



Broadcasting Decision CRTC 2008-347

Ottawa, 10 December 2008

Rogers Broadcasting Limited

Toronto, Ontario

*Application 2008-0540-1, received 10 April 2008
Public Hearing in the National Capital Region
24 September 2008*

CITY News (Toronto) – Category 2 specialty service

*The Commission **approves** an application for a broadcasting licence to operate a new English-language regional Category 2 specialty programming undertaking to serve Greater Toronto. For the purpose of this decision, Greater Toronto includes the City of Toronto and the regions of Durham, York, Peel and Halton extending from Burlington in the west to Clarington in the east and to Brock in the north.*

Introduction

1. Rogers Broadcasting Limited (Rogers) filed an application for a broadcasting licence to provide CITY News (Toronto), a regional English-language Category 2 specialty service that would offer 24-hour-a-day news and information programming sourced from its local television and radio news properties. The programming would consist of a mix of local news, traffic, weather, business, sports and entertainment information devoted exclusively to residents in the Greater Toronto and commuting areas.
2. All of the programming would be drawn from the following categories as set out in item 6 of Schedule 1 to the *Specialty Services Regulations, 1990*: 1 News, 2(a) Analysis and interpretation, 2(b) Long-form documentary, 3 Reporting and actualities, 5(b) Informal education/Recreation and leisure, 6(a) Professional sports, 6(b) Amateur sports, 8(a) Music and dance other than music video programs or clips, 11 General entertainment and human interest, 12 Interstitials, 13 Public service announcements and 14 Infomercials, promotional and corporate videos. Approximately 5% of the total schedule would consist of programming from categories: 2(b), 3, 5(b), 6, 8(a), 12, 13 and 14. The applicant indicated its willingness to accept a condition of licence prohibiting the broadcasting of live sporting events.
3. The Commission has implemented a competitive, open-entry approach to licensing Category 2 services. While the Commission does not consider the impact that a Category 2 service might have on an existing Category 2 service, it does seek to ensure that Category 2 services do not compete directly with any existing Category 1 or analog pay or specialty television service. The Commission examines each application in detail, taking into consideration the proposed nature of service and the unique circumstances of the genre in question.

4. In the present case, the Commission received interventions by Pelmorex Communications Inc. (Pelmorex) and CTVglobemedia Inc. (CTVgm) in opposition to this application. Pelmorex owns the national analog specialty service The Weather Network while CTVgm owns the regional analog specialty service CablePulse 24 (CP24), originally known as Pulse 24. The interventions and the applicant's reply to the interventions can be found on the Commission's website at www.crtc.gc.ca under "Public Proceedings."
5. After considering the positions of the parties, the Commission finds that the issue to be determined in its evaluation of this application is whether the proposed service would be directly competitive with existing Category 1 or analog pay or specialty services.

Would CITY News (Toronto) be directly competitive with existing Category 1 or analog pay or specialty services?

6. Pelmorex submitted that CITY News (Toronto) would air a substantial amount of weather programming and would therefore compete directly with The Weather Network for viewers and advertisers. The Commission finds, however, that the programming service to be offered by CITY News (Toronto) would be much broader in focus than that provided by The Weather Network, which is devoted to weather information. Accordingly, the Commission is satisfied that CITY News (Toronto) would not be directly competitive with The Weather Network.
7. For its part, CTVgm argued that CITY News (Toronto) would offer the same type of programming, target the same audience and be distributed in the same area as CP24. CTVgm explained that CP24's programming has always focused on the City of Toronto given its essential role in the Southern Ontario region as the centre of industry and government. The intervener further noted that, pursuant to an agreement between itself and Rogers, *CityNews*, a Rogers' program that would form the basis for the proposed service, airs on CP24 three times daily.
8. The Commission notes however that CITY News (Toronto) would provide a niche news service targeted to Greater Toronto. In contrast, CP24's mandate is and has always been to serve the region of Southern Ontario. The definition of CP24's nature of service set out by condition of licence in Decision 96-609, its original licensing decision, specified that it was to "provide a regional (Ontario) English-language specialty service." At the time of CP24's licence renewal, the Commission, in Broadcasting Decision 2004-21, refined the nature of service condition of licence by specifying that the licensee provide a "regional (Ontario) English-language specialty television service devoted to news and information, with a focus on Southern Ontario." Furthermore, in Decision 2000-438, which authorized CP24 to solicit local advertising in the Toronto market, the Commission affirmed that:

It remains unchanged that, by condition of licence, the licensee must provide a regional (Ontario) English-language service, and the Commission therefore expects that the existing orientation of the service will not be altered.

9. The Commission is satisfied that CITY News (Toronto), which will be devoted exclusively to residents in Greater Toronto, will not be directly competitive with CP24, which is licensed to serve the region of Southern Ontario. Furthermore, the Commission has recently expressed concern about the decline in local news production in Canada. The Commission consider that CITY News (Toronto) will enhance the diversity of local news production in Greater Toronto.
10. CTVgm also expressed concern that, because Rogers is the dominant cable distributor in Southern Ontario, its proposed service would receive carriage and priority channel placement, making it more widely distributed than CP24, which could have a substantial negative impact on CP24's distribution. In response, Rogers pointed out that, unlike CITY New (Toronto), The Weather Network and CP24 both enjoy mandatory carriage, low channel placement, high brand awareness and are authorized to collect a basic wholesale rate.
11. The Commission notes that section 9 of the *Broadcasting Distribution Regulations* (the Distribution Regulations) prohibits a licensee of a broadcasting distribution undertaking (BDU) from giving undue preference to any person, including itself or subjecting any person to an undue disadvantage. Accordingly, if Rogers' cable BDUs were to grant more favourable terms to the carriage of its own news service than to CP24, Rogers could be subject to allegations of undue preference, contrary to section 9 of the Distribution Regulations.

Conclusion

12. Based on the foregoing, the Commission is satisfied that the application is consistent with Public Notice 2000-6. Furthermore, the Commission is satisfied that the application is in conformity with all applicable terms and conditions announced in Public Notice 2000-171-1. Accordingly, the Commission **approves** the application by Rogers Broadcasting Ltd. for a broadcasting licence to operate the regional, English-language, Category 2 specialty programming undertaking CITY News (Toronto) to serve Greater Toronto. Since the applicant did not define Greater Toronto and commuting areas, the Commission determines that it is appropriate in the circumstances to specify that, for the purpose of this decision, the Commission considers Greater Toronto to include the City of Toronto, and the regions of Durham, York, Peel and Halton extending from Burlington in the west, to Clarington in the east and to Brock in the north. The terms and **conditions of licence** for new undertaking are set out in the appendix to this decision.

Secretary General

Related documents

- *Niagara News TV – Category 2 specialty service*, Broadcasting Decision CRTC 2007-56, 8 February 2007

- *A new policy with respect to closed captioning*, Broadcasting Public Notice CRTC 2007-54, 17 May 2007
- *CablePulse24 – Licence Renewal*, Broadcasting Decision CRTC 2004-21, 21 January 2004
- *Introductory statement – Licensing of new digital pay and specialty services – Corrected Appendix 2*, Public Notice CRTC 2000-171-1, 6 March 2001
- *Advertising on Cable Pulse 24*, Decision CRTC 2000-438, 14 November 2000
- *Licensing framework policy for new digital pay and specialty services*, Public Notice CRTC 2000-6, 13 January 2000
- *Pulse 24 – Approved*, Decision CRTC 96-609, 4 September 1996

This decision 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 to Broadcasting Decision CRTC 2008-347

Terms and conditions of licence for the Category 2 specialty programming undertaking CITY News (Toronto)

Terms

A licence will be issued once the applicant has satisfied the Commission, with supporting documentation, that the following requirements have been met:

- the applicant has entered into a distribution agreement with at least one licensed distributor; and
- the applicant has informed the Commission in writing that it is prepared to commence operations. The undertaking must be operational at the earliest possible date and in any event no later than 36 months from the date of this decision, unless a request for an extension of time is approved by the Commission before 10 December 2011. In order to ensure that such a request is processed in a timely manner, it should be submitted at least 60 days before that date.

The licence will expire 31 August 2015.

Conditions of licence

1. The licence will be subject to the conditions set out in *Introductory statement – Licensing of new digital pay and specialty services – Corrected Appendix 2*, Public Notice CRTC 2000-171-1, 6 March 2001, except for condition 4d) which will not apply, and condition 4a) which is replaced by:

Except as otherwise provided in subparagraphs b) and c), the licensee shall not broadcast more than twelve (12) minutes of advertising material during each clock hour, no more than six (6) minutes of which may consist of local advertising.

2. The licensee shall provide a regional (Greater Toronto) English-language Category 2 specialty programming service consisting of a mix of local news, traffic, weather, business, sports and entertainment information devoted exclusively to residents in Greater Toronto.

For the purpose of this condition of licence, Greater Toronto includes the City of Toronto and the regions of Durham, York, Peel and Halton extending from Burlington in the west, to Clarington in the east, and to Brock in the north.

3. The programming shall be drawn exclusively from the following categories set out in item 6 of Schedule I to the *Specialty Services Regulations, 1990*, as amended from time to time:

1 News

2 (a) Analysis and interpretation

(b) Long-form documentary

3 Reporting and actualities

5 (b) Informal education/Recreation and leisure

6 (a) Professional sports

(b) Amateur sports

8 (a) Music and dance other than music video programs or clips

11 General entertainment and human interest

12 Interstitials

13 Public service announcements

14 Infomercials, promotional and corporate videos

4. The licensee shall not broadcast live coverage of sporting events.
5. The licensee shall broadcast not less than 90% of all programming during the broadcast week in the English-language.
6. The licensee shall caption 100% of its programs over the broadcast day, consistent with the approach set out in *A new policy with respect to closed captioning*, Broadcasting Public Notice CRTC 2007-54, 17 May 2007.
7. In order to ensure that the licensee complies at all times with the *Direction to the CRTC (Ineligibility of non-Canadians)*, P.C. 1997-486, 8 April 1997, as amended by P.C. 1998-1268, 15 July 1998, the licensee shall file, for the Commission's prior review, a copy of any programming supply agreement and/or licence trademark agreement it intends to enter into with a non-Canadian party.

For the purposes of the conditions of this licence, including condition of licence 1, *broadcast day* means the period of up to 18 consecutive hours, beginning each day not earlier than six o'clock in the morning and ending not later than one o'clock in the morning of the following day, as selected by the licensee, or any other period approved by the Commission.