



Broadcasting Decision CRTC 2008-233

Ottawa, 28 August 2008

Persona Communications Inc.
Sechelt and Gibsons, British Columbia

Application 2007-1843-9, received 14 December 2007
Broadcasting Public Notice CRTC 2008-43
14 May 2008

Class 1 cable broadcasting distribution undertaking in Sechelt and Gibsons – Licence renewal and licence amendments

*The Commission **renews** the broadcasting licence for the Class 1 cable broadcasting distribution undertaking (BDU) serving Sechelt and Gibsons, British Columbia, from 1 September 2008 to 31 August 2015.*

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

Introduction

1. The Commission received an application by Persona Communications Corp.¹ (Persona) to renew the broadcasting licence for its Class 1 cable broadcasting distribution undertaking (BDU) serving Sechelt and Gibsons. The current licence expires 31 August 2008.
2. Persona also requested the addition of two conditions of licence authorizing it to insert certain promotional material as a substitute for the “local availabilities” (i.e., non-Canadian advertising material) of non-Canadian satellite services, and authorizing it 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*, as well as 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).
3. Finally, the licensee requested amendments to certain conditions of licence for this undertaking. The changes proposed by the licensee would update the terminology used in specific conditions of licence; reflect certain technical changes; and reflect changes in regard to programming sources. Specific details regarding the precise nature of the proposed amendments to the conditions of licence can be found in the licensee’s application.

¹ On 30 July 2008, Persona Communications Corp. changed its name to Persona Communications Inc.

4. The Commission received interventions in support of this application, as well as an intervention offering general comments from the Canadian Association of Broadcasters (CAB). The interventions and the licensee's reply to the intervention from the CAB can be found on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Commission's analysis and determinations

5. After examining the application, the interventions and the licensee's reply to the intervention from the CAB, 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 addition of and amendments to certain conditions of licence; and
 - the distribution of multiple sets of U.S. 4+1 signals.

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

6. 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 Persona'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.
7. Specifically, the CAB noted that Persona 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 Persona's 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.
8. In its reply, Persona submitted that any suggestion that its licence should not be renewed for a full seven-year term should be immediately dismissed. Persona further submitted that any suggestion that any other special regulatory requirements and processes should apply to the renewal of Persona's licences and that of other western BDUs as compared to those applied when the Commission most recently renewed the licences of BDUs operating in eastern Canada, should also be immediately dismissed.
9. Persona also noted that any changes resulting from Broadcasting Notice of Public Hearing 2007-10 would be implemented via the *Broadcasting Distribution Regulations* (the Regulations) and not the conditions of licence, and, therefore, the special measures proposed by the CAB are unnecessary.

10. In Broadcasting Public Notice 2003-48, the Commission stated that it would begin the process of renewing the licenses 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.
11. 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.
12. 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.

Addition of and amendments to certain conditions of licence

13. The Commission considers that the conditions of licence requested and the licence amendments proposed by Persona, as described in its application, are appropriate and do not conflict with any of the Commission's regulations and existing policy provisions.

Distribution of multiple sets of U.S. 4+1 signals

14. In its intervention, the CAB also questioned Persona's compliance with the Commission's policies relating to the distribution of U.S. 4+1 signals. Specifically, the CAB noted that Persona distributes stations originating from three distinct markets. The CAB stated that it is not aware of a condition of licence authorizing the distribution of more than two sets of U.S. 4+1 signals and requested that the Commission confirm its policy on the distribution of multiple sets of U.S. 4+1 signals as well as on the distribution of high definition (HD) signals. The CAB also requested that Persona be required to bring the Sechelt and Gibsons system into full compliance should it not be respecting the Commission's policy on this matter. In addition, the CAB submitted that Persona was not authorized to distribute the FOX Seattle HD station since it originates from a different market and therefore is not an upgraded version of the FOX Tacoma standard definition (SD) station distributed in Sechelt and Gibsons.
15. In its reply, regarding the distribution of multiple sets of the U.S. 4+1 signals, Persona requested a condition of licence to distribute a third set of U.S. 4+1 signals as well as a condition of licence stating that it will not distribute, to any subscriber, more than two sets of U.S. 4+1 signals at a given time. The licensee also confirmed that the Sechelt and Gibsons system distributes the same FOX Seattle/Tacoma affiliate (KCPQ-TV) as part of both its analog and HD services.
16. With respect to the CAB's request that the Commission confirm its policy on the distribution of multiple sets of U.S. 4+1 signals so as to ensure that Persona fully complies with this policy, the Commission notes that BDUs authorized to distribute a second set of U.S. 4+1 signals may distribute different first and second sets of U.S. 4+1

signals and, pursuant to Broadcasting Public Notice 2003-61, may distribute the upgraded version of an authorized service on HD, provided that no less than 95% of the video and audio components of the upgraded and analog versions of the service are the same. The Commission finds that Persona's current distribution of U.S. 4+1 signals is not in line with this policy.

17. While the Commission notes that Persona requested, in its reply to the CAB's intervention, the addition of a condition of licence authorizing it to distribute, on a digital discretionary basis, a third set of U.S. 4+1 signals, the Commission considers that the addition of such a condition of licence should be subject to a public process. Therefore, if Persona wishes to distribute a third set of U.S. 4+1 signals, it must apply for a condition of licence authorizing it to do so. The Commission notes that it has authorized various BDUs to distribute, on a digital discretionary basis, a third set of U.S. commercial network signals, provided that the BDU does not distribute to any subscriber more than two sets of U.S. commercial network signals at a given time. The Commission considers requests to carry additional sets of U.S. 4+1 signals on a case-by-case basis, during which all interested parties, through a public process, would be provided an opportunity to offer their comments.
18. Finally, the Commission is satisfied with the licensee's response in regard to KCPQ-TV.

Conclusion

19. In light of all of the above, the Commission **renews** the broadcasting licence for the Class 1 cable BDU serving Sechelt and Gibsons, British Columbia, from 1 September 2008 to 31 August 2015. The Commission also **approves** the licensee's request for the addition of and amendments to certain conditions of licence for this undertaking, as specified in its 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

20. 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

- *Review of the regulatory frameworks for broadcasting distribution undertakings and discretionary programming services*, Broadcasting Notice of Public Hearing CRTC 2007-10, 5 July 2007

- *The regulatory framework for the distribution of digital television signals*, Broadcasting Public Notice CRTC 2003-61, 11 November 2003
- *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
- *Licence amendments concerning the distribution of a video games service*, Decision CRTC 95-920, 21 December 1995

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 2008-233

Terms and conditions of licence for the Class 1 cable broadcasting distribution undertaking serving Sechelt and Gibsons, British Columbia

Terms

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

The licence will expire 31 August 2015.

Conditions of licence

1. The licensee is relieved from the requirement of section 17 of the *Broadcasting Distribution Regulations* to distribute the regional signal CBUFT Vancouver.
2. The licensee is relieved from the requirement of section 17 of the *Broadcasting Distribution Regulations* to distribute the programming service of a French-language television station owned and operated by the Canadian Broadcasting Corporation received via satellite or microwave relay on the basic band (channels 2 to 13) so long as it is distributed on an unrestricted channel on the basic service.
3. 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.
4. 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.
5. The licensee is authorized to distribute, at its option, KSTW-TV (UPN) Tacoma and KVOS-TV (IND) Bellingham, Washington, as part of the basic service.
6. The licensee is authorized to distribute, at its option, the audio programming services of KING-FM, KEZX-FM, KSEA-FM, KPLZ-FM, KUBE-FM, KMPS-FM, KUOW-FM, KMBX-FM, KYCW-FM, KISW-FM, KZOK-FM, KRWM-FM, KJAQ-FM, KJR-FM, KWJZ-FM, KKWF-FM, KQMV-FM and KNDD-FM Seattle, KPLU-FM and KBSG-FM Tacoma, KCMS-FM (religious) Edmonds and KLSY-FM Bellevue, Washington, on audio channels of the undertaking.

7. 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.

8. 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.
9. The licensee is authorized to originate a video games service as a special programming service, offered on a discretionary basis, subject to the conditions listed in *Licence amendments concerning the distribution of a video games service*, Decision CRTC 95-920, 21 December 1995.