



Broadcasting Decision CRTC 2007-33

Ottawa, 26 January 2007

**TELUS Communications Inc., and 1219823 Alberta ULC in partnership with
TELUS Communications Inc. in TELE-MOBILE Company, partners in a
general partnership carrying on business as TELUS Communications
Company**

Various locations in Alberta, British Columbia and Quebec; and across Canada
(see Appendix 1)

Application 2006-0633-7

Public Hearing at Regina, Saskatchewan

30 October 2006

Acquisition of assets – Corporate reorganization

1. The Commission **approves** the application by TELUS Communications Inc. (TCI), and 1219823 Alberta ULC in partnership with TCI in TELE-MOBILE Company (TELE-MOBILE), partners in a general partnership carrying on business as TELUS Communications Company (TCC GP) (collectively, “the applicant”),¹ to acquire from TCI, as part of a corporate reorganization, the assets of the cable broadcasting distribution undertakings (BDUs) located in Alberta, British-Columbia and Quebec, as listed in Appendix 1 to this decision, and of the national English-language video-on-demand (VOD) service.
2. The Commission also **approves** the applicant’s request for broadcasting licences to continue the operation of these cable BDUs in accordance with the *Broadcasting Distributions Regulations* and under the same terms and conditions approved in previous decisions, as set out in Appendices 2, 3 and 4 to this decision. In addition, the Commission **approves** the applicant’s request for a broadcasting licence to continue the operation of the national English-language VOD service in accordance with the Commission’s regulatory framework for VOD undertakings² and under the same terms and conditions approved in previous decisions, as set out in Appendix 5 to this decision.
3. The Commission notes that the transaction approved in the current decision will be subsequent to a corporate restructuring that will result in TCI becoming a partner with TELE-MOBILE in TCC GP, and in the transfer of TCI’s assets to TCC GP.

¹ In Broadcasting Notice of Public Hearing CRTC 2006-9, 31 August 2006, the Commission indicated that the application was submitted by TELUS Communications Inc., on its behalf as one of the partners of the general partnership known as TELUS Communications Company, and on behalf of the other partner, a general partnership of TELUS Communications Inc. and 1219823 Alberta ULC known as TELE-MOBILE Company.

² As set out in *Licensing of New Video-On-Demand Programming Undertakings – Introduction to Decisions CRTC 97-283 to 97-287*, Public Notice CRTC 1997-83, 2 July 1997, and in *Introductory statement to Decisions CRTC 2000-733 to 2000-738: Licensing of new video-on demand and pay-per-view services*, Public Notice CRTC 2000-172, 14 December 2000.

4. The Commission also notes that TCI will hold directly and indirectly more than 99% of TCC GP's partnership interest and that the said transaction will not affect the control of the above-mentioned undertakings, which will continue to be exercised by TCI, a wholly owned subsidiary of TELUS Corporation, a widely held public corporation controlled by its Board of Directors.
5. The Commission did not receive any interventions in connection with this application.
6. The Class 1 regional licences for the cable BDUs serving the locations in Alberta and British Columbia, as listed in Appendix 1 to this decision, will expire on 31 August 2009. The Class 1 regional licences for the cable BDUs serving the locations in Quebec, as listed in Appendix 1 to this decision, will expire on 31 August 2011. These licences will be subject to the **conditions** set out in Appendices 2, 3 and 4 to this decision. The licence for the national English-language VOD service will expire on 31 August 2010 and will be subject to the **conditions** set out in Appendix 5 to this decision.
7. The Commission will issue the licences to TELUS Communications Inc., and 1219823 Alberta ULC in partnership with TELUS Communications Inc. in TELE-MOBILE Company, partners in a general partnership carrying on business as TELUS Communications Company, upon surrender of the current licences.
8. Because this licensee is subject to the *Employment Equity Act* and files reports concerning employment equity with the Department of Human Resources and Skills Development, its employment equity practices are not examined by the Commission.

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>

Appendix 1 to Broadcasting Decision CRTC 2007-33

Type of undertaking	Service area
Class 1 regional licence – Cable broadcasting distribution undertakings	Calgary, Edmonton (including St. Albert, Sherwood Park, Spruce Grove and Stony Plain), Fort McMurray, Grande Prairie, Lethbridge, Medicine Hat and Red Deer, Alberta.
Class 1 regional licence – Cable broadcasting distribution undertakings	Kamloops, Kelowna, Nanaimo, Penticton, Prince George, Terrace, Vancouver (including Lower Mainland and Fraser Valley), Vernon and Victoria, British Columbia.
Class 1 regional licence – Cable broadcasting distribution undertakings	Baie-Comeau, Gaspé, Montmagny, Mont-Tremblant, Rimouski, Saint-Georges, Sainte-Marie and Sept-Îles, and their surrounding areas, Quebec.
National English-language video-on-demand service	Across Canada

Appendix 2 to Broadcasting Decision CRTC 2007-33

Conditions of licence

Class 1 regional licence - Cable broadcasting distribution undertakings serving Calgary, Edmonton (including St. Albert, Sherwood Park, Spruce Grove and Stony Plain), Fort McMurray, Grande Prairie, Lethbridge, Medicine Hat and Red Deer, Alberta.

1. The licensee is authorized to distribute, at its option, CFTO-TV (CTV) and CIII-TV (Global) Toronto, and CKND-TV (Global) and CKY-TV (CTV) Winnipeg, as part of its discretionary service in Calgary, Edmonton, Fort McMurray, Grande Prairie, Lethbridge, Medicine Hat and Red Deer.
2. The licensee is authorized to distribute, at its option, CKRD-TV (CBC) Red Deer as part of its basic service in Edmonton and Calgary, and as part of its discretionary service in Grande Prairie, Lethbridge and Medicine Hat.
3. The licensee is authorized to distribute, at its option, CKEM-TV (IND) Edmonton and CICT-TV (Global) Calgary, as part of its discretionary service in Medicine Hat.
4. The licensee is authorized to distribute, at its option and as part of the basic service, the signals of KOMO-TV (ABC), KIRO-TV (CBS) and KING-TV (NBC) Seattle, KCPQ (FOX) Tacoma, and KCPS-TV (PBS) Seattle, or alternatively for each signal, the signal of a different affiliate of the same network located in the same time zone as that of the licensed area and received from a licensed satellite relay distribution undertaking (SRDU).
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 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 *Broadcasting Distribution Regulations* regarding simultaneous substitution apply also in the case of U.S. 4+1 and distant Canadian signals.

6. The licensee is authorized to receive, directly through its own facilities, at its option, any of the distant Canadian signals that are otherwise required to be received from a licensed SRDU. The licensee is not authorized to use any facilities other than its own for the reception of these signals. This condition does not authorize the licensee to provide these services to any other licensed or exempt distribution undertaking.
7. The licensee is relieved of the requirement under section 25(a) of the *Broadcasting Distribution Regulations* regarding the distribution of certain services on restricted channels. It may distribute a programming service referred to in section 18(5) or section 19(f) of the *Broadcasting Distribution Regulations* on a restricted channel only where the licensee has the prior written agreement of the programming service.
8. In order to ensure that neither TELUS Corporation, nor its Board of Directors can exercise control or influence over programming decisions, an independent programming committee must be established in accordance with the following:
 - a) There shall be a committee of three persons to be known as the Programming Committee which shall be responsible for making all programming decisions of the licensed undertaking.
 - b) "Programming decisions" means all decisions of any kind relating to or affecting television programming broadcast by the licensed undertaking and includes all decisions relating to the content and presentation of the licensed undertaking's programming.
 - c) The directors of the licensee, by enactment of the appropriate by-law, will delegate to the Programming Committee the sole and exclusive responsibility and authority to make all programming decisions on behalf of the licensed undertaking, and to supervise the implementation thereof.
 - d) The members of the Programming Committee shall be Canadian citizens, ordinarily resident in Canada.
 - e) No member of the Programming Committee may be either a director, an officer, or a current or former employee of TELUS Corporation and no member of the Programming Committee may be either a director, an officer, or a current or former employee of any non-Canadian shareholder of the licensed undertaking.

- f) At least one member of the Programming Committee shall be an independent member having no links to the licensed undertaking, its affiliates or its shareholders.
 - g) A quorum of the Programming Committee shall be made by a majority of members present at a meeting of the Programming Committee, either in person or by telephone.
 - h) Any decisions respecting removal of members of the Programming Committee shall be made by majority vote of the Programming Committee.
 - i) The Programming Committee shall ensure that the programming will be in conformity with any applicable conditions, regulations and policies of the Commission, as well as with the *Broadcasting Act*.
 - j) No change may be made to these criteria unless prior Commission approval is obtained.
9. 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.

Appendix 3 to Broadcasting Decision CRTC 2007-33

Conditions of licence

Class 1 regional licence - Cable broadcasting distribution undertakings serving Kamloops, Kelowna, Nanaimo, Penticton, Prince George, Terrace, Vancouver (including Lower Mainland and Fraser Valley), Vernon and Victoria, British Columbia

1. The licensee is authorized to distribute, at its option, CFTO-TV (CTV) and CIII-TV (Global) Toronto, and CKND-TV (Global) and CKY-TV (CTV) Winnipeg, as part of its discretionary service in Kamloops, Kelowna, Nanaimo, Penticton, Prince George, Terrace, Vancouver, Vernon and Victoria.
2. The licensee is authorized to distribute, at its option, CHEK-TV (Global) Victoria as part of its discretionary service in Vancouver, Prince George and Terrace.
3. The licensee is authorized to distribute, at its option, CHAN-TV (Global) Vancouver as part of its discretionary service in Kelowna, Kamloops, Penticton, Victoria, Nanaimo and Vernon.
4. The licensee is authorized to distribute, at its option, CIVI-TV (IND) Victoria as part of its discretionary service in Vancouver, Vernon, Prince George, Kelowna, Kamloops, Penticton and Terrace.
5. The licensee is authorized to distribute, at its option, CKVU-TV (IND) Vancouver as part of its discretionary service in Victoria, Nanaimo, Vernon, Prince George, Kelowna, Kamloops, Penticton and Terrace.
6. In Kamloops, only one English-language CBC station, CFJC-TV Kamloops, will be carried. The service will also carry CHBC-TV Kelowna (Global).
7. In Kamloops and Prince George, the licensee will carry only covered-over signals of CHAN-TV Vancouver (Global) and CIVT-TV Vancouver (CTV), and replace the covered commercial content with commercials sold by CFJC-TV Kamloops or CKPG-TV Prince George.
8. The licensee is authorized to distribute, at its option, CIVT-TV (CTV) Vancouver as part of its basic service in Kelowna, and to distribute, at its option, KVOX-TV (IND) Bellingham and KSTW (IND) Tacoma/Seattle, Washington, as part of its basic service in Vancouver and Victoria. The licensee is also authorized to receive KSTW from a Canadian source that is not a licensed Canadian satellite relay distribution undertaking (SRDU).

9. The licensee is authorized to distribute, at its option and as part of the basic service, the signals of KOMO-TV (ABC), KIRO-TV (CBS) and KING-TV (NBC) Seattle, KCPQ (FOX) Tacoma, and KCPS-TV (PBS) Seattle, or alternatively for each signal, the signal of a different affiliate of the same network located in the same time zone as that of the licensed area and received from a licensed SRDU.
10. 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 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 *Broadcasting Distribution Regulations* regarding simultaneous substitution apply also in the case of U.S. 4+1 and distant Canadian signals.

11. The licensee is authorized to receive, directly through its own facilities, at its option, any of the distant Canadian signals that are otherwise required to be received from a licensed SRDU. The licensee is not authorized to use any facilities other than its own for the reception of these signals. The condition does not authorize the licensee to provide these services to any other licensed or exempt distribution undertaking.
12. The licensee is relieved of the requirement under section 25(a) of the *Broadcasting Distribution Regulations* regarding the distribution of certain services on restricted channels. It may distribute a programming service referred to in section 18(5) or section 19(f) of the *Broadcasting Distribution Regulations* on a restricted channel only where the licensee has the prior written agreement of the programming service.

13. In order to ensure that neither TELUS Corporation, nor its Board of Directors can exercise control or influence over programming decisions, an independent programming committee must be established in accordance with the following:
- a) There shall be a committee of three persons to be known as the Programming Committee which shall be responsible for making all programming decisions of the licensed undertaking.
 - b) “Programming decisions” means all decisions of any kind relating to or affecting television programming broadcast by the licensed undertaking and includes all decisions relating to the content and presentation of the licensed undertaking’s programming.
 - c) The directors of the licensee, by enactment of the appropriate by-law, will delegate to the Programming Committee the sole and exclusive responsibility and authority to make all programming decisions on behalf of the licensed undertaking, and to supervise the implementation thereof.
 - d) The members of the Programming Committee shall be Canadian citizens, ordinarily resident in Canada.
 - e) No member of the Programming Committee may be either a director, an officer, or a current or former employee of TELUS Corporation and no member of the Programming Committee may be either a director, an officer, or a current or former employee of any non-Canadian shareholder of the licensed undertaking.
 - f) At least one member of the Programming Committee shall be an independent member having no links to the licensed undertaking, its affiliates or its shareholders.
 - g) A quorum of the Programming Committee shall be made by a majority of members present at a meeting of the Programming Committee, either in person or by telephone.
 - h) Any decisions respecting removal of members of the Programming Committee shall be made by majority vote of the Programming Committee.
 - i) The Programming Committee shall ensure that the programming will be in conformity with any applicable conditions, regulations and policies of the Commission, as well as with the *Broadcasting Act*.
 - j) No change may be made to these criteria unless prior Commission approval is obtained.

14. 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.

Appendix 4 to Broadcasting Decision CRTC 2007-33

Conditions of licence

Class 1 regional licence - Cable broadcasting distribution undertakings serving Baie-Comeau, Gaspé, Montmagny, Mont-Tremblant, Rimouski, Saint-Georges, Sainte-Marie and Sept-Îles, and their surrounding areas, Quebec.

1. The licensee is authorized to distribute the distant signal CFTU-TV (Canal Savoir) Montréal, as part of the basic service.
2. The licensee is authorized to distribute, at its option, as part of either its basic service or its discretionary service, the signals of WBZ-TV (CBS), WHDH-TV (NBC), WCVB-TV (ABC), WFXT (FOX) and WGBH-TV (PBS) Boston, Massachusetts, or the signal of a different affiliate of the same network located in the same time zone.
3. The licensee is authorized to distribute, on a discretionary basis, the signal of WWBI-TV (PAX) Burlington/Plattsburgh on the Mont-Tremblant and surrounding area undertaking.
4. The licensee is authorized to distribute, on a discretionary basis, any of the Canadian television signals set out in the *List of Part 3 eligible satellite services* contained in *Revised lists of eligible satellite services*, as amended from time to time.
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 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 *Broadcasting Distribution Regulations* regarding simultaneous substitution apply also in the case of U.S. 4+1 and distant Canadian signals.

6. The licensee is authorized to receive, directly through its own facilities, at its option, any of the distant Canadian signals that are otherwise required to be received from a licensed satellite relay distribution undertaking. The licensee is not authorized to use any facilities other than its own for the reception of these signals. This condition does not authorize the licensee to provide these services to any other licensed or exempt distribution undertaking.
7. The licensee is relieved of the requirement under section 25(a) of the *Broadcasting Distribution Regulations* regarding the distribution of certain services on restricted channels. It may distribute a programming service referred to in section 18(5) or section 19(f) of the *Broadcasting Distribution Regulations* on a restricted channel only where the licensee has the prior written agreement of the programming service.
8. In order to ensure that neither TELUS Corporation, nor its Board of Directors can exercise control or influence over programming decisions, an independent programming committee must be established in accordance with the following:
 - a) There shall be a committee of three persons to be known as the Programming Committee which shall be responsible for making all programming decisions of the licensed undertaking.
 - b) “Programming decisions” means all decisions of any kind relating to or affecting television programming broadcast by the licensed undertaking and includes all decisions relating to the content and presentation of the licensed undertaking’s programming.
 - c) The directors of the licensee, by enactment of the appropriate by-law, will delegate to the Programming Committee the sole and exclusive responsibility and authority to make all programming decisions on behalf of the licensed undertaking, and to supervise the implementation thereof.
 - d) The members of the Programming Committee shall be Canadian citizens, ordinarily resident in Canada.
 - e) No member of the Programming Committee may be either a director, an officer, or a current or former employee of TELUS Corporation and no member of the Programming Committee may be either a director, an officer, or a current or former employee of any non-Canadian shareholder of the licensed undertaking.

- f) At least one member of the Programming Committee shall be an independent member having no links to the licensed undertaking, its affiliates or its shareholders.
 - g) A quorum of the Programming Committee shall be made by a majority of members present at a meeting of the Programming Committee, either in person or by telephone.
 - h) Any decisions respecting removal of members of the Programming Committee shall be made by majority vote of the Programming Committee.
 - i) The Programming Committee shall ensure that the programming will be in conformity with any applicable conditions, regulations and policies of the Commission, as well as with the *Broadcasting Act*.
 - j) No change may be made to these criteria unless prior Commission approval is obtained.
9. 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.

Appendix 5 to Broadcasting Decision CRTC 2007-33

Conditions of licence

National English-language video-on-demand service

1. The licensee shall adhere to the *Pay Television Regulations, 1990*, with the exception of section 3(2)(d) (commercial messages) and section 4 (logs and records).
2. The licensee shall not include as part of its video-on-demand offering any program containing a commercial message except where:
 - a) the message was already included in a program previously broadcast by a Canadian programming service;
 - b) the program's inclusion as part of the video-on-demand offering is in accordance with the terms of a written agreement entered into with the operator of the Canadian programming service that broadcast the program; and
 - c) the program is offered to subscribers on an on-demand basis at no charge.
3. The licensee shall maintain for a period of one year, and submit to the Commission upon request, a detailed list of the inventory available on each file server, identifying each program by programming category and by country of origin, and indicating the period of time that each program was on the server and available to subscribers.
4. Except as authorized by the Commission, the broadcasting undertaking licensed herein shall be operated in fact by the licensee itself.
5. The licensee shall ensure that, at all times:
 - a) not less than 5% of the English-language feature films and not less than 8% of the French-language feature films in the inventory available to subscribers are Canadian;
 - b) the feature film inventory includes all new Canadian feature films that are suitable for video-on-demand exhibition and which meet the approved *Industry code of programming standards and practices governing pay, pay-per-view and video-on-demand services*; and
 - c) not less than 20% of all programming other than feature films in the inventory available to subscribers is Canadian.

6. The licensee shall contribute 5% of its gross annual revenues to an existing Canadian program production fund administered independently of its undertaking.

For the purpose of this condition:

- a) “gross annual revenues” shall be 50% of the total revenues received from customers of the broadcasting distribution undertaking distributing the video-on-demand service, when the video-on-demand service is a “related service”;
 - b) a “related service” is one in which the broadcasting distribution undertaking distributing the video-on-demand service, or any of its shareholders owns, directly or indirectly, 30% or more of the equity of the video-on-demand service;
 - c) “gross annual revenues” shall be the total amount received from the broadcasting distribution undertaking distributing the video-on-demand service, when the video-on-demand service is not a “related service”.
7. The licensee shall ensure that not less than 25% of the titles promoted each month on its barker channel are Canadian titles.
 8. The licensee shall remit to the rights holders of all Canadian films 100% of revenues earned from the exhibition of these films.
 9. The licensee shall not enter into an affiliation agreement with the licensee of a distribution undertaking unless the agreement incorporates a prohibition against linkage of its service with any non-Canadian discretionary service.
 10. No later than 1 September 2008 and until the end of the licence term, the licensee shall caption at least 90% of all titles in its inventory.
 11. The licensee shall adhere to the guidelines on gender portrayal set out in the Canadian Association of Broadcasters’ *Sex-role portrayal code for television and radio programming*, as amended from time to time and approved by the Commission. The application of the foregoing condition of licence will be suspended as long as the licensee is a member in good standing of the Canadian Broadcast Standards Council.
 12. The licensee shall adhere to the *Pay television and pay-per-view programming code regarding violence*, as amended from time to time and approved by the Commission.

The licensee shall adhere to the *Industry code of programming standards and practices governing pay, pay-per-view and video-on-demand services*, as amended from time to time and approved by the Commission.