



Broadcasting Decision CRTC 2007-102

Ottawa, 30 March 2007

Novus Entertainment Inc.

Vancouver (Greater Vancouver Regional District), British Columbia

Application 2006-1159-2

Broadcasting Public Notice CRTC 2006-141

8 November 2006

Application for relief from section 17 of the *Broadcasting Distribution Regulations*

*The Commission **denies** an application for relief from the requirement to distribute CHNU-TV Fraser Valley (OMNI BC) as part of the basic service.*

The application

1. The Commission received an application from Novus Entertainment Inc. (Novus), licensee of the Class 1 cable broadcasting distribution undertaking (BDU) serving the Greater Vancouver Regional District, British Columbia, requesting relief, by condition of licence, of the requirement under section 17 of the *Broadcasting Distribution Regulations* (the Regulations) to distribute CHNU-TV Fraser Valley (known as OMNI BC), a local, over-the-air television station featuring multi-faith religious programming.
2. Novus cited difficulties related to the reception of CHNU-TV's signal at its local head end in Vancouver and what it felt was a lack of demand from its subscribers for the service as the reasons for its application. Novus also noted that it already carries the multi-faith network Vision TV.

Interventions

3. The Commission received an intervention in opposition to this application from Rogers Broadcasting Limited (Rogers), the licensee of CHNU-TV.
4. Rogers indicated that it had been informed by Novus regarding the latter's technical difficulties in trying to capture a broadcast quality signal from CHNU-TV's antenna on McKee Peak in Abbotsford, but disagreed with the applicant's engineering report, stating that it had pointed out to Novus on a number of occasions that Novus could purchase antenna reception equipment that would greatly improve its reception of the CHNU-TV

signal. Rogers also noted that Shaw Cable, the incumbent cable operator in Vancouver, receives the signal for CHNU-TV by fibre feed from Rogers' broadcast centre in Surrey, at Shaw's own expense. Rogers stated that it had suggested to Novus that it follow Shaw's example, but that Novus had refused to incur the costs associated with such a fibre feed connection.

5. In Rogers' view, the fact that Novus is unable to receive an over-the-air broadcast quality signal for CHNU-TV should not release it from its regulatory obligation as a Class 1 cable BDU to distribute all priority signals in its service area. Rogers noted that the Regulations do not make reference to the popularity or demand for a service but rather to the need for local service and reflection and to the assurance of local basic carriage for local, regional and extra-regional signals. Rogers further noted that the carriage of the specialty programming undertaking Vision TV is mandated by section 18 of the Regulations, a provision separate from the priority carriage requirements set out in section 17 of the Regulations.

Applicant's reply

6. Novus contested the claim that it had repeatedly refused to carry CHNU-TV by stating that it had made attempts to receive the signal with no success. Novus further submitted that if the contours in CHNU-TV's original application, as approved in *New religious television station for the Fraser Valley*, Decision CRTC 2000-218, 6 July 2000 (Decision 2000-218), were in fact its actual measured contours, there would be some possibility of Novus' being able to receive a broadcast quality signal from CHNU-TV. However, Novus noted that the transmission site is now located in Abbotsford, which is not part of the Greater Vancouver Regional District and is a significant distance from the transmission site in Maple Ridge originally proposed and approved in Decision CRTC 2000-218. Given that its network does not extend to Abbotsford, the applicant submitted that Rogers' proposal that it provide a fibre feed connection was prohibitively expensive (in the hundreds of thousands of dollars). Moreover, Novus was of the view that the findings of its engineering report clearly indicated that purchasing new antenna reception equipment would not greatly improve its reception of CHNU-TV and so could not ensure a broadcast quality signal. Novus stated that it did perform rooftop tests at its head-end location but did not have any access rights to any rooftops in Maple Ridge or other locations closer to the CHNU-TV transmission site.

Commission's analysis and determinations

7. In *Decrease in Power*, Decision CRTC 2001-559, 4 September 2001 (Decision 2001-559), the Commission approved a request to change the transmission site of CHNU-TV and decrease its power due to the loss of availability of its initial proposed site. Consequently, CHNU-TV's transmission site is indeed approximately 30 kilometres further southeast (in Abbotsford) than had originally been proposed.

8. However, prior to Decision 2001-559, in *Change to licensed service area*, Decision CRTC 2000-273, 26 July 2000 (Decision 2000-273), the Commission also approved Novus' application to change the licensed area for its cable BDU serving part of Vancouver (Concord Pacific Place) to include the Greater Vancouver Regional District.¹
9. The Commission notes that as defined in the Regulations, a "local television station" is a licensed television station that has a Grade A official contour that includes any part of the licensed area or has, if there is no Grade A official contour, a transmitting antenna that is located within 15 kilometres of the licensed area. While Abbotsford itself does not fall in Novus' service area, the currently authorized Grade A contour of CHNU-TV does cover an eastern portion of Novus' authorized service area. As such, pursuant to section 17(1) of the Regulations, the local television station CHNU-TV must be distributed as part of the basic service.
10. The Commission notes that the solutions suggested by Rogers would mean an additional cost to Novus. However, given Novus' expansion of its service area, as approved in Decision 2000-273, the Commission is of the view that the cost of updating equipment to properly provide service to its authorized service area is a normal business cost. Based on the information provided by Novus, the Commission considers that it has not made a compelling case that the costs it would bear to carry CHNU-TV would be unreasonable or that it would have an undue negative financial impact on its BDU operations in Vancouver. The Commission notes that the applicant has provided no substantiation for its estimates with regard to the cost of running a fiber link to carry CHNU-TV. Further, the Commission finds the applicant's argument that its subscribers have not shown any demand for the CHNU-TV service without merit.
11. Accordingly, the Commission **denies** the application by Novus Entertainment Inc. requesting relief, by condition of licence, of the requirement under section 17 of the Regulations to distribute CHNU-TV Fraser Valley.

Secretary General

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¹ Novus' initial authorized service area was limited to Concord Pacific Place, a community of condominiums and apartment buildings on land that served as the site for Vancouver's World Fair Exposition in 1986.