Canadian Radio-television and Telecommunications Commission
Conseil de la radiodiffusion et des télécommunications canadiennes

Broadcasting Decision CRTC 2008-11

Ottawa, 18 January 2008

Rogers Cable Communications Inc.
Toronto (Peel/Mississauga) and Richmond Hill, Ontario

Application 2007-1155-8, received 20 August 2007
Broadcasting Public Notice CRTC 2007-107
21 September 2007

Change of service areas and distribution of CKCO-TV Kitchener

*The Commission **approves** the application by Rogers Cable Communications Inc. to extend the licensed areas of the cable broadcasting distribution undertakings (BDUs) serving the above-mentioned locations. The Commission also **approves in part** the licensee's request for relief from the regulatory requirement to distribute CKCO-TV Kitchener as part of the basic service of its BDU serving Toronto (Peel/Mississauga). The Commission is requiring that CKCO-TV be distributed as part of the digital basic service.*

The application

1. The Commission received an application by Rogers Cable Communications Inc. (Rogers) to extend the licensed areas of the cable broadcasting distribution undertakings (BDUs) serving the above-mentioned locations as follows:

   - for the undertaking serving Toronto (Peel/Mississauga), by including the portion of the Halton region not presently served by Rogers, i.e. Burlington, Halton Hills, Milton, and Oakville; and

   - for the undertaking serving Richmond Hill, by including Aurora.

2. In support of its application, Rogers noted that in recent years telephone and other companies, including Bell Canada, have been awarded licences to operate terrestrial BDUs in and around the Greater Toronto Area (GTA) using digital subscriber line (DSL) technologies and now have the ability to offer not only a complete array of broadcast television services but also Internet and telephony services (and in the case of Bell Canada, wireless services as well). Rogers indicated that it is currently able to provide three out of the four Quadruple Play services (i.e. wireless, Internet and local telephony) outside of its cable footprint. According to the licensee, in the extremely competitive GTA market, its inability to also provide cable television service in such high-growth neighbouring areas as the Halton region and the community of Aurora puts it at a significant competitive disadvantage vis-à-vis other providers such as Bell Canada.

3. As part of its application, Rogers also proposed to amend the licence of its BDU serving Toronto (Peel/Mississauga) by deleting the reference to CKCO-TV Kitchener from the following condition of licence:

> The licensee is relieved from the requirements of section 17 of the *Broadcasting Distribution Regulations* with respect to CKVR-TV Barrie and CKCO-TV Kitchener, provided that they are distributed as part of the basic service.

and by adding the following condition of licence:

> The licensee is relieved from the requirements of section 17 of the *Broadcasting Distribution Regulations* to distribute CKCO-TV Kitchener as part of the basic service.

4. Rogers indicated that the CTV affiliate CKCO-TV was a regional television station. Since Rogers already offers the local CTV affiliate CFTO-TV Toronto, under section 17(1)(*e*) of the *Broadcasting Distribution Regulations*(the Regulations), it would not normally be required to carry the regional CKCO-TV Kitchener station at all. The CKCO-TV signal would therefore not be considered a priority signal in relation to its existing Toronto (Peel/Mississauga) licensed area. Rogers stated that it currently distributes CKCO-TV to its digital customers only.

5. Although CKCO-TV is considered a local television station in relation to parts of the Halton region the licensee now proposes to serve, Rogers noted that in Decision 2001-255 it was granted a condition of licence relieving it from the requirement to distribute CFTO-TV Toronto as part of the basic service of its Guelph and Kitchener/Grand River cable BDUs. CFTO-TV and CKCO-TV are both considered local television stations in relation to those BDUs and the Commission concluded that CFTO-TV was largely duplicative of CKCO-TV. Rogers stated that it was on this basis that it was requesting the above-noted licence amendments.

6. The Commission received interventions in opposition to the application from Aurora Cable TV Limited, operating under Aurora Cable Internet (ACI), the licensee of the Class 1 cable BDU serving Aurora and Northern Richmond Hill (Oak Ridges); Canadian Cable Systems Alliance Inc. (CCSA); and CTVglobemedia Inc. (CTVgm), on behalf of its subsidiary CTV Television Inc., the licensee of CKCO-TV. The Commission also received a comment from Clearcable Networks (Clearcable), a cable service provider consulting firm.

7. The Commission has identified the following two issues to be addressed in its determinations:

   - Would approval of the application to extend the licensed areas be consistent with past practice and the Regulations?

- What regulatory requirement, if any, is appropriate with respect to the distribution of CKCO-TV in the Toronto (Peel/Missaussauga) licensed area?

Would approval of the application to extend the licensed areas be consistent with past practice and the Regulations?

8. ACI, CCSA and Clearcable expressed concern that Rogers would only serve and build new facilities in the most densely populated and more profitable areas of Aurora and that ACI would be left to serve only the high cost areas, making further upgrades in these areas economically unfeasible. These intervenors submitted that if this were to occur and ACI's operations were no longer viable, residents in the high cost parts of the community could lose cable service entirely. In this regard, Clearcable requested that Rogers make its service plans clear and, in the case where its intent was to build new facilities throughout the entire licensed area currently served by ACI, provide a date for completion to ensure that coverage in the less profitable areas would be available in a timely manner.

9. ACI further submitted that approval of Rogers' application would create a serious new precedent that would bring no benefits to subscribers. Specifically, ACI submitted that the services Rogers stated it would bring to Aurora were already being provided by ACI and others and that Rogers' contribution to local programming would be minimal since Rogers operates regionally-based community channels with a lot of shared programming across the province. ACI stated that its community channel was 100% local and that it better served and reflected the needs and interests of residents.

10. In its reply, Rogers noted that it has been the policy of the Commission and the Federal Government to support the development of competition within the broadcasting distribution sector. In this regard, Rogers cited the Commission's 1995 report *Competition and Culture on Canada's Information Highway* and the Government's 1996 *Convergence Policy Statement*, as well as decisions, such as Broadcasting Decision 2007-128 and Broadcasting Decision 2007-129, in which the Commission approved overbuilding or overwiring. More particularly, in response to the concern that approval of Rogers' application might eventually lead to some smaller communities within Aurora being left without service as a result of its competition with the incumbent ACI, Rogers cited Public Notice 1997-25, wherein the Commission found that this risk would be largely offset by the availability of service from licensed direct-to-home (DTH) and wireless distributors. Rogers also noted that although Cogeco Cable Canada Inc. (Cogeco) operates cable BDUs in the region, it did not intervene with respect to this application, suggesting that Cogeco does not share the concerns raised by ACI, CCSA and Clearcable.

11. Rogers further disagreed with the argument that the authorization of a new entrant would not result in the introduction of new services or enhanced benefits for consumers. Rogers stated that it offers over 250 distinct video services on its digital cable lineup (versus ACI's 110 channels), as well as a broad range of audio services. It noted that many of these services, such as a wide variety of third-language channels, are not offered by ACI or the DTH operators.

12. Finally, with regard to the issue of local programming raised by ACI, Rogers stated that it had an exemplary track record of investing in and providing community programming of direct relevance to its customers. Rogers indicated that its community channel Rogers Television (RTV) produces programs in the York region that cover topics and stories from the entire region, including Aurora, and that Aurora figures prominently in RTV's coverage since several key organizations are located in this community. In this respect, Rogers noted that ACI airs seven programs produced by RTV on its community channel – *First Local*, *Daytime*, *York Region Living*, *York Region Dining*, *The Parenting Show*, *Swap Shop* and *Careers in York* – accounting for approximately 33 hours of programming each week (i.e. 20% of ACI's schedule). Rogers stated that it intended to become an integral part of the Aurora community by participating in community activities and providing community channel programming of direct relevance to the residents of Aurora.

Commission's analysis and determination

13. With respect to the concerns raised by ACI, CCSA and Clearcable regarding the proposed change to the licensed areas, the Commission acknowledges that Rogers' expansion into these areas could have a financial impact on the incumbent cable companies, i.e. ACI and Cogeco. However, since the mid-1990s, the Commission has taken an open-entry approach to competition amongst BDUs. To authorize Rogers to serve these areas would be consistent with the approach taken by the Commission in similar circumstances in the past based on its view that consumers should have increased choice among distributors of broadcasting and other services and that overall service to the public should have a higher priority than the economic viability of any incumbents against whom the new entrant would compete.

14. Further, with regard to the issue of service to all parts of the community raised by intervenors, the Commission notes that with the introduction of rate deregulation of Class 1 cable systems, once the conditions for deregulation are met and a licensed area is rate-deregulated, the obligation to serve no longer applies. The Commission notes that the areas licensed to Rogers, Cogeco and ACI are rate-deregulated and therefore no longer subject to the obligation to serve.

15. Finally, the Commission has no concerns regarding Rogers' proposed community channel programming.

16. Accordingly, in light of all of the above, the Commission **approves** the application by Rogers Cable Communications Inc. to extend the licensed areas of its cable BDUs as follows:

- in the case of the undertaking serving Toronto (Peel/Mississauga), by including Burlington, Halton Hills, Milton, and Oakville; and
- in the case of the undertaking serving Richmond Hill, by including Aurora.

What regulatory requirement, if any, is appropriate with respect to the distribution of CKCO-TV in the Toronto (Peel/Mississauga) licensed area?

17. CTVgm noted that following the approval in Decision 99-48 of Rogers' application to delete the town of Milton and surrounding communities from the licensed area of its BDU serving Toronto, CKCO-TV was no longer a local television station requiring priority carriage within that licensed area. However, Rogers was still subject to a condition of licence requiring it to distribute CKCO-TV as part of its analog basic service, as set out in Decision 96-827 and Broadcasting Decision 2007-230. CTVgm noted that, notwithstanding this condition of licence, Rogers moved CKCO-TV from analog to digital distribution. CTVgm further noted that if Rogers' application for an extension to the Toronto (Peel/Mississauga) licensed area were approved, CKCO-TV would once again become a local television signal as defined in the Regulations and Rogers would be required to distribute the signal on a priority basis.

18. CTVgm opposed Rogers' application to delete its existing condition of licence and to be relieved of the requirement to distribute CKCO-TV on a priority basis but stated that it would be prepared to withdraw its opposition if Rogers were to agree to grandfather CKCO-TV's current carriage as a digital service. CTVgm submitted that if the request for an extension to the licensed area were granted, Rogers should, at a minimum, be required to offer CKCO-TV on digital in this licensed area to ensure that subscribers in Milton and surrounding areas as well as in other parts of western Toronto have the opportunity to receive CKCO-TV should they so desire.

19. In response to the issue of the current distribution of CKCO-TV raised by CTVgm, Rogers stated that the reference to CKCO-TV in its condition of licence was applicable when CKCO-TV was a priority signal in relation to the Toronto (Peel/Mississauga) licensed area (i.e. up until 1 March 1999, the date on which Decision 99-48 was issued) and that it should have been removed when this licensed area was changed. Rogers indicated that the fact that the reference was not removed was purely an administrative oversight on its part. However, going forward, Rogers committed to continuing to distribute CKCO-TV on digital in the extended Toronto (Peel/Mississauga) service area proposed in its application.

Commission's analysis and determination

20. The Commission notes that pursuant to its approval of the extended licensed area for the BDU serving Toronto (Peel/Mississauga), the CKCO-TV signal is now considered a priority signal for the licensed area as a whole. However, consistent with its findings in Decision 99-48 and in light of the largely duplicative programming of CKCO-TV and CFTO-TV, as well as CTVgm's proposal, as agreed to by Rogers in its reply to CTVgm, the Commission considers that it would be appropriate to require Rogers to offer CKCO-TV to its subscribers in this licensed area on a digital basis.

21. Accordingly, the Commission **approves in part** the licensee's request for relief from the regulatory requirement to distribute CKCO-TV as part of the basic service of its Toronto (Peel/Mississauga) undertaking. The Commission hereby replaces the condition of licence relating to the distribution of CKVR-TV and CKCO-TV as part of the basic service with the following **condition of licence**:

> The licensee is relieved from the requirements of section 17 of the *Broadcasting Distribution Regulations* with respect to CKVR-TV Barrie, provided that it is distributed as part of the basic service.

22. In addition, the licensee will also be subject to the following **condition of licence**:

> The licensee is relieved from the requirements of section 17 of the *Broadcasting Distribution Regulations* with respect to CKCO-TV Kitchener, provided that it is distributed as part of the digital basic service.

23. With respect to Rogers' ceasing to comply with its current conditions of licence, Rogers is reminded that in order to remain in compliance at all times, requests to amend such conditions of licence are to be made prior to implementing any change.

Secretary General

Related documents

- *Class 1 regional licence for cable broadcasting distribution undertakings in Ontario*, Broadcasting Decision CRTC 2007-230, 13 July 2007
- *Class 1 cable broadcasting distribution undertaking*, Broadcasting Decision CRTC 2007-129, 4 May 2007
- *Class 1 terrestrial broadcasting distribution undertaking*, Broadcasting Decision CRTC 2007-128, 4 May 2007
- *Relief from the regulatory requirement to distribute CFTO-TV Toronto*, Decision CRTC 2001-255, 3 May 2001
- Decision CRTC 99-48, 1 March 1999
- *New Regulatory Framework For Broadcasting Distribution Undertakings*, Public Notice CRTC 1997-25, 11 March 1997
- *Licence renewal*, Decision CRTC 96-827, 23 December 1996