



## Broadcasting Order CRTC 2009-542

Route reference: 2009-56

Ottawa, 31 August 2009

*Application 2008-1267-9, received 19 September 2008*

### **Mandatory distribution order and licence amendment for La Magnétothèque**

*The Commission **approves** the application by La Magnétothèque for a mandatory distribution order under section 9(1)(h) of the Broadcasting Act that requires Class 1 and Class 2 cable broadcasting distribution undertakings (BDUs), direct-to-home (DTH) distributors and multipoint distribution system (MDS) distributors to distribute the programming of La Magnétothèque on their basic service (analog or digital). The mandatory distribution order is set out in the appendix to this order.*

*The Commission also **approves** the request by La Magnétothèque to charge BDUs distributing its programming a maximum monthly wholesale rate of \$0.02 per subscriber.*

*The Commission further **approves** the request by La Magnétothèque to amend its conditions of licence so as to authorize it to air up to four minutes of advertising in any clock hour.*

*The Commission **denies** the request by La Magnétothèque to require BDUs to distribute La Magnétothèque on their analog networks, or, in the case of a BDU that distributes La Magnétothèque in digital mode only, to provide a complementary digital decoder to subscribers with a visual impairment. However, the Commission strongly encourages BDUs that distribute La Magnétothèque (in digital only without offering a free decoder box to subscribers with a visual impairment) to follow the example of Rogers Cable Communications Inc. and offer decoder boxes so that such persons can fully enjoy the benefits of the Canadian broadcasting system.*

### **Introduction**

1. In Broadcasting Public Notice 2009-56, the Commission called for comments on an application by La Magnétothèque seeking, among other things, a distribution order under section 9(1)(h) of the *Broadcasting Act* (the Act) requiring Class 1 and Class 2 cable broadcasting distribution undertakings (BDUs), direct-to-home (DTH) distributors and multipoint distribution system (MDS) distributors to distribute the programming of La Magnétothèque on the basic service in all French-language markets, as defined by the Commission.

2. La Magnétothèque also requested that the Commission require that Class 1 and Class 2 BDUs that distribute their services in digital in French-language markets, and that have been granted an exception by Broadcasting Public Notice 2007-101 from the obligation to provide described video in analog mode, to offer a digital decoder free of charge so that visually-impaired subscribers may have access to La Magnétothèque's programming.
3. Finally, the licensee requested authorization to charge a monthly wholesale rate of \$0.02 per subscriber residing in a French-language market in Canada, and authorization to amend its conditions of licence to allow it to broadcast a maximum of four minutes of advertising in any clock hour.
4. La Magnétothèque is a not-for-profit corporation that offers a French-language specialty audio programming service accessible to over 150,000 persons with visual impairments via cable, digital television and the Internet. La Magnétothèque broadcasts, 24 hours a day, full readings of news, editorials and other articles published in newspapers, magazines and other periodicals.
5. As part of this proceeding, the Commission received numerous interventions in support of the application and several comments. The interventions and comments can be consulted on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Public Proceedings."
6. After considering the application, interventions and comments, the Commission is of the view that the issues to be addressed in this order are as follows:
  - Should La Magnétothèque be granted a distribution order pursuant to section 9(1)(h) of the Act and, if so, to whom should the order apply?
  - Should a BDU required to distribute La Magnétothèque be required to distribute the service in analog mode, if the BDU operates an analog network?
  - Are the funding mechanisms proposed by La Magnétothèque appropriate?

**Should La Magnétothèque be granted a distribution order pursuant to section 9(1)(h) of the Act and, if so, to whom should the order apply?**

7. The parties generally supported a mandatory distribution order for La Magnétothèque under section 9(1)(h) of the Act. The DTH BDUs, however, proposed to distribute La Magnétothèque to their French-language basic service subscribers rather than to subscribers in French-language markets, as proposed by La Magnétothèque. La Magnétothèque replied that it agreed with this proposal.
8. The Commission expects each applicant submitting an application for a mandatory order for distribution on the basic service under section 9(1)(h) of the Act to provide evidence demonstrating the exceptional importance of its service to the achievement of the objectives of the Act. In this respect, the Commission notes that section 3(1)(p) of

the Act states that “programming accessible by disabled persons should be provided within the Canadian broadcasting system as resources become available for the purpose.”

9. The Commission notes that La Magnétothèque provides French-speaking visually-impaired Canadians with varied programming that fosters the implementation of cultural, economic and political objectives, and that there is currently no other French-language broadcasting service that offers such programming.
10. The Commission considers that La Magnétothèque should be made accessible to all French-speaking Canadians with visual impairments in light of its special contribution to the implementation of the objective set out in section 3(1)(p) of the Act set out above. The Commission notes that it has already issued an order pursuant to section 9(1)(h) requiring the distribution of Voiceprint – a similar English-language service.
11. In light of the foregoing, the Commission **orders** mandatory distribution of La Magnétothèque across Canada in the French-language markets of Class 1 and Class 2 BDUs and MDS distributors, and to subscribers of DTH distributors who subscribe to French-language basic service packages. Pursuant to section 9(1)(h) of the Act, the Commission issues Distribution Order 2009-544 set out in Appendix 1 to this order, in which it sets out the specific requirements concerning the mandatory distribution of La Magnétothèque’s service.

**Should a BDU required to distribute La Magnétothèque be required to distribute the service in analog mode, if the BDU operates an analog network?**

12. The applicant stated that its audience consists of individuals who could have a great deal of difficulty adapting to change, and that consequently it wants to maintain the status quo to the maximum extent possible. La Magnétothèque is of the view that its service should be distributed in analog by BDUs offering an analog service package.
13. Rogers Cable Communications Inc. (Rogers) submitted that the Commission should not require BDUs to distribute La Magnétothèque’s programming in analog mode. Rogers noted that some of its systems do not offer audio signals on their analog networks and that those signals have been transferred to the digital network to free up spectrum for new digital and high definition (HD) services. Rogers indicated, however, that when it offers the service in digital mode only, it provides a decoder free of charge to subscribers with a visual impairment.
14. In response, La Magnétothèque proposed that BDUs that do not offer an analog package or choose to offer its service only in digital be required to provide a decoder free of charge to subscribers with a visual impairment.
15. The Commission notes that the broadcasting system is migrating to digital. For several years, Commission policies have encouraged the transition of the broadcasting and distribution systems to digital. For example, in Broadcasting Public Notice 2003-61, the

Commission stated that its regulatory approach should encourage broadcasters to provide over-the-air digital service and encourage distributors to upgrade their undertakings. As well, the Commission noted that, with the additional capacity gained through the removal of analog services, distributors will have the ability to offer a wider variety of HD services.

16. In accordance with these policies, in Broadcasting Public Notice 2008-100, the Commission decided that, effective 31 August 2011, BDUs will no longer be required to distribute speciality and pay television services in analog mode.
17. The Commission is of the view that requiring a BDU to distribute La Magnétothèque's programming on its analog network when such programming can be distributed on the BDU's digital network contradicts the Commission's recent policies. The Commission further considers that such distribution would restrict the ability of a BDU to manage the transition of its service to digital.
18. The Commission notes that, if La Magnétothèque wishes its programming to be available in analog mode, it can negotiate an agreement with another broadcaster (e.g., Réseau de l'information) to make its programming available on the secondary audio program (SAP) channel. Under this type of arrangement, a BDU that distributes the service in question in analog mode would have to pass through La Magnétothèque on the SAP channel as well.
19. The Commission notes that parties did not have the opportunity to comment on La Magnétothèque's request that a BDU distributing its service in digital mode only be required to provide a complementary decoder to subscribers with a visual impairment, since this proposition was made in response to an intervention. The Commission also notes that subscribers in French-language markets served by the Class 1 BDUs affected by this Order<sup>1</sup> already have access to a complementary decoder under the exception from the requirement to pass through video description on an analog basis pursuant to Broadcasting Public Notice 2007-101.
20. In light of the foregoing, the Commission **denies** the request to require BDUs to distribute La Magnétothèque on their analog networks, or, in the case of a BDU that distributes La Magnétothèque in digital mode only, to provide a complementary digital decoder to subscribers with a visual impairment.
21. However, the Commission strongly encourages the BDUs that distribute La Magnétothèque (in analog mode only and without providing a complementary decoder to subscribers with a visual impairment) to follow Rogers' example and provide decoders so that these individuals can derive maximum benefit from the Canadian broadcasting system.

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<sup>1</sup> Cogeco Cable Inc., Rogers and Videotron Ltd.

## Are the financing mechanisms proposed by La Magnétothèque appropriate?

22. La Magnétothèque proposed to charge BDUs distributing its service a monthly wholesale rate of \$0.02 per subscriber. The total resulting revenues would be devoted to i) direct expenditures incurred to produce programming (50%), ii) increasing the number of hours of original programming from six to eight hours a day (10%), and iii) the promotion of its programming (40%). La Magnétothèque also requested an amendment to its conditions of licence so as to allow it to sell a maximum of four minutes of advertising per hour of programming.
23. The Commission notes that, apart from a general comment to the effect that La Magnétothèque's budget projections should be examined in greater depth, none of the parties questioned the financing mechanisms requested by La Magnétothèque.
24. The Commission further notes that the number of minutes of advertising proposed by La Magnétothèque is comparable to the number that the Commission approved for VoicePrint.
25. The Commission considers that the budget projections submitted by La Magnétothèque appear reasonable. The Commission is of the view that the amount requested will be affordable for subscribers and will allow La Magnétothèque to provide and even improve the services to French-speaking visually-impaired subscribers, pursuant to section 3(1)(p) of the Act.
26. Nevertheless, the Commission expects La Magnétothèque to report on the expenditures it incurs in connection with this new revenue stream at its next licence renewal.
27. Accordingly, the Commission **approves** La Magnétothèque's request to amend its conditions of licence to allow La Magnétothèque to:
  - charge monthly fees to a maximum of \$0.02 per subscriber to each Class 1 and Class 2 cable distribution and MDS undertaking distributing its service in a French-language market;
  - charge each DTH BDU a monthly fee to a maximum of \$0.02 per subscriber who subscribes to a French-language basic service; and
  - sell a maximum of four minutes of advertising per hour of programming.

The **conditions of licence** are set out in Appendix 2 to this order.

Secretary General

**Related documents**

- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services – Regulatory policy, Broadcasting Public Notice CRTC 2008-100, 30 October 2008*
- *Distribution of video description by Class 1 cable broadcasting distribution undertakings (BDUs), direct-to-home BDUs and satellite relay distribution undertakings, Broadcasting Public Notice CTRC 2007-101, 12 September 2007*
- *The regulatory framework for the distribution of digital television signals, Broadcasting Public Notice CRTC 2003-61, 11 November 2003*

*This order 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 1 to Broadcasting Order CRTC 2009-542

### **Terms and conditions for the distribution of La Magnétothèque by persons licensed to carry on certain types of broadcasting distribution undertakings**

The Commission hereby orders, pursuant to section 9(1)(h) of the *Broadcasting Act*, persons licensed to carry on broadcasting distribution undertakings of the types identified in paragraph (a) below to distribute the public affairs programming of La Magnétothèque as directed in (b) below, effective 1 October 2009, on the following terms and conditions:

- a) This Order applies to Class 1 and Class 2 distribution undertakings, including multipoint distribution system (MDS) distributors and direct-to-home (DTH) distributors. These licensees are collectively referred to in this Order as distribution licensees.
- b) The distribution licensees shall distribute La Magnétothèque's programming service in the following manner:
  - i) All Class 1 licensees, Class 2 licensees and MDS licensees shall distribute La Magnétothèque's programming service on an audio channel in the French-language markets;
  - ii) The DTH licensees shall distribute La Magnétothèque's programming service on an audio channel to all persons subscribing to any of the undertaking's French-language basic service packages.
- c) The Commission authorizes the distribution licensees to increase the basic monthly fee by an amount not to exceed the amount authorized under the terms of La Magnétothèque's licence.

## **Appendix 2 to Broadcasting Order CRTC 2009-542**

### **Conditions of licence for specialty audio programming undertaking La Magnétothèque**

1. The licensee shall adhere to the provisions of Part 1.1 of the *Radio Regulations, 1986*, as amended from time to time.
2. The licensee shall broadcast no more than four (4) minutes of advertising in any clock hour.
3. The licensee is authorized to charge each Class 1 and Class 2 cable broadcasting licensee or multipoint distribution undertaking distributing La Magnétothèque in a French-language market a maximum monthly fee of \$0.02 per subscriber.
4. The licensee is authorized to charge each licensee of a direct-to-home distribution undertaking a maximum monthly fee of \$0.02 for each subscriber who subscribes to a French-language basic service package.