



Broadcasting Decision CRTC 2006-460

Ottawa, 31 August 2006

Rogers Cable Communications Inc.

Campbellton, Caraquet, Dalhousie, Grand Falls/Grand Sault, Shediac, Shippagan, Sussex/Sussex Corner and Tracadie/Neguac, and surrounding areas, New Brunswick and Corner Brook and surrounding area, Newfoundland and Labrador

Application 2005-1502-5

Public Hearing at Edmonton, Alberta

19 June 2006

Class 2 regional licence for broadcasting distribution undertakings in New Brunswick and in Newfoundland and Labrador

*The Commission **approves** the application by Rogers Cable Communications Inc. (Rogers) for a Class 2 regional licence to operate cable broadcasting distribution undertakings serving the above-noted locations. The Commission also **approves** Rogers' proposal for a zone-based approach to community programming.*

The application

A regional Class 2 licence

1. The Commission received an application by Rogers Cable Communications Inc. (Rogers) for a Class 2 regional broadcasting licence to carry on cable broadcasting distribution undertakings (BDUs) serving the above-noted locations. In its application, Rogers requested that the Class 2 regional licence include the undertakings serving Caraquet, Shippagan and Tracadie/Neguac, which are currently served by Rogers under Class 3 licences. In addition, Rogers requested that its BDU serving Corner Brook be included under the proposed Class 2 regional licence. That undertaking has, until now, operated under a Commission exemption order¹, but no longer meets the exemption criteria.

¹ See *Exemption order respecting cable broadcasting distribution undertakings that serve between 2,000 and 6,000 subscribers; and Amendment to the Broadcasting Distribution Regulations*, Broadcasting Public Notice CRTC 2004-39, 14 June 2004 (the exemption order for cable BDUs serving between 2,000 and 6,000 subscribers).

2. This is one of three applications by Rogers that the Commission has approved in decisions issued today. The two other decisions² bring under a Class 1 regional licence, and a Class 3 regional licence, Rogers' other BDUs in New Brunswick and in Newfoundland and Labrador, most of which currently operate under their own separate licence.

A “zone-based” approach to community programming

3. Rogers' applications contained plans for a new approach to the provision of community programming under its three proposed regional licences. Rogers requested a number of conditions of licence that would vary the application of certain elements of the Broadcasting Distribution Regulations (the Regulations), thereby enabling the applicant to implement the proposed approach. The approach may be summarized as follows:
 - For the purpose of community programming, the existing licensed areas would be divided into eight zones (six in New Brunswick and two in Newfoundland and Labrador). Each zone would consist of a principal Class 1 or a 2 licensed area having its own head end and studio facilities. Each of the principal licensed areas would be interconnected with five to ten smaller licensed areas (i.e., Class 2 and/or Class 3 licensed areas).
 - For each licensed area within a zone, Rogers would comply with the minimum requirements set out in the Regulations by providing 60% and 30% of local community television programming, and community access television programming, respectively. Rogers proposed that programming produced elsewhere within the same province count towards meeting these requirements.
 - To ensure adequate reflection of communities, Rogers made a commitment that a minimum of 40% of the local community television programming and 20% of the community access television programming distributed in each zone would originate from licensed areas within that zone.
4. In order to implement its proposed approach to community programming, Rogers requested that, by condition of licence, each of the eight zones be deemed to be a licensed area for the purposes of sections 27, 27.1, 28 and 29 of the Regulations. Rogers also proposed other conditions of licence that would modify the application of sections 27.1(1) and 27.1(3) of the Regulations, as well as the definition of the term “local community television programming”.

² See *Class 1 regional licence for broadcasting distribution undertakings in New Brunswick and in Newfoundland and Labrador*, Broadcasting Decision CRTC 2006-459, and *Class 3 regional licence for broadcasting distribution undertakings in New Brunswick and in Newfoundland and Labrador*, Broadcasting Decision CRTC 2006-461, both of today's date.

Rogers' other proposals

5. As a further matter, Rogers noted that some, but not all, of its BDU licences in New Brunswick contain conditions of licence requiring compliance with the Canadian Association of Broadcasters' (CAB) *Voluntary code regarding violence in television programming* (the CAB voluntary code). The applicant requested that the Commission exclude the condition from its proposed Class 2 regional licence. Rogers noted that the condition was essentially rendered redundant as a consequence of the Commission's determination, reached in *Policy framework for community-based media*, Broadcasting Public Notice CRTC 2002-61, 10 October 2002, to expect all cable licensees that elect to distribute community programming to adhere to the CAB voluntary code, as well as to other broadcasting industry codes.
6. Among its further proposals, Rogers requested that:
 - the licensed area for the Corner Brook BDU be redefined to reflect residential growth in that community;
 - authorities regarding 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, be extended to the Corner Brook BDU;
 - amendments previously approved related to conditions of licence on the use of local availabilities be extended to the proposed Class 2 regional licence; and
 - conditions of licence authorizing the distribution of a video games programming service be deleted.
7. The Commission notes that no interventions were filed with respect to Rogers' application. The various elements of that application, and the Commission's analysis and determinations with respect to each, are addressed below.

The regional licence

8. The Commission **approves** the application by Rogers Cable Communications Inc. for a Class 2 regional broadcasting licence to operate Class 2 BDUs serving the following licensed areas: Campbellton, Caraquet, Dalhousie, Grand Falls/Grand Sault, Shediac, Shippegan, Sussex/Sussex Corner and Tracadie/Neguac, and surrounding areas, New Brunswick, subject to the requirements set out in this decision.
9. As noted above, Rogers requested that its Class 2 regional licence include the service area of its Corner Brook BDU. The licence for that BDU was revoked by *Revocation of licences – Exempted cable broadcasting distribution undertakings that serve up to 6,000 subscribers*, Broadcasting Decision CRTC 2004-382, 30 August 2004 (Decision 2004-382), in accordance with the exemption order for cable BDUs serving between 2,000 and 6,000 subscribers. The interconnection of this service area with the service areas of the two Class 3 BDUs serving Pasadena and Deer Lake means that the Corner Brook BDU

no longer qualifies for exempt status. The Commission accordingly **approves** Rogers' request that Corner Brook be included under the Class 2 regional licence. The Corner Brook BDU will be subject to the same **condition of licence** authorizing the carriage of certain U.S. network signals that applied to the undertaking prior to the issuance of Decision 2004-382. The condition is set out in the appendix to this decision.

A “zone-based” approach to community programming

Section 27.1 of the Regulations requires that, except as otherwise provided under a condition of its licence, a licensee devote not less than 60% of the programming distributed on the community channel in the licensed area to local community television programming. Licensees are also required, pursuant to section 27.1(3), to devote a minimum level of their programming to community access television programming. Under the Regulations “local community television programming” means:

...in relation to a licensed area, programming that is reflective of the community served in the licensed area and that is produced

(a) by the licensee in the licensed area, by the members of the community served in the licensed area or by a community television corporation residing in the licensed area; or

(b) by another licensee in a licensed area within the same municipality as the licensee referred to in paragraph (a), by the members of the community served in that licensed area or by a community television corporation residing within that licensed area.

10. Under the Regulations “community access television programming” means:

programming produced by an individual, group or community television corporation residing within the licensed area of a cable distribution undertaking.

11. Rogers' proposal for a zone-based approach to community programming involves the implementation of measures and approaches as exceptions to the Regulations by way of conditions of licence.

12. Rogers provided its rationale for the zone-based approach for all of its Class 1, Class 2 and Class 3 undertakings. The salient points raised by Rogers are provided below. Rogers noted that the majority of the community channels operating in Atlantic Canada face significant difficulties in meeting the Commission's local programming requirements. Rogers indicated that these difficulties are particularly serious in the case of those Class 2 and Class 3 licensed areas that have become increasingly interconnected with neighbouring Class 1 licensed areas. Rogers argued that, in the absence of head end or local production facilities, its own interconnected Class 2 and Class 3 licensed areas are unable to produce or insert any local content, including bulletin boards, without

incurring significant capital costs. Rogers further noted that these costs cannot be justified given the small customer base served in each market, a base that has shrunk over the past ten years due to increased competition. As revenues have decreased, capital and operating expenses have increased, further restricting Rogers' ability to fund the production of local programming.

13. According to Rogers, its Class 1 licensed areas have, on average, approximately 19,000 subscribers. Rogers submitted that, by Ontario and Quebec standards, this number represents a small customer base. Rogers noted that, while it has made improvements in the production of local and access programming, and while community participation in the production of programming will continue, it does not expect to be able to meet the 60% and 30% requirements set out in the Regulations without some reduction in the amount of community programming it offers. Specifically, Rogers suggested that, if its proposal is not approved, it would be forced to reduce its current six-hour broadcast day in Class 1 licensed areas to four hours in order to meet the existing local and access programming requirements.
14. Rogers indicated that, on average, Class 2 and Class 3 licensed areas might have as few as 3,000 and 500, subscribers, respectively. According to the applicant, the average Class 2 licensed area generates about \$1,000,000 in gross broadcasting revenues per annum. Rogers submitted that a contribution of 5% of this revenue (i.e., \$50,000) to local expression is inadequate to meet the Commission's objectives under the community channel policy. This situation is far worse, Rogers commented, in Class 3 licensed areas where it would only have approximately \$7,000 available each year to fund any local programming requirements. In this context, Rogers pointed out that one hour of community programming can be produced at a cost of between \$2,000 and \$10,000, depending on whether it is produced by itself or by an independent producer. Rogers stated that it would be obliged to cease operating community channels in Class 2 licensed areas, since those areas do not have a sufficient number of subscribers to generate the funds needed to produce any local or access programming. In the case of all Class 3 licensed areas, Rogers maintained that even the insertion of bulletin board programming would be too costly, as those are fully interconnected with Class 1 or Class 2 licensed areas and do not have local facilities or staff.
15. Rogers maintained that its zone-based proposal represents a viable solution to the above difficulties and is in the interest of its subscribers and the broadcasting system, as it would permit Rogers to place a deliberate focus on upgrading the quality of its community programming in order to attract a regular viewing audience.
16. Rogers argued that the programming on its community channels reinforces the local and broader provincial communities of interest. While Rogers recognized that its proposal could be perceived as a first step toward the creation of a single, province-wide community channel, it emphasized that this was not its intention. Rogers committed to airing in each zone a minimum of 40% local programming and 20% access programming that originates from the same zone (i.e., from any service area within the same zone).

17. In addition, Rogers proposed that, in each service area within a zone, it would comply with the 60% and 30% local and access requirements set out in the Regulations. It proposed that, for the purposes of these requirements, programming that is produced elsewhere within the same province would qualify as local and/or access programming.

Commission's analysis and determinations

18. The Commission notes that it examines such applications on a case-by-case basis, taking into account any special circumstances. The Commission has examined the applicant's arguments regarding the difficulties it faces in providing quality community channel programming for all of its BDUs in Atlantic Canada. It has also assessed Rogers' proposal to provide community programming under a zone-based approach, and its request for conditions of licence that would permit it to implement this proposed approach as an exception to the Regulations. Based on the available evidence, and taking into account the absence of opposing interventions, the Commission considers it appropriate that Rogers be permitted to proceed with its plans for a zone-based approach to community programming in its licensed areas in Atlantic Canada and accordingly **approves** Rogers' proposal.
19. **Conditions of licence** that will permit the applicant to implement its proposed zone-based approach are set out in the appendix to this decision.

Rogers' other proposals

Proposed deletion of condition of licence regarding violence in programming

20. With respect to Rogers' request that the condition of licence regarding violence in television programming on the community channel be deleted from its proposed Class 2 regional licence, the Commission notes that adherence to the CAB voluntary code is a condition of licence that is generally applicable to all cable BDUs that distribute community programming. The Commission is not persuaded that it is appropriate to remove this condition of licence and therefore **denies** the applicant's request.

Request that the licensed area for Corner Brook be redefined

21. Rogers requested that the licensed area for the undertaking serving Corner Brook be increased to reflect the residential growth that has occurred in this community. As part of its application, Rogers submitted a revised topographical map indicating the proposed borders for the redefined service area. The Commission **approves** the request.

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

22. Rogers requested that an authority granted, by condition of licence, in respect of other Rogers BDUs affected by this decision (see *Amendments to authorization set out in Decision CRTC 2000-437*, Broadcasting Decision CRTC 2005-198, 16 May 2005 (Decision 2005-198)) regarding 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, be extended to the Corner Brook BDU. The Commission **approves** this request.

23. The Commission notes that the suspension of the requirement to perform program deletion set out in Decision 2005-198 (which specifies the rate to be paid by Rogers to the Canadian Association of Broadcasters, on behalf of affected broadcasters for the distribution of distant Canadian signals and of a second set of U.S. 4+1 signals on a digital discretionary basis in lieu of program deletion) was for a period ending 12 August 2006. Because these provisions have expired, Rogers is required to perform program deletion on these services, at the request of affected broadcasters. The Commission notes that, as set out in Roger's original authority in *Carriage of Canadian and U.S. 4+1 signals on a digital basis*, Decision CRTC 2000-437, 8 November 2000, the application of the provisions set out in section 43 of the Regulations may be suspended upon approval of an executed agreement between the licensee and broadcasters. The language of this **condition of licence**, as set out in the appendix to this decision, has been amended accordingly.

Use of local availabilities

24. In its application, Rogers noted that it had filed an earlier proposal to amend conditions of licence appearing on several of its licences and related to local availabilities. Specifically, Rogers had requested that the Commission authorize it to include promotions for non-programming services (e.g., Internet and telephony) in the 25% of local availabilities that it may use to promote BDU services. Rogers requested that, if approved, this condition be incorporated as part of the three regional licences in Atlantic Canada covering the existing Class 1, Class 2 and Class 3 licensed areas.
25. The Commission notes that, in *Licence amendment to replace condition of licence relating to the use of local availabilities in non-Canadian satellite services*, Broadcasting Decision CRTC 2006-205, 2 June 2006, it approved the Rogers application referred to above. Accordingly, the amended **condition of licence** is set out in the appendix to this decision.

Video games service

26. In *Licence amendments concerning the distribution of a video games service*, Decision CRTC 95-591, 25 August 1995, the Commission authorized a large number of BDUs across Canada, including many of those BDUs licensed to Rogers in Atlantic Canada, to originate and distribute a video games programming service as a special programming service, offered on a discretionary basis. In its application, Rogers requested that this condition of licence be deleted in the case of its BDUs to which it currently applies. Rogers noted that the condition of licence is unnecessary because it neither distributes, nor contemplates distributing, such a service. The Commission **approves** Rogers' request, and has deleted this condition of licence accordingly.

Other matters

Employment equity

27. Because this applicant is subject to the *Employment Equity Act* and files reports concerning employment equity with Human Resources and Skills Development, its employment equity practices are not examined by the Commission.

Issuance of the licence

28. The Commission will issue a Class 2 regional broadcasting licence to Rogers Cable Communications Inc. to operate cable broadcasting distribution undertakings to serve the licensed areas set out above. The Regulations applicable to Class 2 licensees shall apply to these undertakings. The licence will expire 31 August 2013 and will be subject to the **conditions** set out therein, as well as to the **conditions** set out in the appendix to this decision.

Secretary General

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 2006-460

Conditions of licence applicable to all licensed areas

1. The licensee is authorized to distribute Atlantic Satellite Network (ASN), as part of the basic service, provided that it is distributed on an unrestricted channel.
2. 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.
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 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 *Broadcasting Distribution Regulations* regarding simultaneous substitution apply also in the case of U.S. 4+1 signals and distant Canadian signals.

4. For the purposes of sections 27, 27.1, 28 and 29 of the *Broadcasting Distribution Regulations*, each of the following eight (8) zones shall be considered licensed areas:

- Zone 1 (Moncton):** Moncton, Shediac, St. André de Shediac, Big Cove, Bouctouche, Cap Lumière, Highway 505/St. Edouard, Petitcodiac, Richibucto, Richibucto Village, St. Antoine, Ste-Anne-de-Kent, St. André de Shediac, Ste-Marie-de-Kent, St-Ignace;
- Zone 2 (Saint John):** Saint John, Sussex/Sussex Corner, Brown’s Flat, Keating’s Corner, Morrisdale, Musquash Subdivision, Patterson/Hoyt, Welsford, Willow Grove;
- Zone 3 (Bathurst):** Bathurst, Campbellton, Caraquet, Dalhousie, Shippegan, Tracadie/Neguac, Allardville, Blue Mountain Settlement, Jacquet River, Salmon Beach
- Zone 4 (Fredericton):** Fredericton, Burtts Corners, Harvey, Ludford Subdivision, McAdam, Nasonworth, Noonan, Tracy/Fredericton Junction;
- Zone 5 (Edmundston):** Edmundston, Grand Falls/Grand Sault, Caron Brook, Lac Baker, St-Joseph-de-Madawaska, Clair, Davis Mills;
- Zone 6 (Miramichi):** Chatham/Newcastle (Miramichi), Centre Acadie, Centre Napan, Rogersville;
- Zone 7 (St. John’s):** St. John’s;
- Zone 8 (Corner Brook):** Corner Brook, Deer Lake, Pasadena.

5. For the purpose of subsection 27.1(1) of the *Broadcasting Distribution Regulations* and condition of licence 7, “local community television programming” means in relation to a licensed area as defined in condition of licence 4, programming that is reflective of the community served in the licensed area and that is produced
- (a) by the licensee in the licensed area, by the members of the community served in the licensed area or by a community television corporation residing in the licensed area;
- (b) by another licensee in a licensed area within the same municipality as the licensee referred to in paragraph (a), by the members of the community served in that licensed area or by a community television corporation residing within that licensed area; or

(c) by the licensee in another licensed area within the same province as the licensee referred to in paragraph (a), by the members of the community served in that licensed area or by a community television corporation residing within that licensed area.

6. As an exception to section 27.1(1) of the *Broadcasting Distribution Regulations*, the licensee shall devote

(a) not less than 60% of the programming distributed on the community channel in each licensed area in each broadcast week to the distribution of local community television programming as defined in conditions of licence 5 (a), (b) and (c); and

(b) not less than 40% of the programming distributed on the community channel in each licensed area in each broadcast week to the distribution of local community television programming as defined in conditions of licence 5(a) and (b).

7. For the purpose of section 27.1(3) of the *Broadcasting Distribution Regulations* and condition of licence 8, “community access television programming” means programming produced:

(a) by an individual, group or community television corporation residing within the licensed area of a cable distribution undertaking; or

(b) by an individual, group or community television corporation residing within the same province as the licensed area.

8. As an exception to section 27.1(3) of the *Broadcasting Distribution Regulations*, the licensee

a) shall devote not less than 30% of the programming distributed on the community channel in each licensed area in each broadcast week to community access television programming as defined in conditions of licence 7 (a) and (b); and,

b) shall devote not less than 20% of the programming distributed on the community channel in each licensed area in each broadcast week to the distribution of community access television programming as defined in condition of licence 7(a).

c) shall devote from 30% to 50% of the programming distributed on the community channel in each broadcast week to community access television programming, as defined in conditions of licence 7 (a) and (b), according to the requests;

d) if one or more community television corporations are in operation in a licensed area, shall make available to them up to 20% of the programming distributed on the community channel in each broadcast week for community access television programming, as defined in conditions of licence 7 (a) and (b); and

e) if one or more community access television corporations are in operation in a licensed area, shall make available to each of them, on request, in each broadcast week, not less than four hours of community access television programming, as defined in conditions of licence 7 (a) and (b).

Conditions of licence applicable to specific licensed areas

Campbellton

9. The licensee is authorized to distribute, at its option, WLBZ-TV (NBC) Bangor and WMEM-TV (PBS) Presque Isle, Maine, and WCVB-TV (ABC) and WBZ-TV (CBS) Boston, Massachusetts, and WUHF-TV (FOX) Rochester, New York, as part of the basic service.
10. The licensee is authorized to distribute, at its option, CIHF-TV-2 (Global) Saint John and CFTF-TV-1 (TQS) Edmundston, as part of the basic service.

Caraquet

11. The licensee is authorized to distribute, at its option, WVII-TV (ABC), WLBZ-TV (NBC), WABI-TV (CBS) Bangor and WMEM-TV (PBS) Presque Isle, Maine, as part of the basic service.

Corner Brook

12. The licensee is authorized to distribute, at its option, WXYZ-TV (ABC), WDIV-TV (NBC), WTVS-TV (PBS), Detroit, Michigan, and WTOL-TV (CBS), Toledo, Ohio, as part of the basic service.

Dalhousie

13. The licensee is authorized to distribute, at its option, WLBZ-TV (NBC) Bangor and WMEM-TV (PBS) Presque Isle, Maine, WCVB-TV (ABC) and WBZ-TV (CBS) Boston, Massachusetts, and WUHF-TV (FOX) Rochester, New York, as part of the basic service.
14. The licensee is authorized to distribute, at its option, CIHF-TV-2 (Global) Saint John and CFTF-TV-1 (TQS) Edmundston, as part of the basic service.

Grand Falls/Grand Sault

15. The licensee is authorized to distribute, at its option, WXYZ-TV (ABC) and WDIV-TV (NBC), Detroit, Michigan, and WUHF-TV (FOX) Rochester, New York, as part of the basic service.
16. The licensee is authorized to distribute, at its option, CIVM-TV (Télé-Québec) Montréal, as part of the basic service.

Shediac

17. The licensee is authorized to distribute, at its option, WXYZ-TV (ABC), WDIV (NBC) and WTVS (PBS) Detroit, Michigan, WBZ-TV (CBS) Boston, Massachusetts, and WUHF-TV (FOX) Rochester, New York, as part of the basic service.

Sussex/Sussex Corner

18. The licensee is authorized to distribute, at its option, WXYZ-TV (ABC) and WJBK-TV (CBS) Detroit, Michigan, and WLBZ-TV (NBC) Bangor and WMED-TV (PBS) Calais, Maine, as part of the basic service.