



Broadcasting Decision CRTC 2008-230

Ottawa, 28 August 2008

Novus Entertainment Inc.
Metro Vancouver, British Columbia

Application 2007-1582-3, received 8 November 2007
Broadcasting Public Notice CRTC 2008-38
1 May 2008

Class 1 cable broadcasting distribution undertaking in Metro Vancouver – Short-term licence renewal and licence amendments

*The Commission **renews** the broadcasting licence for a Class 1 cable broadcasting distribution undertaking (BDU) serving Metro Vancouver, British Columbia, from 1 September 2008 to 31 August 2010. This short-term renewal will permit the Commission to review, at an earlier date, the licensee's compliance with applicable regulatory requirements.*

*The Commission also **approves** various amendments to the broadcasting licence for this cable BDU.*

Introduction

1. The Commission received an application by Novus Entertainment Inc. (Novus) to renew the broadcasting licence for its Class 1 cable broadcasting distribution undertaking (BDU) serving Metro Vancouver (formerly Greater Vancouver Regional District). The current licence expires 31 August 2008.
2. Novus also requested the addition of a condition of licence authorizing it to distribute, at its option, KVOS-TV (IND) Bellingham, Washington, as part of the basic service.
3. Finally, Novus requested various amendments to and the deletion of conditions of licence. These relate to updating references to sections of the *Broadcasting Distribution Regulations* (the Regulations) in order to reflect the currently applicable sections of the Regulations; to deleting conditions of licence that are no longer applicable or required; to updating the terminology used in specific conditions of licence; and to changes in regard to programming sources. Specific details regarding the precise nature of the proposed amendments to and deletion of conditions of licence can be found in the licensee's application.

4. In gazetting the application, the Commission noted the non-compliance of the licensee with respect to subsections 17(1) and 17(2) of the Regulations as they pertain to the distribution of the local priority signal CHNU-TV Fraser Valley (known as OMNI BC) on the basic band of the basic service. This is notwithstanding this signal's launch in 2001 and Broadcasting Decision 2007-102, in which the Commission denied Novus' request for relief from its requirement to distribute this signal. The Commission stated that it would take this into consideration during the licence renewal process.
5. The Commission received an intervention in support of this application from S-VOX, as well as an intervention offering general comments from the Canadian Association of Broadcasters (CAB). The licensee did not reply to the interventions. The interventions, along with other documents pertaining to the proceeding, can be found on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Commission's analysis and determinations

6. After examining the application and the interventions, the Commission finds that the issues to be determined relate to the following:
 - the potential impact of the review of the regulatory framework for BDUs on the licensee's application;
 - the licensee's non-compliance in regard to the distribution of CHNU-TV;
 - the addition of, amendments to and deletion of certain conditions of licence; and
 - the distribution of distant Canadian signals and of 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), and the suspension of non-simultaneous program deletion requirements.

Potential impact of the review of the regulatory framework for BDUs on the licensee's application

7. In its intervention, the CAB noted that the Commission is currently reviewing the regulatory framework for BDUs and is expected shortly to issue revised policies and regulations governing the distribution of both Canadian and non-Canadian broadcasting services. The CAB submitted that it is essential that the Commission not take any action as part of Novus's licence renewal process that would have the effect of superseding the upcoming BDU framework determinations or exempting the licensee from the application of that new framework.

8. Specifically, the CAB noted that Novus has proposed the addition of and amendments to certain conditions of licence that would be in effect for at least the first five years of the new licence term. The CAB submitted that, in making decisions on Novus' licence renewal and imposing new conditions of licence, the Commission should do so in a manner that will allow it to review and revise, as required, those conditions of licence that are inconsistent with the new BDU framework to be established by the Commission.
9. In Broadcasting Public Notice 2003-48, the Commission stated that it would begin the process of renewing the licences for cable BDUs starting with those BDUs serving Atlantic Canada and concluding with those serving western Canada. To date, the Commission has renewed the licences for cable undertakings operating in Atlantic Canada, Quebec and Ontario. This year, the Commission is considering all cable licence renewal applications for the remainder of Canada.
10. The Commission considers that any forthcoming changes to the Regulations should not have a significant impact on any of the relatively routine conditions of licence being considered in this decision.
11. The Commission has considered the CAB's concerns and determines that it is appropriate to proceed with its plan announced in Broadcasting Public Notice 2003-48.

The licensee's non-compliance in regard to the distribution of CHNU-TV

12. S-VOX, representing Christian Channel Inc. (CCI), the licensee of CHNU-TV,¹ supported the application by Novus. S-VOX submitted that Novus, while it has not carried CHNU-TV on its basic service during its current licence term and while it had notified the Commission that it would have CHNU-TV on its basic service by February 2008, only began carrying CHNU-TV in April 2008, on a channel beyond the basic band (channel 70). S-VOX indicated that it appreciates Novus' cooperation despite technical challenges, and that it is pleased with the commitment made by Novus to distribute CHNU-TV on channel 10 no later than October 2008. S-VOX also indicated that it supports the CAB's intervention.
13. With respect to the licensee's non-compliance as it pertains to the distribution of the local priority signal CHNU-TV, the Commission notes that although CHNU-TV launched in 2001, this local priority signal was not yet being offered by Novus at the time of its licence renewal application. This is notwithstanding Broadcasting Decision 2007-102, in which the then licensee of CHNU-TV, Rogers Broadcasting Limited, intervened in opposition, and in which the Commission denied the application by Novus

¹ CCI, an S-VOX company, acquired CHNU-TV from Rogers Broadcasting Limited on 31 March 2008, as set out in Broadcasting Decision 2008-71.

requesting relief from the requirement under section 17 of the Regulations to distribute this station. In that decision, the Commission found that Novus had not made a compelling case that the costs it would bear to carry CHNU-TV would be unreasonable or that carrying the station would have an undue negative financial impact on its BDU operations in Vancouver. Novus was therefore denied relief from the requirement under section 17 of the Regulations with respect to the distribution of CHNU-TV.

14. Novus submitted in its licence renewal application that it was not able to distribute CHNU-TV because it had not yet been able to secure a roof-top lease to erect a receiving antenna on a building in Burnaby. The licensee indicated that it expected to have secured such a lease and to have CHNU-TV included in its basic line-up by February 2008. On 28 February 2008, in response to a deficiency question as to whether CHNU-TV was at that time being offered by Novus as part of its basic service in accordance with section 17 of the Regulations, the licensee advised the Commission that it had succeeded in securing a roof-top lease in Burnaby and that it was in the process of changing its channel line-up to include CHNU-TV, to be effective 1 April 2008.
15. The Commission notes the licensee's difficulties with signal quality in Vancouver and with securing a roof-top lease to receive CHNU-TV in Burnaby. The Commission also notes the intervention in support submitted by S-VOX, representing CCI, the current and recent licensee of CHNU-TV, contingent on the commitment made by Novus to carry CHNU-TV on channel 10 no later than October 2008.
16. Nevertheless, the Commission considers the seven years that elapsed from the time of CHNU-TV's launch in 2001 to the distribution of this signal on Novus' basic service in April 2008 to be an unreasonable length of time for the licensee not to have found the means to distribute this local priority signal on its basic service. Moreover, the Commission notes that the licensee is still in non-compliance as this signal is not yet carried on the basic band (channels 2 to 13), and this, despite having informed programmers and subscribers of a channel realignment effective 1 April 2008 in order to distribute CHNU-TV. Further, the Commission notes that Novus has not requested relief from this requirement. The Commission finds that the seven-year delay in distributing this priority signal in accordance with section 17 of the Regulations, coupled with a further six-month delay (April 2008 to October 2008) for another channel realignment notice to distribute this signal, is unacceptable. Under section 26 of the Regulations, a 60-day notice would have been acceptable.

Addition of, amendments to and deletion of certain conditions of licence

17. The Commission considers that the licence amendments proposed by Novus, described briefly above, are appropriate and do not conflict with any of the Commission's regulations and existing policy provisions.

Distribution of distant Canadian signals and of a second set of U.S. 4+1 signals, and the suspension of non-simultaneous program deletion requirements

18. In Broadcasting Decision 2006-334, the Commission approved a request by Novus to distribute on its Class 1 cable BDU serving the Greater Vancouver Regional District, on a digital discretionary basis, a second set of U.S. 4+1 signals, as well as any of the distant Canadian television signals set out in the *List of Part 3 eligible satellite services*. This approval was subject to the provision that the licensee adhere to the requirements regarding non-simultaneous program deletion set out in section 43 of the Regulations. The Commission also noted in Broadcasting Decision 2006-334 that the above-mentioned provision may be suspended upon its approval of an executed agreement, as described in that decision, between the licensee and broadcasters.
19. In Broadcasting Decision 2006-664, the Commission announced that Novus had reached an agreement with the CAB. As such, the application of the above-mentioned provision was suspended for Novus.
20. The Commission reminds the licensee that, in the event that the agreement between Novus and the CAB is terminated at any time, the requirement for non-simultaneous program deletion will no longer be suspended, and the licensee 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.

Conclusion

21. After careful consideration of this licence renewal application, the interventions received and the licensee's continued non-compliance with regard to the distribution of the local priority signal CHNU-TV, notwithstanding this signal's launch in 2001 and the Commission's determination in Broadcasting Decision 2007-102, the Commission **renews** the broadcasting licence for Novus Entertainment Inc. for its Class 1 cable BDU serving Metro Vancouver (formerly Greater Vancouver Regional District) from 1 September 2008 to 31 August 2010. This short-term renewal will allow the Commission to review, at an earlier date, the licensee's compliance, with applicable regulatory requirements.
22. Furthermore, the Commission requires Novus to submit a report, by no later than 31 October 2008, confirming its distribution of CHNU-TV on the basic band of the basic service of its undertaking, pursuant to sections 17(1) and 17(2) of the Regulations.
23. The Commission also **approves** the addition of, amendments to and the deletion of certain conditions of licence applicable to this undertaking, as set out in the licensee's application. The licence will be subject to the **conditions** specified therein, and to the terms and **conditions of licence** set out in the appendix to this decision.

Employment equity

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

Secretary General

Related documents

- *Acquisition of assets*, Broadcasting Decision CRTC 2008-71, 31 March 2008
- *Application for relief from section 17 of the Broadcasting Distribution Regulations*, Broadcasting Decision CRTC 2007-102, 20 March 2007
- *Suspension of the provision set out in Broadcasting Decision CRTC 2006-334 relating to the requirements regarding non-simultaneous program deletion*, Broadcasting Decision CRTC 2006-664, 8 December 2006.
- *Distribution of additional signals on a discretionary digital basis*, Broadcasting Decision CRTC 2006-334, 7 August 2006.
- *A regional approach to licensing cable distribution undertakings – Adoption of related amendments to the Broadcasting Distribution Regulations*, Broadcasting Public Notice CRTC 2003-48, 17 September 2003.

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 2008-230

Terms and conditions of licence for the Class 1 cable broadcasting distribution undertaking serving Metro Vancouver (formerly Greater Vancouver Regional District), British Columbia

Terms

The operation of this undertaking is regulated pursuant to the *Broadcasting Distribution Regulations* and all related policies.

The licence will expire 31 August 2010.

Conditions of licence

1. The licensee is relieved from the requirement of section 25 of the *Broadcasting Distribution Regulations* to distribute CHEK-TV Victoria on an unrestricted channel. Should the quality of the signal deteriorate significantly, the licensee shall immediately undertake any necessary corrective action, including the distribution of the service on another channel.
2. The licensee is authorized to distribute, at its option, KIRO-TV (CBS), KING-TV (NBC) and KOMO-TV (ABC) Seattle, KCPQ-TV (FOX) Tacoma and KCTS-TV (PBS) Seattle, Washington, as part of the basic service; and, provided the originator of the programming service agrees in writing to such distribution, the service of Radio Québec.
3. The licensee is authorized to distribute, at its option, KVOS-TV (IND) Bellingham and KSTW-TV (IND) Tacoma, Washington, as part of the basic service.
4. The licensee is authorized to receive the KSTW-TV (IND) Tacoma, Washington service from a satellite service that is not a licensed Canadian satellite relay distribution undertaking until such time as the licensee is in a position to obtain the KSTW-TV service from a Canadian source.
5. 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 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.

6. The licensee is authorized to distribute the Shaw Cablesystems Limited (Shaw) ethnic and multicultural special programming service, subject to it obtaining the written agreement of Shaw before distributing any such programming. Approval is also subject to the condition of licence related to sponsorship credits as follows:

The licensee shall not distribute, as part of any ethnic and multicultural special programming service, any commercial message other than sponsorship credits combining no more than the logo, name, address, telephone number and type of activity or profession of the sponsor. The sponsorship credits may contain sound and/or visual images, whether moving or fixed. The sponsorship credits shall have no purpose other than to acknowledge, in a concise and direct manner, the sponsor's contribution and shall at no time constitute a detailed description or promotional device. The Commission reminds the licensee that no paid public service announcements may be distributed as part of this special programming service, other than those whose content conforms to the above-stated description of a permissible sponsorship credit.