



Broadcasting Decision CRTC 2008-229

Ottawa, 28 August 2008

Northern Cablevision Ltd.
Grande Prairie, Alberta

Application 2008-0036-9, received 14 January 2008
Broadcasting Public Notice CRTC 2008-43
14 May 2008

Class 1 cable broadcasting distribution undertaking in Grande Prairie – Licence renewal and licence amendment

*The Commission **renews** the broadcasting licence for the Class 1 cable broadcasting distribution undertaking serving Grande Prairie, Alberta, from 1 September 2008 to 31 August 2015.*

*The Commission also **approves** the addition of a condition of licence.*

Introduction

1. The Commission received an application by Northern Cablevision Ltd. (NCL) to renew the broadcasting licence for its Class 1 cable broadcasting distribution undertaking (BDU) serving Grande Prairie, Alberta. The current licence expires 31 August 2008.
2. NCL also requested the addition of a condition of licence authorizing it to insert certain promotional material as a substitute for the “local availabilities” (i.e., non-Canadian advertising material) of non-Canadian satellite services.
3. The Commission received an intervention offering general comments from the Canadian Association of Broadcasters (CAB). The intervention and the licensee’s reply to the intervention can be found on the Commission’s website at www.crtc.gc.ca under “Public Proceedings.”

Commission’s analysis and determinations

4. After examining the application, the intervention and the licensee’s reply to the intervention, the Commission finds that the issues to be determined relate to the following:
 - the potential impact of the review of the regulatory framework for BDUs on the licensee’s application;
 - the addition of a condition of licence;

- the distribution of multiple sets of signals that provide the programming of the four U.S. commercial networks (CBS, NBC, ABC, FOX) and of the non-commercial PBS network (collectively, the U.S. 4+1 signals); and
- the distribution of distant Canadian signals and of a second set of U.S. 4+1 signals, and the suspension of non-simultaneous program deletion requirements.

Potential impact of the review of the regulatory framework for BDUs on the licensee's application

5. In its intervention, the CAB noted that the Commission is currently reviewing the regulatory framework for BDUs and is expected shortly to issue revised policies and regulations governing the distribution of both Canadian and non-Canadian broadcasting services. The CAB submitted that it is essential that the Commission not take any action as part of NCL's licence renewal process that would have the effect of superseding the upcoming BDU framework determinations or exempting the licensee from the application of that new framework.
6. Specifically, the CAB noted that NCL has proposed a condition of licence that would be in effect for at least the first five years of the new licence term. The CAB submitted that, in making decisions on NCL's licence renewal and imposing new conditions of licence, the Commission should do so in a manner that will allow it to review and revise, as required, those conditions of licence that are inconsistent with the new BDU framework to be established by the Commission.
7. In its reply, NCL submitted that any suggestion that its licence should not be renewed for a full seven-year term should be immediately dispersed. NCL further submitted that any suggestion that any other special regulatory requirements and processes should apply to the renewal of NCL's licence and that of other western BDUs as compared to those applied when the Commission recently renewed the licences of BDUs operating in eastern Canada, should also be immediately dismissed.
8. NCL also noted that any changes resulting from Broadcasting Notice of Public Hearing 2007-10 would be implemented via the *Broadcasting Distribution Regulations* (the Regulations) and not the conditions of licence, and, therefore, the special measures proposed by the CAB are unnecessary.
9. In Broadcasting Public Notice 2003-48, the Commission stated that it would begin the process of renewing the licences for cable BDUs starting with those BDUs serving Atlantic Canada and concluding with those serving western Canada. To date, the Commission has renewed the licences for cable undertakings operating in Atlantic Canada, Quebec and Ontario. This year, the Commission is considering all cable licence renewal applications for the remainder of Canada.

10. The Commission considers that any forthcoming changes to the Regulations should not have a significant impact on any of the relatively routine conditions of licence being considered in this decision.
11. The Commission has considered the CAB's concerns and determines that it is appropriate to proceed with its plan announced in Broadcasting Public Notice 2003-48.

Addition of a condition of licence

12. The Commission considers that the condition of licence requested by NCL, as described in its application, is consistent with the Commission's policy regarding the use of local availabilities as set out in Broadcasting Public Notice 2006-69.

Distribution of multiple sets of U.S. 4+1 signals

13. In its intervention, the CAB also questioned NCL's compliance with the Commission's policies relating to the distribution of U.S. 4+1 signals. Specifically, the CAB noted that NCL distributes NBC, CBS and FOX stations originating from four distinct markets, and ABC stations originating from three distinct markets. The CAB stated that it is not aware of a condition of licence authorizing the distribution of more than two sets of U.S. 4+1 signals and requested that the Commission confirm its policy on the distribution of multiple sets of U.S. 4+1 signals. The CAB also requested that NCL be required to bring the Grande Prairie system into full compliance should it not be respecting the Commission's policy on this matter.
14. In its reply, regarding the distribution of multiple sets of U.S. 4+1 signals, NCL requested a condition of licence to distribute a third set of U.S. 4+1 signals as well as a condition of licence stating that it will not distribute, to any subscriber, more than two sets of U.S. 4+1 signals at a given time.
15. NCL further requested a condition of licence authorizing the distribution of the Seattle high definition (HD) affiliates presently distributed in the Grande Prairie system, that is, a fourth set of U.S. 4+1 signals. NCL stated that it distributes the Seattle HD affiliates because it cannot receive the HD versions of the U.S. 4+1 Spokane signals from the satellite relay distribution undertaking. NCL submitted that carrying the Seattle HD instead of the Spokane HD signals is not problematic because, in its view, these signals are largely identical and originate from the same time zone. Moreover, NCL submitted that this practice does not affect the simultaneous substitution rights of any local Canadian stations and does not affect the capacity available on its system for the distribution of Canadian services. NCL also submitted that its customers would be disrupted and its competitiveness compromised should it be required to change the U.S. 4+1 Spokane affiliates it distributes as part of its analog service.

16. With respect to NCL's distribution of several sets of U.S. 4+1 signals, the Commission finds that this practice is inconsistent with Commission policy and policy objectives. The Commission notes that BDUs authorized to distribute a second set of U.S. 4+1 signals may distribute different first and second sets of U.S. 4+1 signals and, pursuant to Broadcasting Public Notice 2003-61, may distribute the upgraded version of an authorized service on HD, provided that no less than 95% of the video and audio components of the upgraded and analog versions of the service are the same. The Commission finds that NCL's current distribution of U.S. 4+1 signals is not in line with this policy.
17. While the Commission notes that NCL requested, in its reply to the CAB's intervention, the addition of a condition of licence authorizing it to distribute, on a digital discretionary basis, a third set of U.S. 4+1 signals, the Commission considers that the addition of such a condition of licence should be subject to a public process. Therefore, if NCL wishes to distribute a third set of U.S. 4+1 signals, it must apply for a condition of licence authorizing it to do so. The Commission notes that it has authorized various BDUs to distribute, on a digital discretionary basis, a third set of U.S. commercial network signals, provided that the BDU does not distribute to any subscriber more than two sets of U.S. commercial network signals at a given time.
18. Similarly, distribution of a fourth set of U.S. 4+1 signals, the Seattle HD signals, is also inconsistent with the Commission's policy. If NCL wishes to distribute a fourth set of U.S. 4+1 signals, it must apply for a condition of licence authorizing it to do so.
19. In regard to the above, the Commission considers requests to carry additional sets of U.S. 4+1 signals on a case-by-case basis, during which all interested parties, through a public process, would be provided an opportunity to offer their comments.

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

20. In Broadcasting Decision 2002-285, the Commission approved an application by the licensee to distribute on its Class 1 cable BDU serving Grande Prairie, on a digital discretionary basis, a second set of U.S. 4+1 signals, as well as any of the distant Canadian television signals set out in the *List of Part 3 eligible satellite services*. This approval was subject to the provision that the licensee adhere to the requirements regarding non-simultaneous program deletion set out in section 43 of the Regulations. The Commission also noted in Broadcasting Decision 2002-285 that the above provision may be suspended upon its approval of an executed agreement, as described in that decision, between the licensee and broadcasters.
21. In Broadcasting Decision 2006-692, the Commission announced that Canadian Cable Systems Alliance Inc. (CCSA), on behalf of NCL and various other licensees, had reached such an agreement with the CAB. As such, the requirement for non-simultaneous program deletion was suspended for NCL as well as for the other licensees.

22. The Commission reminds the licensee that, in the event that the agreement between the CCSA and the CAB is terminated at any time, the requirement for non-simultaneous program deletion will no longer be suspended, and the licensee will once again be required to perform program deletions as set out in section 43 of the Regulations. Should the agreement be terminated, the Commission is to be advised forthwith.

Conclusion

23. In light of all of the above, the Commission **renews** the broadcasting licence for the Class 1 cable BDU serving Grande Prairie, Alberta, from 1 September 2008 to 31 August 2015. The Commission also **approves** the licensee's request for the addition of a condition of licence regarding the use of locals available, as specified in its application. The licence will be subject to the **conditions** specified therein, and to the terms and **conditions of licence** set out in the appendix to this decision.

Employment equity

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

Secretary General

Related documents

- *Review of the regulatory frameworks for broadcasting distribution undertakings and discretionary programming services*, Broadcasting Notice of Public Hearing CRTC 2007-10, 5 July 2007
- *Suspension of the provision set out in the decisions listed in the appendix to the present decision relating to the requirements for non-simultaneous program deletion*, Broadcasting Decision CRTC 2006-692, 21 December 2006
- *Promotion of non-programming services using local availabilities*, Broadcasting Public Notice CRTC 2006-69, 2 June 2006
- *The regulatory framework for the distribution of digital television signals*, Broadcasting Public Notice CRTC 2003-61, 11 November 2003
- *A regional approach to licensing cable distribution undertakings – Adoption of related amendments to the Broadcasting Distribution Regulations*, Broadcasting Public Notice CRTC 2003-48, 17 September 2003

- *Distribution of additional signals on a discretionary digital basis,*
Broadcasting Decision CRTC 2002-285, 11 September 2002

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 2008-229

Terms and conditions of licence for the Class 1 cable broadcasting distribution undertaking serving Grande Prairie, Alberta

Terms

The operation of this cable broadcasting distribution undertaking is regulated pursuant to the *Broadcasting Distribution Regulations* and all related policies.

The licence will expire 31 August 2015.

Conditions of licence

1. The licensee is authorized to distribute, at its option on a discretionary basis, CITY-TV (IND) Toronto.
2. The licensee is authorized to distribute, at its option, CITV-TV (IND) Edmonton and CHCH-TV (IND) Hamilton, as part of the basic service.
3. The licensee is authorized to distribute, at its option, KREM-TV (CBS), KHQ-TV (NBC), KXLY-TV (ABC) and KSPS-TV (PBS) Spokane, Washington, as part of the basic service.
4. The licensee is authorized to distribute, at its option, the audio programming services of KMBI-FM (religious), KXLY-FM, KISC-FM, KDRK-FM, KEZE-FM, KZZU-FM and KPBX-FM Spokane, Washington, as part of the basic service.
5. The licensee is authorized to distribute the following signals on a digital discretionary basis:
 - any of the distant Canadian television signals set out in the *List of Part 3 eligible satellite services*; and
 - 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 and distant Canadian 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 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 and distant Canadian signals solely on the licensee's digital service.

The Commission reminds the licensee that the requirements set out in section 30 of the Regulations regarding simultaneous substitution apply also in the case of U.S. 4+1 signals and distant Canadian signals.

6. 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.