



Broadcasting Decision CRTC 2012-543

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Ottawa, 9 October 2012

Colba.Net Telecom Inc.

Fredericton, Moncton, Saint John, Allardville, Big Cove, Blue Mountain Settlement, Bouctouche, Brown's Flat, Burtts Corner, Cap Lumière, Davis Mill, Caron Brook, Centre-Acadie, Centre Napan, Clair, Harvey, Highway 505/Saint-Édouard-de-Kent, Jacquet River, Keating's Corner, Lac Baker, Ludford Subdivision, McAdam, Morrisdale, Musquash Subdivision, Nasonworth, Noonan, Patterson/Hoyt, Petitcodiac, Richibucto, Richibucto Village, Rogersville, St-André-de-Shediac, Ste-Anne-de-Kent, St-Antoine, St-Ignace, St-Joseph-de-Madawaska, Ste-Marie-de-Kent, Salmon Beach, Tracy/Fredericton Junction, Welsford and Willow Grove, and their surrounding areas, New Brunswick; St. John's, Deer Lake and Pasadena, and their surrounding areas, Newfoundland and Labrador; and Dartmouth, Halifax, Bedford and Sackville, and their surrounding areas, Nova Scotia

Application 2012-0174-8, received 13 February 2012

Public Hearing in the National Capital Region

7 June 2012

Terrestrial broadcasting distribution undertakings to serve various communities in the Atlantic Provinces

*The Commission **approves** an application for a regional broadcasting licence to operate terrestrial broadcasting distribution undertakings to serve the above-noted communities in the Atlantic Provinces.*

The application

1. The Commission received an application by Colba.Net Telecom Inc. (Colba.Net) for a regional broadcasting licence to operate terrestrial broadcasting distribution undertakings (BDUs) to serve Fredericton, Moncton, Saint John, Allardville, Big Cove, Blue Mountain Settlement, Bouctouche, Brown's Flat, Burtts Corner, Cap Lumière, Davis Mill, Caron Brook, Centre-Acadie, Centre Napan, Clair, Harvey, Highway 505/Saint-Édouard-de-Kent, Jacquet River, Keating's Corner, Lac Baker, Ludford Subdivision, McAdam, Morrisdale, Musquash Subdivision, Nasonworth, Noonan, Patterson/Hoyt, Petitcodiac, Richibucto, Richibucto Village, Rogersville, St-André-de-Shediac, Ste-Anne-de-Kent, St-Antoine, St-Ignace, St-Joseph-de-Madawaska, Ste-Marie-de-Kent, Salmon Beach, Tracy/Fredericton Junction, Welsford and Willow Grove, and their surrounding areas, New Brunswick; St. John's, Deer Lake and Pasadena, and their surrounding areas, Newfoundland and

Labrador; and Dartmouth, Halifax, Bedford and Sackville, and their surrounding areas, Nova Scotia.

2. Colba.Net is a corporation controlled by Motionsphere Inc., which in turn is controlled by Mr. Joseph Bassili.
3. Colba.Net indicated that it would accept a condition of licence requiring it to provide one or more simple means of accessing described programming, whether in an open or embedded format. In addition, it committed to meet the requirements regarding customer service and information set out in Broadcasting and Telecom Regulatory Policy 2009-430 (the Accessibility Policy).
4. The Commission received interventions offering general comments from Bragg Communications Incorporated, carrying on business as Eastlink (Eastlink) and from Rogers Communications Partnership (Rogers). The public record for this application can be found on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Commission's analysis and decisions

5. After examining the application in light of applicable regulations and policies, the Commission considers that the issue it must address relates to the distribution grids presented by the applicant.
6. In its intervention, Eastlink did not object to Colba.Net's proposal to operate competitive BDUs. It noted, however, certain anomalies in the distribution grids presented by the applicant and questioned whether the distribution grids were an accurate representation of its proposed service offering. Eastlink identified the following elements as potentially problematic: 1) CJON St. John's offered as a discretionary service rather than as a basic service; 2) CTV Two Atlantic offered as a discretionary service while the CTV Two affiliate from Barrie is offered on basic; 3) a U.S. 4+1¹ package of programming services not being offered; and 4) the outdated descriptions of various broadcasters. Eastlink expressed concern that Colba.Net does not truly appreciate the regulatory obligations of a licensed terrestrial BDU given that it had failed to make necessary adjustments to the grids in order to account for the different markets and different regulatory requirements and prohibitions applicable in the various proposed service areas.
7. Rogers noted that it commented on the application in order to ensure that Colba.Net be held to the same requirements as those that are imposed on Rogers as a licensed terrestrial BDU. More specifically, it noted that Colba.Net did not provide channel line-ups for all of the proposed undertakings, filing one line-up for each province, which includes multiple service areas. Rogers indicated that it maintains multiple line-ups for the distinct service areas since there are differences in local and regional

¹ This refers to the set of signals that provide the programming of the four U.S. commercial networks (CBS, NBC, ABC, FOX) and the non-commercial PBS network.

over-the-air television affiliates. For example, it noted that Colba.Net does not propose to distribute CIMT-TV Rivière-du-Loup in New Brunswick, even though this service has priority distribution rights in some parts of the province. It also noted that Colba.Net is proposing to distribute certain distant signals on its basic service and indicated that it was not clear whether the applicant was aware of the requirement to obtain the consent of the operator in order to distribute such signals.

8. In its reply to the interventions, Colba.Net noted its intention to comply with the *Broadcasting Distribution Regulations* (the Regulations) as applicable to each of the proposed service areas, offering a channel line-up that complies with the requirements outlined in the Regulations, including the distribution of distant television stations pursuant to section 21 of the Regulations.
9. The Commission is satisfied with Colba.Net's reply to Eastlink's and Rogers' interventions. Nonetheless, the Commission reminds Colba.Net that it must meet all of its regulatory requirements. Furthermore, Colba.Net must file, not less than 30 days prior to informing the Commission that it is ready to commence operations, a website address (or addresses) where the distribution grids have been posted for each of its licensed service areas. Therefore, Colba.Net will have to ensure, at that time, that the grids available at that website address have been updated accordingly, i.e., that they meet all the regulatory requirements.

Conclusion

10. In light of all of the above, the Commission **approves** the application by Colba.Net Telecom Inc. for a regional broadcasting licence to operate terrestrial BDUs to serve Fredericton, Moncton, Saint John, Allardville, Big Cove, Blue Mountain Settlement, Bouctouche, Brown's Flat, Burtt's Corner, Cap Lumière, Davis Mill, Caron Brook, Centre-Acadie, Centre Napan, Clair, Harvey, Highway 505/Saint-Édouard-de-Kent, Jacquet River, Keating's Corner, Lac Baker, Ludford Subdivision, McAdam, Morrisdale, Musquash Subdivision, Nasonworth, Noonan, Patterson/Hoyt, Petitcodiac, Richibucto, Richibucto Village, Rogersville, St-André-de-Shédiac, Ste-Anne-de-Kent, St-Antoine, St-Ignace, St-Joseph-de-Madawaska, Ste-Marie-de-Kent, Salmon Beach, Tracy/Fredericton Junction, Welsford and Willow Grove, and their surrounding areas, New Brunswick; St. John's, Deer Lake and Pasadena, and their surrounding areas, Newfoundland and Labrador; and Dartmouth, Halifax, Bedford and Sackville, and their surrounding areas, Nova Scotia. The licensee shall adhere to the **conditions** specified in the licence, and to the **conditions of licence** set out in the appendix to this decision. Further, the licence will be subject to the terms set out in the appendix to this decision.

Other matters

Designation of a head end

11. Colba.Net indicated that the physical location of the local head end of its Internet Protocol Television BDUs would be in Montréal, Quebec. However, for the purposes of regulatory symmetry with other terrestrial BDUs under the Regulations, the

Commission requires Colba.Net to designate, as a local head end, a specific location in each of its licensed areas in the Atlantic Provinces.² This information must be provided to the Commission no later than 30 days after the date of this decision.

General authorizations for broadcasting distribution undertakings

12. The Commission notes that, under the conditions specified in a BDU's licence, a BDU is also authorized to distribute any service and to undertake any activity authorized in Broadcasting Regulatory Policy 2011-522, as amended from time to time, under the terms and conditions set out therein.

Implementation of the Commission's determinations regarding accessibility of services

13. In the Accessibility Policy, the Commission stated its intention to impose on BDUs a number of requirements and expectations pertaining to customer service, access to described video and accessibility of programming. **Conditions of licence**, requirements and expectations to improve accessibility are set out in the appendix to this decision.
14. Further, in Broadcasting Regulatory Policy 2010-622, the Commission stated that it intended to impose conditions of licence requiring licensed BDUs that operate community channels to caption 100% of original licensee-produced programming by the end of the licence term. The Commission also indicated that it expected licensed BDUs to ensure that 100% of original access programming³ on the community channel is captioned by the end of the licence term. Finally, the Commission stated that it intended to impose conditions of licence requiring licensed BDUs that operate a community channel to provide audio description for all information programs and for news programming (that is, the voice-over of key textual, graphic design and still image elements, such as phone numbers, stock information or weather maps that are posted on the screen). **Conditions of licence** and expectations to this effect are set out in the appendix to this decision.
15. The Commission notes that it may impose further conditions of licence respecting accessibility matters five years into the licence term, if deemed appropriate.

² Thus, the regulatory requirements for this applicant in areas distant from Montréal should be consistent with the requirements for undertakings that have their local head ends situated in the same licensed service areas. Such a designation is contemplated by the definition of "local head end" set out in section 1 of the Regulations. For example, section 22 of the Regulations states: "Except as otherwise provided in a condition of its licence, which condition takes effect on or after September 1, 2011, a licensee shall not distribute a 4+1 package of programming services that originate outside the time zone in which the licensee's local head end is located unless the licensee also distributes to its subscribers the programming services of at least one television station from each English major ownership group that originate in the same time zone."

³ The Regulations define "community access television programming" as "programming produced by an individual, group or community television corporation residing within the licensed area of a cable distribution undertaking."

Mandatory distribution of 9(1)(h) services

16. The Commission reminds the applicant that it will be required to distribute within its licensed service areas all services licensed for mandatory carriage as part of the basic service of distribution undertakings pursuant to section 9(1)(h) of the *Broadcasting Act*.

Secretary General

Related documents

- *General authorizations for broadcasting distribution undertakings*, Broadcasting Regulatory Policy CRTC 2011-522, 24 August 2011
- *Community television policy*, Broadcasting Regulatory Policy CRTC 2010-622, 26 August 2010
- *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009

**This decision is to be appended to the licence.*

Appendix to Broadcasting Decision CRTC 2012-543

Terms, conditions of licence, requirements, expectations and encouragements for the terrestrial broadcasting distribution undertakings to serve Fredericton, Moncton, Saint John, Allardville, Big Cove, Blue Mountain Settlement, Bouctouche, Brown's Flat, Burtts Corner, Cap Lumière, Davis Mill, Caron Brook, Centre-Acadie, Centre Napan, Clair, Harvey, Highway 505/Saint-Édouard-de-Kent, Jacquet River, Keating's Corner, Lac Baker, Ludford Subdivision, McAdam, Morrisdale, Musquash Subdivision, Nasonworth, Noonan, Patterson/Hoyt, Petitcodiac, Richibucto, Richibucto Village, Rogersville, St-André-de-Shediac, Ste-Anne-de-Kent, St-Antoine, St-Ignace, St-Joseph-de-Madawaska, Ste-Marie-de-Kent, Salmon Beach, Tracy/Fredericton Junction, Welsford and Willow Grove, and their surrounding areas, New Brunswick; St. John's, Deer Lake and Pasadena, and their surrounding areas, Newfoundland and Labrador; and Dartmouth, Halifax, Bedford and Sackville, and their surrounding areas, Nova Scotia

Terms

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

A licence 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 **9 October 2014**. 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; and
- filed, not less than 30 days prior to informing the Commission that it is ready to commence operations, a website address (or addresses) where its accurate distribution grids are posted for each of its licensed service areas.

The licence will expire 31 August 2019.

Conditions of licence

1. The licensee shall adhere to the conditions of licence set out in *General conditions of licence for terrestrial (cable, digital subscriber line, multipoint distribution system) and direct-to-home (DTH) satellite broadcasting distribution undertakings*, Broadcasting Regulatory Policy CRTC 2009-547, 31 August 2009, including the general conditions of licence for terrestrial broadcasting distribution undertakings set out in Appendix 1 to that regulatory policy, as amended from time to time and approved by the Commission.

2. The licensee shall provide one or more simple means of accessing described programming, whether in an open or embedded format, that requires little or no visual acuity.
3. The licensee shall caption 100% of original licensee-produced programming on the community channel by the end of the licence term.
4. The licensee shall provide audio description for all the key elements of information programs, including news programming on its community channel (that is, the voice-over of key textual, graphic design and still image elements, such as phone numbers, stock information or weather maps that are posted on the screen).

Requirements

The licensee is required to designate, as a local head end, a specific location in each of its licensed service areas and to provide this information to the Commission no later than 30 days after the date of this decision.

The licensee is required to promote information on all of its disability-specific services and products, in the accessible manner(s) of its choice.

The licensee is required to incorporate an easy-to-find home page link to the special needs/disability sections of its website, if its website includes such sections.

The licensee is required to make the information on its website accessible to the point of providing reasonable accommodation for persons with disabilities (examples of what the Commission considers to be reasonable accommodations are listed in paragraph 66 of *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009).

Where customer service functions on its website are not accessible, the licensee is required to ensure that persons with disabilities will not incur a charge or otherwise be disadvantaged if they use an alternate avenue of customer service.

The licensee is required to make accessible any customer service functions that are available solely over its website.

The licensee is required to make its general call centers accessible to the point of providing reasonable accommodation to persons with disabilities by:

- a) training customer service representatives in handling enquiries from persons with disabilities and familiarizing them with the service provider's products and services for persons with disabilities; and
- b) making its Interactive Voice Response systems accessible.

Expectations

The Commission expects the licensee to ensure that subscribers are able to identify programming with described video in the electronic program guide.

The Commission expects the licensee to make information available in alternative formats to subscribers regarding, among other things, the programming and services offered and the channel line-up.

The Commission expects the licensee to ensure that 100% of original access programming aired on its community channel is captioned by the end of the licence term.

Encouragements

The Commission encourages the licensee to ensure that its set-top boxes are accessible to subscribers with vision and fine motor skill disabilities.

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.