



## Broadcasting Decision CRTC 2006-693

Ottawa, 21 December 2006

### **Bell Canada**

Various locations in Ontario and Quebec

*Application 2006-0667-6*

*Broadcasting Public Notice CRTC 2006-78*

*20 June 2006*

### **Distribution of satellite subscription radio services**

*The Commission **approves** an application by Bell Canada to amend the broadcasting licences for the cable broadcasting distribution undertakings serving various locations in Ontario 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 Bell Canada (Bell) to amend the broadcasting licences for its two regional Class 1 cable broadcasting distribution undertakings (BDUs) serving various locations in Ontario 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. Bell indicated that its Class 1 BDUs will operate on a digital basis with the exception of the hybrid analog/digital undertaking that it currently operates in Montréal, Quebec. It has not yet commenced operation of its BDUs elsewhere in Quebec or in Ontario.

3. Bell submitted that the proposed carriage of Canadian SSR services would enhance the quality and diversity of the audio programming available on its cable BDUs and enable it to respond to subscriber demand for more audio services. Bell also argued that, if it offered a broader selection of high quality audio services, it would be better able to attract the many Canadians who are currently tuning to new, unregulated sources of audio programming, including U.S.-based satellite radio and Internet radio services. Bell further suggested that the ability to access satellite radio by subscribing to digital distribution would motivate subscribers to make the transition to digital services.

## **Interventions**

4. Sirius Canada Inc. fully supported Bell's application as did Shaw Communications Inc. and its wholly-owned subsidiary Star Choice Television Network Incorporated, as well as Rogers Cable Communications Inc. (Rogers).
5. 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 Bell or by BDUs in general.
6. Bell's application was opposed by the Canadian Broadcasting Corporation, the licensee of the pay audio service known as Galaxie, and by Forerunner Global Media Inc., which has been authorized to operate two English-language religious specialty audio services<sup>1</sup>.
7. 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 video, the Canadian Independent Record Producers Association, the Canadian Recording Industry Association, the Union des Artistes, and the Alliance of Canadian Cinema, Television and Radio Artists also opposed the application.
8. Interveners who opposed Bell's application 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.

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<sup>1</sup> *Forerunner Radio Network – Specialty audio service*, Broadcasting Decision CRTC 2003-488, 1 October 2003; and *The National Youth (Radio) Network – Specialty audio service*, Broadcasting Decision CRTC 2003-589, 21 November 2003

*Licensee's reply*

9. In response, Bell submitted that the arguments raised by the opposing interveners were virtually the same as those presented by the same parties against the licensing of SSR services. Bell maintained that the Commission took those arguments into account in establishing the appropriate conditions of licence for the two licensed SSR services, namely Sirius operated by SIRIUS Canada Inc. and XM Canada, operated by Canadian Satellite Radio Inc.
10. Bell submitted that the proposed distribution of SSR services on its BDUs would have a minimal impact on the pay audio services. Bell argued that consumers subscribe to BDUs almost exclusively to receive television signals and perceive the audio services distributed by BDUs as an “added value” feature. Bell further contended that the SSR services’ primary audience would continue to be listeners in vehicles, and that only a small proportion of their audience would be BDU subscribers.
11. Bell submitted that the SSR services were licensed by the Commission under terms and conditions that ensure they make an appropriate contribution to the Canadian broadcasting system, particularly in support of under-represented musical genres. Bell further contended that the SSR services contribute 20% more than the pay audio services to Canadian talent development.

**Commission's analysis and determinations**

12. The Commission is satisfied with the licensee's response to the interventions.
13. 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 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.
14. The Commission notes that Bell's BDUs operate under similar circumstances as those of Rogers. The Commission concludes that, consistent with Decision 2006-650, it is appropriate to authorize Bell 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 Bell 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.

15. 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 *Broadcasting Distribution Regulations* (the Regulations)<sup>2</sup>, 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.<sup>3</sup> 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.
16. In light of the above, the Commission **approves**, with the provisions described above, the application by Bell Canada to amend the broadcasting licences for its regional Class 1 cable broadcasting distribution undertakings serving various locations in Ontario 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.

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<sup>2</sup> Under section 22 of the 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.

<sup>3</sup> 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.

(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>*