



Broadcasting Decision CRTC 2006-595

Ottawa, 16 October 2006

Videotron Ltd.
La Doré, Quebec

*Application 2005-1592-6
Public Hearing in Edmonton, Alberta
19 June 2006*

Cable broadcasting distribution undertaking

*The Commission **approves** the application by Videotron Ltd. for a broadcasting licence to continue the operation of the Class 3 cable broadcasting distribution undertaking serving La Doré, subject to the conditions set out in this decision and in the licence.*

The application

1. The Commission received an application by Videotron Ltd. (Videotron) for a broadcasting licence to continue the operation of the Class 3 cable broadcasting distribution undertaking (BDU) serving La Doré, Quebec.
2. In *Revocation of the licences of exempted small cable distribution undertakings*, Broadcasting Decision CRTC 2002-45, 19 February 2002, the Commission revoked the broadcasting licence issued to Videotron for the BDU serving La Doré pursuant to *Exemption Order respecting cable systems having fewer than 2,000 subscribers*, Broadcasting Public Notice CRTC 2001-121, 7 December 2001. This order was amended in *Amendments to the Exemption order for small cable undertakings*, Broadcasting Public Notice CRTC 2002-74, 19 November 2002 (Public Notice 2002-74).
3. Given that the BDU serving La Doré is no longer operating its head-end and is now interconnected with the Videotron BDUs serving Dolbeau and Saint-Félicien, Quebec, the BDU serving La Doré no longer complies with the terms of the exemption order appended to Public Notice 2002-74 and must therefore obtain a broadcasting licence to continue its operations.
4. The applicant also requested a condition of licence authorizing it to insert, at its option, certain promotional material as a substitute for the “local availabilities” (i.e. non-Canadian advertising material) of non-Canadian satellite services. The applicant agreed to comply with the following condition:

At least 75% of these local availabilities must be made available for use by licensed Canadian programming services for the promotion of their respective services, for the promotion of the community channel and for unpaid Canadian public service announcements. A maximum of 25% of the local availabilities may be made available for the promotion of discretionary programming services and packages, customer service information, channel realignments, cable FM service, additional cable outlets and to promote non-programming services, such as Internet and local telephony.

5. The applicant also requested authorization to distribute, on a discretionary digital basis, a second set of U.S. 4+1 signals.¹

Interventions

6. The Commission received an intervention from the Canadian Association of Broadcasters (CAB), which supported the application, but subject to certain conditions concerning local availabilities. It proposed that the applicant be authorized to promote only its own non-programming services. The CAB also proposed that the applicant be required to continue to use at least half of the 25% of local availabilities for the promotion of programming-related services and that promotions of programming and non-programming services be scheduled equitably during the broadcast day. Finally, the CAB requested that the Commission clarify its policy with respect to the amounts paid by programming services to BDUs for the insertion of promotional material in local availabilities. In this regard, the CAB asked that the Commission specify that programming services should pay only the direct incremental costs incurred by BDUs, i.e., no mark-up, overhead or common costs should be paid by programming services, and that programming services should not be required to “buy” or commit to paying for insertion of promotional material for a period greater than six weeks (referred to as a “minimum buy”).
7. Videotron did not reply to the CAB’s intervention.

The Commission’s analysis and determination

8. The Commission notes that the exemption order appended to Public Notice 2002-74 no longer applies to the BDU serving La Doré since it is now interconnected with the Videotron BDU serving Dolbeau and Saint-Félicien. Accordingly, the Commission **approves** the application by Videotron Ltd. for a broadcasting licence to continue the operation of the Class 3 cable broadcasting distribution undertaking serving La Doré, Quebec.

¹ A second set of signals that provides the programming of the four U.S. commercial networks (CBS, NBC, ABC, FOX) and the non-commercial PBS network (referred to collectively as the U.S. 4+1 signals).

Use of local availabilities

9. The Commission notes the concerns raised by the CAB concerning the use of local availabilities, and that the CAB's intervention was received before the release of *Promotion of non-programming services using local availabilities*, Broadcasting Public Notice CRTC 2006-69, 2 June 2006 (Public Notice 2006-69), in which the Commission found it appropriate to update its policy with respect to the use of local availabilities to permit BDUs to use these availabilities to promote non-programming services, subject to certain conditions.
10. Specifically, the Commission found that BDUs that seek and receive amendments to their conditions of licence allowing them to use local availabilities for this purpose will be authorized to use a maximum of 25% of local availabilities to provide customer service and channel realignment information or to promote discretionary programming services and packages, cable FM service, additional cable outlets and non-programming services, including Internet and telephone services.
11. The Commission added, in Public Notice 2006-69, that the promotion of non-programming services in local availabilities should generally be limited to those non-programming services that are made available in conjunction with programming services, whether they are offered by the BDU, by an affiliated company, or by a third party pursuant to a marketing arrangement with the BDU. The Commission noted that, should a complaint arise, it would be up to the BDU to provide, at the Commission's request, a report on its use of local availabilities. Concerning the costs of broadcasting promotional messages in local availabilities, the Commission reiterated that BDUs may only charge Canadian programming services their share of the direct costs associated with the insertion of their promotional material in local availabilities.
12. The Commission considers that Videotron's application is consistent with its updated policy concerning the use of local availabilities as set out in Public Notice 2006-69. Accordingly, the Commission **approves** Videotron's application for authority to insert, at its option, promotional material as a substitute for the "local availabilities" (i.e., non-Canadian advertising material) of non-Canadian satellite services. A **condition of licence** to that effect is set out in the appendix to this decision.

U.S. 4+1 signals

13. Concerning the distribution on a discretionary digital basis of a second set of U.S. 4+1 signals, the Commission considers that this could serve as an incentive for cable customers to subscribe to the digital service offerings of the cable BDUs. The distribution of such services would also increase the choice available to cable subscribers.
14. Accordingly, the Commission **approves** the request by Videotron to distribute a second set of U.S. 4+1 signals, on a discretionary digital basis, provided that it complies with the **condition of licence** set out in the appendix.

Community programming

15. The Commission notes that the applicant does not intend to operate a community channel in La Doré, and instead proposed to distribute programming for Dolbeau and Saint-Félicien that originates with the community channel of its BDU serving Saint-Félicien.
16. The Commission considers that community programming is an important aspect of the Canadian broadcasting system and that it contributes positively and significantly to achieving the objectives set out in the *Broadcasting Act*. However, it is up to each BDU licensee to decide whether or not to operate a community channel.
17. Given that the La Doré BDU is interconnected with the Videotron BDUs serving Saint-Félicien and Dolbeau, the Commission **approves**, pursuant to section 33(m) of the *Broadcasting Distribution Regulations*, the proposed distribution to La Doré of programming for Dolbeau and Saint-Félicien that originates with the community channel of the BDU serving Saint-Félicien. A **condition of licence** to this effect is included in the appendix.

Issuance of the licence

18. The Commission will issue a Class 3 broadcasting licence to continue operating the cable BDU serving La Doré, Quebec.
19. The rules applicable to Class 3 licensees shall apply to this undertaking, including those relating to distribution on a digital basis. The operation of this undertaking will be regulated pursuant to the *Broadcasting Distribution Regulations*. The licence will expire 31 August 2013 and will be subject to the **conditions** listed in the appendix to this decision and in the licence to be issued.

Employment equity

20. Because this licensee is subject to the *Employment Equity Act* and files reports concerning employment equity with the Department of Human Resources and Skills Development, its employment equity practices are not examined by the Commission.

Secretary General

This decision is to be appended to the 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>

Appendix to Broadcasting Decision CRTC 2006-595

Conditions of licence

1. The licensee is authorized to distribute, at its option, as part of the basic service, the signals of WCAX-TV (CBS), WVNY (ABC), WFFF-TV (FOX) Burlington, New York and WPTZ (NBC) and WCFE-TV (PBS) Plattsburgh, New York or another affiliate of the same network located in the same time zone, indicated on the appropriate list of eligible services.
2. The licensee is authorized to distribute the following signals on a digital discretionary basis:
 - a second set of signals that provides the programming of the four U.S. commercial networks (CBS, NBC, ABC, FOX) and the non-commercial PBS network (hereafter referred to as the U.S. 4+1 signals).

The distribution on a discretionary basis on the licensee's digital service of a second set of U.S. 4+1 signals is subject to the provision that, with respect to such signals, the licensee adhere to the requirements regarding non-simultaneous program deletion set out in section 43 of the *Broadcasting Distribution Regulations*. The Commission may suspend the application of this provision, with respect to the signals to be distributed, upon its approval of an executed agreement between the licensee and broadcasters. Such an agreement must deal with issues related to the protection of program rights arising in connection with the discretionary carriage of a second set of U.S. 4+1 signals solely on the licensee's digital service.

3. The licensee may, at its option, insert certain promotional material as a substitute for the "local availabilities" (i.e., non-Canadian advertising material) of non-Canadian satellite services. At least 75% of these local availabilities must be made available for use by licensed Canadian programming services for the promotion of their respective services, for the promotion of the community channel and for unpaid Canadian public service announcements. A maximum of 25% of the local availabilities may be used to provide subscribers with information regarding customer service and channel realignments, and for the promotion of discretionary programming services and packages, cable FM service, additional cable outlets and non-programming services, including Internet and telephone services.
4. The licensee is authorized to distribute, pursuant to section 33(m) of the *Broadcasting Distribution Regulations*, community programming for Dolbeau and Saint-Félicien that originates with the community channel of the BDUs serving Saint-Félicien.