



Broadcasting Decision CRTC 2006-184

Ottawa, 5 May 2006

Aliant Telecom Inc.

Halifax, Dartmouth, Bedford and Sackville, Nova Scotia; Saint John and Moncton, New Brunswick; and St. John's, Paradise and Mount Pearl, Newfoundland and Labrador

Application 2005-0882-2

Public Hearing at Calgary, Alberta

21 February 2006

Cable broadcasting distribution undertakings

*The Commission **approves** the application by Aliant Telecom Inc. for a regional broadcasting licence to operate Class 1 cable broadcasting distribution undertakings to serve various municipalities in the Maritimes.*

The application

1. The Commission received an application by Aliant Telecom Inc. (Aliant) for a regional broadcasting licence to operate Class 1 cable broadcasting distribution undertakings (BDUs) to serve Region 5, which includes the provinces of Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador.

Interventions

2. The Commission received one intervention in support of this application from Mr. Lloyd Miller, and two which offered comments, submitted by CanWest MediaWorks Inc. (CanWest), licensee of the Global television network (Global), and Rogers Cable Communications Inc. (Rogers), licensee of numerous cable BDUs in Atlantic Canada.
3. CanWest noted that Aliant had made reference to the carriage of a Global signal, but not to a specific Global station. Since CanWest does not have a television station in Newfoundland, carriage of any of its signals would be considered carriage of a distant signal, and CanWest expressed concern that its station CIHF-TV Halifax might not be carried on Aliant's basic service in Newfoundland. CanWest noted that, as set out in *Structural Public Hearing*, Public Notice CRTC 1993-74, 3 June 1993, the carriage of a distant signal requires the consent of the affected broadcaster. CanWest therefore indicated its consent to the carriage of CIHF-TV Halifax by Aliant in Newfoundland, noted that it would maintain its local programming commitments for CIHF-TV, and stated that it would not solicit local advertising in the province of Newfoundland.

4. Rogers did not object to Aliant's proposal to operate BDUs in Atlantic Canada. However, it stressed the importance of adherence to the *Broadcasting Distribution Regulations* (the Regulations), the distribution and linkage requirements, and the requirements related to the distribution of digital television (DTV) signals and high definition (HD) signals. In particular, Rogers questioned Aliant's ability to provide HDTV to subscribers, since no reference to HD was made in Aliant's application. Rogers stated that it was generally opposed to any regulatory asymmetries that could provide Aliant with more flexibility in the Atlantic Region than other BDUs. Rogers also noted that the applicant had made no reference to the deletion of commercial messages on Atlantic Satellite Network (ASN) when that signal is distributed in St. John's. Rogers expressed the view that the rules regarding the deletion of commercial messages should be the same for Rogers and Aliant.
5. Rogers stated further that the Aliant application included only one channel line-up for the entire Atlantic region. It appeared to apply to the St. John's service area, but did not identify over-the-air station carriage, or special channel placements.

Applicant's reply

6. In its reply to the interveners, Aliant stated that, in June 2005, it had launched digital television services in Halifax, and that it was well aware of the requirements of the Regulations as they pertain to distribution and linkage rules. Aliant indicated that its programming packages would continue to meet the distribution and linkage requirements.
7. The applicant further indicated that it is aware of its obligations under the Regulations to provide local HDTV signals when available, but stated that no local HDTV signals are currently available from local broadcasters. Aliant stated that, by the time local HDTV signals become available, it will have identified a delivery option. Aliant also indicated that its new digital head-end facility is fully HD compatible, which would allow Aliant to deliver HDTV once an IP-TV HD delivery standard is established.
8. With respect to the distribution on the basic service of a distant Global signal in the St. John's market, Aliant noted that CanWest had consented to the distribution of CIHF-TV Halifax on the basic service of the cable BDU being proposed to serve St. John's.
9. The applicant noted that its service would be made available in the St. John's market, but that publicizing detailed marketing and packaging options at this time would jeopardize Aliant's competitive position. Aliant reiterated that it would comply with the Commission's distribution and linkage rules.
10. On the issue of deletion of commercial messages on ASN in the St. John's market, Aliant indicated that it would not be its intent to undertake such action.

Commission's analysis

Distribution and linkage requirements

11. The Commission notes the applicant's commitment to adhere to the distribution and linkage rules applicable to all Class 1 BDUs.
12. In *A licensing policy to oversee the transition from analog to digital, over-the-air television broadcasting*, Broadcasting Public Notice CRTC 2002-31, 12 June 2002, the Commission announced its intention to issue "transitional digital television" licences to existing television station licensees. Under such licences, stations could broadcast over-the-air digital programming, including up to 14 hours of such programming that is not duplicative of the analog programming broadcast. Further, in *The regulatory framework for the distribution of digital television signals*, Broadcasting Public Notice CRTC 2003-61, 11 November 2003 (Public Notice 2003-61), the Commission announced its regulatory framework with respect to the distribution of signals provided by digital over-the-air television stations. In Public Notice 2003-61, the Commission stated that BDUs would be required to distribute the signals of priority digital television stations, including those with HD programming, and specifically that, where a BDU is required to distribute the analog signal of a television station as part of its basic service, it is also required to distribute the digital signal.¹
13. In *Call for comments on a proposed framework for the licensing and distribution of high definition pay and specialty services*, Broadcasting Public Notice CRTC 2004-58, 6 August 2004 (Public Notice 2004-58), the Commission called for comment on a proposed framework for the licensing and distribution of high definition pay and specialty services.
14. The Commission notes that Aliant has indicated that it will be technically capable of distributing programming services in HD format and that it intends to distribute all priority and "must-carry" services that are available on a digital basis, including digital signals with HD content. Further, the Commission expects that any requirements adopted in the proceeding initiated by Public Notice 2004-58, with respect to the distribution of HD versions of pay and specialty services by Class 1 licensees, would apply to Digital Subscriber Line Technology (DSL) based Class 1 BDUs such as Aliant, absent such technological or other distinctions as may justify a different approach.
15. The Commission further notes that, should Aliant wish to depart from current regulations or from regulations that may be adopted by the Commission in its future proceedings, it would have to apply to the Commission for permission to do so. Parties would have an opportunity to intervene at that time.

¹ Assuming the contours of the two signals are the same.

Community channel

16. The Commission has consistently taken the view that community programming is an important aspect of the Canadian broadcasting system, and offers a clear and significant contribution to the furtherance of the objectives of the *Broadcasting Act*. However, it remains the prerogative of each BDU licensee to decide whether or not it will operate a community channel. The Commission notes that Aliant does not propose to offer a community channel at this time. Where Aliant does not offer a community channel, pursuant to the Regulations, it is required to contribute to the production of Canadian programming.
17. The Commission also notes that, since the applicant would be operating under a regional licence authorizing it to carry on BDUs in a number of licensed areas, any licensed community programming undertaking eligible to receive funding pursuant to section 29 of the Regulations would be eligible to receive such funding based on the revenues derived from the broadcasting activities of the BDU operating in the licensed area in which the community programming undertaking was licensed to operate. A **condition of licence** to this effect is set out in the appendix to this decision.

Deletion of commercial messages on ASN

18. In *New Regulatory Framework for Broadcasting Distribution Undertakings*, Public Notice CRTC 1997-25, 11 March 1997, the Commission set out its new policy framework for BDUs with respect to regional licences, and indicated that its policy was intended to ensure that "...holders of regional licences operate pursuant to regulatory requirements comparable to those that apply to the existing cable licensees with whom they compete."
19. The existing cable licensee serving St. John's and surrounding areas is Rogers. Rogers is currently required by condition of licence to delete commercial messages on ASN when that signal is distributed in St. John's. While Rogers has applied for the removal of this condition as part of its application for a Class 2 regional BDU licence in Atlantic Canada, the Commission has not yet made a determination on this matter. As a result, and considering the Commission's policy set out above, the Commission considers it appropriate at this time to require Aliant, by **condition of licence**, to delete from the ASN service any commercial messages that are likely to have a negative impact on CJON-TV St. John's, which is owned by Newfoundland Broadcasting Company Limited (NTV). This condition of licence is set out in the appendix to this decision.

Distribution of CIHF-TV Halifax

20. The Commission notes that CanWest has consented to the carriage of CIHF-TV Halifax by Aliant in St. John's and surrounding areas and has committed not to solicit local advertising in the province of Newfoundland and Labrador. The Commission **approves** the applicant's proposal to distribute CIHF-TV Halifax as part of the basic service in St. John's and surrounding areas. A **condition of licence** authorizing the distribution of this signal is set out in the appendix to this decision.

Commission's determination

21. The Commission considers that it is appropriate to licence Aliant to offer broadcasting distribution services in the municipalities listed below. Accordingly, the Commission **approves** the application by Aliant Telecom Inc. for a regional broadcasting licence to operate Class 1 cable broadcasting distribution undertakings to serve the following licensed areas: Halifax, Dartmouth, Bedford and Sackville, Nova Scotia; Saint John and Moncton, New Brunswick; and St. John's, Paradise and Mount Pearl, Newfoundland and Labrador.

Issuance of the licences

22. The Commission will issue a regional broadcasting licence to operate Class 1 cable BDUs to serve the following licensed areas: Halifax, Dartmouth, Bedford and Sackville, Nova Scotia; Saint John and Moncton, New Brunswick; and St. John's, Paradise and Mount Pearl, Newfoundland and Labrador. The regulations applicable to Class 1 licensees shall apply to these undertakings. The licence will expire on 31 August 2012 and will be subject to the **conditions** set out therein, as well as to the **conditions** set out in the appendix to this decision.
23. The Commission reminds the applicant that, pursuant to section 22(1) of the *Broadcasting Act*, no licence may be issued until the Department of Industry notifies the Commission that its technical requirements have been met, and that a broadcasting certificate will be issued.
24. Furthermore, the new regional licence will be issued once the applicant has informed the Commission in writing that it is prepared to commence operations and upon surrender of its current licences. 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 5 May 2008. 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.

Employment equity

25. Because this applicant is subject to the *Employment Equity Act* and files reports concerning employment equity with Human Resources and Skills Development Canada, its employment equity practices are not examined by the Commission.

Secretary General

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 2006-184

Conditions of licence applicable to all licensed areas

1. The licensee is authorized to distribute, as part of the basic service, the signals of WCVB-TV (ABC), WHDH-TV (NBC), WBZ-TV (CBS), and WGBH-TV (PBS) Boston, Massachusetts, and WUHF-TV (Fox) Rochester, New York.
2. The licensee is authorized to distribute, on a discretionary basis, any of the Canadian television signals set out in the *List of Part 3 eligible satellite services* contained in *Revised lists of eligible satellite services*, as amended from time to time.
3. The licensee is authorized to distribute, on a digital discretionary basis, a second set of 4+1 U.S. signals so long as the licensee complies with the following:

The distribution on a discretionary basis on the licensee's digital service of U.S. 4+1 signals, in addition to the set of such signals already carried by the undertaking, and of Canadian distant television signals provided for in the List of Part 2 Eligible Satellite Services, 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 Commission may suspend the application of this provision in respect of a signal, upon its approval of an executed agreement between the licensee and the broadcaster concerned. 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 of distant Canadian television signals.

4. In addition to the services required or authorized to be distributed pursuant to the *Broadcasting Distribution Regulations*, the licensee is authorized to distribute, at its option, the signal of the programming service of the Atlantic Satellite Network (ASN), provided that it is distributed on an unrestricted channel of the basic service.
5. 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 made available for the promotion of discretionary programming services and packages, customer service information, channel realignments, cable FM service and additional cable outlets.

6. For the purposes of sections 29(3) and 29(4) of the *Broadcasting Distribution Regulations*, the licensee's annual contribution to a community programming undertaking licensed in a licensed area shall be calculated on the basis of the licensee's gross revenues derived from broadcasting activities in that licensed area in each broadcast year.

Conditions of licence applicable to specific licensed areas:

Halifax, Dartmouth, Bedford and Sackville, Nova Scotia:

7. The licensee is authorized to distribute, at its option, CFTM-TV (TVA), CFJP-TV (TQS) Montréal, TVOntario (TFO) and Télé-Québec (STP) as part of the basic service.

St. John's, Paradise and Mount Pearl, Newfoundland and Labrador:

8. The licensee must distribute the ASN service in accordance with the terms of an agreement between ASN and Newfoundland Broadcasting Limited (NTV), whereby commercial messages that are likely to have a negative impact on NTV be deleted from the ASN service.
9. The licensee is authorized to distribute, at its option, CIHF-TV Halifax as part of the basic service.