



Broadcasting Decision CRTC 2008-162

Ottawa, 5 August 2008

Télé-Int-Tel inc.

Drummondville and surrounding areas, Saint-Hyacinthe and surrounding areas,
Quebec

Application 2007-1818-2, received 11 December 2007

Public Hearing in the National Capital Region

13 May 2008

Class 1 regional licence for terrestrial broadcasting distribution undertakings in Quebec

*The Commission **approves** the application from Télé-Int-Tel inc. for a Class 1 regional licence to operate terrestrial broadcasting distribution undertakings serving Drummondville and surrounding areas and Saint-Hyacinthe and surrounding areas.*

The application

1. The Commission received an application from Télé-Int-Tel inc. (Télé-Int-Tel) for a Class 1 regional licence to operate terrestrial broadcasting distribution undertakings (BDUs) serving Drummondville and surrounding areas and Saint-Hyacinthe and surrounding areas.
2. In its application, Télé-Int-Tel requested authorization to distribute, 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 (collectively, the U.S. 4+1 signals). The applicant also requested authorization 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.
3. Finally, the applicant proposed to put in place one community channel serving both Drummondville and surrounding areas and Saint-Hyacinthe and surrounding areas.

Commission’s analysis and determinations

4. The Commission received one intervention opposing the application from the Fédération des télévisions communautaires autonomes du Québec (FTCQ), as well as a general comment from Cogeco Cable Québec Inc. (Cogeco). The Commission considered all of the interventions and the applicant’s replies and considers the following issues to be relevant to the evaluation of Télé-Int-Tel’s application.

Class 1 regional licence

5. Cogeco did not oppose Télé-Int-Tel's application but asked that the applicant comply with the same regulations governing Cogeco's Class 1 cable BDUs operating in the above-mentioned locations. Specifically, Cogeco requested that the Commission ensure that the applicant complies with the Commission's requirements regarding distribution and linkage, and priority carriage and access to community programming, as well as with its policies governing the distribution of digital and high-definition television signals.
6. The Commission considers that Cogeco's intervention does not raise any concerns over the approval of the application. Accordingly, the Commission **approves** the application by Télé-Int-Tel inc. for a Class 1 regional licence to operate terrestrial BDUs serving Drummondville and surrounding areas and serving Saint-Hyacinthe and surrounding areas.
7. The operation of these undertakings will be regulated pursuant to the *Broadcasting Distribution Regulations* (The Regulations). The licence will take effect 1 September 2008 and will expire 31 August 2015. The licence will be subject to the **conditions** specified therein, as well as to the **conditions** set out in the appendix to this decision.

A single zone-based approach to community programming

8. The intervention by the FTCQ focused mainly on the applicant's proposal to establish a single zone for community programming. According to the FTCQ, the Commission should require the applicant to put in place two separate community channels, with separate production centres: one for Drummondville and surrounding areas and the other for Saint-Hyacinthe and surrounding areas.
9. The FTCQ noted that residents of both communities would be better served by separate community channels given the distance between the two municipalities and the fact that they are located in different administrative regions. The FTCQ expressed its concern that approval of the applicant's proposal relating to the provision of a single community channel to serve both zones could encourage Cogeco to file an application to combine its Drummondville and Saint-Hyacinthe community channels.
10. In the event that the Commission decided not to require the applicant to put in place two separate community channels and two independent production centres, the FTCQ stated that it would expect the Commission to abstain from ruling on this application until it has completed its review of its policies with respect to community radio and television announced in Broadcasting Public Notice 2008-4, the objective of which is to ensure that the Commission's regulatory policy supports the development of a healthy community broadcasting sector.

11. In its reply, Télé-Int-Tel indicated that the technology it intends to use will enable it to distribute separate community programming for Drummondville and for Saint-Hyacinthe. According to the applicant, owing to demographics and the number of subscribers, it is unable to set up and operate separate local programming facilities. Furthermore, the revenue it would have to earmark for community television for the proposed service area is not sufficient to justify creating two completely independent infrastructures. Lastly, given that the technology it plans to use will enable it to broadcast separate programming in each of the two municipalities, Télé-Int-Tel noted that the programming aired by the community channel will not always be identical in the two locations.
12. With regard to the applicant's request that the Commission vary the application of certain provisions relating to community programming in sections 27, 27.1, 28 and 29 of the Regulations in order to enable it to implement a zone-based approach to its community programming, the Commission evaluates these types of applications on a case-by-case basis, taking into account the particular circumstances of each case.
13. The Commission recognizes that the production of local community television programming for small communities in different municipalities presents problems, particularly in terms of financial and human resources. The Commission considers that Télé-Int-Tel's proposal to vary the application of certain provisions relating to community programming in sections 27, 27.1, 28 and 29 of the Regulations is reasonable. Accordingly, a **condition of licence** consistent with this proposal is set out in the appendix to this decision.
14. The Commission notes FTCQ's suggestion that it postpone ruling on the community channel until publication of the regulatory policy in support of the development of a healthy community broadcasting sector. However, the arguments submitted by this intervener did not satisfy the Commission that delaying publication of this decision and the commencement of operations of the undertakings is in the public interest.

Other matters

Distribution of distant Canadian signals and of a second set of U.S. 4+1 signals

15. Section 19(o) of the Regulations stipulates that a licensee may distribute "any programming service authorized under a condition of its licence." One of the conditions of licence that appear on all licences to carry on a cable distribution undertaking or multipoint distribution system (generally, condition of licence no. 2) stipulates that:

The written approval of the Commission is required prior to the distribution of any service not authorized in:

- a) the *Broadcasting Distribution Regulations*;

- b) the most recent renewal decision or, if there has been no renewal, the initial licensing decision; or
 - c) any subsequent written approvals granted during the term of this licence.
16. The Commission considers that carriage, on a digital discretionary basis, of any of the distant Canadian television signals and of a second set of U.S. 4+1 signals, when coupled with other initiatives such as the carriage of newly licensed Canadian digital services, could serve as an incentive for cable customers to subscribe to the digital service offerings of cable undertakings. The distribution of such services would also increase the choice available to cable subscribers.
17. Furthermore, in Decision 2000-437, the Commission recognized the need to protect the program rights acquired by local broadcasters.
18. In light of the above, the Commission authorizes Télé-Int-Tel to distribute, on a digital discretionary basis, any of the distant Canadian television signals and a second set of U.S. 4+1 signals. A **condition of licence** to this effect is set out in the appendix to this decision.

Insertion of promotional material as a substitute for “local availabilities”

19. Télé-Int-Tel requested authorization to insert promotional material as a substitute for “local availabilities.”
20. In Broadcasting Public Notice 2006-69, the Commission indicated that it 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. The Commission added 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, and that are offered by the BDU, by an affiliated company, or by a third party pursuant to a marketing arrangement with the BDU. The Commission further determined that should a complaint arise, BDUs should ensure that they are in a position to provide, at the Commission’s request, a report with respect to their use of local availabilities. With respect to the costs of inserting promotions in local availabilities, the Commission reiterated that BDUs could only charge Canadian programming services their share of the direct costs associated with the insertion of their promotional material in local availabilities.
21. In this case, the Commission considers that the applicant's proposal complies with the updated policy on the use of local availabilities set out in Broadcasting Public Notice 2006-69. Accordingly, the Commission authorizes Télé-Int-Tel to insert promotional material as a substitute for “local availabilities.” A **condition of licence** to that effect is set out in the appendix to this decision.

Secretary General

Related documents

- *Diversity of voices* – Regulatory policy, Broadcasting Public Notice CRTC 2008-4, 15 January 2008
- *Promotion of non-programming services using local availabilities*, Broadcasting Public Notice CRTC 2006-69, 2 June 2006
- *Carriage of Canadian and U.S. 4+1 signals on a digital basis*, Broadcasting Decision CRTC 2000-437, 8 November 2000

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 2008-162

Terms, conditions of licence, expectation and encouragement

Terms

Issuance of the licence

The Commission will issue a Class 1 regional broadcasting licence to Télé-Int-Tel inc. to operate cable broadcasting distribution undertakings serving Drummondville, Quebec and surrounding areas and Saint-Hyacinthe, Quebec and surrounding areas.

The licence will take effect on 1 September 2008 and will expire 31 August 2015.

The licence for these undertakings will be issued once the applicant has informed the Commission in writing that it is prepared to commence operations. The undertakings must be operational at the earliest possible date and, in any event, no later than 24 months from the date of this decision, unless a request for an extension of time is approved by the Commission before 5 August 2010. In order to ensure that such a request is processed in a timely manner, it should be submitted at least 60 days before that date.

Conditions of licence

1. 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.

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. For the purposes of sections 27, 27.1, 28 and 29 of the *Broadcasting Distribution Regulations*, the municipalities of Drummondville and Saint-Hyacinthe shall be considered a single licensed area.

Expectation

Community channel

Given that the technology used by the licensee enables it to broadcast distinct programming in each of the two locations, the Commission expects that the programming broadcast by the community channel will not always be identical in Drummondville and surrounding areas and in Saint-Hyacinthe and surrounding areas.

Encouragement

Employment equity

In accordance with *Implementation of an employment equity policy*, Public Notice CRTC 1992-59, 1 September 1992, the Commission encourages the licensee to consider employment equity issues in its hiring practices and in all other aspects of its management of human resources.