



Broadcasting Decision CRTC 2008-237

Ottawa, 28 August 2008

Access Communications Co-operative Limited
Regina, Saskatchewan

Application 2007-1620-2, received 19 November 2007
Broadcasting Public Notice CRTC 2008-46
21 May 2008

Class 1 cable broadcasting distribution undertaking serving Regina, Saskatchewan – Licence renewal and licence amendments

*The Commission **renews** the broadcasting licence for the Class 1 cable broadcasting distribution undertaking (BDU) serving Regina, Saskatchewan, from 1 September 2008 to 31 August 2015.*

*The Commission also **approves** various amendments to the broadcasting licence for this cable BDU.*

Introduction

1. The Commission received an application by Access Communications Co-operative Limited (Access) to renew the broadcasting licence for its Class 1 cable broadcasting distribution undertaking (BDU) serving Regina, Saskatchewan. The current licence expires 31 August 2008.
2. In its licence renewal application, Access requested an amendment to its current condition of licence authorizing it, as an exception to section 29 of the *Broadcasting Distribution Regulations* (the Regulations), to devote, to local expression broadcast on its community channel, the greater of \$1.2 million or 2% of the 5% of its gross revenues derived from broadcasting activities that it must contribute annually to Canadian programming. The proposed amendment would permit Access to devote all of the required annual 5% contribution to local expression broadcast on its community channel.
3. In addition, Access requested another amendment to and the deletion of certain conditions of licence. Some of the changes proposed by the licensee would delete particular conditions of licence that are no longer applicable or required; update the terminology used in specific conditions of licence; and reflect certain technical changes. The specific details of the proposed amendments to the broadcasting licence for this undertaking are described in the application.

4. The Commission received numerous interventions in support of this application, as well as interventions by the Canadian Association of Broadcasters (CAB) and the Canadian Film and Television Production Association (CFTPA) offering general comments on the application. The interventions and the licensee's reply can be found on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Commission's analysis and determinations

5. After examining the application, the interventions and the licensee's reply, the Commission finds that the issues to be determined in its evaluation of this application relate to the following:
 - the potential impact of the review of the regulatory framework for BDUs on the licensee's application;
 - Access' required contributions to Canadian programming;
 - the distribution of multiple sets of signals that provide the programming of the four U.S. commercial networks (CBS, NBC, ABC, FOX) and of the non-commercial PBS network (collectively and hereafter referred to as the U.S. 4+1 signals);
 - the reception method of U.S. 4+1 signals distributed on the basic service;
 - the distribution of distant Canadian signals and of a second set of U.S. 4+1 signals, and the suspension of non-simultaneous program deletion requirements; and
 - the amendments to and the deletion of certain conditions of licence.

Potential impact of the review of the regulatory framework for BDUs on the licensee's application

6. The CAB noted that the Commission is currently reviewing the regulatory framework for BDUs and is expected shortly to issue revised policies and regulations governing the distribution of both Canadian and non-Canadian broadcasting services. The CAB submitted that it is essential that the Commission not take any action as part of Access' licence renewal process that would have the effect of superseding the upcoming BDU framework determinations or exempting the licensee from the application of that new framework.
7. Specifically, the CAB noted that Access has proposed various conditions of licence that would be in effect for at least the first five years of the new licence term. The CAB submitted that, in making decisions on Access' licence renewal and imposing new conditions of licence, the Commission should do so in a manner that would allow it to review and revise, as required, those conditions of licence that are inconsistent with the new BDU framework to be established by the Commission.

8. In reply, Access noted that the CAB did not raise these concerns in the public process that considered the licence renewals of the cable systems serving eastern Canada last year, even though it was well-known then that the Commission would be reviewing the regulatory frameworks for BDUs in 2007 and 2008. Access argued that the Commission would be treating BDUs in western Canada differently and unfairly if it were to impose restrictions on them that were not imposed on the cable systems and direct-to-home operators in eastern Canada whose licences were renewed over the past four years.
9. In Broadcasting Public Notice 2003-48, the Commission stated that it would begin the process of renewing the licences for cable BDUs starting with those BDUs serving Atlantic Canada and concluding with those serving western Canada. To date, the Commission has renewed the licences for cable undertakings operating in Atlantic Canada, Quebec, and Ontario. This year, the Commission is considering all cable licence renewal applications for undertakings in the remainder of Canada.
10. The Commission considers that any forthcoming changes to the Regulations should not have a significant impact on any of the relatively routine conditions of licence being considered in this decision.
11. The Commission has considered the CAB's concerns and determines that it is appropriate to proceed with its plan as announced in Broadcasting Public Notice 2003-48.

Access' required contributions to Canadian programming

12. In support of its request to be permitted to devote, to local expression broadcast on its community channel, all of its required annual 5% contribution to Canadian programming, Access submitted that competition among broadcasting distributors has increased in Regina. Access further argued that the cost of operating a community channel has also increased and without additional funding it would have to make programming cuts on its community channel.
13. The Commission did not receive any interventions that opposed Access' request. The CFTPA stated that it generally opposes any proposal that would divert funds from independent production funds that help finance the creation of high-quality Canadian programming. However, the CFTPA indicated that it does not oppose Access' request since other Class 1 not-for-profit cable co-operatives are permitted to devote their entire 5% contribution to their community channel. The CFTPA added that small BDUs and not-for-profit co-operatives, such as Access, do not enjoy the same level of financial resources to fund their contributions to Canadian programming, including community programming.

14. In reply, Access noted that the CFTPA recognized that not-for-profit community-owned co-operatives benefit from being authorized to devote the entire 5% contribution to their community channels, and that the CFTPA acknowledges the important role Access' community channel plays in providing Regina and area residents with local programming.
15. In light of the above, the Commission **approves** the licensee's request for a licence amendment in order to be authorized to devote all of its required annual 5% contribution to Canadian programming to local expression broadcast on its community channel. The amended **condition of licence** is set out in the appendix to this decision.

Distribution of multiple sets of U.S. 4+1 signals

16. The CAB requested that the Commission confirm its policy regarding the distribution of multiple sets of U.S. 4+1 standard definition (SD) and high definition (HD) signals and to ensure that Access' distribution of those signals is consistent with the policy. More specifically, the CAB indicated that Access' distribution of a first and a second set of U.S. 4+1 signals seems to be consistent with the Commission's policy. However, the CAB submitted that Access' distribution of two additional sets of upgraded U.S. 4+1 signals in HD may not be consistent with the Commission's policy if the upgraded HD signals distributed by Access originate in different markets than the U.S. 4+1 signals it distributes in analog and SD.
17. In reply, Access requested an amendment to its current condition of licence that identifies the source of the U.S. 4+1 signals distributed on analog and SD. Specifically, Access proposed to change the source for its U.S. 4+1 analog signals, currently originating in Detroit and Minneapolis, to those originating in Boston, in order for the U.S. 4+1 analog and SD signals to correspond to the U.S. 4+1 upgraded HD signals that it distributes.
18. The Commission notes that BDUs authorized to distribute a second set of U.S. 4+1 signals may distribute different first and second sets. Further, consistent with Broadcasting Public Notice 2003-61, BDUs may distribute the upgraded version of those sets of authorized services in HD, provided that no less than 95% of the video and audio components of the upgraded and analog/SD versions of the service are the same.
19. The Commission therefore considers that the licence amendment proposed by Access is appropriate at this time and is satisfied that the change in programming source will enable Access to ensure that its distribution of U.S. 4+1 signals is consistent with the Commission's policy in this regard. An amended **condition of licence** authorizing the distribution of U.S. 4+1 signals originating in Boston is set out in the appendix to this decision.

Reception method of U.S. 4+1 signals distributed on the basic service

20. In its application, Access requested an amendment to its condition of licence that would allow it to receive the U.S. 4+1 signals from any Canadian terrestrial or satellite relay distribution undertaking (SRDU). Currently, by condition of licence, Access is authorized to obtain the U.S. 4+1 signals distributed as part of the basic service from CANCOM only.
21. The CFTPA raised concerns that granting Access the flexibility to receive the U.S. 4+1 signals it distributes as part of the basic service from any Canadian terrestrial or relay distribution undertaking could ultimately result in a decline in revenues for licensed SRDUs and, by extension, in their required contributions to Canadian programming. As such, all BDUs given this flexibility should be required to make up for potential lost contributions to Canadian programming from SRDUs. Furthermore, the CFTPA requested that the Commission ensure, in the absence of such a requirement, that all previously approved and future similar requests, including that of Access, will not have a material negative impact on the level of overall contributions to Canadian independent production funds.
22. In reply, Access stated that it requested this condition of licence amendment because its current condition makes specific reference to CANCOM as the only source of these U.S. 4+1 signals and because it wishes to have the option of sourcing these U.S. 4+1 signals from more than one type of relay distribution undertaking.
23. The Commission notes that Access' distribution of the U.S. 4+1 signals is authorized by condition of licence rather than by the *Lists of eligible satellite services*. Generally, when issuing conditions of licence authorizing BDUs to distribute the U.S. 4+1 signals on the basic service, the Commission does not specify the reception method. Accordingly, the Commission finds it appropriate to amend the condition of licence authorizing Access to distribute the U.S. 4+1 signals on the basic service in order to grant Access flexibility in how it sources these signals. The amended **condition of licence**, which deletes the reference to CANCOM, is set out in the appendix to this decision.

Distribution of distant Canadian signals and of a second set of U.S. 4+1 signals, and the suspension of non-simultaneous program deletion requirements

24. In Broadcasting Decision 2001-229, the Commission approved a request by Access to distribute, on a digital discretionary basis, a second set of U.S. 4+1 signals, as well as any of the distant Canadian television signals set out in the *List of Part 3 eligible satellite services*. This approval was subject to the provision that the licensee adhere to the requirements regarding non-simultaneous program deletion set out in section 43 of the Regulations. The Commission also noted in Broadcasting Decision 2001-229 that the above provision may be suspended upon its approval of an executed agreement between the licensee and broadcasters dealing with issues related to the protection of program rights arising in connection with the digital discretionary distribution of the above-noted signals.

25. In Broadcasting Decision 2006-692, the Commission announced that Canadian Cable Systems Alliance Inc. (CCSA), on behalf of Access and various other licensees, had reached such an agreement with the CAB. As such, the requirement for non-simultaneous program deletion was suspended for Access as well as for the other licensees.
26. The Commission reminds the licensee that, in the event that the agreement between the CCSA and the CAB is terminated at any time, the requirement for non-simultaneous program deletion will no longer be suspended and the licensee will once again be required to perform program deletions as set out in section 43 of the Regulations. Should the agreement be terminated, the Commission is to be advised forthwith.

Amendments to and deletion of certain conditions of licence

27. The Commission considers that the amendments to and the deletion of certain conditions of licence, as described in Access' application, are also appropriate and do not conflict with any of the Commission's regulations and existing policy provisions.

Conclusion

28. Based on all of the above, the Commission **renews** the broadcasting licence for the Class 1 cable BDU serving Regina, Saskatchewan, from 1 September 2008 to 31 August 2015.
29. The Commission also **approves** the proposed amendments to and the deletion of certain conditions of licence.
30. The licence will be subject to the **conditions** specified therein as well as to the terms and **conditions of licence** set out in the appendix to this decision.
31. The Commission notes that, since the publication of this licence renewal application, it has authorized, through an administrative process, an extension to Access' authorized service area to include White City, which formerly operated under a separate licence. This change was announced in Broadcasting Public Notice 2008-52.

Employment equity

32. Because this licensee is subject to the *Employment Equity Act* and files reports concerning employment equity with the department of Human Resources and Social Development Canada, its employment equity practices are not examined by the Commission.

Secretary General

Related documents

- *Applications processed pursuant to streamlined procedures – Information bulletin, Broadcasting Public Notice CRTC 2008-52, 12 June 2008*
- *Suspension of the provision set out in the decisions listed in the appendix to the present decision relating to the requirements for non-simultaneous program deletion, Broadcasting Decision CRTC 2006-692, 21 December 2006*
- *The regulatory framework for the distribution of digital television signals, Broadcasting Public Notice CRTC 2003-61, 11 November 2003*
- *A regional approach to licensing cable distribution undertakings – Adoption of related amendments to the Broadcasting Distribution Regulations, Broadcasting Public Notice CRTC 2003-48, 17 September 2003*
- *Carriage of Canadian and U.S. 4+1 signals on a discretionary digital basis, Broadcasting Decision CRTC 2001-229, 24 April 2001*

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 2008-237

Terms and conditions of licence applicable to the Class 1 cable broadcasting distribution undertaking serving Regina, Saskatchewan

Terms

The operation of this cable broadcasting distribution undertaking is regulated pursuant to the *Broadcasting Distribution Regulations* and all related policies.

The licence will expire 31 August 2015.

Conditions of licence

1. The licensee is relieved from the requirement of section 7 of the *Broadcasting Distribution Regulations* that it not alter or delete a programming service in the course of its distribution, except as provided below. The licensee may alter or curtail the programming services of the Saskatchewan Provincial Legislature and the Shopping Channel for the purposes of sharing certain channels in accordance with the licensee's agreements with the operators of these programming services.
2. The licensee shall make a contribution to Canadian programming each broadcast year ending 31 August of an amount not less than 5% of its gross revenues derived from broadcasting activities, less any contribution to its community channel made by the licensee in that year.
3. The licensee is authorized to distribute, at its option, WBZ-TV (CBS), WHDH-TV (NBC), WCVB-TV (ABC), WFXT (FOX), and WGBH-TV (PBS) Boston, Massachusetts, as part of the basic service.
4. The licensee may, at its option, designate one of the U.S. superstations specified in Section B of the *List of Part 2 eligible satellite services* and distribute the signal of that superstation within a discretionary package that may include one or more Canadian specialty and/or pay television services.
5. 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 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 Regulations regarding simultaneous substitution apply also in the case of U.S. 4+1 signals and distant Canadian signals.

6. 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.
7. The licensee is authorized to originate a video games service as a special programming service, offered on a discretionary basis, subject to the conditions listed in *Licence amendments concerning the distribution of a video games service*, Decision CRTC 95-591, 24 August 1995.