



## Broadcasting Decision CRTC 2008-365

Ottawa, 23 December 2008

**Sogetel inc.**  
Saint-Paulin, Quebec

*Application 2008-0833-9, received 13 June 2008*  
*Public Hearing in Cambridge, Ontario*  
*20 October 2008*

### **Class 1 terrestrial broadcasting distribution undertaking**

1. The Commission **approves** the application by Sogetel inc. (Sogetel) for a Class 1 broadcasting licence to operate a terrestrial broadcasting distribution undertaking (BDU) to serve Saint-Paulin, Quebec. The Commission did not receive any interventions in connection with this application. The licence will be subject to the **conditions** specified therein, and to the terms and **conditions** set out in the appendix to this decision.
2. Sogetel is controlled by Gestion Michel Biron inc., which is a corporation controlled by Michel Biron, and an eligible corporation pursuant to *Direction to the CRTC (Ineligibility of Non-Canadians)*, P.C. 1997-486, 8 April 1997, as amended by P.C. 1998-1268, 15 July 1998.

### **Commission's analysis and determinations**

3. In its application, Sogetel requested authorization to distribute, at its option, as part of the basic service, the signals WCAX-TV (CBS) Burlington, Vermont, WPTZ (NBC) Plattsburgh, New York, WVNY (ABC) and WFFF-TV (FOX) Burlington, Vermont, and WCFE (PBS) Plattsburgh, New York, or, alternatively for each signal, the signal of a different affiliate of the same network located in the same time zone as that of the licensed area and included on the appropriate list of eligible satellite services. The applicant also 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 major U.S. commercial networks (CBS, NBC, ABC, FOX) and the non-commercial PBS network (hereafter referred to as the U.S. 4+1 signals). Finally, the applicant requested authorization to insert, at its option, promotional material as a substitute for "local availabilities" (i.e., non-Canadian advertising material) of non-Canadian satellite services.
4. The Commission considered the following issues relevant to its analysis of Sogetel's application.

### **Distribution of U.S. 4+1 signals as part of the basic service**

5. The Commission notes that it has already authorized BDUs to distribute as part of the basic service the U.S. 4+1 signals or the signal of another affiliate of the same network located in the same time zone.<sup>1</sup> The authorization requested by the applicant is consistent with those granted by the Commission in previous similar cases.
6. Accordingly, the Commission authorizes Sogetel, by **condition of licence**, to distribute, at its option, as part of the basic service, the signals WCAX-TV (CBS) Burlington, Vermont, WPTZ (NBC) Plattsburgh, New York, WVNY (ABC) and WFFF-TV (FOX) Burlington, Vermont, and WCFE (PBS) Plattsburgh, New York, or, alternatively for each signal, the signal of a different affiliate of the same network, provided that the station is located in the same time zone as that of the licensed area, and provided that the signal is included on the appropriate list of eligible satellite services.

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

7. The Commission considers that distribution, on a discretionary digital basis, of distant Canadian television signals and a second set of U.S. 4+1 signals, when coupled with other initiatives such as the distribution 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. In Decision 2000-437, the Commission also recognized the need to protect the program rights acquired by local broadcasters.
8. Accordingly, the Commission authorizes Sogetel to distribute, on a discretionary digital basis, any of the distant Canadian television signals and a second set of U.S. 4+1 signals. A **condition of licence** to that effect is set out in the appendix to this decision.

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

9. Sogetel requested authorization to insert promotional material as a substitute for “local availabilities.” 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, the BDU would be required to provide, at the Commission’s request, a report on its use of local availabilities. With respect to the costs of inserting promotions in local availabilities, the Commission reiterated that a BDU could only charge Canadian programming services their share of the direct costs associated with the insertion of their promotional material in local availabilities.

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<sup>1</sup> For example, see Broadcasting Decisions 2007-354 and 2008-238.

10. 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 Sogetel, by **condition of licence**, to insert the promotional material as a substitute for "local availabilities."

#### **Local digital television signals**

11. The Commission reminds the applicant that, absent a condition of licence to the contrary, the applicant must provision its network in such a way as to be able to provide to its entire subscriber base, without exception, all other mandatory high definition (HD) signals that may be made available in Saint-Paulin, including any pay and specialty services that may be accorded must-carry status under the framework established in Broadcasting Public Notice 2006-74.
12. In Broadcasting Public Notice 2006-74, the Commission noted that any BDU that was unable to meet the distribution requirements established in that notice has the option of applying to the Commission for relief from the requirements, bearing the onus of persuading the Commission that such relief is warranted. The Commission is of the view that, in the context of the delivery of HD over-the-air signals as well as mandatory HD pay and specialty services, BDUs should bear the onus of persuading the Commission that granting an exception to the normal distribution requirements would be appropriate. While it remains open to the applicant to file a further application, the Commission notes that no relevant arguments have yet been presented to persuade it that an exception is warranted.

#### **Other matters**

##### **New regulatory policy**

13. In Broadcasting Public Notice 2008-100, the Commission set out its determinations regarding its review of the regulatory frameworks for BDUs and discretionary programming services. Unless otherwise specified, most of the amendments to the *Broadcasting Distribution Regulations* will take effect 31 August 2011.
14. The Commission notes that implementation of some of the elements proposed in that public notice will result in amendments to the conditions of licence requested by the applicant and set out in the appendix to this decision. Specifically, a second set of U.S. 4+1 signals may be made available to the subscriber, but only when that subscriber also receives at least one signal, originating from the same time zone as the U.S. signals, of each large Canadian multi-station broadcasting group.
15. The Commission also considered it appropriate, with respect to advertising in local availabilities of non-Canadian services, to assess the likely costs and potential revenues associated with the exploitation of new forms of advertising. The Commission therefore announced, in Broadcasting Public Notice 2008-102, a call for comments on a regulatory framework for the sale of commercial advertising in the local availabilities of

non-Canadian programming services distributed across Canada by various BDUs, including new forms of advertising that utilize the potential of new digital platforms.

16. The Commission notes that when the new regulatory policy announced in Broadcasting Public Notice 2008-100 takes effect, the licensee will be required to file an application to amend the conditions of licence, appended to this decision, that are affected by the new policy.

Secretary General

**Related documents**

- *Call for comments on a proposed framework for the sale of commercial advertising in the local availabilities of non-Canadian services* - Notice of consultation, Broadcasting Public Notice CRTC 2008-102, 30 October 2008
- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services* – Regulatory policy, Broadcasting Public Notice CRTC 2008-100, 30 October 2008
- *Class 1 terrestrial broadcasting distribution undertaking serving Regina, Pilot Butte, White City, Saskatoon, Moose Jaw, Prince Albert, Yorkton, Estevan, Weyburn, Swift Current, North Battleford and Battleford, Saskatchewan – Licence renewal and licence amendments*, Broadcasting Decision CRTC 2008-238, 28 August 2008
- *Class 1 broadcasting distribution undertaking at Winnipeg – Licence amendments*, Broadcasting Decision CRTC 2007-354, 21 September 2007
- *Regulatory framework for the licensing and distribution of high definition pay and specialty services*, Broadcasting Public Notice CRTC 2006-74, 15 June 2006
- *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*, 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: [www.crtc.gc.ca](http://www.crtc.gc.ca).*

# Appendix to Broadcasting Decision CRTC 2008-365

## Terms, conditions of licence and encouragement

### Terms

#### Issuance of the licence

The Commission will issue a Class 1 broadcasting licence to Sogetel inc. to operate a terrestrial broadcasting distribution undertaking to serve Saint-Paulin, Quebec.

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

The licence will expire 31 August 2015.

The licence for this undertaking will be issued once the applicant has informed the Commission in writing that it is prepared to commence operations. The undertaking 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 23 December 2010. In order to ensure that such a request is processed in a timely manner, it should be submitted at least 60 days prior to that date.

#### Conditions of licence

1. The licensee is authorized to distribute, at its option, as part of the basic service, the signals WCAX-TV (CBS) Burlington, Vermont, WPTZ (NBC) Plattsburgh, New York, WVNY (ABC) and WFFF-TV (FOX) Burlington, Vermont, and WCFE (PBS) Plattsburgh, New York, or, alternatively for each signal, the signal of a different affiliate of the same network located in the same time zone as that of the licensed area and included on the appropriate list of eligible satellite services, as amended from time to time and approved by the Commission.
2. 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 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 simultaneous substitution requirements set out in section 30 of the Regulations apply also in the case of U.S. 4+1 signals and distant Canadian signals.

3. 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.

## **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.