



Broadcasting Decision CRTC 2006-334

Ottawa, 7 August 2006

Novus Entertainment Inc.
Vancouver, British Columbia

Application 2006-0497-7
Broadcasting Public Notice CRTC 2006-63
19 May 2006

Distribution of additional signals on a discretionary digital basis

1. The Commission received an application by Novus Entertainment Inc. (Novus) to amend the broadcasting licence for its Class 1 cable broadcasting distribution undertaking (BDU) serving Vancouver, British Columbia.
2. Novus requested authority to distribute, as part of its basic service, the following non-Canadian services set out in the *List of Part 2 eligible satellite services* (the Part 2 List)¹:
 - The Arts & Entertainment Network (A&E);
 - Cable News Network (CNN);
 - CNN Headline News (CNN-2);
 - Consumer News and Business Channel (CNBC); and
 - Spike TV
3. Novus also requested authority to distribute the following services on a discretionary digital basis, as approved by the Commission for various cable BDUs in *Carriage of Canadian and U.S. 4+1 signals on a digital basis*, Decision CRTC 2000-437, 8 November 2000 (Decision 2000-437):
 - a) a second set of signals that provides the programming of the four U.S. commercial networks (CBS, NBC, ABC, FOX) and of the non-commercial PBS network (collectively, the U.S. 4+1 signals); and
 - b) any of the Canadian television signals set out in the *List of Part 3 eligible satellite services* (the Part 3 List)².
4. Novus is currently distributing the signals described above without authorization by the Commission.

¹ The revised lists are available on the Commission's web site at www.crtc.gc.ca under "Industries at a glance".

² Ibid.

Interventions

5. The Commission received interventions in connection with this application by Shaw Communications Inc. (Shaw), Rogers Cable Communications Inc. (Rogers), the Canadian Association of Broadcasters (CAB) and the Cable Public Affairs Channel (CPAC).
6. Shaw operates a Class 1 cable BDU serving Vancouver. Shaw submitted that it should be subject to the same regulatory requirements as Novus because they are each Class 1 cable licensees competing in the same market. Accordingly, Shaw stated that it would support Novus' request for authority to distribute the five non-Canadian signals from the Part 2 List on its basic service only if Shaw were also authorized to distribute non-Canadian satellite services as part of the basic service of its cable BDU serving Vancouver.
7. Rogers is the licensee of numerous cable BDUs serving various markets across Canada. In its intervention, Rogers indicated that it agreed with Shaw that licensees of BDUs should be subject to the same regulatory requirements.
8. The CAB contended that Novus had not provided any compelling reason to justify an exception to the *Broadcasting Distribution Regulations* (the Regulations) that would permit the licensee to offer non-Canadian services from the Part 2 List as part of its basic service.
9. Shaw, Rogers and the CAB did not oppose Novus' request for authority to distribute a second set of U.S. 4+1 signals as well as any Canadian television signal set out in Part 3 List.
10. For its part, CPAC expressed concern that Novus was not fulfilling its obligations with respect to the distribution of CPAC. In particular, the intervener questioned whether Novus was distributing CPAC's French-language version on an auxiliary audio channel as well as providing CPAC's French-language version on a distinct discretionary analog or digital channel.

Licensee's replies

11. In its response to Shaw, Rogers and the CAB, Novus withdrew its request for authority to distribute non-Canadian services from the Part 2 List on its basic service. Novus confirmed that it would delete A&E, CNN, CNN-2, CNBC and Spike TV from its basic service and offer these services as part of its discretionary service and linked with a Canadian pay television service, in accordance with *Distribution and linkage requirements for Class 1 and Class² licensees*, Broadcasting Public Notice CRTC 2005-119, 14 December 2005. Novus, nevertheless, indicated that it wished to maintain its request for authority to distribute a second set of U.S. 4+1 and distant Canadian signals.

12. In response to CPAC, Novus confirmed that it was distributing, as part of its basic service, CPAC's English-language version and providing the audio of CPAC's French-language version on an auxiliary audio channel. Novus made a commitment to add CPAC's French-language version to the cable BDU's digital discretionary service.

Commission's determination

13. The Commission considers that carriage, on a discretionary digital basis, of Canadian signals included in the Part 3 List and of an additional set of U.S. 4+1 signals, when coupled with other initiatives such as the carriage of newly licensed Canadian digital services, could serve as an incentive for cable customers to subscribe to the digital service offerings of cable BDUs. The distribution of such services would also increase the choice available to cable subscribers.
14. However, in Decision CRTC 2000-437, the Commission also recognized the need to protect the program rights acquired by local broadcasters.
15. Accordingly, the Commission **approves** the application by Novus Entertainment Inc. to amend the broadcasting licence for its Class 1 broadcasting distribution undertaking serving Vancouver, in order to authorize the distribution, on a discretionary digital basis, of a second set of U.S. 4+1 signals and of any of the Canadian television signals provided for in the Part 3 List, so long as the licensee complies with the following:

The distribution on a discretionary basis on the licensee's digital service of U.S. 4+1 signals, in addition to the set of such signals already carried by the undertaking, and of Canadian television signals provided for in the List, 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 in respect of a signal, upon its approval of an executed agreement between the licensee and the broadcaster concerned. 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 of distant Canadian television signals solely on the licensee's digital service, as approved in this decision.

16. The Commission reminds the licensee that the simultaneous substitution requirements, as set out in section 30 of the Regulations, also apply with respect to the U.S. 4+1 and distant Canadian television signals.

17. The Commission also reminds Novus that, in accordance with Distribution Order 2006-1 set out in appendix to Broadcasting Public Notice CRTC 2006-5³, it must distribute the English-language version of CPAC on its basic service, provide the audio of CPAC's French-language version on an auxiliary audio channel, and provide CPAC's French-language version on a discretionary analog or digital channel.

Secretary General

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>

³ *Changes to the distribution of the Cable Public Affairs Channel and the parliamentary programming service in response to a Direction from the Governor in Council, Broadcasting Public Notice CRTC 2006-5, 19 January 2006*