



Broadcasting Decision CRTC 2005-385

Ottawa, 9 August 2005

Rogers Cable Communications Inc.

Ajax, Bolton, Pickering, Oshawa, Richmond Hill,
Newmarket and Toronto, Ontario

Application 2004-1120-8

Broadcasting Public Notice CRTC 2005-5

13 January 2005

Distribution of WNLO-23 on a discretionary digital basis

*The Commission **approves** an application by Rogers Cable Communications Inc. for the discretionary digital distribution of the off-air signal of WNLO-23 (UPN) Buffalo, New York on the cable broadcasting distribution undertakings serving the above-noted localities.*

The application

1. The Commission received an application by Rogers Cable Communications Inc. (Rogers) to distribute on its Class 1 and Class 2 cable broadcasting distribution undertakings (BDUs) serving the above-mentioned localities the off-air signal of WNLO-23 (UPN) Buffalo, New York.
2. A condition of each of these licences stipulates that:

The written approval of the Commission is required prior to the distribution of any service not authorized in:

 - a) the *Broadcasting Distribution Regulations* (the Regulations);
 - b) the most recent renewal decision or, if there has been no renewal, the initiallicensing decision; or
 - c) any subsequent written approvals granted during the term of this licence.
3. Rogers filed the present application as required by its conditions of licence.
4. Section 19(g) of the Regulations stipulates that the Commission's prior approval is required should a Class 1 or Class 2 cable licensee wish to distribute the programming service of any non-Canadian television station received directly over the air at the local head end and that began operation after 1 January 1985. WNLO-23 began operating on 13 May 1987.

Applicant's rationale

5. In support of its application, Rogers submitted that the proposed distribution of WNLO-23 would increase the diversity of the programming available to its digital subscribers and encourage more subscribers to choose its digital service. Rogers further contended that WNLO-23 would continue to target the Buffalo and western New York state market for advertising revenues, and that there would be only 1.8% duplication between the programming offered by WNLO-23 and that provided by Canadian television broadcasters. Accordingly, in Rogers' view, the proposed addition of WNLO-23 would have a minimal impact on Canadian television broadcasters operating in the affected communities.

Interventions

6. The Commission received two interventions in connection with this application: one in support by Mr. Nicholas Fitzpatrick, a Rogers' subscriber, and one in opposition by Global Communications Limited (Global). Among its broadcasting holdings, Global owns numerous conventional television stations across Canada, including television stations in southern Ontario.
7. Global expressed concern that the introduction of a new foreign television service might cause financial harm to Canadian conventional television broadcasters operating in southern Ontario. Global stated that, in 2004, Ontario's conventional television broadcasters reported the lowest profitability in over a decade while national advertising revenues also declined in that year. According to Global, local advertising revenues would be jeopardized by the addition of a new foreign television service.
8. Global disagreed with Rogers' assertions that WNLO-23's advertising would remain focused on Buffalo and western New York and that the possible overlap between the programming aired by WNLO-23 and that offered by Canadian television services would be limited.
9. Global further contended that, because all of Rogers' digital subscribers would automatically receive WNLO-23, the service would not be truly discretionary. Moreover, in Global's view, the potential for negative impact on Canadian conventional television broadcasters would increase as digital penetration increases.

Applicant's reply

10. In response to Global's intervention, Rogers submitted that the fact that Global is the only one of the numerous local television broadcasters serving the GTA that intervened to this application is evidence that the other local television broadcasters do not share Global's concerns.
11. Rogers noted that it has carried WNYO-49 (Warner Brothers) Buffalo on its cable BDUs serving the above-noted localities since 2002. It further submitted that its carriage of WYNO-49 has not had a significant impact on local television broadcasters.

12. Rogers reiterated that WNLO-23 would continue to target the Buffalo and western New York market and stated that the minimal amount of Canadian advertising revenues that WNLO-23 would attract would be derived from Canadian advertising revenues that are already flowing to one of the many Buffalo stations that reach into the Toronto market.

Commission's analysis and determination

13. In *Distribution of WNYO-49 (Warner Brothers) Buffalo, New York*, Decision CRTC 2001-688, 9 November 2001, the Commission confirmed its policy of permitting the distribution of U.S. stations that began operation after 1985 only in cases where it is satisfied that the station will not materially compete for Canadian advertising revenues with local broadcasters.
14. As noted by Rogers in its application, the cable BDUs serving the localities noted-above have been distributing WNYO-49 on a discretionary digital basis since 2002. Based on its examination of viewing to foreign television services, the Commission finds that there is no evidence that distribution of WNYO-49 has led to increased viewing to U.S. television services or resulted in a negative financial impact on Canadian conventional television broadcasters serving the GTA. The Commission's analysis reveals that viewing in the GTA to U.S. television services has declined in recent years while the local advertising revenues generated by the GTA's conventional television broadcasters have increased since 2002. Taking the foregoing into account as well as the licensee's statement that WNLO-23's signal is already readily available over-the-air, the Commission considers that the impact of the distribution of WNLO-23 as part of a discretionary digital tier of the cable BDUs serving the above-mentioned localities will be minimal.
15. In light of all of the above, the Commission **approves** the application by Rogers Cable Communications Inc. to distribute WNLO-23 (UPN) Buffalo, on a digital discretionary basis, on its Class 1 and Class 2 cable broadcasting distribution undertakings serving Ajax, Bolton, Pickering, Oshawa, Richmond Hill, Newmarket and Toronto.

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>