



Broadcasting Decision CRTC 2010-821

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Route reference: 2010-497

Additional references: 2010-497-1, 2010-497-2

Ottawa, 5 November 2010

Novus Entertainment Inc.
Metro Vancouver, British Columbia

Application 2009-1606-7, received 26 November 2009
Public Hearing in Calgary, Alberta
20 September 2010

Class 1 terrestrial broadcasting distribution undertaking serving Metro Vancouver – Licence renewal and amendments

*The Commission **renews** the broadcasting licence for the Class 1 terrestrial broadcasting distribution undertaking serving Metro Vancouver, British Columbia from 1 December 2010 to 31 August 2015. This short-term renewal will enable the Commission to review, at an earlier date, the licensee's compliance with the Broadcasting Distribution Regulations, any applicable Orders, and its conditions of licence.*

*The Commission further **approves** the licensee's proposal to add a condition of licence that would allow it to devote its entire contribution to Canadian programming to its community channel until it has 20,000 subscribers on 31 August of two consecutive broadcast years. However, the Commission **denies** the licensee's proposal to add a condition of licence exempting it from making contributions to the Local Programming Improvement Fund. The hearing panel reiterates the additional considerations attached to Various Class 1 terrestrial broadcasting distribution undertakings in western Canada – Licence renewals and amendment, *Broadcasting Decision CRTC 2010-820*, 5 November 2010.*

The application

1. The Commission received an application by Novus Entertainment Inc. (Novus) to renew the broadcasting licence for its Class 1 terrestrial broadcasting distribution undertaking (BDU) serving Metro Vancouver, which expires 30 November 2010.
2. Novus also proposed to add conditions of licence that would allow it to devote its entire contribution to Canadian programming to its community channel and to be exempt from contributions to the Local Programming Improvement Fund (LPIF).

3. In a letter dated 19 March 2010, Novus stated that it was willing to accept a condition of licence requiring that it provide one or more simple means of accessing described programming, whether in an open or embedded format, that require little or no visual acuity.
4. The Commission received an intervention from Rogers Cable Communications Inc. (Rogers) opposing the addition of the conditions of licence set out above relating to contributions to Canadian programming and to the LPIF. The intervention and the applicant's reply are available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Commission's analysis and determinations

5. After examining the application, the intervention, Novus' reply to the intervention, and information provided at the public hearing, the Commission considers that it is appropriate to address the following issues:
 - non-compliance with the requirement to distribute The Accessible Channel;
 - non-compliance with the requirement to distribute certain campus radio stations;
 - the request to devote the entire required contribution to Canadian programming to Novus' community channel;
 - the request for relief from contributions to the LPIF; and
 - implementation of the Commission's policy regarding accessibility of broadcasting services.

Non-compliance with the requirement to distribute The Accessible Channel

6. Distribution Order 2007-1, which was set out in Appendix 2 to Broadcasting Decision 2007-246 issued 24 July 2007, required Class 1 distribution undertakings, among others, to distribute The Accessible Channel as part of the digital basic service effective 24 January 2008, or when the service began operation, should this be after 24 January 2008.
7. Although The Accessible Channel began operation on 29 January 2009, Novus did not begin to distribute it until 3 May 2010.
8. The licensee submitted that the delay had been caused by difficulties in obtaining reasonably priced equipment necessary to allow it to distribute The Accessible Channel.
9. While acknowledging the difficulties experienced by the licensee, the Commission notes that The Accessible Channel launched 18 months after the publication of Distribution Order 2007-1. In the Commission's view, Novus had ample time to take the measures necessary to ensure compliance with the distribution order. Instead, after

The Accessible Channel was in operation, Novus took approximately an additional 15 months before complying with Distribution Order 2007-1.

10. Novus submitted, in its response to an undertaking dated 22 September 2010, that it had worked very hard to bring all of its services into compliance and that “late compliance is not non-compliance.” The Commission considers that late compliance does constitute non-compliance. In this instance, although The Accessible Channel is now being distributed, it in no way compensates for the lost opportunity for this service to be distributed and made available to subscribers during that 15-month period. The Commission therefore reminds the licensee that, when a regulation or an order is put in place, it is the licensee’s responsibility to comply on the effective date of the requirement.
11. In light of the above, the Commission finds that Novus was in non-compliance with the terms of Distribution Order 2007-1 during the current licence term.

Non-compliance with the requirement to distribute certain campus radio stations

12. Section 22(1)(a) of the Broadcasting Distribution Regulations (the Regulations) states:

Except as otherwise otherwise provided under a condition of its licence, a Class 1 licensee, and any Class 2 licensee that elects to distribute an audio programming service in a licensed area, shall distribute in the licensed area the programming services of each local radio station that is a radio programming undertaking licensed as a campus station, a community station or a native station.

13. The Commission indicated, in Broadcasting Public Notices 2008-100 and 2010-499, that it intends to eliminate section 22 of the Regulations. However, this change is not scheduled to come into effect until 1 September 2011.
14. Under section 22(1)(a) of the Regulations, Novus has been required, throughout the licence term, to distribute the signals of the campus radio stations CJSF-FM Burnaby (Simon Fraser University), CITR-FM Vancouver (University of British Columbia) as well as the campus radio station serving Burnaby operated by the B.C.I.T. Radio Society. However, Novus confirmed that it only began to distribute these signals in April and May of 2010.
15. In its application, the licensee indicated that the delay in distribution was because the signals of the stations were very weak and that it needed to obtain roof rights near its network close to the campuses in order to transmit the signals by fibre to its head-end. However, at the hearing, Novus stated that it had distributed these stations at one time, but ceased to do so for a period of a year and a half.
16. The Commission notes that the three campus radio stations have been in operation for many years. As such, Novus did not have the authority to cease distribution of these stations and was therefore required to carry them on an on-going basis.

17. Accordingly, the Commission finds that Novus was in non-compliance with section 22(1)(a) of the Regulations during the current licence term.

The request to devote the entire contribution to Canadian programming to Novus' community channel

18. Novus requested the following condition of licence:

The licensee, as a distributor of its own community programming on the community channel and having less than 20,000 subscribers on 31 August 2009, is relieved from the requirement of section 29(5) of the *Broadcasting Distribution Regulations* from making a contribution to Canadian programming that is the greater of

(a) 5% of its gross revenues derived from broadcasting activities in the broadcast year, less any contribution to local expression made by the licensee in that year; and

(b) 3% of its gross revenues derived from broadcasting activities in that broadcast year

and will be permitted to devote 5% of its gross revenues derived from broadcasting activities in the broadcast year to local expression which can be 100% satisfied by the distribution of its own community programming on its own community channel until it has 20,000 or more subscribers on 31 August of two consecutive fiscal years. Section 29(5) will then govern the licensee's contributions for the following broadcast year.

19. This condition of licence would permit Novus to devote the entire contribution to Canadian programming to its community channel until such time as it has more than 20,000 subscribers on 31 August of two consecutive fiscal years. Novus submitted that such an approach is appropriate given its small size and that it simply extends flexibility already provided to smaller BDUs.

20. Rogers opposed the addition of this condition of licence. It noted that Novus will continue to operate as a Class 1 BDU and should therefore be subject to the same regulatory obligations that are imposed on all other Class 1 BDUs in Canada, including contribution requirements.

21. Novus replied to Rogers' intervention by arguing that it is one of the few BDUs in Canada operating with less than 20,000 subscribers in a large urban centre in competition with a Class 1 incumbent BDU. Novus stated that this situation leaves it with limited resources to provide important services to its subscribers, such as the community channel. Novus stated that it must be able to devote its entire contribution to Canadian programming to its community channel in order to continue to provide such services.

22. The Commission acknowledges that the licensee has limited resources, given the fact that it has to operate as a Class 1 BDU, despite having less than 20,000 subscribers. It also recognizes that these limited resources could potentially hamper Novus' capacity to offer a community channel.
23. Given Novus' limited resources, and since the Commission recognizes the importance of community programming to the Canadian broadcasting system, it considers it appropriate to approve Novus' request to devote its entire contribution to Canadian programming to the community channel. The Commission notes that the approval of this condition of licence could provide additional funds to fulfil the requirement to caption programming on the community channel, which is addressed later in this decision.
24. The Commission notes that Novus' proposed condition of licence made reference to "fiscal" years, while the requirement from which it is requesting relief refers to "broadcast" years. Novus did not object to amending its proposed condition of licence to replace the word "fiscal" with the word "broadcast."
25. Accordingly, the Commission **approves** the addition of a condition of licence permitting the licensee to devote its entire contribution to Canadian programming to its community channel until it has 20,000 or more subscribers on 31 August of two consecutive broadcast years. The **condition of licence** is set out in the appendix to this decision.
26. The Commission reminds Novus that this condition of licence comes into effect on 1 December 2010, that is, the first day of the new licence term. Therefore, the licensee must comply with section 29(5) of the Regulations for the months of September, October and November 2010.

The request for relief from contributions to the Local Programming Improvement Fund

27. Novus requested the following condition of licence:

The licensee is relieved from the requirements of section 29.1(1) to make a contribution of 1.5% of its gross revenues derived from broadcasting activities in the broadcast year to Canadian programming, as a contribution to be made to the Local Programming Improvement, until it has 20,000 or more subscribers on 31 August of two consecutive fiscal years. Section 29.1(1) will then govern the licensee's contribution for the following broadcast year.

28. This condition of licence would permit Novus to be relieved from the requirement to contribute to the LPIF, until such time as it has more than 20,000 subscribers on 31 August of two consecutive fiscal years.
29. Novus stated that it had been relieved from the requirements of section 29.1(1) for the 2009-2010 broadcast year pursuant to section 29.1(2) since it had less than 20,000 subscribers as of 31 August 2009. Novus further stated that the Regulations provide it with the option of seeking relief from the requirement in future years. Novus

advanced its view that the “intention of the Commission is to provide relief to smaller licensees who are not eligible for an exemption from licensing requirements.”

30. Rogers opposed the addition of this condition of licence. It noted that Novus will continue to operate as a Class 1 BDU and should therefore be subject to the same regulatory obligations that are imposed on all other Class 1 BDUs in Canada, including contribution requirements.
31. Novus replied to Rogers’ intervention by reiterating that its scarce resources were limiting its ability to offer important services to its subscribers and that relief from contributions to the LPIF was necessary to permit Novus to offer such services.
32. Given that the proposed condition of licence would result in an overall reduction in financial support for Canadian programming, the Commission **denies** Novus’ request for relief from contributions to the LPIF.
33. The Commission reminds Novus that its obligation to make contributions to the LPIF were applicable as of 1 September 2010, that is, the date the relief provided by section 29.1(2) of the Regulations ended.

Implementation of the Commission’s determinations regarding accessibility of broadcasting services

34. In Broadcasting and Telecom Regulatory Policy 2009-430 (the Accessibility Policy), the Commission stated its intention to impose on BDUs, at the time of their licence renewals, a number of requirements and expectations pertaining to customer service, access to described video and accessibility of programming. Further, in Broadcasting Regulatory Policy 2010-622 (the Community Television Policy), the Commission stated that it intended to impose conditions of licence requiring licensed BDUs that operate community channels to caption 100% of original licensee-produced programming by the end of their next licence term. The Commission also indicated that it expects licensed BDUs to ensure that 100% of original access programming on the community channel is captioned by the end of the next licence term. Finally, the Commission stated that it intended to impose conditions of licence requiring licensed BDUs that operate a community channel to provide audio description for all information programs and for news programming (that is, the voice-over of key textual, graphic design and still image elements, such as phone numbers, stock information or weather maps that are posted on the screen).
35. With respect to closed captioning on its community channel, Novus indicated at the public hearing that it would be in a position to caption 100% of its original licensee-produced programming by the end of a seven-year licence term. However, Novus stated that, if the Commission were to grant a licence term that was any less than seven years, it would not be in a financial position to caption 100% of its original licensee-produced programming by the end of its licence term. The Commission asked Novus to provide financial evidence to support its position on the matter.

36. Upon review of the financial information provided by Novus, the Commission is not convinced that a departure from the Community Television Policy is justified in this case. The Commission therefore finds that it is appropriate to require Novus, by **condition of licence**, to caption 100% of its original licensee-produced programming by the end of its licence term. The Commission also expects Novus to ensure that 100% of original access programming is captioned by the end of its licence term. As mentioned earlier in this decision, the Commission's approval of Novus' request to devote its entire contribution to Canadian programming to its community channel could provide additional funds to fulfill the requirement to caption programming on the community channel.
37. With respect to audio description, Novus committed to providing audio description for programming on its community channel during the course of its licence term. Accordingly, the Commission finds that it is appropriate to require Novus, by **condition of licence**, to provide audio description for all key elements of information programs, including news programming. For the purposes of this condition, "audio description" refers to announcers reading aloud the key textual and graphic information that is displayed on screen during information programs.
38. Novus stated its willingness to accept a **condition of licence** requiring that it provide one or more simple means of accessing described programming, whether in an open or embedded format. The condition of licence is set out in the appendix to this decision.
39. Novus also committed to meet most of the requirements regarding customer service and information set out in Broadcasting and Telecom Policy 2009-430. However, with respect to the accessibility of Novus' interactive voice response system (IVRS), the Commission notes that the Accessibility Policy stated that Class 1 BDUs must make their general call centres accessible to the point of providing a reasonable accommodation to persons with disabilities by 21 July 2011. Based on the information on the record, the Commission does not consider that Novus clearly demonstrated that its IVRS is adequately accessible for persons with disabilities by, for example, providing an option for the caller to speak directly with a customer service representative.
40. The Commission considers that it is appropriate to impose a **condition of licence** relating to Novus' IVRS to ensure that this service is provided for the purpose of ensuring that persons with disabilities are able to access Novus' customer services by phone. The condition of licence is set out in the appendix to this decision.
41. Additionally, consistent with the Accessibility Policy and as committed to by the licensee, Novus is required to:
- promote information on all of its disability-specific services and products, in the accessible manner(s) of their choice;

- incorporate an easy-to-find home page link to the special needs/disability sections of its website, if its website includes such sections;
- make the information on its website accessible to the point of providing a reasonable accommodation for persons with disabilities by 23 July 2012 (examples of what the Commission considers to be reasonable accommodations are listed in paragraph 66 in the Accessibility Policy);
- ensure that, where customer service functions on its website are not accessible, persons with disabilities will not incur a charge or otherwise be disadvantaged if they use an alternate avenue of customer service;
- make accessible any customer service functions that are available solely over the its website by 23 July 2012;
- make its general call centers accessible to the point of providing a reasonable accommodation to persons with disabilities by training customer service representatives in handling enquiries from person with disabilities and familiarizing them with the service provider's products and services for persons with disabilities.

Other matters

42. During the previous licence term, Novus was authorized, by condition of licence, to receive KSTW-TV (IND) Tacoma, Washington from a satellite service that is not a licensed Canadian satellite relay distribution undertaking (SRDU). However, in light of the issuance of Broadcasting Regulatory Policy 2009-639, in which the Commission eliminated from the lists of eligible satellite services the requirement to receive certain services from a licensed SRDU, such a condition of licence is no longer necessary. Therefore, the Commission is deleting this condition from Novus' licence.
43. The Commission reminds the licensee that it is required to comply with the Community Television Policy.

Conclusion

44. In light of the foregoing, the Commission **renews** the broadcasting licence for the Class 1 terrestrial broadcasting distribution undertaking serving Metro Vancouver from 1 December 2010 until 31 August 2015. This short-term renewal will allow the Commission to review, at an earlier date, the applicant's compliance with the *Broadcasting Distribution Regulations*, any applicable orders, and its conditions of licence. Further, as indicated above, the Commission **approves** the licensee's proposal to add a condition of licence that would allow it to devote its entire contribution to Canadian programming to its community channel until it has 20,000 subscribers on 31 August of two consecutive broadcast years. However, the Commission **denies** the licensee's proposal to add a condition of licence exempting it from making contributions to the Local Programming Improvement Fund. The licence will be subject to the terms, **conditions of licence**, and expectations set out in the appendix to this decision.

Secretary General

Related documents

- *Community Television Policy*, Broadcasting Regulatory Policy CRTC 2010-622, 26 August 2010, as corrected by *Community Television Policy – correction*, Broadcasting Regulatory Policy CRTC 2010-622-1, 13 September 2010
- *Campus and community radio policy*, Broadcasting Regulatory Policy CRTC 2010-499, 22 July 2010
- *Amendments to the requirements set out in the lists of eligible satellite services*, Broadcasting Regulatory Policy CRTC 2009-639, 9 October 2009
- *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009
- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services – Regulatory policy*, Broadcasting Public Notice CRTC 2008-100, 30 October 2008
- *New digital specialty described video programming undertaking; Licence amendments; Issuance of various mandatory distribution orders*, Broadcasting Decision CRTC 2007-246, 24 July 2007

* *This decision is to be appended to the licence.*

Appendix to Broadcasting Decision 2010-821

Terms, conditions of licence, expectations and encouragements for the Class 1 terrestrial broadcasting distribution undertaking serving Metro Vancouver

Terms

The operation of this terrestrial broadcasting distribution undertaking is regulated pursuant to the *Broadcasting Distribution Regulations* and all related policies.

The licence will expire 31 August 2015.

Conditions of licence

1. The licensee is relieved from the requirement set out in section 7 of the *Broadcasting Distribution Regulations* as it pertains to the passing through of video description on an analog basis. The authority is subject to it providing, upon request, a complimentary digital set-top box to its analog cable subscribers who are blind or who have a visual impairment, to enable these subscribers to access video description on a digital basis.
2. The licensee is relieved from the requirement of section 25 of the *Broadcasting Distribution Regulations* to distribute CHEK-TV Victoria on an unrestricted channel. Should the quality of the signal deteriorate significantly, the licensee shall immediately undertake any necessary corrective action, including the distribution of the service on another channel.
3. The licensee is relieved from the requirement set out in section 29(5) of the *Broadcasting Distribution Regulations* (the Regulations). The licensee may devote 5% of its gross revenues derived from broadcasting activities in the broadcast year to local expression which can be entirely satisfied by devoting such revenues to the distribution of its own community programming on its own community channel until it has 20,000 or more subscribers on 31 August of two consecutive broadcast years. Section 29(5) of the Regulations will govern the licensee's contributions for the following broadcast years.
4. The licensee is authorized to distribute, at its option, the service of Télé-Québec provided that the originator of the programming service agrees in writing to such distribution.
5. The licensee is authorized to distribute, at its option, KIRO-TV (CBS), KING-TV (NBC) KOMO-TV (ABC) Seattle, KCPQ-TV (FOX) Tacoma and KCTS-TV (PBS) Seattle, Washington, as part of the basic service.
6. The licensee is authorized to distribute, at its option, KVOS-TV (IND) Bellingham and KSTW-TV (IND) Tacoma, Washington, as part of the basic service.

7. 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 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 Regulations regarding simultaneous substitution apply also in the case of U.S. 4+1 signals and distant Canadian signals.

8. The licensee is authorized to distribute the Shaw Cablesystems Limited (Shaw) ethnic and multicultural special programming service, subject to it obtaining the written agreement of Shaw before distributing any such programming. Approval is also subject to the condition of licence related to sponsorship credits as follows:

The licensee shall not distribute, as part of any ethnic and multicultural special programming service, any commercial message other than sponsorship credits combining no more than the logo, name, address, telephone number and type of activity or profession of the sponsor. The sponsorship credits may contain sound and/or visual images, whether moving or fixed. The sponsorship credits shall have no purpose other than to acknowledge, in a concise and direct manner, the sponsor's contribution and shall at no time constitute a detailed description or promotional device. The Commission reminds the licensee that no paid public service announcements may be distributed as part of this special programming service, other than those whose content conforms to the above-stated description of a permissible sponsorship credit.

9. The licensee shall provide one or more simple means of accessing described programming, whether in an open or embedded format, that requires little or no visual acuity.
10. The licensee shall caption 100% of original licensee-produced programming by the end of the licence term.

11. The licensee shall provide audio description for all the key elements of information programs, including news programming (that is, the voice-over of key textual, graphic design and still image elements, such as phone numbers, stock information, or weather maps that are posted on the screen).
12. The licensee shall ensure that its interactive voice response system is accessible to the point of reasonable accommodation for persons with disabilities, taking into account the needs of individuals with different disabilities, by 21 July 2011.

Expectations

1. The Commission expects the licensee to make information available in alternative formats to subscribers regarding, among other things, the programming and services offered and the channel line-up.
2. The Commission expects the licensee to ensure that subscribers are able to identify programming with described video in the electronic program guide.
3. The Commission expects the licensee to ensure that 100% of original access programming is captioned by the end of the licence term.

Encouragement

The Commission encourages the licensee to ensure that its set-top boxes are accessible to subscribers with vision and fine motor skill disabilities.

Employment equity

In accordance with *Implementation of an employment equity policy*, Public Notice CRTC 1992-59, 1 September 1992, the Commission encourages the licensee to consider employment equity issues in its hiring practices and in all other aspects of its management of human resources.

Additional considerations by the hearing panel

The hearing panel reiterates the additional considerations attached to *Various Class 1 terrestrial broadcasting distribution undertakings in western Canada – Licence renewals and amendment*, Broadcasting Decision CRTC 2010-820, 5 November 2010.