



Broadcasting Decision CRTC 2008-145

Ottawa, 22 July 2008

Rogers Cable Communications Inc.

Various locations in New Brunswick, Newfoundland and Labrador, and Ontario

Application 2008-0420-5, received 18 March 2008

Broadcasting Public Notice CRTC 2008-36

25 April 2008

Distribution of additional signals on a digital discretionary basis – Licence amendments

*The Commission **approves** the application by Rogers Cable Communications Inc. (Rogers) to amend the condition of licence on the Class 1 and Class 2 regional licences for its cable broadcasting distribution undertakings (BDUs) authorizing the distribution on a digital discretionary basis of a second set of U.S. 4+1 network signals and any of the Canadian television signals set out in the List of Part 3 eligible satellite services, subject to certain conditions.*

*The Commission also **approves** Rogers' request to amend the condition of licence on the Class 3 regional licence for its cable BDUs authorizing the distribution on a digital discretionary basis of a second set of U.S. 4+1 network signals, subject to certain conditions.*

*Finally, the Commission **approves** the licensee's request to suspend the requirement that it perform non-simultaneous program deletion.*

The application

1. The Commission received an application by Rogers Cable Communications Inc. (Rogers) to amend the regional licences of its cable broadcasting distribution undertakings (BDUs) serving various locations in New Brunswick, Newfoundland and Labrador, and Ontario. Rogers proposed to amend the condition of licence authorizing the distribution of the following services on its Class 1 and Class 2 cable BDUs 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 of the non-commercial PBS network (collectively, the U.S. 4+1 signals).

2. Rogers also proposed to amend the condition of licence authorizing the distribution, on its Class 3 cable BDUs, of a second set of U.S. 4+1 signals on a digital discretionary basis.
3. Finally, Rogers requested that the Commission suspend the requirement that it perform non-simultaneous program deletion with respect to these signals. In support of its request, the licensee indicated that it has negotiated an agreement with the Canadian Association of Broadcasters (CAB) and provided a copy of the agreement to the Commission.

Intervention and reply

4. The Commission received one intervention in opposition to this application from St. Andrews Community Television (SACT), on behalf of CHCT-TV St. Andrews.
5. SACT indicated that Rogers' distribution of distant signals (U.S. or Canadian) is not consistent with the objectives of the *Broadcasting Act*, namely those related to the importance of giving priority to local Canadian programming services and of considering regional needs and concerns. Moreover, SACT submitted that the current application undermines the current regulatory review as announced in Broadcasting Notice of Public Hearing 2007-10. SACT also raised issues of market share and of audience fragmentation in relation to the offering of distant Canadian signals and the second set of U.S. 4+1 signals.
6. In its reply, Rogers indicated that it was first granted the condition of licence authorizing the distribution of Canadian distant signals and the second set of U.S. 4+1 signals on a digital discretionary basis in Decision 2000-437 and that the condition of licence was subsequently amended in Broadcasting Decision 2005-198 and Broadcasting Decision 2006-614. Given the above decisions, Rogers submitted that SACT's intervention should be dismissed, since it takes issue with the appropriateness of Decision 2000-437, and that the proper forum for the consideration of SACT's concerns would have been during the 2000 proceedings. Rogers also stated that the agreement filed with its application includes compensation for the impact of U.S. 4+1 and distant Canadian signals on local television stations at rates similar to those in current agreements between the CAB and other terrestrial BDUs.

Commission's analysis and determinations

7. The Commission notes that this application reflects an amendment to an existing condition of licence as a result of a negotiated agreement between the CAB and Rogers. In this regard, the Commission is satisfied with the licensee's reply and considers the current amendment to the condition of licence appropriate.
8. In light of the above, the Commission **approves** the application by Rogers Cable Communications Inc. to amend the condition of licence relating to the distribution, on a digital discretionary basis, of a second set of U.S. 4+1 signals and distant Canadian signals on Rogers' Class 1 and Class 2 regional licences for its cable BDUs serving various locations in New Brunswick, Newfoundland and Labrador, and Ontario. The new condition of licence shall read as follows:

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 (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 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 Regulations regarding simultaneous substitution apply also in the case of U.S. 4+1 signals and distant Canadian signals.

9. The Commission also **approves** Rogers' request to amend the condition of licence relating to the distribution, on a digital discretionary basis, of a second set of U.S. 4+1 signals on Rogers' Class 3 regional licence for its cable BDUs serving various locations in New Brunswick and Newfoundland and Labrador. The new condition of licence shall read as follows:

The licensee is authorized to distribute the following signals on a digital discretionary 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 (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 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 solely on the licensee's digital service.

10. Finally, in light of the agreement between Rogers and the CAB, the Commission **approves** the licensee's request to suspend the requirement that it perform non-simultaneous program deletion with respect to the signals that are the subject of Rogers' agreement with the CAB, and this, for all licences forming part of this application. The Commission notes that the agreement does not have a fixed expiration date but will proceed on a month-to-month basis until terminated by either party.
11. The Commission also notes that, in the event that the agreement between Rogers and the CAB is terminated at any time, the requirement for non-simultaneous program deletion will no longer be suspended, and Rogers will once again be required to perform program deletions as set out in section 43 of the Regulations. Should the agreement be terminated, the Commission is to be advised forthwith.

Secretary General

Related documents

- *Review of the regulatory frameworks for broadcasting distribution undertakings and discretionary programming services*, Broadcasting Notice of Public Hearing CRTC 2007-10, 5 July 2007
- *Rogers cable distribution undertakings – Licence amendment*, Broadcasting Decision CRTC 2006-614, 31 October 2006
- *Amendments to authorization set out in Decision CRTC 2000-437*, Broadcasting Decision CRTC 2005-198, 16 May 2005
- *Carriage of Canadian and U.S. 4+1 signals on a digital basis*, Decision CRTC 2000-437, 8 November 2000

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>.