



Broadcasting Decision CRTC 2006-694

Ottawa, 21 December 2006

TELUS Communications Inc.

Various locations in British Columbia,
Alberta and Quebec

Application 2006-0823-4

Broadcasting Public Notice CRTC 2006-96

28 July 2006

Distribution of satellite subscription radio services

*The Commission **approves** an application by TELUS Communications Inc. to amend the broadcasting licences for the cable broadcasting distribution undertakings serving various locations in British Columbia, Alberta 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 being distributed 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 TELUS Communications Inc. (TELUS) to amend the broadcasting licences for its cable broadcasting distribution undertakings (BDUs) serving various locations in British Columbia, Alberta 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. TELUS submitted that the Canadian broadcasting system would benefit from a broader distribution of SSR services. In particular, TELUS noted that providing increased access to these Canadian licensed services would ensure that more Canadians obtain their audio programming through the regulated system rather than through unregulated means (both legal and illegal). According to TELUS, increased penetration of SSR services would also benefit Canadian talent and would drive penetration of digital broadcasting distribution.

Interventions

3. The Commission received interventions in opposition to this application by the owners of the two licensed pay audio programming services, namely the Canadian Broadcasting Corporation, which owns Galaxie, and Corus Entertainment Inc., which owns Max Trax. TELUS' application was also opposed by a number of Canadian cultural organizations, including the Society of Composers, Authors, and Music Publishers of Canada, the Canadian Conference of the Arts, the Association québécoise de l'industrie du disque, du spectacle et de la vidéo, the Alliance of Canadian Cinema, Television and Radio Artists, and the Canadian Recording Industry Association. While not opposing the application, the Canadian Association of Broadcasters raised concerns that it asked Commission to address before authorizing the distribution of SSR services by TELUS or by BDUs in general.
4. Interveners 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. Interveners also submitted that the widespread distribution of satellite radio by BDUs was not contemplated in the satellite radio applications, or 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, interveners raised concerns that BDU distribution of SSR services could have a negative impact on the pay audio services, potentially resulting in their demise and the attendant loss of a significant amount of airplay for Canadian music.

Licensee's reply

5. In response, TELUS pointed out that the SSR services are licensed as Canadian services and that SSR devices already permit the delivery of their signals to Canadian homes. TELUS submitted that authorizing the distribution of SSR services by BDUs would increase the delivery of Canadian services since, under section 6 (2) of the *Broadcasting Distribution Regulations* (the Regulations), BDUs must ensure predominance of Canadian audio channels provided to the subscriber. TELUS also confirmed that it would abide by the predominance requirement if it were authorized to distribute the SSR services.

Commission's analysis and determinations

6. The Commission is satisfied with the licensee's response to the interventions.
7. In *Distribution of satellite subscription radio services*, Broadcasting Decision CRTC 2006-650, 28 November 2006 (Decision 2006-650), the Commission approved, subject to specific provisions, an application by Rogers Cable Communications Inc. (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.
8. The Commission notes that TELUS' BDUs operate under similar circumstances as those of Rogers. The Commission concludes that, consistent with Decision 2006-650, it is appropriate to authorize TELUS 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 TELUS to distribute SSR services under provisions in respect of such distribution that will place these 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.
9. 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 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 being distributed may also be used to fulfil the requirements set out in section 6(2) of the Regulations; that is, the Canadian-produced channels of the SSR service being distributed will be considered Canadian programming services for the purposes of section 6(2) of the Regulations.

¹ Under section 22 of the Regulations, broadcasting distribution undertakings 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.

10. In light of the above, the Commission **approves**, with the provisions described above, the application by TELUS Communications Inc. to amend the broadcasting licences for its cable broadcasting distribution undertakings serving various locations in British Columbia, Alberta 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), 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 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>