



## Broadcasting Decision CRTC 2012-551

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Route reference: Part 1 application posted on 1 June 2012

Ottawa, 10 October 2012

**Rogers Communications Inc. and Fido Solutions Inc., partners in a general partnership carrying on business as Rogers Communications Partnership**  
Allardville, Bouctouche, Big Cove, Blue Mountain Settlement, Brown's Flat, Burtt's Corner, Cap Lumière, Caron Brook, Centre-Acadie, Centre Napan, Clair, Davis Mill, Fredericton, Harvey, Highway 505 to Sainte-Anne-de-Kent, from Sainte-Anne-de-Kent to Saint-Edouard-de-Kent, Jacquet River, Keatings Corner, Lac Baker, Ludford Subdivision, McAdam, Moncton, Morrisdale, Musquash Subdivision, Nasonworth, Noonan, Patterson, Petitcodiac, Richibucto, Richibucto Village, Rogersville, Saint John, Saint-André-de-Shédiac, Sainte-Anne-de-Kent, Saint-Antoine, Saint-Ignace, Saint-Joseph-de-Madawaska, Sainte-Marie-de-Kent, Salmon Beach, Tracy, Welsford and Willow Grove as well as surrounding areas, New Brunswick and Deer Lake, Pasadena and St. John's as well as surrounding areas, Newfoundland and Labrador

*Application 2012-0644-1*

### **Regional terrestrial broadcasting distribution undertakings – Licence amendments**

*The Commission **denies** an application by Rogers Communications Inc. and Fido Solutions Inc., partners in a general partnership carrying on business as Rogers Communications Partnership, to amend the broadcasting licences for its regional terrestrial broadcasting distribution undertakings serving the above-noted areas by adding a condition of licence related to simultaneous substitution.*

#### **The application**

1. The Commission received an application by Rogers Communications Inc. and Fido Solutions Inc., partners in a general partnership carrying on business as Rogers Communications Partnership (RCP), to amend the broadcasting licences for its regional terrestrial broadcasting distribution undertakings (BDUs) serving the above-noted areas by adding a condition of licence related to simultaneous substitution.
2. Specifically, the licensee proposed to add the following condition of licence:

Pursuant to section 7(a) of the *Broadcasting Distribution Regulations*, the licensee is authorized, in the licensed areas, to delete the programming service of a non-Canadian television station and substitute it with the programming service of

CITY-TV Toronto if the programming service to be deleted and the programming service of CITY-TV are comparable and simultaneously broadcast.

For the purposes of this condition of licence, “comparable” shall have the meaning set out in the *Broadcasting Distribution Regulations*.

3. The licensee stated that the practical impact of the proposed licence amendment is that, on RCP’s regional BDUs in New Brunswick and in Newfoundland and Labrador, CITY-TV Toronto would be able to receive simultaneous substitution privileges in relation to the commercial U.S. television stations originating in the eastern time zone that are distributed on the basic service in the licensed areas of each undertaking.
4. The licensee recognized that distant signals, such as CITY-TV Toronto in New Brunswick and in Newfoundland and Labrador, are usually not granted simultaneous substitution privileges. However, it argued that the performance of simultaneous substitution would constitute an appropriate compensation on the part of the BDU for the retransmission of CITY-TV as a distant signal.<sup>1</sup>
5. The Commission received an intervention in support of this application from Channel Zero Inc., an intervention offering general comments from Shaw Communications Inc. (Shaw), as well as interventions in opposition to the application from Bell Media Inc. (Bell Media), the Canadian Broadcasting Corporation (CBC) and several individuals.
6. Bell Media, the CBC and several individuals argued that the application does not adhere to the simultaneous substitution policy, which grants simultaneous substitution privileges to only local and regional stations. Moreover, according to those interveners, approval of the application would grant RCP the benefits of having a local station in Atlantic Canada without investments in service to the region. The CBC also argued that RCP has not substantiated its claim that there would be no impact on the revenues of incumbent broadcasters in Atlantic Canada.
7. In its reply, RCP argued that approval of its application would not constitute an exception to the simultaneous substitution policy and that it would be similar to the practice currently in place for direct-to-home (DTH) undertakings, which allows them to distribute non-Canadian signals with substituted programming from distant signals. RCP also argued that it is not seeking the benefits of a local station without the investments because the main benefit associated with operating a local station is the right to solicit local advertising. On the contrary, RCP indicated that it has decided not to establish a local station in the Atlantic region to avoid disrupting existing over-the-air (OTA) services in the region. The public record for this proceeding, including the licensee’s reply to the interventions received, is available on the Commission’s website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under “Public Proceedings.”

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<sup>1</sup> In Broadcasting Public Notice 2008-100, the Commission established that over-the-air licensees would be permitted to negotiate compensation from BDUs for the retransmission of their stations as distant signals.

## Commission's analysis and decision

8. The Commission notes that simultaneous substitution privileges are currently reserved for local and regional stations<sup>2</sup> and that broadcasters must operate an OTA transmitter in a given market in order to benefit from regulatory protections there, such as simultaneous substitution.<sup>3</sup> Nevertheless, the Commission has authorized certain broadcasters to extend their local signals into regional markets by adding new transmitters in order to maximize simultaneous substitution opportunities. However, the Commission has not permitted simultaneous substitution for signals that are not available over the air.<sup>4</sup> In addition, the Commission is concerned that permitting simultaneous substitution of distant signals over U.S. services might encourage existing conventional television broadcasters to close local stations or significantly reduce spending in local markets.
9. The Commission agrees with the CBC that RCP has not provided any economic evidence that would demonstrate that approval of the application would not have a negative impact on existing stations serving Atlantic Canada. Furthermore, the Commission is of the view that the simultaneous substitution practices of DTH undertakings are not relevant to the consideration of the present application since they are a result of a significant technological difference in the substitution of signals.

## Conclusion

10. In light of all of the above, the Commission **denies** the application by Rogers Communications Inc. and Fido Solutions Inc., partners in a general partnership carrying on business as Rogers Communications Partnership, to amend the broadcasting licences for its regional terrestrial broadcasting distribution undertakings serving the above-noted areas by adding a condition of licence related to simultaneous substitution.

Secretary General

### Related documents

- *A group-based approach to the licensing of private television services*, Broadcasting Regulatory Policy CRTC 2010-167, 22 March 2010
- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services* – Regulatory policy, Broadcasting Public Notice CRTC 2008-100, 30 October 2008
- *National high definition over-the-air digital television service*, Broadcasting Decision CRTC 2008-75, 3 April 2008

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<sup>2</sup> See section 38(2)(a) of the *Broadcasting Distribution Regulations*.

<sup>3</sup> See Broadcasting Decision 2010-167.

<sup>4</sup> See Broadcasting Decision 2008-75 in which the Commission denied an application by HDTV Networks Incorporated for a broadcasting licence to operate a national, English-language high definition over-the-air digital television service.