



## Broadcasting Decision CRTC 2008-238

Ottawa, 28 August 2008

### **Saskatchewan Telecommunications**

Regina, Pilot Butte, White City, Saskatoon, Moose Jaw, Prince Albert, Yorkton,  
Estevan, Weyburn, Swift Current, North Battleford and Battleford, Saskatchewan

*Application 2007-1553-4, received 1 November 2007*

*Broadcasting Public Notice CRTC 2008-46*

*21 May 2008*

### **Class 1 terrestrial broadcasting distribution undertaking serving Regina, Pilot Butte, White City, Saskatoon, Moose Jaw, Prince Albert, Yorkton, Estevan, Weyburn, Swift Current, North Battleford and Battleford, Saskatchewan – Licence renewal and licence amendments**

*The Commission **renews** the broadcasting licence for the Class 1 terrestrial broadcasting distribution undertaking (BDU) serving the above-noted communities, from 1 September 2008 to 31 August 2015.*

*The Commission **approves** various amendments to the broadcasting licence for this terrestrial BDU.*

*The Commission also **approves** the redefinition of the BDU's authorized service area to reflect the expansion of the residential areas.*

### **Introduction**

1. The Commission received an application by Saskatchewan Telecommunications (SaskTel) to renew the broadcasting licence for its Class 1 terrestrial broadcasting distribution undertaking (BDU) serving the above-noted locations. The current licence expires 31 August 2008.
2. SaskTel requested the addition of a condition of licence authorizing it to receive directly through its own facilities or from “any Canadian relay broadcasting distribution undertaking” (licensed or exempt), at its option, any of the distant Canadian signals or the 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) that are otherwise required to be received from a licensed satellite relay distribution undertaking (SRDU). SaskTel proposed that this authorization be subject to the stipulation that it would not be authorized to provide these signals to any other licensed or exempt distribution undertaking, except under the terms of a separate relay distribution undertaking licence, should the licensee seek such an additional licence.

3. SaskTel also requested amendments to and the deletion of certain conditions of licence. Some of the changes proposed by the licensee would delete particular conditions of licence that are no longer applicable or required; update the terminology used in specific conditions of licence; and reflect certain technical changes. The specific details of the proposed amendments to the broadcasting licence for this undertaking are described in the licensee's application.
4. In addition, SaskTel requested the authority to redefine its authorized service area to reflect the expansion of the residential areas.
5. The Commission received an intervention by High Fidelity HDTV Inc. in support of this application, an intervention in opposition by an individual, as well as interventions by the Canadian Association of Broadcasters (CAB) and the Canadian Film and Television Production Association (CFTPA) offering general comments on the application. The interventions and the licensee's replies to the interventions can be found on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Public Proceedings."

### **Commission's analysis and determinations**

6. After examining the application, the interventions and the licensee's replies, the Commission finds that the issues to be determined in its evaluation of this application 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 regarding the sourcing of distant Canadian and U.S. 4+1 signals;
  - the distribution of multiple sets of U.S. 4+1 signals;
  - SaskTel and the Government of Saskatchewan;
  - 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; and
  - the amendments to and the deletion of certain conditions of licence, and the redefinition of the authorized service area.

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

7. 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 SaskTel'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.
8. Specifically, the CAB noted that SaskTel has proposed various conditions 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 SaskTel's licence renewal and imposing new conditions of licence, the Commission should do so in a manner that would 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.
9. In reply, SaskTel stated that it raised similar concerns in its licence renewal application regarding potential conflicts between the outcome of the BDU regulatory framework review and its current and proposed conditions of licence.
10. 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 undertakings in the remainder of Canada.
11. 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.
12. The Commission has considered the CAB's concerns and determines that it is appropriate to proceed with its plan as announced in Broadcasting Public Notice 2003-48.

**Addition of a condition of licence regarding the sourcing of distant Canadian and U.S. 4+1 signals**

13. The Commission has granted conditions of licence to other BDUs authorizing them to obtain distant Canadian and U.S. 4+1 signals directly through their own facilities. In its comments on SaskTel's request for the addition of a condition of licence, the CFTPA expressed concern about the Commission's decision to grant BDUs flexibility on how they source these signals. The CFTPA submitted that, if BDUs choose to source these signals from a terrestrial relay distribution undertaking, which is exempt from licensing and not required to contribute to Canadian programming, or via their own fibre facilities,

this could ultimately result in a decline in revenues for licensed SRDUs and by extension in their required contributions to Canadian programming. Although the CFTPA acknowledged that SaskTel should be provided with flexibility similar to that granted to other BDUs, it requested that all BDUs given this flexibility be required to make up for potential lost contributions to the creation and presentation of Canadian programming from SRDUs.

14. In reply, SaskTel maintained that, in its view, while giving due consideration to the impact that granting this condition of licence would have on other BDUs, the Commission placed equal importance on allowing BDUs to receive distant signals using the most efficient and effective means at their disposal in order to meet customer expectations and demands. SaskTel also submitted that a review of the regulatory framework for Canadian broadcasting services conducted by Dunbar/Leblanc recommended that the requirement for terrestrial BDUs to obtain their U.S. over-the-air television stations from a licensed SRDU be deleted. Finally, SaskTel argued that receiving signals of the highest quality and therefore providing a more attractive television service to subscribers would minimize the potential bypass of the Canadian system.
15. Given that other BDUs have been granted a similar condition of licence to that requested by SaskTel, the Commission sees no reason to prohibit SaskTel from availing itself of the efficiencies afforded by its own network in the same manner as those other BDUs. However, the Commission notes that the particular condition of licence requested by SaskTel specifies that the licensee would be authorized to provide the services received directly through its own facilities or from “any Canadian relay broadcasting distribution undertaking” (licensed or exempt).
16. The authorization usually granted to BDUs in regard to the reception of these signals permits the licensee to receive the signals “directly or through its own facilities.” The Commission has not thus far permitted licensees to receive the signals from “any Canadian relay broadcasting distribution undertaking,” as also requested by SaskTel. The Commission notes that, in Broadcasting Notice of Public Hearing 2007-10, it requested comments on any changes to its policies with respect to SRDUs and terrestrial relay distribution network undertakings. The Commission will address many of the underlying policy issues raised by SaskTel’s request in that proceeding. The Commission does not consider it appropriate at this time to grant the requested additional flexibility.
17. As noted above, SaskTel also proposed that its requested condition of licence be subject to the following:

This condition does not authorize the licensee to provide these services to any other licensed or exempt distribution undertaking **except under the terms of a separate relay distribution undertaking licence should the licensee seek such an additional licence.**

18. The Commission notes that its general practice is to include in the condition of licence a limitation that the BDU not provide these services to any other distribution undertaking. As for SaskTel's proposed exception to this limitation, the Commission does not consider it necessary or appropriate to grant a condition of licence that is subject to a licence that SaskTel may obtain at a later date. Should SaskTel apply for a licence to operate a relay distribution undertaking at some future time, it could at the same time request to have its BDU licence amended to include the exception.
19. In light of the above, the Commission **approves** SaskTel's request for the addition of a **condition of licence**, with an amendment to the specific wording requested, as set out in the appendix to this decision.

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

20. The CAB submitted that SaskTel's distribution of U.S. 4+1 signals is generally consistent with the Commission's policy in regard to the distribution of U.S. 4+1 signals, with the exception of its distribution of CBS stations whose signals originate in three separate markets. Specifically, the CAB submitted that SaskTel's distribution of an upgraded high definition (HD) version of CBS Boston is inconsistent with the Commission's policy. The CAB pointed out that SaskTel currently offers a standard definition (SD) version of CBS Minneapolis on the basic service, not CBS (SD) Boston. While not objecting to SaskTel's proposed licence amendment that would allow it to replace, at its option, each U.S. 4+1 network signal distributed on the basic service with a different affiliate of the same network, the CAB contended that SaskTel must ensure that the HD U.S. 4+1 signals it offers are upgraded versions of the SD U.S. 4+1 signals already distributed on its undertaking. The CAB requested that the Commission confirm its policy on the distribution of multiple sets of U.S. 4+1 signals, and ensure that SaskTel's distribution of those signals is consistent with the policy.
21. SaskTel replied that, in its initial licence application, it requested and received the authority to distribute CBS Minneapolis as part of the basic service via a condition of licence. SaskTel indicated that it does not offer the CBS Minneapolis signal in HD because it is not available. SaskTel specified that it therefore offers the HD version of CBS Boston.
22. The Commission notes that BDUs authorized to distribute a second set of U.S. 4+1 signals may distribute different first and second sets. Further, consistent with Broadcasting Public Notice 2003-61, BDUs may distribute the upgraded version of an authorized service in HD, provided that no less than 95% of the video and audio components of the upgraded and analog/SD versions of the service are the same.
23. The Commission therefore confirms that the upgraded (HD) version of the CBS signal distributed by SaskTel must correspond with the SD version of the CBS signal distributed by the licensee. Accordingly, SaskTel must apply to amend its condition of licence to reflect a change in the source of its CBS signal distributed on the basic service. Alternatively, SaskTel could apply for authority to distribute a third, or partial, set of U.S. 4+1 signals to accommodate its current situation.

24. 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. The Commission considers requests to carry additional sets of U.S. 4+1 signals on a case-by-case basis. Such requests would be subject to a public process, during which all interested parties would be provided an opportunity to offer their comments.

#### **SaskTel and the Government of Saskatchewan**

25. The individual who submitted an opposing intervention alleged that the Government of Saskatchewan is unduly involved in SaskTel's operations. Specifically, the intervener raised concerns about cross budgeting with respect to the licensee's community channel and revenue sharing between subdivisions of SaskTel.
26. In reply, SaskTel confirmed that it does not receive any funding from the Government of Saskatchewan. SaskTel stated that, to the contrary, it has paid dividends of more than \$1 billion to the provincial treasury over the past 18 years, including \$30 million in 2007 alone. It indicated that these funds are used by the Government of Saskatchewan to provide a variety of services to all Saskatchewan residents.
27. The Commission notes that SaskTel is a crown corporation of the Government of Saskatchewan. In general, under the terms of *Direction to the CRTC (Ineligibility to hold broadcasting licences)*, SOR/85-627, provincial governments and their agents may not hold broadcasting licences unless the corporation qualifies as an independent carrier, is not controlled by the provincial government, and enjoys freedom of expression and journalistic, creative and programming independence. In Decision 2001-171, the Commission determined that SaskTel qualified as an independent carrier eligible to hold a broadcasting licence.
28. The Commission is satisfied with SaskTel's response to this intervention and has no further concerns in regard to this matter.

#### **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**

29. In Broadcasting Decision 2002-286, the Commission approved a request by SaskTel to distribute, 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 *Broadcasting Distribution Regulations* (the Regulations). The Commission also noted in Broadcasting Decision 2002-286 that the above provision may be suspended upon its approval of an executed agreement, as described in that decision, between the licensee and broadcasters.

30. In Broadcasting Decision 2004-288, the Commission announced that SaskTel had reached such an agreement with the CAB. As such, the requirement for non-simultaneous program deletion was suspended for SaskTel.
31. The Commission reminds the licensee that, in the event that the agreement between SaskTel 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.

**Amendments to and deletion of certain conditions of licence, and redefinition of the authorized service area**

32. The Commission considers that the amendments to and the deletion of certain conditions of licence, as described in SaskTel's application, are appropriate and do not conflict with any of the Commission's regulations and existing policy provisions.
33. Further, the Commission finds that the proposed redefinition of SaskTel's authorized service area to reflect expanded residential areas is appropriate.

**Conclusion**

34. Based on all of the above, the Commission **renews** the broadcasting licence for the Class 1 terrestrial BDU serving Regina, Pilot Butte, White City, Saskatoon, Moose Jaw, Prince Albert, Yorkton, Estevan, Weyburn, Swift Current, North Battleford and Battleford, Saskatchewan, from 1 September 2008 to 31 August 2015.
35. The Commission also **approves** the proposed amendments to and the deletion of certain conditions of licence, as discussed above. Furthermore, the Commission **approves** the redefinition of SaskTel's authorized service area to reflect the expansion of the residential areas.
36. The licence will be subject to the **conditions** specified therein as well as to the terms and **conditions of licence** set out in the appendix to this decision.

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
- *Pay-per-view service*, Broadcasting Decision CRTC 2006-491, 8 September 2006

- *Suspension of the provision set out in Broadcasting Decision CRTC 2002-286 relating to the requirements regarding non-simultaneous program deletion, Broadcasting Decision CRTC 2004-288, 23 July 2004*
- *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 2002-286, 11 September 2002*
- *New Cable distribution undertaking in Saskatchewan, Decision CRTC 2001-171, 12 March 2001*
- *New Regulatory Framework for Broadcasting Distribution Undertakings, Public Notice CRTC 1997-25, 11 March 1997*

*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 2008-238**

**Terms, conditions of licence, and encouragement applicable to the Class 1 terrestrial broadcasting distribution undertaking serving Regina, Pilot Butte, White City, Saskatoon, Moose Jaw, Prince Albert, Yorkton, Estevan, Weyburn, Swift Current, North Battleford and Battleford, Saskatchewan**

### **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 the distant signal of CJIL-TV Lethbridge as part of the basic service.
2. The licensee is authorized to distribute, at its option, WCCO-TV (CBS) Minneapolis, Minnesota, and WHDH-TV (NBC), WCVB-TV (ABC), WFXT-TV (FOX) and WGBH-TV (PBS) Boston, Massachusetts, as part of the basic service. Alternatively, for each network signal, the licensee may distribute the signal of a different affiliate of the same network located in the same time zone as that of the licensed area and included in the *Lists of eligible satellite services*, as amended from time to time.
3. 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.

4. The licensee is authorized to receive, directly through its own facilities, at its option, any of the distant Canadian signals and U.S. 4+1 signals that are otherwise required to be received from a licensed satellite relay distribution undertaking. The licensee is not authorized to use any facilities other than its own for the reception of these signals. This condition does not authorize the licensee to provide these services to any other licensed or exempt distribution undertaking.
5. 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.
6. 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), 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 *Broadcasting Distribution Regulations* (the Regulations) unless a subscriber is already receiving 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.

7. The licensee shall be subject to the following conditions of licence as an exception to the requirements set out in section 29 of the *Broadcasting Distribution Regulations* (the Regulations):

- If the licensee has 20,000 or more subscribers in the licensed area of a broadcasting distribution undertaking (BDU) on 31 August of the previous broadcast year and distributes programming that qualifies as local expression on a video-on-demand or pay-per-view service, the licensee shall make, in each broadcast year, a contribution to Canadian programming of not less than the greater of:
  - a) 5% of its gross revenues derived from broadcasting activities in the licensed area in the year, less any contribution to local expression made by the licensee in the licensed area in that year, and
  - b) 3% of its gross revenues derived from broadcasting activities in the licensed area in the broadcast year.
- If the licensee has fewer than 20,000 subscribers in the licensed area of a BDU on 31 August of the previous broadcast year and distributes programming that qualifies as local expression on a video-on-demand or pay-per-view service, the licensee shall make, in each broadcast year, a contribution of not less than 5% of its gross revenues derived from broadcasting activities in the licensed area in the year to Canadian programming, less any contribution to local expression made by the licensee in the licensed area in that year.
- If the licensee has 20,000 or more subscribers in the licensed area of a BDU on 31 August of the previous broadcast year and does not distribute programming that qualifies as local expression on a video-on-demand or pay-per-view service, and if a community programming undertaking is licensed in the licensed area, the licensee shall make, in each broadcast year, a contribution of not less than:
  - a) 3% of its gross revenues derived from broadcasting activities in the licensed area in the broadcast year to Canadian programming, and
  - b) 2% of its gross revenues derived from broadcasting activities in the licensed area in the broadcast year to the community programming undertaking.

- If the licensee has fewer than 20,000 subscribers in the licensed area of a BDU on 31 August of the previous broadcast year and does not distribute programming that qualifies as local expression on a video-on-demand or pay-per-view service, and if a community programming undertaking is licensed in the licensed area, the licensee shall make, in each broadcast year, a contribution of 5% of its gross revenues derived from broadcasting activities in the licensed area in the broadcast year to the community programming undertaking.
- If the licensee does not distribute programming that qualifies as local expression on a video-on-demand or pay-per-view service, and if no community programming undertaking is licensed in the licensed area, the licensee shall make, in each broadcast year, a contribution of not less than 5% of its gross revenues derived from broadcasting activities in the licensed area in the year to Canadian programming.
- For the purpose of calculating the licensee's contribution to local expression for each of the Regina and Saskatoon licensed areas, the licensee may include the contributions to local expression made for programming produced in other licensed areas, for programming produced outside the licensed areas, or for programming covering provincial events, up to a maximum of 20% of the total contribution to local expression applicable for the Regina and Saskatoon licensed areas.

For the purposes of these conditions:

“video-on-demand service” means the video-on-demand programming undertaking authorized in *National video-on-demand service*, Broadcasting Decision CRTC 2003-453, 9 September 2003, as amended from time to time;

“pay-per-view service” means the pay-per-view programming undertaking authorized in *Pay-per-view service*, Broadcasting Decision CRTC 2006-491, 8 September 2006, as amended from time to time;

“contribution to local expression” means the eligible expenses for local expression made in accordance with *New Regulatory Framework for Broadcasting Distribution Undertakings*, Public Notice CRTC 1997-25, 11 March 1997, as amended from time to time;

“local expression” refers to programming that qualifies as local expression in accordance with the conditions of licence applicable to the programming service; and

“contribution to Canadian programming” shall have the meaning set out in section 29(1) of the Regulations.

## **Encouragement**

### **Employment equity**

In accordance with *Implementation of an employment equity policy*, Public Notice CRTC 1992-59, 1 September 1992, the Commission encourages the licensee to consider employment equity issues in its hiring practices and in all other aspects of its management of human resources.