



Broadcasting Decision CRTC 2013-583

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Route reference: 2013-335

Ottawa, 31 October 2013

**Rogers Communications Inc., on behalf of Mountain Cablevision Limited
Across Canada**

Application 2013-0906-3, received 20 June 2013

Public hearing in the National Capital Region

12 September 2013

Terrestrial broadcasting distribution undertakings serving various locations in Ontario, New Brunswick and Newfoundland and Labrador; national video-on-demand programming undertaking known as Rogers On Demand; and terrestrial and direct-to-home national pay-per-view services known as Rogers Sportsnet – Acquisition of assets (Corporate reorganization)

*The Commission **denies** the application by Rogers Communications Inc. on behalf of Mountain Cablevision Limited for authority to acquire from Rogers Communications Partnership its terrestrial broadcasting distribution undertakings serving various locations in Ontario, New Brunswick and Newfoundland and Labrador, its national video-on-demand programming undertaking known as Rogers On Demand and its terrestrial and direct-to-home national pay-per-view services, both known as Rogers Sportsnet.*

The Commission is concerned that the proposal to separate the broadcasting assets from the licences and to grant operational control of the undertakings to an entity that is not the licensee for an indeterminate period of time would set an inappropriate precedent that would adversely impact the Commission's ability to supervise and regulate the broadcasting system in accordance with its mandate, including ensuring the proper application of orders from the Governor in Council, such as the Direction to the CRTC (Ineligibility of Non-Canadians) and the Direction to the CRTC (Ineligibility to Hold Broadcasting Licences).

The application

1. Rogers Communications Inc. (RCI) filed an application on behalf of Mountain Cablevision Limited (Mountain) for authority to acquire from RCI and Fido Solutions Inc., partners in a general partnership carrying on business as Rogers Communications Partnership (RCP), as part of an corporate reorganization:

- the terrestrial broadcasting distribution undertakings operated by RCP under regional licences serving various locations in Ontario, New Brunswick and Newfoundland and Labrador;
 - the national video-on-demand programming undertaking known as Rogers On Demand; and
 - the terrestrial and direct-to-home national pay-per-view services known as Rogers Sportsnet.
2. The Commission did not receive any interventions regarding this application.
 3. Mountain and RCP are both controlled by RCI.
 4. In its application, Rogers requested the issuance of broadcasting licences to Mountain under the same terms and conditions as those in effect under the current licences and authorization for RCP to continue operating the broadcasting distribution, video-on-demand and pay-per-view undertakings.

Commission's analysis

5. The Commission has imposed a general condition of licence on all licensees that states the following: "Except as authorized by the Commission, this broadcasting undertaking shall be operated in fact by the licensee itself. The licence cannot be transferred or assigned." This condition of licence serves to ensure that unless otherwise authorized by the Commission, operational control of any undertaking is exercised by the licensee who received authority by the Commission to operate it. This requirement also ensures that the integrity of the licensing process is maintained and facilitates the proper administration of the *Broadcasting Act* (the Act), including any regulations and directions issued under the Act.
6. The Commission considers that if an applicant is seeking an exception to an existing requirement, it bears the onus of demonstrating that its proposal is appropriate in the circumstances and in the best interest of the Canadian broadcasting system, taking into account the broadcasting policy set out in section 3 of the Act.
7. In the present case, the Commission notes that under the Asset Acquisition Agreement between RCP and Mountain, RCP agreed to sell and transfer all of its broadcasting licences to Mountain, while remaining the owner of the broadcasting assets required for the operation of the undertakings. Further, as per the Network and Operating Agreement between RCP and Mountain, RCP would be required to operate the assets in accordance with the terms and conditions of the licences and any directions received from Mountain.
8. The Commission is concerned that while the Network and Operating Agreement provides Mountain with certain levers of control over the undertakings, the lack of details in this agreement regarding the responsibilities of each party leaves the effective control of the undertakings in question. Further, the Commission considers

that the Network and Operating Agreement clearly provides that the day-to-day operations of the relevant undertakings would rest with RCP and not the proposed licensee Mountain.

9. Rogers justified its request for an exception by indicating that it was for corporate planning purposes. No further justification was provided. The Commission considers that the justification offered by the applicant is insufficient in that it provides no rationale to satisfy the Commission that granting the authorization would serve the interests of the Canadian broadcasting system.
10. Further, the Commission is concerned that separating the broadcasting assets from the licences and granting operational control of the undertakings to an entity that is not the licensee for an indeterminate period of time would set an inappropriate precedent that would adversely impact the Commission's ability to continue to supervise and regulate the broadcasting system in accordance with its mandate, including ensuring the proper application of orders from the Governor in Council such as the *Direction to the CRTC (Ineligibility of Non-Canadians)* and the *Direction to the CRTC (Ineligibility to Hold Broadcasting Licences)*.

Conclusion

11. In light of all the above, the Commission **denies** the application by Rogers Communications Inc. on behalf of Mountain Cablevision Limited for authority to acquire from Rogers Communications Partnership its terrestrial broadcasting distribution undertakings serving various locations in Ontario, New Brunswick, Newfoundland and Labrador, its national video-on-demand programming undertaking known as Rogers On Demand and its terrestrial and direct-to-home national pay-per-view services known as Rogers Sportsnet.
12. The Commission reminds licensees and applicants seeking authority to acquire the assets necessary to operate an existing licensed undertaking that as a general rule licensees are required to both operate and have operational control of the undertakings for which they are licensed. Where an authorization is sought to the contrary, applicants are to submit sufficient information to allow the Commission to determine how operational and effective control is to be exercised. Specifically, such applicants are expected to demonstrate satisfactorily that: 1) the proposed request for authorization would benefit the Canadian broadcasting system; and 2) the approval of their request would not serve to undermine the integrity of the Commission's licensing process. In addition, they must satisfy the Commission that approval of their request would not unduly impede its ability to supervise and regulate the broadcasting system in a flexible yet effective manner, including its ability to ensure that the orders issued by the Governor in Council giving directions to the Commission are given proper effect.

Secretary General