



## Broadcasting Decision CRTC 2006-463

Ottawa, 31 August 2006

### **Cogeco Cable Québec Inc.**

Grand-Mère, Nicolet, Roberval, Sainte-Agathe-des-Monts, Saint-Jovite/Mont-Tremblant, and surrounding areas, Quebec

*Application 2005-1580-2*

*Public Hearing at Edmonton, Alberta*

*19 June 2006*

### **Class 2 regional licence for broadcasting distribution undertakings in Quebec**

*The Commission **approves** the application by Cogeco Cable Québec Inc. for a Class 2 regional broadcasting licence to operate cable distribution undertakings serving the above-noted locations.*

#### **The application**

1. The Commission received an application by Cogeco Cable Québec Inc. (Cogeco) for a Class 2 regional broadcasting licence to operate the cable broadcasting distribution undertakings (BDUs) serving the above-noted locations. Cogeco currently operates these BDUs under separate Class 2 licences, with the exception of the BDUs serving Grand-Mère and Sainte-Agathe-des-Monts, which it operates under Class 1 licences. The licences for these undertakings expire 31 August 2006. The applicant requested that its BDUs serving Grand-Mère and Sainte-Agathe-des-Monts be included under the Class 2 regional licence because the undertakings now have fewer than 6,000 subscribers.
2. In its application, Cogeco proposed to add a condition of licence permitting it to distribute, at its option, the programming service of the distant station CFTU-TV (Canal Savoir) Montréal on the basic service of all the Class 2 undertakings that it operates.
3. Cogeco proposed to amend the condition of licence relating to the use of 25% of its local availabilities for the promotion of its discretionary programming services to allow the promotion of non-programming services, such as Internet access and local telephone service.<sup>1</sup>

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<sup>1</sup> The Commission notes that the applicant requested the same licence amendment relating to the use of local availabilities for its Quebec and Ontario BDUs. In *Licence amendment to replace condition of licence relating to the use of local availabilities in non-Canadian satellite services*, Broadcasting Decision CRTC 2006-364, 14 August 2006, the Commission approved Cogeco's application and amended the condition of licence for its Quebec and Ontario Class 1, Class 2 and Class 3 BDUs accordingly. The Commission further notes that this decision took into account the comments

4. The applicant also requested a condition of licence permitting it to distribute, on a digital discretionary basis, a second set of signals that provides the programming of the four U.S. commercial networks (CBS, NBC, ABC and FOX) and of the non-commercial PBS network, as well as the Canadian television services whose distribution is provided for in the *List of Part 3 Eligible Satellite Services*.<sup>2</sup>
5. For its BDU serving Nicolet, Cogeco proposed to add a condition of licence permitting it to distribute, on a discretionary basis, the programming service of the extra-regional station CKMI-TV-2 (Global) Sherbrooke.
6. For its BDU serving Saint-Jovite/Mont-Tremblant, Cogeco proposed to add a condition of licence permitting it to distribute, at its option, on the basic service, the programming service of the distant station CFJP-TV (TQS) Montréal.

### Interventions

7. The Commission received interventions concerning Cogeco's application. Some expressed concerns, but did not oppose the application. The issues raised in these interventions are addressed below.

### Local programming

8. Télévision communautaire Laurentides-Lanaudière (TCLL) submitted that Cogeco's community channel in the Saint-Jovite/Mont-Tremblant licensed area does not comply with Commission regulations, specifically section 27.1 of the *Broadcasting Distribution Regulations* (the Regulations).
9. TCLL explained that in its application, Cogeco indicated that only the Roberval undertaking distributes its own programming on the community channel, and that all the other undertakings operated by Cogeco and covered under this application broadcast, on the community channel, programming produced by the Class 1 undertaking with which they are each interconnected. TCLL indicated that Cogeco considers TCLL as being a producer of access programming with respect to Cogeco's Class 1 licensed area of Sainte-Adèle, whereas, according to TCLL, the programming it produces should be considered as local programming serving the community in the licensed area of the Class 2 undertaking serving Saint-Jovite/Mont-Tremblant.

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made by the Canadian Association of Broadcasters. This new **condition of licence** is set out in the appendix to this decision.

<sup>2</sup> The Commission notes that in a separate application pertaining to its Quebec BDUs, the applicant also requested permission to add a second set of U.S. 4+1 and distant Canadian signals. In *Distribution of additional signals on a discretionary digital basis*, Broadcasting Decision CRTC 2006-386, 22 August 2006, the Commission approved Cogeco's request to distribute, on a discretionary basis, a second set of U.S. 4+1 signals and any distant Canadian signals appearing on the *List of Part 3 Eligible Satellite Services*. This **condition of licence** is set out in the appendix to this decision.

10. The Fédération des télévisions communautaires autonomes du Québec (FTCAQ) supported TCLL's claims, and added that it does not oppose issuing a regional licence to Cogeco as long as the applicant demonstrates to the Commission that it will make every effort with respect to the development of local programming and access, in compliance with *Policy framework for community-based media*, Broadcasting Public Notice CRTC 2002-61, 10 October 2002 (Public Notice 2002-61), and the Regulations. The FTCAQ added that its members would like the Commission to reaffirm that local programming takes precedence over programming produced outside the service area.
11. In response to the interveners, Cogeco explained that TVCogeco broadcasts or rebroadcasts, each week, 18 hours of programming produced by TCLL, as well as 19 hours of access programming produced by other Sainte-Jovite/Mont-Tremblant collaborators, totalling 47.9% of access programming. Cogeco further explained that if it had to satisfy the Commission's local and access programming requirements separately in each of its service areas, it would have no choice but to abandon TVCogeco and withdraw its community channel in the Class 2 or Class 3 service areas. Cogeco then requested the Commission's permission to amend its application in order to include new conditions of licence dividing the authorized service areas into 12 zones for community programming purposes.
12. In a letter dated 8 June 2006, the Commission denied the request to include in this application the amendment requested by Cogeco in its reply, and informed Cogeco that paragraphs 17 to 27 and 45, as well as Appendix 1, of its reply would not be considered by the Commission in its deliberations. The Commission advised Cogeco that it could submit a separate application seeking amendments to its conditions of licence. Cogeco's new application for amendment was the subject of Broadcasting Public Notice CRTC 2006-83, 7 July 2006 (Public Notice 2006-83). The Commission's decision on that public proceeding will be issued shortly.

### **Keeping broadcast opportunities and time slots available**

13. In their interventions, the FTCAQ and TCLL asked the Commission to direct Cogeco to continue offering the local broadcast opportunities that have previously been made available to community television corporations. These interveners also asked that Cogeco provide appropriate time slots, particularly during peak viewing time, to meet the broadcasting needs of the communities served.
14. In response to the interveners, Cogeco stated that it had no regulatory obligation to provide broadcast opportunities, but that it was in favour of doing so. Cogeco also confirmed that it would continue to offer these broadcast opportunities in order to allow local community television corporations to manage programming locally.
15. Cogeco also stated that it will continue setting aside attractive and regular time slots for programming produced by local community television corporations, as long as the programming is of high quality and relevant.

### **Commission's determination**

16. The Commission notes that in *Cable television community channel standards*, Public Notice CRTC 1992-39, 1 June 1992, it accepted a set of standards submitted by the Canadian Cable Television Association. These standards were reiterated in Public Notice 2002-61 and specifically stipulate that interested groups or individuals within the community served must, wherever possible, have access to the community channel and to the cable undertaking's facilities. It is up to the cable undertaking to determine who will have access in order to ensure balanced programming and satisfy the regulatory requirements concerning local and access programming in community television.
17. With respect to time slots, the Commission notes that, according to Public Notice 2002-61, access programming should be scheduled in a reasonable manner throughout the broadcast day, including the peak viewing period (7:00 p.m. to 11:00 p.m.).
18. Accordingly, the Commission is satisfied with the applicant's commitments to keep broadcast opportunities available for local community television corporations so that they can manage programming locally, and to provide attractive and regular time slots for the programming they produce.

### **Community television funding**

19. TCLL, supported by the FTCAQ, asked the Commission to direct Cogeco to assist in funding the local and access programming it produces. TCLL also wished to see the applicant's funding allocated more equitably because, in its view, there appears to be an imbalance between the funding allocated to TCLL and the programming it produces and broadcasts on the TVCogeco Sainte-Adèle community channel.
20. In response to the issues raised by these interveners, Cogeco explained that, when a local community television corporation has access to the TVCogeco channel to broadcast its programming, there cannot be a direct relationship between the percentage of air time given to the corporation and the amount of funding provided by Cogeco. TVCogeco agrees to air the local corporation's programming, but it must also set aside airtime and funding for other groups entitled to access. TVCogeco also produces a high percentage of local programming, programs that are often more expensive for it to produce (such as major local shows, live municipal debates, Christmas charity drives and telethons for local agencies).
21. Cogeco noted that the amounts paid directly to local community television corporations generally range from \$5,000 to \$20,000. According to Cogeco, the corporations have many more lucrative sources of funding, such as government grants and advertising, membership drives, bingo, benefits events and the employment assistance program.

22. Finally, Cogeco indicated that it will provide local community television corporations operating in its territory with free technical support representing several thousand dollars per year, whether for updating broadcast opportunities, production control room wiring, equipment loans, loans from the television archives, camera calibration, training or technical expertise.
23. Consequently, the applicant was of the view that it had found a fair balance between funding and support for access programming produced by local community television corporations and funding for programming produced by Cogeco and broadcast on TVCogeco.

#### **Commission's determination**

24. As stipulated in section 29 of the Regulations, except as otherwise provided by a condition of its licence, each Class 2 BDU distributing its own community programming on the community channel must make, in each broadcast year, a contribution of not less than 5% of its gross revenues derived from broadcasting activities in the year to Canadian programming, less any contribution to local expression made by the licensee in that year. Consequently, because Cogeco operates a community channel, in order to reflect its contribution to local expression, it may deduct an amount equal to no more than 5% of its gross revenues derived from the broadcasting activities of each undertaking. Pursuant to section 29(2) of the Regulations, any portion of that 5% not devoted to local expression must be paid into a production fund.
25. As set out in paragraph 11 of this decision, Cogeco proposed a new approach to community programming and requested an amendment to its licences permitting it to establish 12 community programming zones that would be considered licensed areas for the purposes of sections 27, 27.1, 28, 29 and 35 of the Regulations. This application was the subject of Public Notice 2006-83. The Commission's decision pursuant to that public proceeding will be issued shortly.

#### **Other Commission decisions**

##### **Request by the applicant to include its cable distribution undertakings serving Grand-Mère and Sainte-Agathe-des-Monts in its Class 2 regional licence**

26. The Commission notes that the cable distribution undertakings serving Grand-Mère and Sainte-Agathe-des-Monts are currently operated under Class 1 licences. Given that they are currently serving fewer than 6,000 subscribers (4,689 for the Grand-Mère BDU and 5,775 for the Saint-Agathe-des-Monts BDU, as at 31 August 2005), the Commission **approves** Cogeco's request to include the Grand-Mère and Sainte-Agathe-des-Monts BDUs in the Class 2 regional licence.

#### **Distribution of CFTU-TV Montréal**

27. The Commission **approves**, by **condition of licence**, the applicant's request to distribute, at its option, the programming service of the distant station CFTU-TV (Canal Savoir) Montréal on the basic service of all the Class 2 undertakings that it operates.
28. The Commission considers that the distribution of CFTU-TV on the basic service will expand the range of French-language programming services offered to subscribers.

#### **Distribution of CKMI-TV-2 (Global) Sherbrooke**

29. The Commission **approves** Cogeco's request to distribute CKMI-TV-2 (Global) Sherbrooke on a discretionary basis on the BDU serving Nicolet.

#### **Distribution of CFJP-TV (TQS) Montréal**

30. The Commission **approves** Cogeco's request to distribute, at its option, on the basic service of its BDU serving Saint-Jovite/Mont-Tremblant, the programming service of the distant station CFJP-TV (TQS) Montréal.

#### **Other conditions of licence**

31. The Commission notes that the applicant also proposed to add other conditions of licence for its Class 2 BDUs. The Commission did not receive any interventions concerning these proposals. A complete list of the **conditions of licence** imposed by the Commission is appended to this decision.

#### **New regional licence**

32. The Commission **approves** the application by Cogeco Cable Québec Inc. for a Class 2 regional broadcasting licence to operate the BDUs serving the locations noted below. Subject to the requirements of this decision, the Commission will issue a regional broadcasting licence to operate the Class 2 cable BDUs to serve the following licensed areas: Grand-Mère, Nicolet, Roberval, Sainte-Agathe-des-Monts and Saint-Jovite/Mont-Tremblant. These undertakings will be regulated pursuant to the *Broadcasting Distribution Regulations*. The licence will come into effect on 1 September 2006 and will expire on 31 August 2013. The licence will be subject to the **conditions** specified therein, as well as to the **conditions** set out in the appendix to this decision.

## **Employment equity**

33. Because this applicant is subject to the *Employment Equity Act* and files reports concerning employment equity with the Department of Human Resources and Skills Development, 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 2006-463

### Conditions of licence applicable to all licensed areas

1. 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.
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, 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, 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 requirements set out in section 30 of the *Broadcasting Distribution Regulations* regarding simultaneous substitution apply also in the case of U.S. 4+1 signals and distant Canadian signals.



## **Conditions of licence applicable to specific licensed areas**

### **Grand-Mère**

3. The licensee is authorized to distribute, at its option, WVNY (ABC) Burlington, Vermont, WPTZ (NBC) and WCFE-TV (PBS) Plattsburgh, New York, and WCAX-TV (CBS) and WFFF-TV (FOX) Burlington, Vermont, as part of the basic service.
4. The licensee is authorized to distribute, at its option, the programming service of the distant station CFTU-TV (Canal Savoir) Montréal, as part of the basic service.
5. The licensee is authorized to distribute, at its option, the programming service of the distant station CFCF-TV (CTV) Montréal, as part of the basic service.

### **Nicolet**

6. The licensee is authorized to distribute, at its option, WVNY (ABC) Burlington, Vermont, WPTZ (NBC) and WCFE-TV (PBS) Plattsburgh New York, and WCAX-TV (CBS) and WFFF-TV (FOX) Burlington, Vermont, as part of the basic service.
7. The licensee is authorized to distribute, at its option, the programming service of the distant station CFTU-TV (Canal Savoir) Montréal, as part of the basic service.
8. The licensee is authorized to distribute the programming service of the extra-regional station CKMI-TV-2 (Global) Sherbrooke on a discretionary tier.

### **Roberval**

9. The licensee is authorized to distribute, at its option, WVNY (ABC) Burlington, Vermont, WPTZ (NBC) and WCFE-TV (PBS) Plattsburgh, New York, and WCAX-TV (CBS) and WFFF-TV (FOX) Burlington, Vermont, as part of the basic service.
10. The licensee is authorized to distribute, at its option, the programming service of the distant station CFTU-TV (Canal Savoir) Montréal, as part of the basic service.
11. The licensee is authorized to distribute, at its option, the programming service of the distant station CFCF-TV (CTV) Montréal, as part of the basic service.

### **Sainte-Agathe-des-Monts**

12. The licensee is authorized to distribute, at its option, WVNY (ABC) Burlington, Vermont, WPTZ (NBC) Plattsburgh, New York, and WCAX-TV (CBS) and WFFF-TV (FOX) Burlington, Vermont, as part of the basic service.
13. The licensee is authorized to distribute, at its option, WCFE-TV (PBS) Plattsburgh, New York and WETK-TV (PBS) Burlington, Vermont, as part of the basic service.

14. The licensee is authorized to distribute, at its option, the programming service of the distant station CFTU-TV (Canal Savoir) Montréal, as part of the basic service.
15. The licensee is relieved from the requirement set out in section 25(b) of the *Broadcasting Distribution Regulations* to distribute the signal of CFJP-TV (TQS) Montréal on an unrestricted channel. Should the quality of the signal deteriorate significantly, the licensee shall immediately undertake any necessary corrective action, including the distribution of the service on another channel.

**Saint-Jovite/Mont-Tremblant**

16. The licensee is authorized to distribute, at its option, WVNY (ABC) Burlington, Vermont, WPTZ (NBC) Plattsburgh, New York, and WCAX-TV (CBS) and WFFF-TV (FOX) Burlington, Vermont, as part of the basic service.
17. The licensee is authorized to distribute, at its option, WCFE-TV (PBS) Plattsburgh, New York and WETK-TV (PBS) Burlington, Vermont. One service is to be distributed as part of the basic service and the other on a discretionary tier.
18. The licensee is authorized to distribute, at its option, the programming service of the distant station CFTU-TV (Canal Savoir) Montréal, as part of the basic service.
19. The licensee is authorized to distribute, at its option, the programming service of the distant station CFJP-TV (TQS) Montréal, as part of the basic service.