



Broadcasting Decision CRTC 2007-264

Ottawa, 30 July 2007

Cogeco Cable Canada Inc.

Bath, Douglastown, Lancaster, Rockwood, Smithville and Wallaceburg, Ontario

Application 2007-0116-1, received 24 January 2007

Public Hearing in the National Capital Region

28 May 2007

Class 3 regional licence for broadcasting distribution undertakings in Ontario

*The Commission **approves** the application by Cogeco Cable Canada Inc. (Cogeco) for a Class 3 regional broadcasting licence to operate cable broadcasting distribution undertakings (BDUs) serving the above-noted locations. The Commission also **approves** Cogeco's proposal for a zone-based approach to community programming, as well as various additions, amendments and deletions of conditions of licence currently applicable under one or more of its existing Class 3 broadcasting licences.*

*However, the Commission **denies** the licensee's request that the requirements regarding non-simultaneous program deletion comparable to those set out in section 43 of the Broadcasting Distribution Regulations not be applied to the second set of U.S. 4+1 signals (i.e. the four U.S. commercial networks CBS, NBC, ABC, FOX and the non-commercial network PBS) authorized for distribution on a digital discretionary basis by its BDUs serving Bath and Wallaceburg.*

Introduction

1. The Commission received an application by Cogeco Cable Canada Inc. (Cogeco) for a Class 3 regional broadcasting licence to operate cable broadcasting distribution undertakings (BDUs) serving the above-noted locations. Cogeco's Bath and Wallaceburg undertakings had been operating under a Commission exemption order.¹ Cogeco indicated that those areas no longer met the exemption criteria and that it was therefore requesting that both of these undertakings be included under the proposed Class 3 regional licence.

¹ The licence for Bath was revoked in Broadcasting Decision 2002-45, in accordance with the exemption order respecting cable systems having fewer than 2,000 subscribers. The licence for Wallaceburg was revoked in Broadcasting Decision 2004-382, in accordance with the exemption order respecting cable undertakings that serve between 2,000 and 6,000 subscribers.

2. This is one of two decisions concerning Cogeco that the Commission is issuing today. The other decision brings under a Class 1 regional broadcasting licence Cogeco's other BDUs in Ontario, which previously operated under separate licences.

A "zone-based" approach to community programming

3. As part of its application, Cogeco requested conditions of licence that would vary the application of certain provisions relating to community programming in section 35 of the *Broadcasting Distribution Regulations* (the Regulations) in order to enable it to implement a zone-based approach to its community programming in Ontario (see Appendix 1). With the exception of zone 9 (Milton), which does not have its own head end, Cogeco noted that each zone would include a Class 1 service area with its own head end and community programming studio facilities. Seven of the fourteen² proposed zones would consist of a single service area. The remaining zones would consist of one or more Class 1 systems with one or two smaller Class 3 service areas.
4. Cogeco clarified that it was not seeking to reduce the minimum levels of local community and community access television programming set out in section 35 of the Regulations, which requires Class 3 licensees, except as otherwise provided under a condition of licence, to devote not less than 60% of the programming distributed on the community channel in the licensed area in each broadcast week to local community television programming and not less than 30% thereof to community access television programming.
5. In order to implement its zone-based approach to community programming, Cogeco requested a condition of licence stipulating that, for the purpose of application of section 35 of the Regulations, each of the proposed zones would be considered a licensed area. Further, for the purpose of section 35(2)(d) of the Regulations, "local community television programming" in relation to a licensed area would constitute programming that would be reflective of the community and that would be produced by the licensee in the licensed area, by another licensee in the licensed area, by the members of the community served in the licensed area or by a community television corporation residing in the licensed area. Finally, for the purpose of section 35(2)(e) of the Regulations, "community television access programming" would constitute programming produced by an individual, group or community television corporation residing within the licensed area.
6. In support of its application, Cogeco submitted that licensed areas do not always coincide with communities that share civic, economic and social interests and that its proposal for a zone-based approach to community programming in Ontario serves the public interest by allowing these areas to share local and community access programming from the greater community. Cogeco also indicated that its Class 3 undertakings in Ontario are

² In its original application, Cogeco proposed 15 zones, one of which included the systems of Pembroke, Chalk River and Deep River, Ontario. However, in Broadcasting Decision 2007-91, the Commission subsequently approved an application by Cogeco to have these systems exempted pursuant to Broadcasting Public Notice 2003-23 and Broadcasting Public Notice 2004-39.

small and located adjacent to or near Class 1 systems. As a result, the community programming distributed on these Class 1 systems would be relevant to the residents in the Class 3 licensed areas.

7. Cogeco further noted that the same practical and technical challenges apply for community programming in Ontario as in Quebec, New Brunswick, and Newfoundland and Labrador, where the Commission has approved a zone-based approach to community programming, particularly for Class 3 licensed areas that are interconnected with Class 1 licensed areas. Cogeco stated that the Class 3 undertakings in Ontario do not have the financial resources to support a separate community channel.

Cogeco's other proposals

8. In its application, Cogeco also proposed various additions, amendments and deletions of conditions of licence currently applicable under one or more of its existing Class 3 broadcasting licences. As one matter, Cogeco proposed to harmonize the conditions of licence for Class 3 systems that are or will soon be fully interconnected with Class 1 systems. The interconnected systems were described as the following: Kingston is interconnected with Bath; Niagara Falls with Douglastown; Cornwall with Lancaster; Georgetown (Halton) with Rockwood; Niagara Falls with Smithville; and Sarnia with Wallaceburg. Cogeco noted that these changes would ensure that interconnected systems have the necessary conditions of licence to allow them to distribute the same or similar channel line-ups.
9. As a further matter, Cogeco requested that its BDUs serving Bath, Douglastown, Lancaster, and Rockwood be authorized to distribute a second set of 4+1 signals (i.e. the four U.S. commercial networks CBS, NBC, ABC, FOX and the non-commercial network PBS) and that the usually applicable requirements regarding non-simultaneous program deletion comparable to those set out in section 43 of the Regulations not be applied to the second set of U.S. 4+1 signals authorized for distribution on a digital discretionary basis by its BDUs serving Bath and Wallaceburg. Among other things, Cogeco noted that Class 3 licensees do not have a requirement to perform simultaneous substitution under the Regulations. It noted that, if the Commission were to impose the requirements of section 43 of the Regulations on Class 3 cable licensees, these licensees would be required to perform non-simultaneous substitution with respect to a second set of digital U.S. 4+1 signals but would not have to perform simultaneous substitution with respect to the first set of analog U.S. 4+1 signals.

Interventions

10. The Commission received numerous interventions in support of this application.

Commission's analysis and determinations

Class 3 regional broadcasting licence

11. The Commission **approves** the application by Cogeco Cable Canada Inc. for a Class 3 regional broadcasting licence to operate Class 3 BDUs serving Douglastown, Lancaster, Rockwood, and Smithville. As noted above, Cogeco requested that its Class 3 regional broadcasting licence also include the service areas of Bath and Wallaceburg. The interconnection of Bath with Kingston and the interconnection of Wallaceburg with Sarnia means that these two systems no longer qualify for exempt status. The Commission accordingly also **approves** the licensee's request that Bath and Wallaceburg be included under the new Class 3 broadcasting regional licence.
12. With the exception of the licensee's request that the requirements regarding non-simultaneous program deletion not be applied to its proposed second set of U.S. 4+1 signals for distribution on a digital discretionary basis by its BDUs serving Bath and Wallaceburg, which is addressed separately in this decision, the Commission **approves** the additions, amendments and deletions to conditions of licence for the above-noted undertakings proposed by the licensee, including amendments and deletions to harmonize the conditions of licence for Class 3 systems that are or will soon be fully interconnected with Class 1 systems. A complete list of the **conditions of licence** applicable to the licensee is appended to this decision.
13. The Commission notes that, in Broadcasting Decision 2007-161, it approved an application by Cogeco to amend the broadcasting licences for its Class 3 cable BDUs serving various locations in Ontario and Quebec in order to add a condition to each licence authorizing the licensee to distribute, at its option, the audio programming service of one or more licensed satellite subscription radio undertakings on a digital basis, subject to certain provisions. Accordingly, as requested by the licensee, this condition of licence is also reflected in Appendix 2 of this decision.

"Zone-based" approach to community programming

14. With regard to the licensee's request that the Commission vary the application of certain provisions relating to community programming in section 35 of the Regulations in order to enable it to implement a zone-based approach to its community programming in Ontario, the Commission evaluates these types of applications on a case-by-case basis, taking into account the particular circumstances of each case.
15. Having examined Cogeco's arguments concerning the difficulties it has experienced in providing and maintaining quality community programming in its existing Class 1 and 3 licensed areas, the Commission considers that the proximity of the municipalities in several of Cogeco's proposed zones would foster the creation of a community of interest at the local and regional levels and allow residents to be better informed of the activities

and events taking place in their community. Furthermore, the interconnection of a large number of small Class 1 or 3 licensed areas with larger Class 1 BDUs would offer the public expanded programming and access to Cogeco's community programming in their respective regions.

16. The Commission notes that in accordance with the policy framework for community-based media set out in Broadcasting Public Notice 2002-61, programs produced in licensed areas within the same municipality are considered local community television programming in each such licensed area. Since the communities in proposed zone 10 (Niagara) of the current application are part of the same regional municipality, they can already share local programming. Cogeco's proposal would therefore not have an impact on the community programming in these service areas.
17. In light of all of the above, and taking into account the absence of opposing interventions, the Commission considers it appropriate to authorize Cogeco to implement its zone-based community programming plan in its Ontario licensed areas. Accordingly, the Commission **approves** the licensee's request for conditions of licence varying the application of certain provisions relating to community programming in section 35 of the Regulations. The **conditions of licence** that will enable Cogeco to implement its zone-based approach are set out in Appendix 2 to this decision.

Distribution of a second set of U.S. 4+1 signals and suspension of non-simultaneous program deletion requirements

18. In Decision 2000-437, the Commission stated that it shared the concern expressed by interveners that the carriage of a second set of U.S. 4+1 signals in addition to the first set carried on an analog basis had the potential to erode the local program rights purchased by broadcasters and thus impinge on the ability of local broadcasters to fulfil their programming obligations and responsibilities. Consequently, the Commission authorized certain Class 3 licensees to distribute a second set of U.S. 4+1 signals on a digital discretionary basis subject to the provision that the licensees adhere to the requirements regarding non-simultaneous program deletion set out in section 43 of the Regulations.
19. Subsequently, the Commission has authorized other Class 3 licensees to distribute a second set of U.S. 4+1 signals on a digital discretionary basis subject to this same requirement. For example, in Decision 2002-300, the Commission authorized Cogeco's Class 3 systems in Kemptville and Smithville, Ontario to distribute a second set of U.S. 4+1 signals subject to the licensee's adherence to the requirements set out in section 43 of the Regulations.
20. Accordingly, the Commission **approves** the licensee's request that its BDUs serving Douglastown, Lancaster, and Rockwood be authorized to distribute a second set of U.S. 4+1 signals, subject to its adherence to section 43 of the Regulations. **Conditions of licence** to this effect are set out in the appendix to this decision.

21. With respect to Cogeco's request that the requirements regarding non-simultaneous program deletion not be applied to its second set of U.S. 4+1 signals authorized for distribution on a digital discretionary basis by its BDUs serving Bath and Wallaceburg, the Commission continues to be of the view that it should protect the local program rights purchased by broadcasters and is not persuaded that a departure from its current approach is warranted in this instance. Therefore, the Commission **approves** the licensee's request that its undertaking serving Bath be authorized to distribute a second set of U.S. 4+1 signals. However, the Commission **denies** the licensee's request that the requirements regarding non-simultaneous program deletion set out in section 43 of the Regulations not be applied to the second set of U.S. 4+1 signals authorized for distribution on a digital discretionary basis by its BDUs serving Bath and Wallaceburg.
22. As set out in a condition of licence appended to this decision, these requirements may be suspended upon approval of an executed agreement between the licensee and broadcasters that deals with issues related to the protection of program rights. Cogeco and the Canadian Association of Broadcasters (CAB) entered into such an agreement with respect to its licensed systems on 28 November 2005. This agreement was extended by the parties on 9 November 2006 and was to terminate six months after the Commission issued its determinations in the proceeding initiated by Broadcasting Notice of Public Hearing 2006-5. The Commission notes that it issued its determinations for this proceeding in Broadcasting Public Notice 2007-53. The parties have agreed to extend their agreement on a month-to-month basis, where a new agreement is not concluded by the expiry date of the above agreement. Should the agreement be terminated, the Commission is to be advised forthwith.
23. The Commission notes that Cogeco's current agreement with the CAB does not cover the Bath and Wallaceburg systems since, as set out above, these systems were previously operating pursuant to exemption orders. Should Cogeco wish to have the requirements regarding non-simultaneous program deletion suspended for these systems, it must obtain the Commission's approval of an agreement related to the protection of programming rights.

Employment equity

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

Secretary General

Related documents

- *Class 1 regional licence for broadcasting distribution undertakings in Ontario*, Broadcasting Decision CRTC 2007-263, 30 July 2007

- *Determinations regarding certain aspects of the regulatory framework for over-the-air television*, Broadcasting Public Notice CRTC 2007-53, 17 May 2007
- *Distribution of satellite subscription radio services*, Decision CRTC 2007-161, 1 June 2007
- *Revocation of licences – Exempted cable broadcasting distribution undertakings that serve between 2,000 and 6,000 subscribers*, Broadcasting Decision CRTC 2007-91, 21 March 2007
- *Review of certain aspects of the regulatory framework for over-the-air television*, Broadcasting Notice of Public Hearing CRTC 2006-5, 12 June 2006
- *Revocation of licences - Exempted cable broadcasting distribution undertakings that serve up to 6,000 subscribers*, Broadcasting Decision CRTC 2004-382, 30 August 2004
- *Amendment to the Broadcasting Distribution Regulations*, Broadcasting Public Notice CRTC 2004-39, 14 June 2004
- *Exemption of cable broadcasting distribution undertakings that serve between 2,000 and 6,000 subscribers*, Broadcasting Public Notice CRTC 2003-23, 30 April 2003
- *Distribution of additional signals on a discretionary digital basis*, Broadcasting Decision CRTC 2002-300, 10 October 2002
- *Policy framework for community-based media*, Broadcasting Public Notice CRTC 2002-61, 10 October 2002
- *Revocation of licences of exempted small cable distribution undertakings*, Broadcasting Decision CRTC 2002-45, 19 February 2002
- *Carriage of Canadian and U.S. 4+1 signals on a digital basis*, Decision CRTC 2000-437, 8 November 2000

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 1 to Broadcasting Decision CRTC 2007-264

Zones	Class 1 undertakings	Class 3 undertakings
1 – Belleville	Belleville	
2 – Brockville	Brockville	
3 – Burloak	Burlington Oakville	
4 – Chatham	Chatham	Wallaceburg
5 – Cobourg	Cobourg	
6 – Cornwall	Cornwall	Lancaster
7 – Hamilton	Hamilton/Central-East Hamilton/North-West Hamilton/Stoney Creek Hamilton/Dundas	
8 – Kingston	Kingston	Bath
9 – Milton	Georgetown	Rockwood
10 – Niagara	Niagara Falls St. Catharines Grimsby	Douglastown Smithville
11 – North Bay	North Bay	
12 – Peterborough	Peterborough	
13 – Sarnia	Sarnia	
14 – Windsor	Windsor Leamington	

Appendix 2 to Broadcasting Decision CRTC 2007-264

For the purposes of all the following terms and conditions of licence, “Regulations” shall mean the *Broadcasting Distribution Regulations*.

Terms and conditions of licence applicable to all undertakings

Terms

Issuance of the licence

The Commission will issue a Class 3 regional broadcasting licence to Cogeco Cable Canada Inc. to operate cable broadcasting distribution undertakings to serve the following licensed areas: Bath, Douglastown, Lancaster, Rockwood, Smithville and Wallaceburg, Ontario.

The licence will come into effect 1 September 2007 and will expire 31 August 2014.

Conditions of licence

1. The licensee is authorized to distribute, on a digital discretionary basis, the signal of WNYO-49 (Warner Brothers) Buffalo, New York.
2. The licensee is authorized to distribute 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) on a digital discretionary basis.

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 Regulations. The Commission may suspend the application of this provision 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, at its option, the audio programming service of any licensed satellite subscription radio undertaking on a digital basis. The distribution of satellite subscription radio signals is subject to the following provisions:
 - (i) Subject to the exception outlined in (ii) below, the licensee may not count the signals of conventional radio programming undertakings for the purpose of fulfilling the preponderance requirement set out in section 6(2) of the Regulations unless a subscriber is already receiving at least 40 channels of one or more licensed pay audio programming undertakings.
 - (ii) A licensee is entitled to count the signals of conventional radio programming undertakings that a licensee is required to distribute under section 22 of the Regulations for the purpose of fulfilling the preponderance requirement set out in section 6(2) of the Regulations.
 - (iii) The Canadian-produced channels offered by the satellite subscription radio undertaking are deemed to be “Canadian programming services” for the purposes of section 6(2) of the Regulations.
5. For the purpose of section 35 of the Regulations and the current conditions of licence, each of the following zones shall be considered an authorized service area:

Zone 1 (Belleville): Belleville

Zone 2 (Brockville): Brockville

Zone 3 (Burloak): Burlington and Oakville

Zone 4 (Chatham): Chatham and Wallaceburg

Zone 5 (Cobourg): Cobourg

Zone 6 (Cornwall): Cornwall

Zone 7 (Hamilton): Hamilton/Central-East, Hamilton/North-West, Hamilton/Stoney Creek, and Hamilton/Dundas

Zone 8 (Kingston): Kingston and Bath

Zone 9 (Milton): Georgetown and Rockwood

Zone 10 (Niagara): Niagara Falls, St. Catharines, Grimsby, Douglastown, and Smithville

Zone 11 (North Bay): North Bay

Zone 12 (Peterborough): Peterborough

Zone 13 (Sarnia): Sarnia

Zone 14 (Windsor): Windsor and Leamington

6. For the purpose of section 35(2)(d) of the Regulations, “local community television programming” in relation to a licensed service area shall constitute programming that is reflective of the community and that is produced by the licensee in the licensed area, by another licensee in the licensed area, by the members of the community served in the licensed area or by a community television corporation residing in the licensed area.
7. For the purpose of section 35(2)(e) of the Regulations, “community television access programming” shall constitute programming produced by an individual, group or community television corporation residing within the licensed area.

Conditions of licence applicable to specific undertakings

Bath

8. The licensee is authorized to distribute, at its option, CBOT Ottawa and CBLFT Toronto, Ontario as part of the basic service.
9. The licensee is authorized to distribute, at its option, WWNY-TV (CBS) Watertown, New York as part of the basic service.

Douglastown

10. The licensee is relieved of the requirements of section 32 of the Regulations with respect to CKXT-TV Toronto, Ontario, provided that it is distributed as part of the basic service.
11. The licensee is relieved of the requirements of section 32 of the Regulations with respect to the television station licensed to Crossroads Television System, provided that it is distributed as part of the basic service on a cable channel that is no higher than channel 36.
12. The licensee is authorized to distribute, at its option, WIVB-TV (CBS), WGRZ-TV (NBC) and WNEQ-TV (PBS) Buffalo, New York and WJET-TV (ABC) Erie, Pennsylvania as part of the basic service.

Lancaster

13. The licensee is authorized to distribute, at its option, CIVM-TV Montréal, CHOT-TV Gatineau and CFJP-TV Montréal, Quebec as part of the basic service.
14. The licensee is relieved of the requirements of section 32 of the Regulations with respect to CKXT-TV Toronto, Ontario, provided that it is distributed as part of the basic service.

Rockwood

15. The licensee may cease to distribute CFPL-TV London, Ontario on an analog channel of the basic service, provided that it distributes this signal in a digital format.
16. The licensee may substitute the signal of CKVR-TV Barrie, Ontario for that of a non-Canadian station when both are broadcasting identical programming, as an exception to the requirements of section 7 of the Regulations.
17. The licensee is relieved of the requirements of section 25 of the Regulations to distribute the signals of CKCO-TV Kitchener and CBLT Toronto, Ontario on unrestricted channels. Should the quality of any of the signals deteriorate significantly, the licensee shall immediately undertake any necessary corrective action, including the distribution of these services on other channels.
18. The licensee is relieved of the requirements of section 32 of the Regulations with respect to CKXT-TV Toronto, Ontario, provided that it is distributed as part of the basic service.
19. The licensee is relieved of the requirements of section 32 of the Regulations with respect to the television station licensed to Crossroads Television System, provided that it is distributed as part of the basic service on a cable channel that is no higher than channel 36.
20. The licensee is authorized to distribute, at its option, WNEQ-TV (PBS) Buffalo, New York, as part of the basic service.

Smithville

21. The licensee is relieved of the requirements of section 32 of the Regulations with respect to CKXT-TV Toronto, Ontario, provided that it is distributed as part of the basic service.
22. The licensee is authorized to distribute, at its option, CHCH-TV Hamilton, Ontario as part of the basic service.
23. The licensee is relieved of the requirements of section 32 of the Regulations with respect to the television station licensed to Crossroads Television System, provided that it is distributed as part of the basic service on a cable channel that is no higher than channel 36.
24. The licensee is authorized to distribute, at its option, WIVB-TV (CBS), WGRZ-TV (NBC) and WNEQ-TV (PBS) Buffalo, New York and WJET-TV (ABC) Erie, Pennsylvania as part of the basic service.

Wallaceburg

25. The licensee is relieved of the requirements of section 32 of the Regulations with respect to CFMT-TV-1 (OMNI.1) London, provided that it is distributed as part of the basic service.