



Broadcasting Decision CRTC 2005-201

Ottawa, 18 May 2005

Câblevision TRP-SDM inc.

Trois-Pistoles, Saint-Fabien, Rimouski, Mont-Joli, Matane, Rivière-du-Loup
and surrounding areas, Quebec

*Applications 2003-1775-2, 2003-1891-6
Broadcasting Public Notice CRTC 2004-40
17 June 2004*

Multipoint distribution system licence renewal and licence amendment

*The Commission **renews** the licence that Câblevision TRP-SDM inc. holds to distribute broadcasting services using multipoint distribution system (MDS) technology in Trois-Pistoles, Saint-Fabien, Rimouski, Mont-Joli, Matane and Rivière-du-Loup, from 1 September 2005 to 31 August 2009. However, instead of issuing one licence to serve all of these communities, the Commission will divide the original licensed area into six areas, each licensed separately.*

*The Commission also **approves** the application for authority to distribute, on an analog basis in each of the licensed areas, MétéoMédia, MusiquePlus, VRAK.TV, Séries +, Canal Z and Canal Vie as part of the basic service, and Super Écran on a discretionary basis.*

The applications

1. The Commission received two applications by Câblevision TRP-SDM inc. (Câblevision). The first of these applications was for the renewal of the broadcasting distribution undertaking (BDU) licence it holds for the operation of a multipoint distribution system (MDS) undertaking serving Trois-Pistoles, Saint-Fabien, Rimouski, Mont-Joli, Matane, Rivière-du-Loup and surrounding areas.¹ Câblevision further requested that, in the new licence term, it be licensed as a Class 3 licensee under the *Broadcasting Distribution Regulations* (the Regulations).
2. In its second application, Câblevision indicated that it would no longer offer digital services. It requested authorization to distribute, on an analog basis, MétéoMédia, MusiquePlus, VRAK.TV, Séries +, Canal Z and Canal Vie as part of its basic service, and Super Écran on a discretionary basis. Câblevision indicated that the flexibility it was requesting in its second application was for the purpose of allowing it to complete the construction of its transmitters to serve Saint-Fabien, Mont-Joli, Matane and Rivière-du-Loup and to remain competitive in each of the markets it serves.

¹ The licence was renewed to 31 August 2005 in *Administrative renewal*, Broadcasting Decision CRTC 2005-119, 1 April 2005.

Intervention

3. The Commission received an intervention from Cogeco Cable Inc. (Cogeco). While Cogeco was not opposed to Câblevision's application for licence renewal, it was opposed to certain aspects of the two applications.
4. Cogeco argued that Câblevision should not be recognized as a Class 3 licensee. It noted that, in *New regulatory framework for broadcasting distribution undertakings*, Public Notice CRTC 1997-25, 11 March 1997 (Public Notice 1997-25), the Commission stated that new terrestrial distribution undertakings, regardless of size, would be regulated according to the class of licence held by the cable BDU already serving the market. Cogeco stated that, given that some of the markets served by Câblevision are also served by Class 1 cable BDUs, the Commission's approval of Câblevision's application to be regulated as a Class 3 licensee would be contrary to the policy established in Public Notice 1997-25 and would create regulatory and commercial inequity among competing BDUs serving the same market. Cogeco also noted that LOOK Communications Inc. (formerly LOOK TV Inc.), a regional MDS BDU serving various communities in Quebec, holds a single licence for a Class 1 BDU, in accordance with the policy established in Public Notice 1997-25.²
5. The intervener also submitted that the Commission should deny Câblevision's request for a licence amendment that would authorize the licensee to distribute, on an analog basis, MétéoMédia, MusiquePlus, VRAK.TV, Séries +, Canal Z and Canal Vie as part of its basic service, and Super Écran as a discretionary service. The intervener noted that Câblevision currently distributes two services that the Commission has not authorized (Séries + and Canal Z), and also distributes, as part of its basic service, and in analog mode, services only authorized for distribution on a discretionary basis and in digital mode. According to the intervener, the Commission should not legitimize the licensee's violations of existing regulations and conditions of licence by approving its applications without imposing appropriate penalties on the licensee for its non-compliance.
6. Furthermore, the intervener stated that the Commission should not approve the licensee's request to distribute Séries + and Canal Z as part of its basic analog service, as to do so would be contrary to the Commission's distribution and linkage requirements.³
7. Cogeco appended to its intervention two complaints that it had previously submitted to the Commission. The first complaint, submitted in August 2002 and again in February 2004, alleged that Câblevision had produced false advertising. The second complaint, submitted in October 2002, alleged that Câblevision was distributing certain services without the Commission's approval, as noted above.

² See *LOOK – MDS licence renewal*, Broadcasting Decision CRTC 2004-347, 16 August 2004.

³ Section 4(b) of *Distribution and linkage requirements for Class 1 and Class 2 licensees*, Broadcasting Public Notice CRTC 2005-45, 11 May 2005, states that, "except as otherwise provided under a condition of its licence, where a Class 1 licensee that operates an undertaking in a French-language market distributes [Canal Z, Séries +, Canal Évasion or Historia], the licensee must distribute that service solely on a discretionary basis."

8. The licensee did not reply to Cogeco's intervention.

Commission's analysis and determination

9. The Commission notes that the transmitters at Saint-Fabien, Mont-Joli, Matane and Rivière-du-Loup are not yet in operation.⁴ The Commission also notes that, while the services distributed by the licensee's operational transmitters in Trois-Pistoles and Saint-Fabien do not compete directly with those of any other Class 1 licensee, those distributed by the licensee's transmitter in Rimouski do compete. Likewise, the licensee's proposed transmitters in Mont-Joli, Matane and Rivière-du-Loup would also compete with the services of other Class 1 licensees.
10. As pointed out by the intervener, Public Notice 1997-25 stipulates that new terrestrial BDUs, regardless of size, should be regulated according to the class of licence held by the cable BDU already serving the market.
11. The Commission **renews** the licence that Câblevision holds to distribute broadcasting services using MDS technology in each of Trois-Pistoles, Saint-Fabien, Rimouski, Mont-Joli, Matane and Rivière-du-Loup. However, instead of issuing one licence to serve all of these communities, the Commission will divide Câblevision's original licensed area into six areas, each licensed separately. Furthermore, the Commission will issue Class 1 licences in respect of Câblevision's BDUs authorized to serve Rimouski, Mont-Joli, Matane and Rivière-du-Loup, and will issue Class 3 licences for the Trois-Pistoles and Saint-Fabien BDUs. The four Class 1 licences will be subject to the **conditions of licence** set out in Appendix B to this decision. The two Class 3 licences will be subject to the **conditions of licence** set out in Appendix C to this decision.
12. The licences in respect of Saint-Fabien, Mont-Joli, Matane and Rivière-du-Loup will not be issued until the applicant has informed the Commission in writing that it is prepared to commence operations.
13. The Class 1 and Class 3 BDUs of Câblevision will be subject to sections 1 through 15 of the Regulations, which apply to all classes and types of BDUs that are subject to the Regulations.
14. The Commission notes that, since Câblevision's BDUs serving Rimouski, Mont-Joli, Matane and Rivière-du-Loup will operate under Class 1 licences, they will be subject to a number of regulations that were not applicable to the undertaking under its previous licence.

⁴ The Commission approved an application for an extension of the time limit to commence the operation of the transmitters at Saint-Fabien, Mont-Joli, Matane and Rivière-du-Loup in *Deadline to commence operations*, Broadcasting Decision CRTC 2005-156, 14 April 2005.

15. Nevertheless, given their small subscriber base, the limited number of services to be offered to subscribers, the very limited capacity of Câblevision's BDUs, the adverse negative effect certain requirements would have on the licensee, as well as the fact that the licensee's service offering at each location will consist entirely of licensed Canadian services and include few discretionary services, the Commission relieves the licensee, in respect of its Class 1 BDUs, by **condition of licence 2** in Appendix B, from the requirements pertaining to the carriage of services set out in sections 17 and 18 of the Regulations, as well as from those requirements set out in sections 20 and 22 of the Regulations concerning distribution and linkage of non-Canadian services and the carriage of audio programming services. For the same reasons, the Commission, by **condition of licence 3** in Appendix B, relieves these BDUs from the requirement to carry the programming service known as the Cable Public Affairs Channel (CPAC) for which the Commission has issued a mandatory distribution order under section 9(1)(h) of the *Broadcasting Act* (the Act).⁵ The authorizations set out in section 19 of the Regulations will not apply under these licences.
16. The Commission notes that the service known as the Aboriginal Peoples Television Network (APTN) is also one for which the Commission has issued a mandatory distribution order under section 9(1)(h) of the Act.⁶ However, under the terms and conditions set out in that order, the licensee is not obliged to distribute APTN as none of its Class 1 BDUs have an available channel, as that term is defined in the Regulations.
17. At the same time, the Commission requires, as stipulated by **condition of licence 4** in Appendix B, that the licensee distribute on these Class 1 BDUs a number of local stations as part of the basic service. It also authorizes the distribution of certain French-language pay and specialty services, as set out in Appendix A to this decision. Each Class 1 BDU is also required to contribute 5% of its gross annual broadcasting-related revenues to the production of Canadian programming, as set out in sections 27, 28 and 29 of the Regulations. The Commission is of the view that, taken together, the measures set out above will ensure that the services offered by these BDUs will be consistent with the intent and purpose of the Regulations as they pertain to Class 1 licensees.
18. The Commission recognizes that Câblevision is in non-compliance with its conditions of licence as a consequence of its unauthorized distribution of certain services. In light of Câblevision's non-compliance, and consistent with the Commission's general approach in such circumstances, the Commission will issue the six broadcasting licences to Câblevision in respect of its MDS BDUs authorized to serve Trois-Pistoles, Rimouski, Rivière-du-Loup, Saint-Fabien, Mont-Joli and Matane, from 1 September 2005 to 31 August 2009. This period will allow the Commission to assess, at an earlier date, the licensee's compliance with its conditions of licence.

⁵ Distribution Order 2002-1, attached as Appendix 2 to *Licence renewal for CPAC; and issuance of a distribution order*, Broadcasting Decision CRTC 2002-377, 19 November 2002.

⁶ Distribution Order 1999-2, appended to *Order respecting the distribution of the Aboriginal Peoples Television Network*, Public Notice CRTC 1999-70, 21 April 1999.

19. The Commission notes that it is common for cable BDUs to be authorized to distribute the services that were being distributed by Câblevision without authority. It also notes that the licensee requested that its licence be amended at the same time as it filed its licence renewal application in an effort to correct its non-compliance with respect to the unauthorized distribution of certain services. Taking these factors into consideration, the Commission **approves** the application by Câblevision for authority to distribute, on an analog basis, MétéoMédia, MusiquePlus, VRAK.TV, Séries +, Canal Z and Canal Vie as part of its basic service, and Super Écran on a discretionary basis.
20. The Commission reminds the licensee that it must adhere to the applicable Regulations and to its conditions of licence at all times during the course of the new licence term.
21. With respect to the complaint by Cogeco regarding Câblevision's false advertising, the Commission notes that it does not generally deal with such matters.

Secretary General

This decision is to be appended to each 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 A to Broadcasting Decision CRTC 2005-201

Authorizations

1. The licensee is authorized to distribute, as part of its basic service, the following programming services on each of its Class 1 and Class 3 broadcasting distribution undertakings:
 - Le Réseau de l'information (RDI)
 - Le Canal D
 - Le Réseau des sports (RDS)
 - Télétoon
 - Séries +
 - Canal Z
 - Canal Vie
 - MusiquePlus
 - MétéoMédia
 - VRAK.TV

2. The licensee is authorized to distribute Super Écran on a discretionary basis on each of its Class 1 and Class 3 broadcasting distribution undertakings.

Appendix B to Broadcasting Decision CRTC 2005-201

Conditions of licence for the Class 1 broadcasting distribution undertakings serving Rimouski, Mont-Joli, Matane and Rivière-du-Loup

3. For the purposes of the *Broadcasting Distribution Regulations*, as amended from time to time, the licences held by the licensee are Class 1 licences.
4. The licensee shall adhere to the *Broadcasting Distribution Regulations*, with the exception of sections 17, 18, 20 and 22. The authorizations set out in section 19 of the *Broadcasting Distribution Regulations* do not apply to the licensee.
5. The licensee is not required to distribute the Canadian Public Affairs Channel (CPAC) programming service.
6. The licensee is required to distribute the following programming services, as part of the basic service, on each of the undertakings serving the communities listed below:

Matane

- CIVB-TV (SRTQ) Rimouski (programming originating from CIVM-TV Montréal)
- CBGAT (SRC) Matane (programming originating from CBVT Québec)
- CFER-TV (TVA) Rimouski
- CJPC-TV (TQS) Rimouski (programming originating from CFJP-TV Montréal)

Mont-Joli and Rimouski

- CIVB-TV (SRTQ) Rimouski (programming originating from CIVM-TV Montréal)
- CJBR-TV (SRC) Rimouski (programming originating from CBVT Québec)
- CFER-TV (TVA) Rimouski
- CJPC-TV (TQS) Rimouski (programming originating from CFJP-TV Montréal)

Rivière-du-Loup

- CIVB-TV-1 (SRTQ) Grand Portage (programming originating from CIVM-TV Montréal)
- CKRT-TV (SRC) Rivière-du-Loup
- CIMT-TV (TVA) Rivière-du-Loup
- CFTF-TV (TQS) Rivière-du-Loup

Appendix C to Broadcasting Decision CRTC 2005-201

Conditions of licence for the Class 3 broadcasting distribution undertakings serving Trois-Pistoles and Saint-Fabien

1. For the purposes of the *Broadcasting Distribution Regulations*, as amended from time to time, the licences held by the licensee are Class 3 licences.
2. The licensee shall adhere to the *Broadcasting Distribution Regulations*, with the exception of section 32. The authorizations set out in section 33 of the *Broadcasting Distribution Regulations* do not apply to the licensee.
3. The licensee is required to distribute the following programming services, as part of the basic service, on each of the undertakings serving the communities listed below:

Trois-Pistoles

- CIVB-TV-1 (SRTQ) Grand Portage (programming originating from CIVM-TV Montréal)
- CKRT-TV (SRC) Rivière-du-Loup
- CIMT-TV (TVA) Rivière-du-Loup
- CFTF-TV (TQS) Rivière-du-Loup

Saint-Fabien

- CIVB-TV (SRTQ) Rimouski (programming originating from CIVM-TV Montréal)
- CJBR-TV (SRC) Rimouski (programming originating from CBVT Québec)
- CFER-TV (TVA) Rimouski
- CJPC-TV (TQS) Rimouski (programming originating from CFJP-TV Montréal)