



Broadcasting Decision CRTC 2014-204

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Route reference: Part 1 application posted on 17 October 2013

Ottawa, 1 May 2014

Rogers Communications Partnership

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

Fredericton, Moncton and Saint John, and surrounding areas, New Brunswick; and St. John's and surrounding area, Newfoundland and Labrador

Application 2013-1334-5

Terrestrial broadcasting distribution undertakings serving various communities in New Brunswick and in Newfoundland and Labrador – Licence amendments

*The Commission **approves** an application by Rogers Communications Partnership (Rogers) to amalgamate 43 of the 44 broadcasting distribution undertaking (BDU) licences in New Brunswick and in Newfoundland and Labrador into 7 BDU licences.*

*The Commission also **approves** Rogers' request to add conditions of licence and to amend other conditions of licence relating to the distribution of U.S. 4+1 signals for certain proposed service areas.*

*The Commission **denies** Rogers' request to add a condition of licence allowing it to redirect 2% of its gross revenues derived from broadcasting activities to the operation of each of French- and English-language community channels in the Fredericton and Saint John service areas.*

Application

1. Rogers Communications Partnership (Rogers) filed an application to amend the regional broadcasting licence for its terrestrial broadcasting distribution undertakings (BDUs) serving the above-noted areas by:

- amalgamating 43 of the 44 existing BDU licences into 7 BDU licences aligned with the zones established to provide community programming;¹
- adding a condition of licence allowing it to redirect 2% of its gross annual revenues derived from broadcasting activities to the operation of each of English- and French-language community channels in the Fredericton and Saint John service areas for a total of 4%; and
- adding conditions of licence and amending other conditions of licence relating to the distribution of U.S. 4+1 signals for certain proposed service areas.

Interventions

2. The Commission received interventions from the Canadian Association of Community Television Users and Stations (CACTUS), the Canadian Media Production Association (CMPA), Chipman Community TV, Harvey Community TV and St. Andrews Community TV. The public record for this application can be found on the Commission's website at www.crtc.gc.ca or by using the application number provided above.

Amalgamation of existing BDUs

Background

3. In Broadcasting Decisions 2006-459 and 2006-461, the Commission granted Rogers a Class 1 and a Class 3 regional broadcasting licence to operate terrestrial BDUs serving various communities in New Brunswick and in Newfoundland and Labrador. In Broadcasting Decision 2013-642, the Commission indicated that it would issue a single regional broadcasting licence that would group the various BDUs serving those communities.

Rogers' proposal

4. Rogers proposed to amalgamate 43 of its 44 BDU licences in New Brunswick and in Newfoundland and Labrador into 7 BDU licences aligned with the zones established to provide community programming. It argued that the proposed amalgamation is justified given that:
 - consolidation of the smaller BDU licences into seven larger BDU licences would be administratively and operationally more efficient and in the best interest of subscribers, the Commission and the communities served; and

¹ In Broadcasting Decisions 2006-459 and 2006-461, the Commission authorized Rogers to group several of its BDUs into zones for the purposes of offering community television channels. The zones established to provide community programming mirror the service areas set out in the appendix to this decision.

- the proposed structure would be more in line with existing BDU competitors in Atlantic Canada (for instance, Bell Aliant has a single regional broadcasting licence for Atlantic Canada that includes three regional licensed BDUs).

Intervention by CACTUS

5. In its intervention, CACTUS submitted that it was premature for the Commission to consider the amalgamation proposed by Rogers since the Commission's approval of Rogers' zone-based community television service in the last licence renewal proceeding was based in part on special circumstances encountered by Rogers at that time for its BDUs. CACTUS further submitted that the proper time to consider such a request would be after a full licence term (at the time of renewal) to enable a proper evaluation of the effects of the zone-based community television service. It also argued that to consider Rogers' request before that time would render the exception noted above irreversible.

Commission's analysis and decision

6. The Commission agrees that approval of the proposed amalgamation would make the amalgamation of the BDUs in question permanent. However, the Commission notes that the amalgamation would not permanently extend the conditions of licence relating to the zone-based community channels. These conditions of licence would be re-evaluated at the next licence renewal.
7. The Commission considers that permitting the amalgamation of these licences for very small communities into larger regional groups will provide Rogers with administrative efficiencies and will more closely mirror the structure of BDUs with which Rogers competes. The Commission is of the view that this will benefit Canadians by lessening upward pressure on Rogers' retail rates and thereby result in a more competitive market for distribution services in Atlantic Canada. Accordingly, the Commission **approves** Rogers' request to be permitted to amalgamate its BDU licences as proposed in its application. The BDUs are listed in the appendix to this decision.

Addition of a second community channel in the Fredericton and Saint John service areas

Background

8. Pursuant to section 5(1) of the *Broadcasting Act* (the Act), the Commission's mandate is to regulate and supervise all aspects of the Canadian broadcasting system in the public interest. Among its many objectives, the Act recognizes the specificity of English- and French-language broadcasting and strives to reflect the circumstances and aspirations of Canadians including the linguistic duality and the special place of aboriginal peoples within that society. The Act also provides, however, that each element of the Canadian broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming.

9. The Commission is also guided by section 41 of the *Official Languages Act*, which stipulates that as a federal institution, the Commission must ensure that positive measures are taken to enhance the vitality of the English and French linguistic minority communities in Canada, to support and assist their development and to foster the full recognition and use of both English and French in Canadian society.
10. In regard to community television programming, section 34(5) of the *Broadcasting Distribution Regulations* (the Regulations) sets out the following:

Except as otherwise provided under a condition of its licence, if a licensee distributes its own community programming on the community channel in the licensed area, the licensee shall make, for each broadcast year, a contribution to Canadian programming that is equal to 5% of its gross revenues derived from broadcasting activities in the broadcast year less any allowable contribution to local expression made by the licensee in that broadcast year.

11. The Commission notes that the allowable contribution to local expression currently represents an amount between 1.5% and 2% of gross revenues derived from broadcasting activities.² In Broadcasting Regulatory Policy 2010-622, as amended by Broadcasting Regulatory Policy 2010-622-1 (the Community television policy), the Commission indicated that licensees electing to distribute two community channels (one in each language) in a given market may apply under the Regulations for a condition of licence allowing them to allocate up to 2% of their required contribution to Canadian programming to each of the community channels for a total of 4%.
12. In Broadcasting Decisions 2004-170 and 2013-623, the Commission granted similar conditions of licence to Rogers Cable Communications Inc. for its Ottawa and Moncton service areas and to Bell Canada to offer official language minority community programming on its video-on-demand platform for its service areas in Ontario and Quebec (including Montréal).

Rogers' proposal

13. In its application, Rogers requested a condition of licence that would authorize it to allocate an additional 2% of its gross revenues derived from broadcasting activities in its Saint John and Fredericton service areas to fund the operation of two community channels, one operating in each official language, in these two zones. Rogers further requested that its existing condition of licence that authorizes the contribution of up to 2% of its gross broadcasting revenues from broadcasting activities exclusively from its Moncton service area to each of its English- and French-language community channels be expanded to include the former licensed Class 3 service areas that form part of the approved Moncton community channel zone. The Commission notes that this would authorize Rogers to redirect up to an additional 2% of its gross revenues from broadcasting activities for its Bouctouche,

² In Broadcasting Regulatory Policy 2012-392, the Commission implemented a mechanism that will see this amount eventually scaled back to 1.5%.

Highway 505/St. Edouard, Petitcodiac, St. Antoine, Ste-Anne-de-Kent, St-André-de-Shédiac, and Ste-Marie-de-Kent service areas from the Canada Media Fund (CMF) and other certified independent funds to community programming.

14. Rogers stated that the addition of a second community channel in the Fredericton and Saint John service areas would allow it to expand the level of French-language programming provided in the second and third largest cities of Canada's only officially designated bilingual province. It also indicated that because of the existing conditions of licence applicable to the zone-based community channels in New Brunswick, its proposal to fund two new separate French-language community channels would benefit all French speakers in the province, not only those in Fredericton and Saint John.
15. Rogers also requested the authority to use 80% and 75% of the incremental funding in the proposed licensed service areas in years 1 and 2, respectively, for capital equipment purchases. It argued that spending on capital equipment up front would avoid future depreciation expenses (normally spread over five years) that reduce funding available to actually operate the channels. The balance of funding in the first two years (20% and 25%) would be used on community animation, i.e., building awareness of the access opportunities available, building up a volunteer base, and conducting training and orientation at the new stations in the Saint John and Fredericton regions. Rogers committed to launching the French-language community channels within 24 months of the Commission's decision.
16. Rogers submitted that this application is not unlike its application to add conditions of licence associated with the funding of second community channels in Ottawa and Moncton, which the Commission approved in Broadcasting Decision 2004-170.

Intervention by CACTUS

17. CACTUS submitted that it is generally opposed to multiple community television channels in the same licensed service area divided along linguistic or other ethnic or cultural lines. It argued that community media is meant to provide an open-access platform for expression and the exchange of ideas among all citizens of an area.
18. Moreover, CACTUS argued that there is no justification for awarding Rogers twice as much money to do what it is supposed to do with its original community channels in Fredericton and Saint John, i.e., reflect the official languages and the ethnic and Aboriginal composition of the community. It submitted that the population of the official language minority community in these two service areas is relatively small and that RogersTV's schedule lacks content specific to the Fredericton and Saint John service areas.

Commission's analysis and decision

19. As noted above, the Community television policy sets out that a licensee may request an exception to the Regulations through a condition of licence to allocate up to 2% of

its required contribution to Canadian programming to a second community channel. The Commission has already approved such conditions of licence to Rogers for its Moncton and Ottawa service areas and to Bell for its Montréal service area.

20. While the Commission has granted authority to operate two community channels within a service area in the past, it notes that these exceptions to the Regulations were based on the particular circumstances at hand. In these three service areas, the population of each official language minority community is significantly larger than those of the Saint John and Fredericton areas.
21. With respect to the current application, according to Statistics Canada 2011 Census data,³ Fredericton and Saint John have 6,755 (7.2%) and 5,230 (4.1%) official language minority individuals, respectively. Conversely, Moncton, Montréal and Ottawa have 47,525 (34.4%), 847,860 (22.2%) and 164,885 (17.9%) official language minority individuals, respectively. Given the small size of the Fredericton and Saint John markets and the relatively low official language minority populations, the Commission questions whether it would be more cost effective and beneficial to the communities to be served by one channel rather than two.
22. Moreover, when the Commission approved the conditions by which Rogers would fund its second community channels in Moncton and Ottawa, BDU revenues and their associated contributions to Canadian programming were growing. Currently, BDU subscriptions and revenues appear to be peaking and there is evidence that they may decline in the future, which will have an impact on BDU contributions to support the production of Canadian programming.
23. Rogers indicated that if the Commission were to approve the application, it would be authorized to redirect on average up to an additional \$570,000 per year⁴ away from the CMF and other certified independent production funds to these two new community channels. Further, the Commission notes that Rogers' request that the first two years of funding go to capital expenditures (80% and 75%) and to community animation (20% and 25%) would not result in any incremental community programming produced for the first two years.
24. In addition, according to the data provided by Rogers for the broadcast year ending 31 August 2013, the existing community channels in Fredericton and Saint John only distributed on average 10 hours of programming per day, of which approximately one hour per day consisted of original programming. The remaining 14 hours per day were comprised of public service messages (bulletin board). These figures are not dissimilar to what is currently produced by Rogers in Moncton for each of its official language community channels. As noted by CACTUS, programming on the two stations never begins before 12 p.m., and on the Saint John station, never before 4 p.m. on weekends. In light of this, the Commission considers that Rogers' existing community channels may be underutilized.

³ Over the Census metropolitan area or Census area

⁴ Forecast average from 2013 to 2017

25. On account of the apparent underutilization of the existing community channels and given that redirecting up to an additional \$570,000 per year away from the CMF and other authorized independent funds to the two new proposed community channels reduces the overall financing available for the production of Canadian programming, the Commission doubts whether Rogers' proposal is the most effective in terms of achieving the objectives of the Community television policy and the Act.
26. The Commission considers that to achieve these objectives Rogers should consolidate its current physical community television operations on a service area basis (Rogers currently operates nine separate community channels in New Brunswick) and more efficiently use its existing channels by providing programming for both official languages as well as Aboriginal and ethnic programming on one community channel.
27. In light of the above, the Commission **denies** Rogers' request to add a condition of licence to authorize it to redirect 2% of its gross annual revenues derived from broadcasting activities to the operation of each of English- and French-language community channels in the Fredericton and Saint John service areas.

Distribution of U.S. 4+1 signals in certain proposed service areas

Background

28. The Regulations specify that a BDU is authorized to distribute a U.S. 4+1 (ABC, CBS, NBC, FOX and PBS) package of programming services located in the same time zone as its service area. However, the Commission may grant exceptions by condition of licence. The Regulations also provide that a BDU can distribute another package of U.S. 4+1 programming services that is authorized under a condition of licence. Further, they authorize a BDU to distribute a high definition (HD) version of the above-noted U.S. 4+1 programming services.

Rogers' proposal

29. In its application, Rogers requested to amend its conditions of licence regarding the offering of U.S. 4+1 programming services applicable to its proposed service areas. It indicated that Bell Aliant, its principle competitor in Atlantic Canada, is authorized to offer a specific set of U.S. 4+1 programming services as part of the basic service or to select the signal from another affiliate of the same network, from the same time zone. Rogers sought the same authority in the following conditions of licence:

For Bathurst, Fredericton, Miramichi, Moncton and Saint John, New Brunswick

The licensee is authorized to distribute, as part of the basic service, WCVB-TV (ABC), WBZ-TV (CBS) and WHDH-TV (NBC) Boston, Massachusetts, WUTV-TV (FOX) Buffalo, New York, and WMEM-TV (PBS) Presque Isle, Maine (the U.S. 4+1 signals), 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 approved first set of U.S. 4+1 signals and

included in the *List of non-Canadian programming services authorized for distribution*, as amended from time to time and approved by the Commission.

For Edmundston, New Brunswick

The licensee is authorized to distribute, as part of the basic service, WCVB-TV (ABC) and WHDH-TV (NBC) Boston, Massachusetts, WUTV-TV (FOX) Buffalo, New York, and WAGM-TV (CBS) and WMEM-TV (PBS) Presque Isle, Maine (the U.S. 4+1 signals), 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 approved first set of U.S. 4+1 signals and included in the *List of non-Canadian programming services authorized for distribution*, as amended from time to time and approved by the Commission.

For Corner Brook and St. John's, Newfoundland and Labrador

The licensee is authorized to distribute, as part of the basic service, WCVB-TV (ABC), WBZ-TV (CBS) and WHDH-TV (NBC) Boston, Massachusetts, WUTV-TV (FOX) Buffalo, New York, and WTVS-TV (PBS) Detroit, Michigan (the U.S. 4+1 signals), 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 approved first set of U.S. 4+1 signals and included in the *List of non-Canadian programming services authorized for distribution*, as amended from time to time and approved by the Commission.

30. Rogers also requested two exceptions to the Regulations by condition of licence with respect to the provision that BDUs are only authorized to distribute the HD version of a U.S. 4+1 programming service that it already distributes in standard definition (SD). It noted that since it has been operating in Atlantic Canada, all of its service areas in New Brunswick have been distributing on the basic service the SD version of WMEM-TV (PBS) Presque Isle, Maine. When Rogers first starting distributing HD versions of the U.S. 4+1 programming services in New Brunswick, WMEM-TV was not available in HD. To ensure that subscribers had access to an HD version of a PBS affiliate, Rogers distributed WNED-TV Buffalo, New York, in HD on a discretionary basis.
31. As regards the Edmundston service area, Rogers indicated that it has the authority to distribute WAGM-TV (CBS) Presque Isle as part of the basic service. In HD, Rogers distributes WBZ-TV (CBS) Boston. Similar to the situation concerning PBS, Rogers submitted that it added the HD version of WBZ-TV to this service area when WAGM-TV was not available in HD.
32. Rogers argued that subscribers have become accustomed to receiving the HD versions of these stations and that due to competitive concerns, it is reluctant to

remove these services to comply with the Regulations that came into effect on 1 September 2011. Rogers sought to correct this issue in the present application rather than wait until its next licence renewal proceeding. Consequently, to ensure that subscriber services are not disrupted, Rogers requested that it be subject to the following conditions of licence:

For Bathurst, Edmundston, Fredericton, Miramichi, Moncton and Saint John

The licensee is authorized to distribute, in high definition, an additional affiliate of the non-commercial network PBS located in the same time zone as that of the approved first set of U.S. 4+1 signals and included in the *List of non-Canadian programming services authorized for distribution*, as amended from time to time and approved by the Commission.

For Edmundston

The licensee is authorized to distribute, in high definition, an additional affiliate of the commercial network CBS located in the same time zone as that of the approved first set of U.S. 4+1 signals and included in the *List of non-Canadian programming services authorized for distribution*, as amended from time to time and approved by the Commission.

Commission's analysis and decisions

33. The Commission notes that the conditions of licence relating to the distribution of U.S. 4+1 signals as part of the basic service are similar to those normally approved by the Commission for BDUs over the past few years. These conditions are more flexible than those that were approved for Rogers in 2004 and would allow Rogers to adjust its offerings based on subscriber demands. The Commission notes that it did not receive any interventions in this regard.
34. In light of the above, the Commission **approves** Rogers' request to amend conditions of licence regarding the offering of U.S. 4+1 programming services applicable to its proposed service areas, as set out above.
35. With respect to the request by Rogers to distribute HD stations that differ from the SD stations it distributes, the Commission notes that in Broadcasting Decision 2010-820, it denied a similar application from Shaw Cablesystems Limited and Videon Cablesystems Inc. (collectively, Shaw) because such an approval would have given some subscribers access to more than two sets of U.S. 4+1 signals.
36. However, the Commission notes that the distribution of U.S. 4+1 signals is an issue in the "Let's Talk TV" proceeding. As such, to avoid a scenario where subscriber services could be disrupted multiple times over the next few years, the Commission finds it appropriate to maintain the status quo regarding the distribution of U.S. 4+1 signals in Rogers' service areas in New Brunswick. Accordingly, the Commission **approves** Rogers' request to add conditions of licence regarding the offering of an

additional affiliate of the non-commercial network PBS and of the commercial network CBS, as set out above.

Secretary General

Related documents

- *Let's Talk TV*, Broadcasting Notice of Consultation CRTC 2014-190, 24 April 2014
- *Terrestrial broadcasting distribution undertakings serving various locations in Ontario, New Brunswick, and Newfoundland and Labrador; national video-on-demand programming undertaking known as Rogers On Demand; and terrestrial and direct-to-home national pay-per-view services known as Rogers Sportsnet – Acquisition of assets (corporate reorganization)*, Broadcasting Decision CRTC 2013-642, 29 November 2013
- *Administrative renewals*, Broadcasting Decision CRTC 2013-633, 27 November 2013
- *Terrestrial broadcasting distribution undertakings serving various communities in Ontario and Quebec – Licence amendments*, Broadcasting Decision CRTC 2013-623, 22 November 2013
- *Amendments to the Broadcasting Distribution Regulations – Provisions relating to local expression*, Broadcasting Regulatory Policy CRTC 2012-392, 19 July 2012
- *Various Class 1 terrestrial broadcasting distribution undertakings in western Canada – Licence renewals and amendments*, Broadcasting Decision CRTC 2010-820, 5 November 2010
- *Community television policy*, Broadcasting Regulatory Policy CRTC 2010-622, 26 August 2010
- *Class 3 regional licence for broadcasting distribution undertakings in New Brunswick and in Newfoundland and Labrador*, Broadcasting Decision CRTC 2006-461, 31 August 2006
- *Class 1 regional licence for broadcasting distribution undertakings in New Brunswick and in Newfoundland and Labrador*, Broadcasting Decision CRTC 2006-459, 31 August 2006
- *Contributions to French- and English-language community channels*, Broadcasting Decision CRTC 2004-170, 10 May 2004

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

Appendix to Broadcasting Decision CRTC 2014-204

Amalgamation of broadcasting distribution undertaking licences – Atlantic Canada

Name of proposed licensed service area	Existing licensed service area
Bathurst Region	Allardville Blue Mountain Settlement Jacquet River Salmon Beach
Edmundston Region	Caron Brooke Clair Davis Mill Lac Baker St-Joseph-de-Madawaska
Fredericton Region	Burtts Corner Fredericton Harvey Ludford Subdivision McAdam Nasonworth Noonan Tracy/Fredericton Junction
Miramichi Region	Big Cove Cap Lumière Centre Acadie Centre Napan Richibucto Richibucto Village Rogersville St-Ignace
Moncton Region	Moncton Bouctouche Highway 505/St. Edouard Petitcodiac St. Antoine Ste-Anne-de-Kent St-André-de-Shediac Ste-Marie-de-Kent
Saint John Region	Saint John Brown's Flat Keating's Corner Morrisdale Musquash Subdivision Patterson/Hoyt Welsford Willow Grove
Corner Brook Region	Deer Lake Pasadena
St. John's Region	St. John's