



Broadcasting Decision CRTC 2008-197

Ottawa, 21 August 2008

Rogers Cable Communications Inc.
Toronto and surrounding areas, Ontario

Application 2008-0179-7, received 1 February 2008

Broadcasting Public Notice CRTC 2008-24

20 March 2008

Change of service area and licence amendments

The Commission approves an application by Rogers Cable Communications Inc. (Rogers) to extend the authorized service area of the cable broadcasting distribution undertaking (BDU) serving Toronto (Peel/Mississauga) in order to include the authorized service areas of its cable BDUs in Richmond Hill, Toronto (Downsview), Toronto (Etobicoke) and Toronto (York). The amalgamated undertaking is now identified as serving Toronto and surrounding areas.

In line with this amalgamation, the Commission approves Rogers' request to add conditions of licence to certain existing cable undertakings that are the subject of the present application.

The application

1. The Commission received an application by Rogers Cable Communications Inc. (Rogers) to extend the authorized service area of its cable broadcasting distribution undertaking (BDU) serving Toronto (Peel/Mississauga) in order to include the authorized service areas of its cable BDUs in Richmond Hill, Toronto (Downsview), Toronto (Etobicoke) and Toronto (York). These and other Class 1 cable BDUs are operating under the Class 1 regional broadcasting licence approved in Broadcasting Decision 2007-230.
2. In line with this proposed amalgamation, Rogers requested that the following conditions of licence be extended to certain existing cable undertakings that are the subject of the present application:
 - a) the addition of the following condition of licence, which is currently applicable to the other Toronto systems that form part of this application, to the existing Richmond Hill system:

The licensee is relieved from the requirements of section 17 of the *Broadcasting Distribution Regulations* with respect to CKVR-TV Barrie, provided that it is distributed as part of the basic service.

b) the addition of the following condition of licence, which is currently applicable to the Toronto (Peel/Mississauga) system, to the existing Richmond Hill, Toronto (Downsview), Toronto (Etobicoke) and Toronto (York) systems:

The licensee is relieved from the requirements of section 17 of the *Broadcasting Distribution Regulations* with respect to CKCO-TV Kitchener, provided that it is distributed as part of the digital basic service.

c) the addition of the following condition of licence, which is currently applicable to the Toronto (Peel/Mississauga), Toronto (Etobicoke), Toronto (York) and Richmond Hill systems, to the existing Toronto (Downsview) system:

The licensee is relieved from the requirements of section 17 of the *Broadcasting Distribution Regulations* with respect to the television station licensed to Crossroads Television System, provided that it is distributed as part of the basic service on a cable channel that is no higher than channel 36.

d) the addition of the following condition of licence, which is currently applicable to the Toronto (Peel/Mississauga) system, to the existing Toronto (Downsview), Toronto (Etobicoke) and Toronto (York) systems:

The licensee is relieved from the requirements of section 25 of the *Broadcasting Distribution Regulations* to distribute the signals of TFO (a French-language educational television programming service) and of CBLT Toronto on unrestricted channels. Should the quality of these signals deteriorate significantly, the licensee shall immediately undertake any necessary corrective action, including the distribution of these services on other channels.

3. Rogers stated that it would maintain two separate, existing channel line-ups, one for the Richmond Hill system and one for the other Toronto systems forming part of the proposed amalgamated undertaking.
4. The Commission received an intervention in opposition to this application from CTVglobemedia Inc. (CTVgm), licensee of CKVR-TV. The intervention and the licensee's reply to the intervention can be found on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Commission's analysis

5. After examining the application, the intervention and the licensee's reply to the intervention, the Commission considers that the issues to be determined relate to extending the authorized service area of Rogers' cable BDUs serving Toronto (Peel/Mississauga) in order to include the authorized service areas of its cable BDUs in Richmond Hill, Toronto (Downsview), Toronto (Etobicoke) and Toronto (York), and to the proposed amendments, including that for the distribution of CKVR-TV on the licensee's existing Richmond Hill system.

Extension of the authorized service area

6. The Commission considers that the proposed amalgamation of these Rogers Toronto area BDUs, along with Rogers' proposal to maintain two separate channel line-ups in the proposed amalgamated undertaking, do not conflict with established Commission practices and policies. Given the differences in current analog channel line-ups between the system in Richmond Hill and the other four Toronto area systems forming part of this application, the Commission is of the view that maintaining two separate channel line-ups at this time would be less disruptive to subscribers.

Proposed amendments

7. The Commission notes that, with the exception of the proposed amendment relating to the distribution of CKVR-TV in Richmond Hill, no interventions were received pertaining to the amendments proposed by Rogers for the cable systems that are the subject of the present application. The Commission finds that these proposed amendments do not raise any concerns, given that these would simply extend the conditions of licence in order to apply them to the proposed amalgamated undertaking in its entirety.
8. In regard to the proposed amendment relating to the distribution of CKVR-TV on the Richmond Hill BDU, CTVgm, in its intervention, stated that, if Rogers were to be granted the relief sought, the BDU would be free to move CKVR-TV to a high channel on the basic service (i.e., a channel from 59 to 70). Noting that the service has historically been offered on channel 20 in all of Rogers' Greater Toronto Area (GTA) systems, including that of Richmond Hill, CTVgm argued that relatively low channel placement is important in order to allow viewers to easily find CKVR-TV and to prevent any impact on audience tuning to the station and on CTVgm's revenues generated from this station. The intervener further argued that CKVR-TV offers local programming that is pertinent to all of the GTA communities, including that of Richmond Hill, and that this justifies the need to have it carried on a lower channel on the basic service (specifically, channel 20).
9. CTVgm also submitted that Rogers' objectives for pursuing the proposed amalgamation and its rationale for being granted such a condition of licence for its Richmond Hill system (i.e., to allow for greater flexibility and to allow for more efficient operation) would not be achieved by granting relief from the distribution of CKVR-TV. CTVgm therefore requested that the Commission not grant the proposed addition of the condition of licence for the Richmond Hill system and that, instead, it require Rogers, by condition of licence, to continue distributing CKVR-TV on channel 20 on that system.

10. In reply, Rogers submitted that this issue is commercial in nature and that, as a result, it should be negotiated between parties, without regulatory intervention.¹ Nevertheless, noting that CKVR-TV has been carried on channel 20 in its Toronto service areas since the 1990s, Rogers stated that it generally seeks to minimize channel relocations as they are disruptive and can have an impact on programming services.
11. The Commission notes that sections 17(1) and 17(2) of the *Broadcasting Distribution Regulations* (the Regulations) require a licensee of a cable BDU to distribute, among others, priority local, over-the-air television stations as part of the basic service, beginning with the basic band, i.e., channels 2 to 13. In addition, section 17(1) of the Regulations also provides for relief from these requirements by way of condition of licence.
12. Since CKVR-TV is a priority local station for the Richmond Hill BDU, it is entitled to priority carriage, i.e., as part of the basic service, beginning with the basic band. In order for Rogers to continue distributing CKVR-TV on channel 20 in its Richmond Hill system, it must be granted relief from the requirements of section 17 of the Regulations.
13. As noted above, since the 1990s, CKVR-TV has been carried on channel 20 (a channel outside of the basic band) in the GTA systems, including that of Richmond Hill, even though that BDU did not have a condition of licence authorizing it to do so. In fact, in certain 1996 licence renewal decisions,² Rogers was first granted relief from the requirement to distribute CKVR-TV on the basic band on its other Toronto area cable systems forming part of this application, as long as it was carried as part of the basic service. At that time, the Richmond Hill BDU was not owned by Rogers. In 2006, when Rogers applied for a Class 1 regional licence (instead of renewing existing licences) for its BDUs in Ontario (which, at that time, included the Richmond Hill BDU acquired in 2000 as part of the exchange with Shaw Communications Inc.³), the existing condition of licence relieving Rogers from the requirement to distribute CKVR-TV on the basic band on its Toronto area systems was carried over to the Toronto (Downsview, Etobicoke, Peel/Mississauga and York) BDUs. Rogers submitted that the condition of licence was not applied to Richmond Hill at that time due to “administrative oversight” on their part. The Commission notes that when Rogers renewed its licence at that time, by way of new regional licences, CTVgm remained silent, notwithstanding Rogers’ continued distribution of CKVR-TV outside the basic band on its Richmond Hill channel line-up.
14. The Commission considers that CTVgm, in requesting the imposition of a condition of licence requiring Rogers to distribute CKVR-TV on channel 20, is thereby giving consent for placement of this service outside the basic band. Accordingly, the Commission considers that it would be appropriate to grant Rogers the relief requested with respect to the distribution of CKVR-TV on a channel outside the basic band. The issue that remains is whether the Commission should impose a

¹ In support of its argument that channel placement is a matter for negotiation between the parties concerned, Rogers cited, among others, Public Notice 1996-60, Public Notice 1997-150 and Broadcasting Decision 2003-407.

² Decisions 96-826, 96-827, 96-830 and 96-831

³ See Decision 2000-419.

condition of licence requiring Rogers to distribute CKVR-TV on channel 20 in its Richmond Hill system.

15. The Commission has tended, in both policy and practice, to favour an approach of non-intervention on matters of channel placement. Although the Commission has addressed channel placement in the past,⁴ it generally has encouraged parties to reach agreements on such matters through negotiations before applying to the Commission for relief from a distribution requirement. As set out in Public Notice 1996-60, “due to the complexity of [channel placement] issues, the number of parties involved, and the difficulty and regulatory burden associated with establishing rules applicable to a myriad of circumstances [...] the Commission has concluded that such matters should properly be the subject of negotiation between the parties concerned.” More recently, in a letter dated 30 October 2003, in which it ruled on the placement of Channel M on the Vancouver cable system operated by Shaw Cablesystems Ltd. (Shaw), the Commission reiterated that it “continues to believe that the most appropriate mechanism for resolving channel placement issues is negotiations between the parties concerned.” In that letter, the Commission also encouraged Shaw and Channel M to continue discussions with a view to arriving at a mutually acceptable channel placement.
16. As for CTVgm’s argument that Rogers has existing conditions of licence that prescribe specific channel placement for other stations that would otherwise be entitled to carriage on the basic band, the Commission notes that those channel numbers had been negotiated between the parties and agreed upon by those parties prior to application to the Commission for relief from section 17 of the Regulations. For example, in Broadcasting Decision 2005-326, where Rogers was relieved of the requirement of section 17 of the Regulations with respect to CJMT-TV Toronto, with the provision that it be distributed on channel 14 as part of the basic service, this channel was mutually agreed upon by the parties involved prior to the application for relief.⁵ Similarly, in Broadcasting Decision 2003-504, Rogers and the programmer reached an acceptable agreement regarding the channel placement of CKXT-TV Toronto on channel 15 prior to the application by the BDU for a condition of licence.⁶

⁴ In Broadcasting Public Notice 2004-46, the Commission addressed the issue of channel placement in relation to the mandatory carriage of certain services as part of the basic service pursuant to section 9(1)(h) of the *Broadcasting Act*. In Broadcasting Decision 2008-29, the Commission determined the channel placement for CKCS-TV Calgary and CKES-TV Edmonton on Shaw Cablesystem Ltd.’s Calgary and Edmonton systems, in part due to exceptional circumstances of that application involving the launch of new services and a Media Plan offer on the part of the BDU, which was introduced during an initial Commission mediation of this issue.

⁵ In this instance, the programmer was Rogers Broadcasting Limited.

⁶ See also Broadcasting Decisions 2007-240 and 2005-218, in which the Commission approved the relief from section 17 of the Regulations requested by Cogeco Cable Canada Inc. and Videotron (Regional) Ltd., respectively, based upon its understanding that the BDUs and the licensees in each case had reached mutual agreement regarding channel placement.

17. With respect to the issue of channel placement for the present application, the Commission notes that the main concern raised by CTVgm in its intervention relates to the possibility that, in being granted relief from the requirements of section 17 of the Regulations with respect to the distribution of CKVR-TV by Rogers on its Richmond Hill system, that BDU would be allowed to arbitrarily move CKVR-TV “up the dial,” which could result in a decrease in CTVgm’s audience share and profits derived from this station. The Commission notes that since no details regarding the financial impact that this would have on CTVgm were provided, it is unable to conclude that CTVgm would suffer financial harm should CKVR-TV be placed on a channel other than channel 20 outside the basic band.
18. The Commission also notes that Rogers, in its reply, stated that it seeks to minimize channel realignments in order to avoid customer dissatisfaction and/or migration to other programming platforms (i.e., direct-to-home, illegal or unregulated sources of programming). The Commission further notes that Rogers’ stated objective for this application is to achieve a standardized offering. Given the longstanding distribution of CKVR-TV on channel 20 on Rogers’ Richmond Hill line-up and given that the service is currently distributed on channel 20 on Rogers’ other systems forming part of this application, the Commission is of the view that the objectives for amalgamation and Rogers’ desire to minimize channel realignments should incite the BDU to continue distributing CKVR-TV on channel 20.
19. The condition of licence sought by Rogers for the distribution of CKVR-TV on its Richmond Hill system pertains uniquely to its distribution on analog. While cable television distribution technology makes channel placement important under the analog regime due to the relatively limited analog channel capacity of cable BDUs, channel placement may become less relevant as the broadcasting system transitions from analog to digital distribution.
20. Based on the foregoing, the Commission is of the view that imposing a specific channel position for the distribution of CKVR-TV on the basic service of Rogers’ Richmond Hill system is neither warranted nor appropriate.
21. In light of Rogers’ statements that channel realignments are disruptive and that they can have an impact on each programming service affected; that CKVR-TV has been carried on channel 20 in Rogers’ GTA service areas since the 1990s; and that maintaining this signal on channel 20 contributes to achieving the standardization sought (this signal is currently carried on channel 20 on all systems forming part of this amalgamation) and minimizes disruptions to the subscribers, the Commission encourages Rogers to continue distributing CKVR-TV in its present channel position.

Commission’s determinations

22. In light of all of the above, the Commission **approves** the application by Rogers Cable Communications Inc. to extend the authorized service area of the cable BDU serving Toronto (Peel/Mississauga) in order to include the authorized service areas of its cable BDUs in Richmond Hill, Toronto (Downsview), Toronto (Etobicoke) and Toronto (York). The amalgamated undertaking is now identified as serving Toronto and surrounding areas.

23. Accordingly, the Commission also **approves** the request by Rogers to extend certain conditions of licence to certain existing cable BDUs that are the subject of the present application, as set out above.

Secretary General

Related documents

- *Relief from section 17 of the Broadcasting Distribution Regulations*, Broadcasting Decision CRTC 2008-29, 15 February 2008
- *Application for relief from section 17 of the Broadcasting Distribution Regulations*, Broadcasting Decision CRTC 2007-240, 20 July 2007
- *Class 1 regional licence for cable broadcasting distribution undertakings in Ontario*, Broadcasting Decision CRTC 2007-230, 13 July 2007
- *Application for relief from section 17 of the Broadcasting Distribution Regulations*, Broadcasting Decision CRTC 2005-326, 15 July 2005
- *Application for relief from sections 17 and 32 of the Broadcasting Distribution Regulations*, Broadcasting Decision CRTC 2005-218, 27 May 2005
- *Channel placement of certain services whose national distribution has been required pursuant to section 9(1)(h) of the Broadcasting Act – Call for comments on tools to promote and improve the visibility of these services*, Broadcasting Public Notice CRTC 2004-46, 9 July 2004
- Letter from the Commission to Multivan Broadcast Corp., 30 October 2003
- *Application for relief from section 17 of the Broadcasting Distribution Regulations*, Broadcasting Decision CRTC 2003-504, 16 October 2003
- *Regional broadcasting distribution undertakings in Alberta and British Columbia*, Broadcasting Decision CRTC 2003-407, 20 August 2003
- *Transfer of ownership and control*, Decision CRTC 2000-419, 27 October 2000
- *Broadcasting Distribution Regulations*, Public Notice CRTC 1997-150, 22 December 1997
- *Licence renewal*, Decision CRTC 96-831, 23 December 1996
- *Licence renewal*, Decision CRTC 96-830, 23 December 1996
- *Licence renewal*, Decision CRTC 96-827, 23 December 1996

- *Licence renewal*, Decision CRTC 96-826, 23 December 1996
- *Access Rules for Broadcasting Distribution Undertakings*, Public Notice CRTC 1996-60, 26 April 1996

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>.