



Broadcasting Decision CRTC 2007-64

Ottawa, 15 February 2007

Cogeco Cable Canada Inc., on its own behalf and on behalf of its subsidiary Cogeco Cable Québec Inc.

Various locations in Ontario and Quebec

Application 2006-1309-3

Broadcasting Public Notice CRTC 2006-150

22 November 2007

Distribution of satellite subscription radio services

*The Commission **approves** an application by Cogeco Cable Canada Inc., on its own behalf and on behalf of its subsidiary Cogeco Cable Québec Inc., to amend the broadcasting licences for its Class 1 cable broadcasting distribution undertakings serving various locations in Ontario and Quebec, in order to add a condition to each licence authorizing the licensee to distribute, at its option, the audio programming service of one or more licensed satellite subscription radio (SSR) undertakings on a digital basis, subject to the following provisions:*

- *the licensee is not permitted to use the signals of conventional radio programming undertakings, with the exception of those required to be distributed under section 22 of the Broadcasting Distribution Regulations (the Regulations), to fulfil the preponderance requirement set out in section 6(2) of the Regulations, unless a subscriber is already receiving at least 40 channels of one or more pay audio programming undertakings; and*
- *the Canadian-produced channels of the SSR undertaking that are being distributed in this manner will be considered Canadian programming services for the purposes of section 6(2) of the Regulations.*

The application

1. The Commission received an application by Cogeco Cable Canada Inc., on its own behalf and on behalf of its subsidiary Cogeco Cable Québec Inc. (collectively Cogeco) to amend the broadcasting licences for its Class 1 cable broadcasting distribution undertakings (BDUs) serving various locations in Ontario and Quebec. The licensee requested that it be authorized, by condition of licence, to distribute, at its option, the audio programming service of one or more licensed satellite subscription radio (SSR) undertakings on a digital basis.

2. Cogeco submitted that distribution of these services would yield a number of benefits for the Canadian broadcasting system. According to Cogeco, the proposed distribution would enhance the diversity of audio programming services available to Canadians and serve as an additional source of revenue for Canadian musicians. Furthermore, Cogeco stated that the distribution of these services by BDUs would not only encourage analog subscribers to migrate to digital, but would also motivate Canadian subscribers to sign on with a Canadian BDU rather than with an American distributor offering the same services.

Interventions

3. The Commission received interventions by the Canadian Independent Record Production Association (CIRPA) as well as by Mr. Pascal Gauvin in opposition to Cogeco's application. The Commission also received a comment by the Canadian Recording Industry Association (CRIA).
4. CIRPA argued that the applications for SSR services were predicated and approved by the Commission on the underlying assumption that these services would be delivered via satellite to receivers designed specifically for that purpose. CIRPA also submitted that the widespread distribution of satellite radio by BDUs was contemplated neither in the satellite radio applications, nor in the Commission's decision to impose lighter Canadian content obligations on the SSR services than on pay audio services or conventional radio stations. In addition, CIRPA raised concerns that BDU distribution of SSR services could have a negative impact on the pay audio services, potentially resulting in their demise and in the attendant loss of a significant amount of airplay for Canadian music. CIRPA also submitted that Canadian BDUs do not have the same opportunities for communication with SSR services that American BDUs may have. The intervener contended that Canadian BDUs are consequently at a disadvantage compared with their American counterparts.
5. CIRPA submitted that Cogeco's argument that Canadians would sign up for U.S. SSR services because Canadian BDUs do not offer those services was speculative. Finally, CIRPA criticised the fact that there was no proposed rate schedule for the provision of the SSR services. The intervener contended that, without a schedule, it could not accurately predict the number of consumers who could potentially adopt the services provided.
6. Mr. Pascal Gauvin expressed concern that, by expanding the scope of its business, Cogeco could reduce the quality of its service overall, thus increasing customer dissatisfaction. Mr. Gauvin was also concerned that Cogeco's initiative would result in the demise of the Quebec company.

7. CRIA suggested that Cogeco, like any other BDU seeking authority to distribute SSR services, should be authorized to carry these services under the same regulatory framework and terms and conditions as those granted to Rogers Cable Communications Inc. (Rogers) in *Distribution of satellite subscription radio services*, Broadcasting Decision CRTC 2006-650, 28 November 2006 (Decision 2006-650).
8. The licensee did not reply to the interventions.

Commission's analysis and determinations

9. In Decision 2006-650, the Commission approved, subject to specific provisions, an application by Rogers to distribute one or more licensed SSR services on a digital basis on its BDUs serving various locations in Ontario, New Brunswick, and Newfoundland and Labrador. The Commission has also approved, subject to similar dispositions, similar applications by Videotron Ltd. and CF Cable TV Inc. (*Distribution of satellite subscription radio services*, Broadcasting Decision CRTC 2006-695, 29 August 2006) and by TELUS Communications Inc. (*Distribution of satellite subscription radio services*, Broadcasting Decision CRTC 2006-694, 28 July 2006).
10. The Commission notes that Cogeco's BDUs operate under similar circumstances as those of Rogers. The Commission concludes that, consistent with Decision 2006-650, it is appropriate to authorize Cogeco to distribute the SSR services on a digital basis subject to the same provisions as imposed on Rogers. The Commission finds that it is appropriate to authorize Cogeco to distribute SSR services, under provisions in respect of such distribution that will place those services on a relatively equal competitive footing with pay audio services, which are subject to a linkage ratio of one Canadian service to one non-Canadian service. The Commission further finds it appropriate that the applicable provisions offer some incentive to distributors to continue to distribute pay audio services, as well as the SSR services. In this way, both subscribers and the Canadian broadcasting system can potentially benefit from a greater diversity in audio services. At the same time, the use of Canadian creative and other resources in the provision of audio programming on BDUs can be maximized.
11. The Commission is imposing a **condition** on each licence, as set out below, specifying that conventional radio signals, with the exception of those required under section 22 of the *Broadcasting Distribution Regulations* (the Regulations¹), may not be used to fulfil the preponderance requirement set out in section 6(2) of the Regulations, unless a subscriber is already receiving at least 40 channels of pay audio.² The Canadian-produced channels of the SSR service that are being distributed may also be

¹ Under section 22 of the Regulations, BDUs must distribute local community, campus and native radio programming undertakings as well as at least one Canadian Broadcasting Corporation radio programming undertaking operating in English and one operating in French.

² The Commission notes that the requirement set out in section 6(2) of the Regulations applies to each of analog and digital technology, as well as to audio and video channels, separately. Thus, conventional radio stations, whether or not they must be distributed pursuant to section 22 of the Regulations, can only be taken into account for these purposes if they are distributed on a digital basis.

used to fulfil the requirements set out in section 6(2) of the Regulations; that is, these Canadian-produced channels will be considered Canadian programming services for the purposes of section 6(2) of the Regulations.

12. In light of the above, the Commission **approves**, with the provisions described above, the application by Cogeco Cable Canada Inc., on its own behalf and on behalf of its subsidiary Cogeco Cable Québec Inc., to amend the broadcasting licences for its Class 1 cable broadcasting distribution undertakings serving various locations in Ontario and Quebec, in order to add the following **condition** to each licence:

The licensee is authorized to distribute, at its option, the audio programming service of any licensed satellite subscription radio undertaking on a digital basis. The distribution of satellite subscription radio signals is subject to the following provisions:

- (i) Subject to the exception outlined in (ii) below, the licensee may not count the signals of conventional radio programming undertakings for the purpose of fulfilling the preponderance requirement set out in section 6(2) of the *Broadcasting Distribution Regulations* (the Regulations) unless a subscriber is already receiving at least 40 channels of one or more licensed pay audio programming undertakings.
- (ii) A licensee is entitled to count the signals of conventional radio programming undertakings that a licensee is required to distribute under section 22 of the Regulations for the purpose of fulfilling the preponderance requirement set out section 6(2) of the Regulations.
- (iii) The Canadian-produced channels offered by the satellite subscription radio undertaking are deemed to be “Canadian programming services” for the purposes of section 6(2) of the Regulations.

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>