



Broadcasting Decision CRTC 2006-679

Ottawa, 19 December 2006

Halifax Cablevision Ltd.

Halifax, Nova Scotia

Access Communications Inc.

Dartmouth, Nova Scotia

Bragg Communications Inc.

Bridgewater, Nova Scotia

Bay Communications Inc.

Kentville/New Minas, Nova Scotia

K-Right Communications Ltd.

New Glasgow, Sydney, Truro and Bedford/Sackville, Nova Scotia; and
Charlottetown, Prince Edward Island

Applications 2006-0473-7, 2006-0474-5, 2006-0476-1, 2006-0477-9, 2006-0475-3

Broadcasting Public Notice CRTC 2006-93

26 July 2006

Programming distributed on community channels in Nova Scotia and Prince Edward Island – Licence amendment

*In this decision, the Commission **approves in part** the applications by Bragg Communications Inc., Bay Communications Inc. and K-Right Communications Ltd. for the cable broadcasting distribution undertakings (BDUs) serving Bridgewater, Kentville/New Minas, New Glasgow, Sydney, Truro, Bedford/Sackville, Nova Scotia, and Charlottetown, Prince Edward Island, to add a condition of licence to be relieved of the 60% local community programming requirement set out in section 27.1(1) of the Broadcasting Distribution Regulations (the Regulations). The Commission has decided to reduce to 30% the 60% local community programming requirement of the above-mentioned BDUs and to allow 30% of the programming distributed on the community channels in the licensed areas of these same BDUs to be produced from within the same province as the licensed area. **Conditions of licence** to this effect are set out in this decision.*

*The Commission **denies** the applications by Halifax Cablevision Ltd. and Access Communications Inc. to add a condition of licence to be relieved of the 60% local community programming requirement set out in section 27.1(1) of the Regulations.*

This decision does not apply to Eastlink's cable BDUs that are exempt from licensing pursuant to Exemption order respecting cable broadcasting distribution undertakings that serve between 2,000 and 6,000 subscribers; and Amendment to the Broadcasting Distribution Regulations, Broadcasting Public Notice CRTC 2004-39, 14 June 2004 (the exemption order) as a condition of being exempted is that a BDU comply with all of the criteria set out in the exemption order.

The applications

1. The Commission received applications by Halifax Cablevision Ltd., Access Communications Inc., Bragg Communications Inc., Bay Communications Inc., K-Right Communications Ltd., all carrying on business as Eastlink (collectively, Eastlink), to amend the broadcasting licences for the cable broadcasting distribution undertakings (BDUs) serving the above-mentioned locations. Eastlink proposed to add the following condition of licence in order to be relieved of the requirement set out in section 27.1(1) of the *Broadcasting Distribution Regulations* (the Regulations) that it devote at least 60% of the programming distributed on the community channel in the licensed area in each broadcast week to the distribution of local community television programming:
 1. For the purpose of section 27.1(1) of the *Broadcasting Distribution Regulations*, "local community television programming" means, in relation to a licensed area, programming that is reflective of the community served in the licensed area and that is produced:
 - a) by the licensee in the licensed area, by the members of the community served in the licensed area or by a community television corporation residing in the licensed area;
 - b) by the licensee in another licensed area or by the members of the community served in that other licensed area and that is relevant to the community referred to in paragraph a);
 - c) by another licensee in a licensed area or by the members of the community served in that licensed area and that is relevant to the community referred to in paragraph a); or
 - d) by an exempt cable broadcasting distribution undertaking or by members of the community served by that undertaking and that is relevant to the community referred to in paragraph a).
2. Eastlink submitted that the Maritime region is composed of small, largely rural municipalities where low population density means fewer subscribers, less revenue and few resources available for each community channel. As a result, most Eastlink cable BDUs can produce only a small amount of local programming. Eastlink added that much of the programming that it produces in one service area is relevant to members of communities in other service areas. The proposed amendment would allow one Eastlink cable BDU to count the programming of any other Eastlink cable BDU as local

community television programming for the purposes of section 27.1(1) of the Regulations, which, according to Eastlink, would allow it to provide more comprehensive coverage of regional events.

3. Eastlink submitted that its proposed approach would also permit it to better fulfil the objectives of both the *Broadcasting Act* (the Act) and the *Policy framework for community-based media*, Broadcasting Public Notice CRTC 2002-61, 10 October 2002 (Public Notice 2002-61).

Interventions

4. The Commission received several interventions supporting these applications, an intervention opposing them, and a comment regarding Eastlink's proposal. The interventions supporting the applications were from not-for-profit organizations that have supplied community programming content to Eastlink. These interveners stated that they would benefit from distribution to a wider, more regional audience given that their programming is relevant on a regional level.
5. In its opposing intervention, the Fédération des télévisions communautaires autonomes du Québec (FTCAQ) submitted that Eastlink would essentially create a large regional service or network based on Public Notice 2002-61, but its regulatory obligations to devote 60% of its programming to local production and 30% to access programming would apply across the entire region rather than to each individual community. The FTCAQ expressed concern that, as a result, the proposed amendment would change the conventional definition of "local programming" and compromise the policy framework for community channels that was established in Public Notice 2002-61 in light of the objectives of the Act.
6. Furthermore, the FTCAQ noted that Eastlink did not take into account the distinctions among the communities within the proposed region or indicate how it would account for the diversity among them.
7. In response to Eastlink's argument that the proposed amendment would improve the quality of its programming, the FTCAQ stated that the notion of "quality" is subjective. It added that community television is not intended to compete with the regional and national networks and should be for the people and by the people. For these reasons, the FTCAQ was of the view that the local content of community television is of greater significance than the production quality.
8. While the FTCAQ acknowledged that producing programming in small communities can be difficult, it pointed out that many small communities throughout Canada have successful community channels. The FTCAQ questioned whether Eastlink has done everything within its means to ensure the viability of its community channels. It further submitted that Eastlink did not provide quantifiable data to support its claim that the community channels are not feasible.

9. Finally, Mr. Gordon Inglis submitted a comment with respect to these applications. Mr. Inglis expressed concern that if cable BDUs were allowed to produce programming for a larger geographic region, the programming content would target a broader, more general audience and increase its sponsorship and advertising opportunities. According to Mr. Inglis, truly local programming would become less of a priority in order to accommodate the broader audience.
10. Eastlink did not reply to the interventions.

Commission's analysis and determination

11. The Commission has considered the views of the applicants and of the interveners in its evaluation of these applications.
12. The Commission notes that one of the key objectives of Public Notice 2002-61 is to ensure that cable BDUs provide community programming that is truly local and reflective of the communities they are serving. The term "local community television programming" is defined in the Regulations as follows:

... programming that is reflective of the community served in the licensed area and that is produced

(a) by the licensee in the licensed area, by the members of the community served in the licensed area or by a community television corporation residing in the licensed area; or

(b) by another licensee in a licensed area within the same municipality as the licensee referred to in paragraph (a), by the members of the community served in that licensed area or by a community television corporation residing within that licensed area.
13. The Commission notes that Eastlink's proposed definition of local community television programming would allow any community programming – regardless of whether it was produced in another city or province – that is deemed relevant to the community being served to be considered local programming. The Commission is of the view that while the Maritime provinces cover a relatively small geographic area, programming that targets audiences across two provinces is unlikely to have the same local flavour and reflection as programming produced specifically for and in the various communities that Eastlink serves. For this reason, the Commission finds that the Eastlink proposal is not in keeping with the objectives of Public Notice 2002-61 or the Regulations.
14. Nevertheless, the Commission recognizes that producing local community programming in smaller rural communities presents many challenges, including limited financial and human resources, particularly for smaller Class 1 cable BDUs. The Commission notes that it recently approved applications by Rogers Cable Communications Inc. (Rogers Cable) to adopt a zone-based approach to community programming in New Brunswick

and Newfoundland and Labrador.¹ Although the Eastlink applications noted many of the same challenges as Rogers Cable, the Eastlink proposal differs from that of Rogers Cable in that Eastlink proposed that all of its community programming, whether produced in Nova Scotia or Prince Edward Island, qualify for the 60% local community programming requirement. Rogers Cable, however, proposed eight zones between New Brunswick and Newfoundland and Labrador, none of which crosses provincial borders. Rogers Cable also proposed that only programming produced within the same province would count towards the 60% local and 30% community access programming requirements. Furthermore, each of the zones proposed by Rogers Cable has a 40% local community programming requirement and a 20% access programming requirement to ensure that the communities' local flavour is maintained.

15. In light of the above, the Commission considers that it is appropriate to grant some relief for Eastlink's smaller Class 1 BDUs from the requirement set out in section 27.1(1) of the Regulations. Accordingly, the Commission **approves in part** the applications by Bragg Communications Inc., Bay Communications Inc. and K-Right Communications Ltd. to amend the broadcasting licences for the cable BDUs serving Bridgewater, Kentville/New Minas, New Glasgow, Sydney, Truro, Bedford/Sackville, Nova Scotia, and Charlottetown, Prince Edward Island, to add a condition of licence to be relieved of the requirement set out in section 27.1(1) of the Regulations that it devote at least 60% of the programming distributed on the community channel in the licensed area in each broadcast week to the distribution of local community television programming.
16. The Commission replaces the 60% local community programming requirement for the Class 1 BDU of Bragg Communications Inc. serving Bridgewater, Nova Scotia, that of Bay Communications Inc. serving Kentville/New Minas, Nova Scotia, as well as those of K-Right Communications Ltd. serving New Glasgow, Sydney, Truro, Bedford/Sackville, Nova Scotia, and Charlottetown, Prince Edward Island, with a requirement that at least 30% of the programming distributed on the community channels in these licensed areas be local community television programming, and a minimum of 30% be regional community television programming, that is, community programming produced within the same province as the licensed area. The above-mentioned licences are therefore subject to the following **conditions of licence**:

The licensee shall, as an exception to the requirement set out in section 27.1(1) of the *Broadcasting Distribution Regulations*, devote:

- a) at least 30% of the programming distributed on the community channel in the licensed area in each broadcast week to the distribution of local community television programming; and

¹ See *Class 1 regional licence for broadcasting distribution undertakings in New Brunswick and in Newfoundland and Labrador*, Broadcasting Decision CRTC 2006-459, *Class 2 regional licence for broadcasting distribution undertakings in New Brunswick and in Newfoundland and Labrador*, Broadcasting Decision CRTC 2006-460, and *Class 3 regional licence for broadcasting distribution undertakings in New Brunswick and in Newfoundland and Labrador*, Broadcasting Decision CRTC 2006-461, all dated 31 August 2006.

b) at least 30% of the programming distributed on the community channel in the licensed area in each broadcast week to the distribution of regional community television programming.

For the purpose of this condition of licence, “regional community television programming” means community programming that is reflective of the community served in the licensed area referred to in paragraph a), and that is produced in the same province as the licensed area referred to in paragraph a).

17. While the Commission recognizes the challenges faced by smaller Class 1 cable BDUs, it is of the view that the BDUs serving Halifax and Dartmouth are not subject to these same challenges given the number of subscribers they serve and the fact that these BDUs are permitted to share local community programming since they both fall within the Regional Municipality of Halifax. Accordingly, the Commission **denies** the applications by Halifax Cablevision Ltd. and Access Communications Inc. to amend the broadcasting licences for the cable BDUs serving the above-mentioned locations in order to add a condition of licence to be relieved of the requirement set out in section 27.1(1) of the Regulations that it devote at least 60% of the programming distributed on the community channel in the licensed area in each broadcast week to the distribution of local community television programming.
18. The Commission notes that a number of the Eastlink cable BDUs requesting the licence amendment that is the subject of this decision have been exempted from licensing requirements and associated regulations pursuant to *Exemption order respecting cable broadcasting distribution undertakings that serve between 2,000 and 6,000 subscribers; and Amendment to the Broadcasting Distribution Regulations*, Broadcasting Public Notice CRTC 2004-39, 14 June 2004 (the exemption order).² The exempted cable BDUs include those of Bragg Communications Inc. serving Amherst, Antigonish and Kingston (Aylesford), Nova Scotia, those of Bay Communications Inc. serving Liverpool and Yarmouth, Nova Scotia, as well as those of K-Right Communications Ltd. serving Windsor, Nova Scotia, and Summerside, Prince Edward Island. The Commission notes that this decision does not apply to these undertakings as the condition of being exempted is that a BDU comply with all of the criteria set out in the exemption order.

Secretary General

This decision is to be appended to each 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>

² In *Changes to the distribution of the Cable Public Affairs Channel and the parliamentary programming service in response to a Direction from the Governor in Council*, Broadcasting Public Notice CRTC 2006-5, 19 January 2006, the Commission amended the exemption order with respect to the distribution in both the English- and French-language of the Cable Public Affairs Channel.