



Broadcasting Decision CRTC 2006-596

Ottawa, 16 October 2006

Videotron Ltd.
Dolbeau, Quebec

Application 2005-1338-4
Public Hearing in Edmonton, Alberta
19 June 2006

Cable broadcasting distribution undertaking

*The Commission **approves** the application by Videotron Ltd. for a broadcasting licence to continue the operation of the Class 2 cable broadcasting distribution undertaking serving Dolbeau, subject to the conditions set out in this decision and in the licence.*

The application

1. The Commission received an application by Videotron Ltd. (Videotron) for a broadcasting licence to continue the operation of the Class 2 cable broadcasting distribution undertaking (BDU) serving Dolbeau, Quebec.
2. In *Revocation of licence – Exempted cable broadcasting distribution undertakings that serve between 2,000 and 6,000 subscribers*, Broadcasting Decision CRTC 2004-344, 13 August 2004, the Commission revoked the broadcasting licence issued to Videotron for the BDU serving Dolbeau pursuant to *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 (Public Notice 2004-39).
3. Given that the BDU serving Dolbeau is no longer operating its head-end and is now interconnected with the Videotron BDUs serving Saint-Félicien and La Doré, Quebec, the BDU serving Dolbeau no longer complies with the terms of the exemption order appended to Public Notice 2004-39 and must therefore obtain a broadcasting licence to continue its operations.
4. Videotron also asked to be relieved, by condition of licence, of the requirement under section 27.1(1) of the *Broadcasting Distribution Regulations* that it devote at least 60% of the programming broadcast on the community channel in the licensed area in each broadcast week to local community television programming. The applicant proposed to reduce the minimum amount of local community television programming to 45%.
5. Videotron proposed to broadcast Dolbeau community programming that would originate from the community channel of its BDU serving Saint-Félicien.

6. The applicant also requested a condition of licence authorizing it to insert, at its option, certain promotional material as a substitute for the “local availabilities” (i.e., non-Canadian advertising material) of non-Canadian satellite services. The applicant agreed to comply with the following condition:

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 made available for the promotion of discretionary programming services and packages, customer service information, channel realignments, cable FM service, additional cable outlets and to promote non-programming services, such as Internet and local telephony.

7. The applicant also requested authorization to distribute, on a discretionary digital basis, a second set of U.S. 4+1 signals.¹

Interventions

8. The Commission received interventions opposing this application from the Fédération des télévisions communautaires autonomes du Québec (the Federation) and the Société d’information Lac Saint-Jean, better known as Télévision locale Dolbeau-Mistassini (TVLDM9), as well as an intervention from the Canadian Association of Broadcasters (CAB).
9. Although the Federation and TVLDM9 were in favour of issuing a BDU licence for the service area of Dolbeau, they opposed adding a condition of licence that would reduce the BDU’s requirements with respect to the local portion of community programming. The Federation noted that, if a licensee chooses to distribute a community channel, it must operate the channel in full compliance with the Commission’s policies. The Federation also submitted that the interconnection should not be to the detriment of local community programming. TVLDM9 noted that it has been providing community programming in the Dolbeau and Saint-Félicien areas for a number of years. It asked for a community channel specifically for Dolbeau, and stated that it is able to produce the 60% level of local programming required by the Commission and is prepared to negotiate financial arrangements with Videotron so that a broadcasting centre can be installed in Dolbeau.
10. The CAB supported the application, but subject to certain conditions concerning local availabilities. It proposed that the applicant be authorized to promote only its own non-programming services. The CAB also proposed that the applicant be required to continue to use at least half of the 25% of local availabilities for the promotion of

¹ 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 (referred to collectively as the U.S. 4+1 signals).

programming-related services and that the promotions of programming and non-programming services be scheduled equitably during the broadcast day. Finally, the CAB requested that the Commission clarify its policy with respect to the amounts paid by programming services to BDUs for the insertion of promotional material in local availabilities. In this regard, the CAB asked the Commission to specify that programming services should pay only the direct incremental costs incurred by BDUs, i.e., no mark-up, overhead or common costs should be paid by programming services, and that programming services should not be required to “buy” or commit to paying for insertion of promotional material for a period greater than six weeks (referred to as a “minimum buy”).

The applicant’s replies

11. In response to the interventions by the Federation and TVLDM9, Videotron submitted that the demographics and number of subscribers do not allow for separate facilities to be implemented and operated in these two communities. Videotron maintained that the revenue to be allocated to community television for these regions makes installing two completely independent infrastructures financially unjustifiable.
12. Videotron submitted that the best solution for continuing to offer relevant community programming to each of the two communities would be to combine the local productions of both regions on one channel and to broadcast Dolbeau community programming from Saint-Félicien. In doing so, the people of Saint-Félicien would also have access to Dolbeau programming, and vice-versa. According to the applicant, it is evident that it is committed to broadcasting 90% local content by combining the two service areas because these two systems are very closely linked. Videotron affirmed that, given that there would be no reduction in the amount of original community programming, the public would not be penalized.
13. Videotron also pointed out that Dolbeau and Saint-Félicien are part of the same sector of the Lac Saint-Jean region, that they share the same Member of the National Assembly (MNA) and Member of Parliament (MP) as well as the same social circumstances (agriculture, forestry, industry), and that the Chambers of Commerce and the regional county municipalities (RCM) represent those same social circumstances to their MNA and MP. Videotron also pointed out that these two municipalities are located only 34 kilometres apart.
14. Videotron did not reply to CAB’s intervention.

Commission’s analysis and determinations

15. The Commission notes that the exemption order appended to Public Notice 2004-39 does not apply to the BDU serving Dolbeau since it is now interconnected with the Videotron BDU that serves Saint-Félicien and La Doré. Accordingly, the Commission **approves** the application by Videotron Ltd. for a broadcasting licence to continue the operation of the Class 2 cable broadcasting distribution undertaking serving Dolbeau, Quebec.

Community programming

16. The Commission considers that community programming is an important aspect of the Canadian broadcasting system and that it contributes positively and significantly to achieving the objectives set out in the *Broadcasting Act*.
17. The Commission notes that the Dolbeau BDU is interconnected with the BDU in Saint-Félicien and that Dolbeau community programming will be broadcast from the Saint-Félicien BDU because the Dolbeau BDU is no longer operates a head-end.
18. With respect to the offer by TVLDM9 to install a broadcasting centre in Dolbeau, the Commission notes that Videotron is under no regulatory obligation to maintain a head-end in Dolbeau. Videotron's decision to interconnect the Dolbeau BDU with its Saint-Félicien BDU means that a community channel specifically for Dolbeau is no longer possible.
19. With respect to the request to reduce the level of local community television programming from 60% to 45%, the Commission assesses this type of application by taking into account the circumstances of each case. In the present case, the Commission notes the social and cultural circumstances that Dolbeau and Saint-Félicien share, as well as their geographic proximity. Further, in *Programming distributed on the community channel – Licence amendment*, Broadcasting Decision CRTC 2006-383, 18 August 2006, the Commission approved an application to amend the licence of the BDU serving Saint-Félicien by reducing from 60% to 45% the minimum percentage of local community television programming.
20. Given the circumstances, the Commission finds that Videotron's proposal for local community television programming is a viable solution that will allow the applicant to provide a community channel for the people of Dolbeau and Saint-Félicien.
21. The Commission encourages Videotron to collaborate with the interveners and other interested parties in order to maximize their capacity to contribute to the undertaking's community programming.
22. Accordingly, the Commission **approves** the request by Videotron concerning the minimum level of local community television programming. The **condition of licence** is set out in the appendix to this decision.

Use of local availabilities

23. The Commission notes the concerns raised by the CAB regarding the use of local availabilities, and that the CAB's intervention was received before the release of *Promotion of non-programming services using local availabilities*, Broadcasting Public Notice CRTC 2006-69, 2 June 2006 (Public Notice 2006-69), in which the Commission found it appropriate to update its policy with respect to the use of local availabilities to permit BDUs to use these availabilities to promote non-programming services, subject to certain conditions.

24. Specifically, the Commission found that BDUs that seek and receive amendments to their conditions of licence allowing them to use local availabilities for this purpose will be authorized to use a maximum of 25% of local availabilities to provide customer service and channel realignment information or to promote discretionary programming services and packages, cable FM service, additional cable outlets and non-programming services, including Internet and telephone services.
25. The Commission added, in Public Notice 2006-69, that the promotion of non-programming services in local availabilities should generally be limited to those non-programming services that are made available in conjunction with programming services, whether they are offered by the BDU, by an affiliated company, or by a third party pursuant to a marketing arrangement with the BDU. The Commission noted that, should a complaint arise, it would be up to the BDU to provide, at the Commission's request, a report on its use of local availabilities. Concerning the costs of broadcasting promotional messages in local availabilities, the Commission reiterated that BDUs may only charge Canadian programming services their share of the direct costs associated with the insertion of their promotional material in local availabilities.
26. The Commission considers that Videotron's application is consistent with its updated policy concerning the use of local availabilities as set out in Public Notice 2006-69. Accordingly, the Commission **approves** Videotron's application for authority to insert, at its option, promotional material as a substitute for the "local availabilities" (i.e., non-Canadian advertising material) of non-Canadian satellite services. A **condition of licence** to that effect is set out in the appendix to this decision.

U.S. 4+1 signals

27. Concerning the distribution on a discretionary digital basis of a second set of U.S. 4+1 signals, the Commission considers that this could serve as an incentive for cable customers to subscribe to the digital service offerings of the cable BDUs. The distribution of such services would also increase the choice available to cable subscribers.
28. Accordingly, the Commission **approves** the application by Videotron to distribute a second set of U.S. 4+1 signals, on a discretionary digital basis, provided that it complies with the **condition of licence** set out in the appendix.

Issuance of the licence

29. The Commission will issue a Class 2 broadcasting licence to continue the operation of the cable BDU serving Dolbeau, Quebec.

30. The rules applicable to Class 2 licensees shall apply to this undertaking, including those relating to digital distribution. The operation of this undertaking will be regulated pursuant to the *Broadcasting Distribution Regulations*. The licence will expire 31 August 2013 and will be subject to the **conditions** listed in the appendix to this decision and in the licence to be issued.

Employment equity

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

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 2006-596

Conditions of licence

1. The licensee is authorized to distribute, at its option, as part of the basic service, the signals of WCAX-TV (CBS), WVNY (ABC), WFFF-TV (FOX) Burlington, New York and WPTZ (NBC) and WCFE-TV (PBS) Plattsburgh, New York or another station affiliated with the same network, or another affiliate of the same network located in the same time zone, indicated on the appropriate list of eligible services.
2. The licensee is authorized to distribute the following signals on a discretionary digital basis:
 - 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 (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, 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 in respect to the signal 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 solely on the licensee's digital service.

The Commission reminds the licensee that the simultaneous substitution requirements, set out in section 30 of the *Broadcasting Distribution Regulations*, regarding simultaneous substitution also apply in the case of U.S. 4+1 signals.

3. 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.

4. The licensee shall, as an exception to the requirement set out in section 27.1(1) of the *Broadcasting Distribution Regulations*, devote at least 45% of the programming broadcast on the community channel in the licensed area in each broadcast week to the broadcast of local community television programming. This programming shall be broadcast from its undertaking serving Saint-Félicien.