction) at all times, as each of the partners of Wireline LP (including the general partner, Wireline GP) will be "Canadian" pursuant to the Direction.
15. Two of the partners of Wireline GP, Bell Canada and Aliant Subco raise no issues with regard to their compliance with the Direction. However, Wireline GP's compliance does raise questions and, therefore, the applicant was asked to demonstrate how it would comply.
16. The applicant confirmed that 80% of the board of directors of Wireline GP and its CEO will be Canadian.
17. The applicant noted that, pursuant to the Direction, to be a qualified corporation, Canadians must beneficially own and control, directly or indirectly, in the aggregate and otherwise than by way of security only, not less than 80% of all of Wireline GP's issued and outstanding voting shares and not less than 80% of the votes.

¹ *Direction to the CRTC (Ineligibility of Non-Canadians)*, P.C. 1997-486, 8 April 1997, amended by P.C. 1998-1268, 15 July 1998.

Beneficial ownership test

18. The applicant stated that the beneficial ownership test will be met as follows:
- Because a partnership is not a legal entity and because it is the Commission's practice to regard each of the partners individually, the 100% of the voting shares of Wireline GP held by Holdings LP should be viewed as being held for the benefit of its partners. These partners and their percentage interests in the partnership are GP Co. (with a nominal interest of approximately 0.001%), Holdings Trust (81%, after the spin off mentioned above in paragraph 6) and BCE and Bell Canada (19%);
 - The assets of Holdings Trust should be viewed as being held for the benefit of its unitholder, a second trust, Parent Trust, which in turn holds them for the benefit of its unitholders. The initial unitholders of Parent Trust will be the existing shareholders of Aliant, together with BCE and Bell Canada. At a later stage, units may be distributed to the shareholders of BCE;
 - Thus, the unitholders of Parent Trust will have indirect beneficial interest in the units of Holdings Trust, which in turn, (a) will hold 81% of the shares of GP Co., and (b) will, after the spin off, hold 81% of the partnership interests of Holdings LP. Holdings LP will hold 100% of the voting shares of Wireline GP; and
 - The unitholders of Parent Trust (after the spin off) will therefore have indirect beneficial ownership, in the aggregate, of approximately 81% of the voting shares of Wireline GP. Given that the unitholders of Parent Trust must be 80% Canadian, Canadians will beneficially own, in the aggregate, 64% (80% of 81%) of the voting shares of Wireline GP. BCE and Bell Canada, together, will hold an ownership interest of approximately 19% of the voting shares of Wireline GP, resulting in an 83% beneficial ownership by Canadians.

Beneficial control test

19. The applicant noted that control is defined in the Direction as "control in any manner that results in control in fact, whether directly through the ownership of securities or indirectly through a trust, agreement or arrangement, the ownership of a corporation or otherwise".
20. The applicant contended that the control test of the voting shares of Wireline GP will be met as follows:
- Control indirectly through a trust constitutes control for the purpose of the Direction;
 - The voting unitholders of Parent Trust will elect the trustees of the trust annually, which will give them, in the aggregate, control over the assets of the trust, which in turn will give them control over the assets of Holdings Trust;
 - The voting unitholders of Parent Trust and/or BCE and Bell Canada will direct the election of directors of GP Co., which will have, as one of its assets to be held on behalf of Holdings LP, 100% of the voting shares of Wireline GP;

- Thus, the voting unitholders of Parent Trust and/or BCE and Bell Canada will have, in aggregate, control over the voting shares of Wireline GP.

21. Further, the applicant indicated that, in order to ensure that the units to be held by the public will comply with the Direction at all times, it will put in place a mechanism to monitor the issuance of units of the Parent Trust, which will be substantially similar to the mechanism in place to monitor the issuance of shares by BCE.

Commission's analysis and determination

22. The Commission has carefully examined the proposed ownership structure resulting from the series of transactions affecting the BDUs of Aliant and indirectly those of Câblevision. This is to ascertain how beneficial ownership and control of Wireline GP's common shares will be exercised through the various entities to be established to ensure that the proposal will comply with the Direction at all times.

Compliance with the Direction

23. The Commission finds the applicant's argument regarding the beneficial ownership and control of the voting shares of Wireline GP to be reasonable and is of the opinion that it satisfies the shareholding and control tests set out in the definition of a "qualified corporation" in the Direction. Wireline GP could therefore be considered a qualified corporation pursuant to the Direction, subject to the comments that follow.
24. Regarding the trustees' control of the shares of GP Co., the applicant, in a letter dated 8 June 2006, in paragraph 11, raised the argument that, "while the unitholders will have beneficial ownership (in the sense that the profits accrue to them) they will not have control over the shares in any sense. They cannot sell them or vote them; this power is vested in the trustees". The applicant further stated in paragraph 15 that "the trustees... will be responsible for managing the assets under trust. In this case, the main asset of the trust will be the shares in GP Co.". As the applicant pointed out in its letter of 10 March 2006, in paragraph 10(f), GP Co. will have direct control over Aliant's BDUs as well as the voting shares of BNG and indirect control over the BDUs of Câblevision.
25. Applicants must comply with section 3 of the Direction, which essentially requires that Canadians be in actual control of an applicant. As the Direction does not recognize trusts per se, the Commission must look through the trust itself and consider the status of the trustees as Canadian. The Commission agrees with the applicant that, under the proposed ownership structure, the trustees themselves will have an ability to control the course of affairs of the Aliant and Câblevision BDUs, through their ability to vote the interests they have in GP Co. and Holdings LP. To ensure this power remains at all times with Canadians, the Commission will require that 100% of the trustees of Parent Trust and Holdings Trust and the trustees of any subsidiary trust be Canadian. The Commission notes that this requirement is consistent with the approach used in *Intra-corporate reorganization*, Broadcasting Decision CRTC 2002-114, 22 April 2002.

26. The matter of quorums of the various entities also raises an issue. While there is a requirement in the term sheets that 80% of the trustees of both Parent Trust and Holdings Trust and that 80% of the directors of Wireline GP and GP Co. be Canadian, in certain circumstances, there may be occasions where at a meeting of trustees or directors of Parent Trust, Holdings Trust, GP Co. or Wireline GP, after an initial failure to reach a quorum (initially, a majority of all trustees or directors), a quorum may be obtained with the presence of only three trustees or directors. The term sheets do not reveal a requirement that any minimum percentage of Canadian trustees or directors be present at such time. Consequently, a second quorum could, depending on the number of trustees or directors appointed, which is unknown at this time, consist of a majority of, or entirely of, foreign entities.
27. Thus, in certain circumstances, control over the decision making of the proposed licensee may be exercised by foreign entities. This again raises the question of the applicant's compliance with section 3 of the Direction. In order to ensure that control will rest with Canadians at all times, the Commission will impose a requirement that 100% of the directors of GP Co. and Wireline GP be Canadian.
28. Although the applicant confirmed in its letter of 8 June 2006 that Canadians will beneficially own and control at least 83.8% of the voting shares of GP Co., it raised the issue of the status of GP Co. under the Direction. The applicant argued that, because GP Co. holds all of the shares of Wireline GP, it could be viewed as the parent corporation of Wireline GP. Consequently, as a parent corporation, only 66 2/3% or more of GP Co.'s voting shares need be held by Canadians as opposed to 80% or more.
29. The Commission notes that GP Co. holds the shares of Wireline GP not for its own purposes but on behalf of the partners of Holdings LP. Thus, it is not clear that GP Co. is the parent corporation of Wireline GP as that term is used in the Direction². Even if GP Co. would be said to control Wireline GP, the term sheets do not address the establishment of any mechanism to ensure that the parent corporation (GP Co.) or its directors do not exercise control or influence over any programming decisions of the subsidiary corporation, as required by the Direction. For this reason, the Commission finds that GP Co. has not met all of the requirements to be considered a parent corporation under the Direction and, therefore, must maintain a minimum of 80% Canadian shareholdings and have a Canadian as its CEO.
30. Because of these concerns and the complexity of the proposed ownership structure, with its interlocking relationships between the various entities, and in order to ensure that this structure will comply with the Direction at all times, the Commission will require, as **conditions of licence** of the licences to be issued, that:

² "Subsidiary corporation" means a corporation that is controlled by another corporation.

- 100% of the trustees of Holdings Trust and Parent Trust and any subsidiary trusts be Canadian at all times;
- 100% of the directors of GP Co. and Wireline GP be Canadian at all times; and
- no less than 80% of the shareholders of GP Co. and its CEO be Canadian at all times.

Conclusion

31. For all the reasons set out above, the Commission **approves, subject to the conditions described above and subject to the following filing requirements**, the application by Aliant Telecom Inc., on behalf of itself and of Câblevision du Nord de Québec inc. to implement an intra-corporate reorganization involving the BDUs of Aliant and Câblevision.
32. Upon surrender of the current licences issued to Aliant, the Commission will issue new licences to Wireline GP, the general partner and a limited partner, to Bell Canada and Aliant Subco, the other limited partners, to carrying business as Wireline Limited Partnership. The licences will be subject to the terms and conditions as set out in the existing licences and to the further conditions specified above in this decision concerning the compliance with the Direction.

Filing requirements

33. This decision is based on the understanding that the term sheets filed with the Commission are consistent with the final executed documents to be filed.
34. This authority will only be effective when the Commission receives documentation establishing to its satisfaction that the intra-corporate reorganization described in this decision has been completed as approved:
 - amalgamation documents of Aliant Inc., Aliant Telecom Inc. and other affiliates (i.e., articles of arrangements of Wireline GP);
 - incorporating documents for Acquisitionco, Aliant Subco, Aliant Amalco and GP Co.;
 - complete list of the board of directors of Wireline GP, GP Co., Bell Nordiq Group Inc. and Aliant Subco;
 - complete list of the board of trustees of Holdings Trust and Parent Trust;
 - complete share capital structures and equity interests of Wireline GP, Bell Nordiq Group Inc., GP Co., Wireline LP, Holdings LP, Holdings Trust and Parent Trust;
 - executed and signed versions of the Securityholders' Agreement, the Investor Liquidity to Exchange Agreement, the Wireline LP Limited Partnership Agreement, the Holdings LP Limited Partnership Agreement, the Declaration of Trust of Parent Trust and the Declaration of Trust of Holdings Trust;

- a complete description of the proposed mechanism to monitor the issuance of units of Parent Trust; and
- a chart reflecting the executed and final structure.

35. Furthermore, the Commission requires that the above documentation be amended to include the following provision:

The trustee or trustees of Parent Trust and of Holdings Trust shall, at all times, ensure that:

- a body corporate be a “qualified corporation” for the purposes of the *Direction to the CRTC (Ineligibility of Non-Canadians)*; or
- an individual be Canadian pursuant to the *Direction to the CRTC (Ineligibility of Non-Canadians)*.

Secretary General

This decision is to be appended to each licence. It 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>