



Broadcasting Decision CRTC 2010-532

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Ottawa, 30 July 2010

Rogers Cable Communications Inc.

Various locations in Ontario, New Brunswick, and Newfoundland and Labrador

Application 2010-0947-3, received 7 June 2010

Deletion and exemption of licensed service areas under a broadcasting licence

*The Commission **approves** an application by Rogers Cable Communications Inc. to delete the licensed service areas set out in the appendix to this decision from its Class 1 and Class 2 regional licences for terrestrial broadcasting distribution undertakings. However, the Commission **denies** Rogers request that approval of this application be made retroactive to 1 September 2009.*

Introduction

1. In Broadcasting Public Notice 2008-100, the Commission decided to expand the scope of its two previous exemption orders for small terrestrial broadcasting distribution undertakings (BDUs) to include terrestrial BDUs serving fewer than 20,000 subscribers under a single exemption order. The Commission further decided that BDUs operating in both small and large markets under a single regional licence would be permitted to determine whether there would be greater benefits to continuing to operate in all markets under a single licence, or to conduct their operations in smaller markets in such a way that those operations would constitute a “discrete operation” that would be eligible for exemption. To this end, the Commission permitted BDUs operating under regional licences to apply to remove (“carve out”) certain service areas from their licences, provided they met certain conditions.
2. The Commission’s new order was issued in Broadcasting Order 2009-544. In that order, the Commission stated that parties seeking to qualify for exemption from licensing requirements should file applications for revocation of licence with the Commission.
3. With respect to BDUs operating under regional licences, the Commission set out criteria to assess whether or not a BDU’s operations in a specific area constituted a discrete operation so as to be eligible for exemption under Broadcasting Order 2009-544. Specifically, the Commission stated that it would consider applications to carve out a service area from a regional licence if, in that area, the licensee:
 - (a) has separate head-end facilities; or

- (b) distributes one or more unique priority (local and/or regional) television stations as part of its basic service in that area that are not offered as part of the basic service in other service areas in which the BDU operates under the same regional licence; or
- (c) offers substantial community programming to its subscribers that is specific to that service area.
4. The Commission included a requirement that, in order to qualify under (c) above, BDUs that do not operate a community channel specific to the particular service area¹ must demonstrate that 5% of gross broadcasting revenues derived from the area has been spent on community programming specific to that area in the past broadcast year.
 5. Rogers Cable Communications Inc. (Rogers) has applied to carve-out various licensed service areas under its Class 1 and Class 2 regional licences, as noted in the Appendix to this decision, on the grounds that each of these areas have fewer than 20,000 subscribers and meet the discrete operation test with respect to community programming expenditures. Given that the licensee has filed documentation demonstrating that it spends 5% or more of the broadcasting revenues derived from each of the licensed service areas on community programming specific to those areas, the Commission **approves** the deletion of the licensed service areas listed in the Appendix to this decision from the relevant licences.
 6. The Commission notes that, following the carve out of the various licensed service areas under the Class 2 regional licences, there are no remaining licensed service areas under these two licences. This results in the actual revocation of these licences.
 7. The Commission reminds Rogers that it must, at all times, comply with the criteria set out in the appendix to Broadcasting Order 2009-544 for each service area listed in the Appendix to this decision. In order to continue operating these undertakings as discrete operations that are eligible for exemption under this order, Rogers will need to maintain its current minimum contribution (5%) to community programming for each of the carved out service areas.

Request for retroactivity

8. Rogers has also requested that approval of its application be made retroactive to 1 September 2009 given that the information provided to demonstrate its compliance with the exemption order criteria related to the number of subscribers as well as revenues derived from the 2008-2009 broadcast year, which ended 31 August 2009. Rogers stated that these carved out service areas were therefore eligible for exemption under the order on 1 September 2009.

¹ BDUs that operate, for example, video-on-demand based community “channels” or that have adopted a “zone-based” approach to the provision of community programming.

9. In Broadcasting Order 2009-544, the Commission stated that its normal procedure was to require a licensee to submit an application to revoke, or in this case carve out, its licence. Until the Commission issues a decision approving such an application, “a licensee would remain a licensee with all attendant obligations and requirements.”
10. Broadcasting Order 2009-544 also invited licensees who met all exemption order criteria to submit their respective applications by 30 October 2009 and indicated that the Commission would target rendering its determinations by 1 February 2010. The Commission issued Broadcasting Decision 2010-87 on 15 February 2010 for all applications received. The Commission notes that Rogers did not submit such an application until 7 June 2010.
11. Given the above, and consistent with its approach stated in Broadcasting Order 2009-544 and the manner in which previous licence revocations and carve-out applications were dealt with, the Commission **denies** Rogers’ request to make the carve-out of these licensed service areas retroactive to 1 September 2009. Carve out of these licensed areas is effective as of the date of this decision.
12. The Commission notes that Rogers also filed a letter requesting a Commission decision on the interpretation of the provision for non-payment of contributions to the Local Programming Improvement Fund for the 2009-2010 broadcast year that applies to licensees with fewer than 20,000 subscribers. The Commission will shortly issue a decision on that matter.

Secretary General

Related documents

- *Revocation of broadcasting licences for exempted terrestrial broadcasting distribution undertakings; Deletion and exemption of licensed service areas under a broadcasting licence*, Broadcasting Decision CRTC 2010-87, 15 February 2010
- *Exemption order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers*, Broadcasting Order CRTC 2009-544, 31 August 2009
- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services – Regulatory policy*, Broadcasting Public Notice CRTC 2008-100, 30 October 2008

**This decision is to be appended to the licences, where applicable.*

Appendix to Broadcasting Decision CRTC 2010-532

Ontario	
Class	Deletion of licensed service area (carve-out) Location
Class 1 Regional ⁽¹⁾	Bolton
	Camp Borden
	Collingwood
	Keswick
	Orangeville
	Orillia
	Owen Sound
	St. Thomas
	Woodstock
	Class 2 Regional ⁽²⁾
Atlantic (New Brunswick and Newfoundland and Labrador)	
Class 1 Regional ⁽³⁾	Bathurst NB
	Chatham/Newcastle NB
	Edmundston NB
Class 2 Regional ⁽²⁾	Campbellton NB
	Caraquet NB
	Dalhousie NB
	Grand Falls/Grand-Sault NB
	Shediac NB
	Shippagan NB
	Sussex/Sussex Corner NB
	Tracadie/Neguac NB
	Corner Brook NL

(1) The Commission notes that Barrie, Kitchener, London, Newmarket, Oshawa, Ottawa, Pickering, Toronto and surrounding areas (which encompasses Toronto Peel/Mississauga, Toronto Downsview, Toronto Etobicoke, Richmond Hill and Toronto York), and Toronto (Scarborough) remain licensed areas under Rogers Cable Communications Inc.'s Class 1 regional licence in Ontario.

(2) Carve-out of these locations under both Class 2 regional licences (i.e. Tillsonburg, Ontario and the Class 2 licence in the Atlantic Provinces) has the effect of exempting all service areas under those licences. As such, these two Class 2 regional licences are revoked.

(3) The Commission notes that Fredericton, Moncton, and Saint John, New Brunswick, and St. John's and surrounding areas, Newfoundland and Labrador, remain licensed areas under Rogers Cable Communications Inc.'s Class 1 regional licence in the Atlantic (New Brunswick and Newfoundland and Labrador).