



## Broadcasting Decision CRTC 2005-570

Ottawa, 1 December 2005

### **TELUS Communications Inc.**

Calgary, Edmonton (including St. Albert, Sherwood Park, Spruce Grove and Stony Plain), Fort McMurray, Grande Prairie, Lethbridge, Medicine Hat and Red Deer, Alberta; Kamloops, Kelowna, Nanaimo, Penticton, Prince George, Terrace, Vancouver (including Lower Mainland and Fraser Valley), Vernon and Victoria, British Columbia

*Application 2004-1490-5*

*Broadcasting Public Notice CRTC 2005-63*

*22 June 2005*

### **Licence amendments related to signal distribution**

*The Commission **denies** a proposal by TELUS Communications Inc. (TELUS) to amend its broadcasting licences by adding a condition of licence that would grant TELUS authority to distribute, on its basic service, any service included on the Commission's List of part 2 eligible satellite services or any distant Canadian signal that is offered on the basic service of any of its competitors. It further **denies** TELUS' proposal to add a condition of licence that would grant it authority to distribute any Canadian or non-Canadian audio programming service that is offered by any of its competitors.*

*The Commission, however, **approves** TELUS' proposal to amend its broadcasting licences by adding a condition that would permit it to receive distant Canadian signals using its own facilities rather than from a licensed Satellite Relay Distribution Undertaking (SRDU), provided that it does not make those signals available to any other licensees. The Commission also **approves** TELUS' proposal to amend its broadcasting licences by adding a condition of licence that would permit it to replace, at its option, any of the U.S. 4+1 signals that it is authorized to distribute with the signal of a different affiliate of the same network located in the same time zone as that of the licensed area and received from a licensed SRDU.*

### **The application**

1. The Commission received an application by TELUS Communications Inc. (TELUS) to amend the licences of its regional broadcasting distribution undertakings (BDUs) serving Alberta and British Columbia. The application included four proposals.

## Proposal 1 – Distribution of television services

2. TELUS requested authority to distribute, on its basic service, any service included on the Commission's List of part 2 eligible satellite services<sup>1</sup> or any distant Canadian signal that is offered on the basic service of any of its competitors. This authority would grant TELUS both the ability to offer any service that a competitor has previously been authorized to distribute, as well as an automatic authority to offer any service that a competitor receives authority to offer in the future, without the need for TELUS to submit its own application. To implement this authority, TELUS proposed that the following condition be added to its licences:

The licensee is authorized to distribute, as part of the basic service, any Part 2 eligible satellite service and any distant television station that is not a Part 2 eligible satellite service that is authorized for distribution as part of the basic service within its licensed area by any licensee.

3. The Commission notes that, like all other Class 1 BDUs, TELUS is authorized to distribute, on its basic service, a wide range of local, regional and extra-regional Canadian and non-Canadian services, including one set of U.S. 4+1 signals,<sup>2</sup> as well as other types of Canadian programming services, such as specialty services. TELUS has also received a more general authorization to distribute, as part of its discretionary service, a second set of U.S. 4+1 signals and any distant Canadian signals, subject to certain additional requirements. In order to distribute additional distant Canadian or non-Canadian signals as part of its basic service, TELUS must currently submit an application to the Commission.
4. TELUS argued that the need to submit applications for the authority to distribute additional signals that are already provided by an incumbent BDU provides the incumbent BDU with an advantage, since applications can take several months for the Commission to process. In TELUS' view, the fact that the Commission has already authorized an incumbent BDU to distribute a particular service as part of its basic service means that the Commission is satisfied that such distribution is appropriate in the market and that, consequently, its distribution by a competitor would also be appropriate.
5. TELUS further submitted that, in the interests of competitive parity, whenever one of its competitors is authorized to offer a new service as part of its basic service, TELUS should automatically be authorized to distribute the same service or signal as part of its basic service in the market.

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<sup>1</sup> The most recent version of the Part 2 list and other lists can be found in *Revised lists of eligible satellite services*, Broadcasting Public Notice CRTC 2005-105, 24 November 2005.

<sup>2</sup> The term "U.S. 4+1 signals" refers to a set of signals from each of the four major private American networks, i.e., ABC, CBS, FOX and NBC, as well as one PBS signal.

### **Proposal 2 – Distribution of audio services**

6. Using the same rationale outlined above, TELUS also requested authority to distribute any Canadian or non-Canadian audio programming service that is offered by any of its competitors. As with the first proposal, this authority would grant TELUS the ability to offer any audio service that a competitor has previously been authorized to distribute, as well as automatic authority to offer any such service that a competitor might receive authority to offer in the future, without the need for TELUS to submit its own application. To implement this authority, TELUS requested that the following condition be added to its licences:

The licensee is authorized to distribute any audio programming service that is authorized for distribution within its licensed area by any licensee.

### **Proposal 3 – Reception of distant Canadian signals**

7. TELUS requested authority to receive, directly through its own broadband facilities, any of the Canadian signals set out in the Commission's lists of eligible satellite services that BDUs are required to receive from a licensed Satellite Relay Distribution Undertaking (SRDU). To implement this authority, TELUS requested that the following condition be added to its licences:

The licensee is authorized to receive directly through its own facilities, at its option, any Canadian signals which are otherwise required to be received from a licensed SRDU.

8. In support of this proposal, TELUS argued that it would be more cost efficient for it to receive and transport these signals using its own broadband facilities, where possible.

### **Proposal 4 – Distribution of other U.S. 4+1 signals**

9. TELUS requested authority to replace, at its option, any of the U.S. 4+1 signals that it is authorized to distribute with the signal of a different affiliate of the same network located in the same time zone as that of the licensed area, provided that the signal is received from a licensed SRDU. For example, under this authority, an NBC signal from Seattle, Washington could be replaced with a NBC signal from Spokane, Washington, at TELUS' discretion. To implement this authority, TELUS requested that the following condition be added to its licences:

In addition to the services required or authorized to be distributed pursuant to the applicable section of the *Broadcasting Distribution Regulations*, the licensee is authorized, by condition of licence, to distribute, at its option and as part of either the basic service or its discretionary service, the signals of KOMO-TV (ABC), KIRO-TV (CBS), KING-TV (NBC), KCTS-TV (PBS) Seattle and KCPQ (FOX) Tacoma, or alternatively for each signal, the signal of a different affiliate of the same network located in the same time zone as that of the licensed area and received from a licensed SRDU.

10. In support of its proposal, TELUS noted that, when the Commission licensed Bell Canada to operate regional Class 1 BDUs in Ontario and Quebec,<sup>3</sup> it was authorized to distribute certain identified U.S. 4+1 signals “or, alternatively for each signal, the signal of a different affiliate of the same network located in the same time zone as that of the licensed area and received from a licensed SRDU.” In contrast, TELUS’ own authorizations explicitly set out the particular U.S. 4+1 signals that it is authorized to distribute and do not permit any substitutions. TELUS submitted that approval of this proposal would eliminate the need for it to submit an application to the Commission in order to change one of the U.S. 4+1 signals that it distributes, and would be consistent with the approach that the Commission has taken for the BDUs to be operated by Bell Canada.

## **Interventions**

11. The Commission received an intervention from Saskatchewan Telecommunications Inc. (SaskTel) in support of the TELUS application. It also received interventions from the Canadian Cable Telecommunications Association (CCTA), Canadian Satellite Communications Inc. (Cancom), Shaw Communications Inc. (Shaw) as well as two interventions from Jim Pattison Broadcast Group Limited Partnership,<sup>4</sup> one as licensee of CFJC-TV Kamloops, British Columbia and one as licensee of CHAT-TV Medicine Hat, Alberta opposing various aspects of the application. The concerns of the interveners in relation to each of TELUS’ four proposals, as well as the applicant’s reply to those concerns, are set out below.

## **Proposals 1 and 2 – Distribution of television and audio services**

12. The CCTA and Shaw opposed TELUS’ first and second proposals under which it requested authority to offer any television or audio service that a competitor has previously been authorized to distribute, as well as an automatic authority to offer any service that a competitor might receive authority to offer in the future, without the need for TELUS to submit its own application. The CCTA and Shaw argued that TELUS is subject to the same regulatory processes as all other BDUs and should not be permitted to avoid the regulatory scrutiny that its competitors face. They argued that the application process is necessary, since it provides an opportunity for parties to raise issues with respect to a BDU’s plans and to ensure that these issues are addressed by the BDU and by the Commission. The CCTA and Shaw further submitted that the authority sought by TELUS is overly broad, particularly in that it would permit TELUS to distribute the same distant Canadian television stations as direct-to-home (DTH) BDUs.

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<sup>3</sup> *Regional broadcasting distribution undertakings in Ontario and Quebec*, Broadcasting Decision CRTC 2004-496, 18 November 2004.

<sup>4</sup> Jim Pattison Broadcast Group Ltd. (the general partner) and Jim Pattison Industries Ltd. (the limited partner) carrying on business as Jim Pattison Broadcast Group Limited Partnership.

13. In reply to the comments by the CCTA and Shaw, TELUS argued that requiring authorization on the part of each BDU is time-consuming and wasteful. With respect to the concern that, under its first proposal, TELUS would be permitted to distribute the same distant Canadian stations as DTH BDUs, TELUS replied that that it “sees no public policy reason that it should not be afforded the same flexibility as its DTH competitors.”

### **Proposal 3 – Reception of distant Canadian signals**

14. Cancom opposed TELUS’ third proposal under which it would be permitted to receive distant Canadian signals identified on the Commission’s list of eligible satellite services using its own broadband facilities rather than from a licensed SRDU.
15. Cancom argued that approval of TELUS’ proposal would result in lost revenues for Cancom, inhibiting Cancom’s ability to provide services to rural and remote BDUs. Cancom also noted that, as an SRDU, it is subject to several obligations, including the contribution of 5% of its gross revenues to the production of Canadian programming. Cancom submitted that TELUS would not be subject to such obligations if it were to receive and transport distant Canadian signals using its own facilities. Consequently, approval of TELUS’ proposal would lead to a decrease in Cancom’s revenues, thereby resulting in a net loss to Canadian production funds. Cancom further submitted that the “existing national fibre network” that TELUS proposed to use to transmit services to its BDUs would constitute a Terrestrial Relay Distribution Undertaking (TRDU). However, Cancom noted that TRDUs are currently exempt from licensing on the condition that they are “local or regional in nature and not national.”<sup>5</sup> Since the TELUS facilities are national, Cancom argued that a licensing hearing would be necessary to authorize TELUS to receive and transport distant Canadian signals as it has proposed.
16. Cancom further submitted that the Commission has never before given a BDU general authority to receive distant Canadian signals other than from a licensed SRDU, and that approval of the proposed amendment to TELUS’ licence would constitute a significant change to the Commission’s distant signal policy. Cancom considered that such an approval would be procedurally inappropriate in the context of a licence amendment and would inevitably lead to similar applications by other BDUs. Cancom was of the view that such a sequence of events could have a significant negative impact on SRDUs, which would, in turn, affect the affordability of the services SRDUs provide to rural and remote BDUs.

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<sup>5</sup> The TRDU exemption order is contained in *Final revisions to certain exemption orders*, Public Notice CRTC 2000-10, 24 January 2000.

17. In reply to Cancom, TELUS argued that a reduction in Cancom's revenues used to calculate its contribution to Canadian programming would be offset by TELUS' own required contribution to Canadian programming. TELUS also disagreed that it would be operating an unlicensed TRDU if its application were approved. TELUS noted that the TRDU exemption order refers to the distribution of signals to "affiliated distribution undertakings," and argued that, under its proposal, TELUS would not be distributing signals to any other party but would be receiving and transporting these signals for its own exclusive use.

**Proposal 4 – Distribution of other U.S. 4+1 signals**

18. The CCTA commented on TELUS' fourth proposal, under which it would be authorized to replace any of the U.S. 4+1 signals that it is authorized to distribute with the signal of a different affiliate of the same network located in the same time zone as that of the licensed area and received from a licensed SRDU. The CCTA submitted that a similar request had been made by SaskTel and rejected in the context of its BDU licensing proceeding.<sup>6</sup> In that proceeding, the Commission found that the practice of authorizing the specific U.S. 4+1 signals that a BDU offers as part of its basic package through a public proceeding provided an important opportunity for broadcasters and other interested parties to comment on the proposal, enabling the Commission to evaluate the potential for adverse impact in the markets served by the BDU. The CCTA submitted that it is not aware of any departure that the Commission has made from this policy, or of any fundamental change in circumstance over the past three years that would warrant a reversal of the Commission's approach. Nonetheless, the CCTA indicated that it did not oppose the request in principle, provided that the Commission was willing to extend the same flexibility to other BDUs.
19. CFJC-TV and CHAT-TV opposed TELUS' request. They argued that approval would permit TELUS to make changes to the U.S. 4+1 signals that it would offer, at its own discretion, which could reduce opportunities for broadcasters to obtain simultaneous substitution of their signals over the signals of U.S. services. In the view of CFJC-TV and CHAT-TV, the best case scenario would be a requirement that TELUS distribute U.S. 4+1 signals from the Spokane, Washington region.
20. In reply to the concerns of CFJC-TV and CHAT-TV, TELUS argued that its proposed authorization may be of benefit to those stations. TELUS noted that it is not currently authorized to distribute U.S. 4+1 signals from Spokane, Washington as part of its basic service, but would be authorized to do so should the Commission approve its application.

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<sup>6</sup> *Distribution of U.S. 4+1 television signals*, Broadcasting Decision CRTC 2002-248, 26 August 2002.

## Commission's analysis and determinations

### Proposals 1 and 2 – Distribution of television and audio services

21. The Commission has put in place general authorizations permitting BDUs to distribute a wide range of services. To this end, sections 17, 18 and 19 of the *Broadcasting Distribution Regulations* (the Regulations) set out many types of television services that all Class 1 and Class 2 BDUs may distribute without application to the Commission. Similarly, sections 22 and 23 of the Regulations set out a wide range of audio services that may be distributed without application to the Commission. Of particular importance to this proceeding, the Commission notes that section 19(j) already authorizes TELUS to distribute certain services that are distributed by the incumbent cable company. However, only BDUs licensed prior to 3 June 1993 may make use of the authorization in section 19(h) which permits the distribution of “any Part 2 eligible satellite service that the licensee was authorized to distribute as part of its basic service before June 3, 1993.” Any Class 1 BDU that wishes to distribute other services, such as additional distant Canadian services as part of its basic service, must submit an application to the Commission for authorization to do so.
22. It would appear that the primary advantage enjoyed by incumbent cable companies in relation to TELUS as a result of the authorizations set out in the Regulations relates to section 19(h), as quoted above. The Commission notes, however, that in response to questions from the Commission, TELUS did not identify any specific service distributed by incumbent cable companies that it wished to distribute but was not already authorized to distribute. It is, therefore, not apparent that approval of the authorization sought by TELUS would be necessary to place it on an equal footing with any incumbent cable company in relation to the programming services that each is authorized to distribute.
23. However, as noted earlier, the authorization sought by TELUS would also permit it to distribute on its basic service, any Part 2 service or distant Canadian television station that a DTH competitor is authorized to distribute, without the necessity of filing an application and requesting a specific authorization. With respect to distant Canadian television stations in particular, the Commission notes that DTH BDUs are national rather than regional in nature and, as such, are authorized to distribute the signal of any Canadian television station as part of their basic service in order that they might serve subscribers throughout Canada. In this respect, the authorization requested by TELUS would greatly exceed that granted to any other Class 1 or Class 2 terrestrial BDU.

24. Further, in the Commission's view, the authorization sought by TELUS would actually far exceed the authorizations currently granted to DTH BDUs. While DTH BDUs are authorized to distribute the signal of any Canadian television station on the basic service, they are also subject to extensive program deletion requirements found in sections 42 and 43 of the Regulations,<sup>7</sup> or to meet alternative requirements. Similarly, Class 1 BDUs that have been authorized to distribute distant Canadian television stations, although only on a discretionary basis, rather than as part of the basic service, are also required to perform program deletion<sup>8</sup> or meet alternative requirements. Unlike all other BDUs, approval of TELUS' first proposal would permit it to distribute any distant Canadian stations as part of its basic service without any program deletion or other alternative requirements. As such, the Commission is of the view that, rather than providing competitive parity, as is suggested by TELUS, the proposed authorization would actually provide TELUS with a significant competitive advantage over all other BDUs.
25. With respect to TELUS second proposal related to the distribution of audio services, the Commission considers that approval of that proposal would similarly not be necessary to place it on an equal footing with any incumbent cable company and would actually provide it with a competitive advantage viz-à-viz other BDUs.
26. Finally, the Commission does not agree with TELUS that the distribution of a programming service by one BDU in a market would necessarily mean that the distribution of the same service by a different BDU would be appropriate. It considers that the distribution of a particular programming service may, in some cases, not be appropriate or may require regulatory scrutiny due, for example, to differences in the licensed service areas of the BDUs. In the Commission's view, the current policy of requiring Class 1 and 2 BDUs to submit an application to add new non-Canadian services or distant Canadian television stations to its basic service remains appropriate.
27. In light of the above, the Commission **denies** the proposal by TELUS to amend its broadcasting licences by adding a condition of licence that would grant TELUS authority to distribute, on its basic service, any service included on the Commission's List of part 2 eligible satellite services or any distant Canadian signal that is offered on the basic service of any of its competitors. It further **denies** TELUS' proposal to add a condition of licence that would grant it authority to distribute any Canadian or non-Canadian audio programming service that is offered by any of its competitors.

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<sup>7</sup> These program deletion requirements have been suspended by the Commission subject to alternative measures set out by the Commission in *Direct-to-home (DTH) broadcasting distribution undertakings – simultaneous and non-simultaneous program deletion and the carriage of local television signals in smaller markets*, Broadcasting Public Notice CRTC 2003-37, 16 July 2003.

<sup>8</sup> Like DTH, program deletion requirements for these terrestrial BDUs may be suspended subject to alternative measures agreed upon by the BDU and affected broadcasters.

### Proposal 3 – Reception of distant Canadian signals

28. The Commission acknowledges Cancom's concern that approval of TELUS' request, under which it would be permitted to receive distant Canadian signals using its own facilities rather than from a licensed SRDU, could potentially reduce the contributions to Canadian program production that SRDUs would otherwise make in the future. The Commission notes, however, that such an approval would have little or no effect on the current level of contributions, since the TELUS undertakings have not yet been commercially launched. The Commission also notes that the TELUS undertakings will themselves be required to contribute 5% of gross revenues from broadcasting activities to fund Canadian programming, which may result in a net increase to total contributions, once the TELUS service has been commercially launched.
29. Cancom also argued that, if TELUS' application were approved, TELUS could be operating a TRDU that would require licensing by the Commission. The Commission is of the view that TELUS would not be operating a TRDU as long as it uses only its own facilities to transport signals and does not make those signals available to any other licensed or exempt distribution undertakings. The Commission considers that it would be appropriate to amend TELUS' proposed condition of licence in order to include these stipulations.
30. In essence, the Commission sees no reason to prohibit TELUS from availing itself of the efficiencies afforded by its own network. Further, the Commission does not consider that approval of TELUS' request would result in widespread requests for exceptions to the requirement to receive distant Canadian signals from SRDUs. The construction of all of the reception and transportation facilities necessary to receive distant Canadian signals in the manner proposed by TELUS would, for most BDUs, be far less cost-effective than receiving these signals from an SRDU.
31. In light of the above, the Commission **approves** TELUS' proposal to amend its broadcasting licences by adding a condition that would permit it to receive distant Canadian signals using its own facilities, provided that it does not use any facilities other than its own for reception of these signals and does not make these signals available to any other licensed or exempt distribution undertaking. The **condition of licence** reads as follows:

The licensee is authorized to receive directly through its own facilities, at its option, any of the distant Canadian signals that are otherwise required to be received from a licensed SRDU. 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.

#### **Proposal 4 – Distribution of other U.S. 4+1 signals**

32. When the Commission licensed Bell Canada to operate a regional BDU, it granted Bell Canada the flexibility to distribute either a specified set of U.S. 4+1 signals or to select another set of U.S. 4+1 signals for distribution, provided that those alternative signals were received from an SRDU and originated in the same time zone as the licensed area of the BDU. The Commission notes that no interveners opposed Bell Canada's request for this authority.
33. The Commission notes that the authority granted to Bell Canada, and the one proposed by TELUS in this proceeding, still limit the U.S. 4+1 signals that may be distributed to those that are offered by SRDUs and that originate in the same time zone as the BDU's service area. Furthermore, the U.S. 4+1 signals that a SRDU may distribute to BDUs are currently limited to those set out in its licence, which includes the same U.S. 4+1 signals that appear on the lists of eligible satellite services. In the Commission's view, this means that the impact of the proposed authorization on other programming services distributed by TELUS would be minimal. If, at some later date, the Commission were to receive a proposal to amend the lists of eligible satellite services to add other U.S. 4+1 signals, this proposal would be subject to a public process, during which interested parties would be provided an opportunity to offer their comments.
34. With respect to the specific concerns raised by CFJC-TV and CHAT-TV, the Commission notes, as described by TELUS above, it is not currently authorized to distribute the Spokane signals preferred by CFJC-TV and CHAT-TV. Approval of the proposed authorization could, therefore, be beneficial to these stations since it would permit TELUS to distribute the Spokane signals.
35. The Commission notes that the authority proposed by TELUS relates to the U.S. 4+1 signals that may be distributed on either TELUS' basic or discretionary services. However, TELUS also filed a separate application, coincident with the application that is the subject of this decision, to amend its authority to distribute a second set of U.S. 4+1 signals as part of its discretionary service. The Commission approved that authority in *Distribution of U.S. 4+1 network signals on a digital discretionary basis*, Broadcasting Decision CRTC 2005-409, 15 August 2005. Consequently, the only issue that remains in this proceeding is the set of U.S. 4+1 signals that TELUS may distribute as part of its basic service. The Commission therefore considers that it would be appropriate to amend the authorization proposed by TELUS to reflect this change in circumstances since the application that is the subject of this proceeding was submitted.
36. In light of the above, the Commission **approves** TELUS' proposal to amend its broadcasting licences by adding a condition of licence that would permit it to replace, at its option, any of the U.S. 4+1 signals that it is authorized to distribute as part of its basic service with the signal of a different affiliate of the same network located in the same time zone as that of the licensed area and received from a licensed SRDU. The **condition of licence** reads as follows:

In addition to the services required or authorized to be distributed pursuant to the applicable section of the *Broadcasting Distribution Regulations*, the licensee is authorized, by condition of licence, to distribute, at its option, and as part of the basic service, the signals of KOMO-TV (ABC), KIRO-TV (CBS), KING-TV (NBC), KCPS-TV (PBS) Seattle and KCPQ (FOX) Tacoma, or alternatively for each signal, the signal of a different affiliate of the same network located in the same time zone as that of the licensed area and received from a licensed SRDU.

37. The above condition of licence replaces condition of licence 1 for TELUS' Alberta and British Columbia BDUs set out in the appendix to *Regional broadcasting distribution undertakings in Alberta and British Columbia*, Broadcasting Decision CRTC 2003-407, 20 August 2003.

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>*