



Broadcasting Decision CRTC 2006-542

Ottawa, 21 September 2006

CF Cable TV Inc.
La Pocatière, Quebec

Application 2005-1135-4
Broadcasting Public Notice CRTC 2006-54
26 April 2006

Application for relief from section 17 of the *Broadcasting Distribution Regulations*

*The Commission **denies** the application to relieve CF Cable TV Inc. of the requirement to distribute the priority signal CIMT-TV (TVA) Rivière-du-Loup on the basic service, with substitution, within a section of the service area of its Class 1 broadcasting distribution undertaking serving La Pocatière.*

The application

1. The Commission received an application by CF Cable TV Inc.¹ (CF Cable), licensee of the Class 1 cable broadcasting distribution undertaking (BDU) serving La Pocatière, requesting relief, by condition of licence, from the requirement under section 17 of the *Broadcasting Distribution Regulations* (the Regulations) to distribute CIMT-TV (TVA) Rivière-du-Loup on the basic service of its cable BDU, beginning with the basic band (channels 2 to 13). CF Cable proposed instead to distribute CFCM-TV (TVA) Québec on the basic service of this cable BDU, without substitution. CF Cable added that it intended to continue distributing CIMT-TV on the basic service.
2. The section of the service area referred to in the application is located west of La Pocatière and covers the municipalities of Saint-Jean-Port-Joli, L'Islet, Saint-Roch-des-Aulnaies, Sainte-Louise and Saint-Aubert. CF Cable serves approximately 1,500 subscribers in these municipalities, and the service area contains approximately 5,800 subscribers. In fact, over 4,300 subscribers would continue receiving CIMT-TV as the TVA priority signal.

¹ The application was filed by Videotron (Regional) Ltd. in 2005. On 1 January 2006, Videotron (Regional) Ltd. and CF Cable TV Inc. merged, continuing under the name CF Cable TV Inc. In Broadcasting Public Notice CRTC 2006-54, 26 April 2006, this application was inadvertently published as being filed by Videotron Ltd., rather than by CF Cable TV Inc.

3. Until February 2004, subscribers served by the cable BDU serving La Pocatière received the regulatory priority signal CIMT-TV, as well as the signal CFCM-TV, without substitution. CF Cable indicated that, after its network was upgraded in 2004, it stopped distributing CFCM-TV on the analog band of its BDU and commenced substituting it with CIMT-TV on the digital band, in order to standardize the list of signals distributed by its systems.
4. According to CF Cable, it is at this point that it started receiving numerous complaints from subscribers living outside the Lower Saint Lawrence administrative region, but within the La Pocatière service area. The municipalities affected by the deletion of the signal passed resolutions and a large percentage of the population signed a petition asking CF Cable to distribute the TVA signal originating in Québec instead of the Rivière-du-Loup signal.
5. CF Cable's argument is that CIMT-TV's programming is not representative of the service area covered by this application and that, in its opinion, CFCM-TV's programming is more representative. CF Cable also pointed out that the section of the service area in question represents just over 5% of its subscribers who receive CIMT-TV as a priority signal. According to the applicant, approval of this application would have a negligible impact on CIMT-TV because it estimates the number of homes affected by the application to be at just over 2% of the station's extended market.

Interventions

6. The Commission received several interventions concerning the application, the majority of them in support, as well as comments from Télé Inter-Rives ltée (TIR), licensee of television station CIMT-TV.
7. TIR argued that the dissatisfaction of CF Cable subscribers stems from the applicant's 2004 business decision to drop the CFCM-TV signal from its analog service and offer it only on the digital service of the cable BDU serving La Pocatière.
8. TIR reminded the Commission that on several occasions in recent years, TIR had expressed concern about the negative effects of distributing distant stations in small television markets. TIR pointed out that CIMT-TV is a local priority station for the entire licensed area of the BDU serving La Pocatière, whereas CFCM-TV, which is located 120 kilometres from La Pocatière, is a distant station. TIR further argued that, because the La Pocatière service area has over 6,000 subscribers, the applicant is required to substitute using CIMT-TV.

9. TIR noted that the section of the service area covered by this application belongs to the Chaudière-Appalaches administrative region, and not to the Québec administrative region, where CFCM-TV is located. TIR contended that it provides television viewers in the Chaudière-Appalaches administrative region with appropriate and high-quality television service by broadcasting important news as well as community information and activities of the region, every day during prime time. According to TIR, this differs from CFCM-TV, which does not provide any daily, weekly or monthly coverage of this region, with the exception of the very few occasions where news from this region is deemed of primary importance.
10. TIR noted that, owing to CIMT-TV's priority status, CF Cable is required to substitute the other TVA signals it carries. However, even with substitution, television viewers would have access to CFCM-TV newscasts, since the substitution applies to identical programs only. As a result, all newscasts aired by CIMT-TV and by CFCM-TV would be accessible to all subscribers to CF Cable's La Pocatière cable BDU that are affected by this application.
11. TIR argued that should CF Cable not substitute the CIMT-TV signal for the CFCM-TV signal in the western section of the BDU's current service area, this would directly affect the revenues of its station CIMT-TV. According to TIR, CIMT-TV would also lose viewing hours to CFCM-TV, automatically reducing the station's national advertising revenues.
12. However, following discussions with CF Cable, TIR reported that it had obtained a commitment from CF Cable to carry out the substitution with the signal of CKRT-TV Rivière-du-Loup, an affiliate of the Canadian Broadcasting Corporation (CBC) owned by CKRT-TV Itée, in the eastern part of the current service area of the cable BDU serving La Pocatière, even though it is not required to do so under the Regulations.
13. As a result, TIR stated it would, on an exceptional basis, agree with the Commission approving the application on a temporary test basis until the end of the current licence term of the CF Cable Class 1 cable BDU serving La Pocatière, i.e., until 31 August 2010, so that it can assess the impact on CIMT-TV's national revenues. TIR asked the Commission to require CF Cable, by condition of licence, to substitute by inserting the CKRT-TV (CBC) signal in the eastern section of the BDU's current service area.

Applicant's reply

14. CF Cable noted that CFCM-TV is a regional station, not a distant station, and added that approving the application would not create a precedent, since the Commission has authorized exemptions from section 17 of the Regulations in the past. CF Cable pointed out that the purpose of its application is to serve the public more effectively, all the while complying with the Regulations.

15. CF Cable agreed that approval of this application could affect CIMENT-TV's rate card and contribute to a decrease in revenues, but pointed out that the loss of potential viewers would be very minimal, since a number of TVA viewers would continue tuning in to channel 4 instead of channel 45. CF Cable also noted that, CIMENT-TV has benefited from its regulated priority for many years, which itself is the result of the shape of the service area, and not the result of the strength of its signal compared with the CFCM-TV Québec signal.

Commission's analysis and determinations

16. Section 17(1) of the Regulations prescribes the order of priority in which television programming services must be distributed on the basic service of Class 1 and Class 2 BDUs. Section 17 of the Regulations stipulates that the channel distribution of these services must begin with the basic band. Section 1 of the Regulations defines the basic band as "the 12 analog cable channels that are commonly identified by the numbers 2 to 13 ..."
17. CF Cable's application concerns a Class 1 BDU. CIMENT-TV describes itself as a local television station for the BDU serving La Pocatière, whereas CFCM-TV is considered a regional television station. The Commission notes that CIMENT-TV is the priority TVA signal in the service area in question and that, as a result, this station has a right to the substitutions applicable to the CFCM-TV signal when this signal is distributed by this BDU.
18. In the past, the Commission has approved applications by BDUs seeking relief from the requirement to distribute certain services pursuant to section 17 of the Regulations, subject to the terms and conditions for distribution set out in the agreements between those BDUs and the programming services in question. In this instance, the Commission notes that TIR and CF Cable did not have a distribution agreement in place when this application was filed.
19. Furthermore, in light of TIR's intervention, the Commission considers that TIR has not clearly and unequivocally waived its right to distribution as the TVA priority signal for the BDU in question. The Commission notes that TIR's support is based on a commitment by CF Cable to the effect that the latter would be required, with no regulatory obligation to do so, to carry the CKRT-TV signal as a substitute in the eastern section of the service area of the BDU serving La Pocatière. The Commission further notes that CF Cable did not mention this commitment in its original application or in its reply. Finally, the Commission notes that such an agreement also requires prior Commission approval.

20. Accordingly, without any evidence that TIR waived its right to distribution on the basic analog service without substitution, and in the absence of an agreement between CF Cable and TIR as to the terms and conditions for distributing CIMT-TV, that provides a suitable solution regarding the distribution of TVA by its cable BDU serving La Pocatière, the Commission **denies** the application by CF Cable TV Inc. to be relieved of the requirement to distribute the priority signal CIMT-TV Rivière-du-Loup as part of its basic analog service, with substitution, in a section of the licensed area of its Class 1 cable BDU serving La Pocatière.
21. With respect to CF Cable's explanation concerning the removal of the CFCM-TV signal from the analog band of its BDU in 2004 under the guise of complying with the Regulations, the Commission notes that removing the signal from the analog band was not a regulatory requirement, but rather a decision by the licensee. The Commission reminds CF Cable that it is licensed to distribute the regional signal of CFCM-TV Québec on its analog band as long as it makes the applicable substitutions. As a result, CF Cable will be able to satisfy the preferences of subscribers living in the communities covered by this application.

Secretary General

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