Broadcasting Decision CRTC 2012-51

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Bell Media Inc.
Barrie, Burlington, Fonthill, Fort Erie, Hamilton, Niagara Falls, St. Catharines, Oakville and Welland, Ontario

Application 2011-0942-1 and 2011-0943-9

CKVR-DT Barrie – New digital transmitters to serve the areas of Burlington, Fonthill, Fort Erie, Hamilton, Niagara Falls, St. Catharines, Oakville and Welland

The Commission ***approves*** *applications by Bell Media Inc. to amend the broadcasting licence for the conventional television station CKVR-DT Barrie in order to add two digital transmitters to serve the areas of Burlington, Fonthill, Fort Erie, Hamilton, Niagara Falls, St. Catharines, Oakville and Welland, Ontario.*

A dissenting opinion by Commissioners Rita Cugini and Peter Menzies is attached.

The application

1. The Commission received applications by Bell Media Inc. (Bell Media) to amend the broadcasting licence for the English-language conventional television programming undertaking CKVR-DT Barrie in order to add two new digital transmitters to serve the areas of Burlington, Fonthill, Fort Erie, Hamilton, Niagara Falls, St. Catharines, Oakville and Welland, Ontario.

2. The transmitter serving Hamilton, Burlington and Oakville would operate on channel 35 with an average effective radiated power (ERP) of 10,500 watts (maximum ERP of 25,000 watts with an effective height of antenna above average terrain (EHAAT) of 248 metres). The transmitter serving Fonthill, Fort Erie, Niagara Falls, St. Catharines and Welland would operate on channel 42 with an average ERP of 1,340 watts (maximum ERP of 5,000 watts with an EHAAT of 146 metres).

3. The Commission notes that the addition of the new transmitters would allow CKVR-DT to require simultaneous substitution for its signal in those markets and repatriate advertising revenues from American border stations.

Background

4. Bell Media is a wholly owned subsidiary of BCE Inc. Bell Media acquired CKVR-DT from CTVglobemedia Inc. in 2011 in a transaction that was approved by the Commission in Broadcasting Decision 2011-163.

5. The present signal for CKVR-DT covers the Greater Toronto Area (GTA), Oshawa and Newmarket. The station is distributed by broadcasting distribution undertakings (BDUs) in the above markets and in the proposed markets.

6. CKVR-DT, as part of the A-Channel station lineup, has recently been rebranded into a "CTV Two" station, which Bell Media uses as an additional window to feature first-run, premium programming.

Interventions and applicant's reply

7. The Commission received interventions in support of the applications from individuals in the communities to be served, as well as interventions in opposition from Rogers Broadcasting Limited (Rogers), Channel Zero Inc. (Channel Zero), the Canadian Broadcasting Corporation (CBC) and Shaw Communications Inc. (Shaw), to which the applicant replied. The public record for this proceeding is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

8. Opposing interveners argued that approval of the applications would have a negative impact on other Canadian television stations currently operating in the Toronto extended market (Toronto EM) and would give Bell Media significant market dominance with respect to the sale of advertising and the acquisition of programs. Rogers and Channel Zero estimated that the proposed amendment would result in an impact of $8.4 and $8.9 million respectively in the first year while CBC estimated that the impact could be up to five times the $2 to $2.5 million in incremental revenues suggested by Bell Media.

9. Channel Zero, licensee of CHCH-DT Hamilton, argued that the ability to package the new CKVR-DT Barrie with CFTO-DT Toronto and the other Ontario CTV stations would give Bell Media a dominant position in the Ontario advertising market and have a negative impact on all competitors.

10. Rogers, Shaw and the CBC argued that the applications are contrary to the Commission's common ownership policy and that the licence amendment would allow Bell Media to own and operate two conventional television stations in the Toronto EM.

11. In a letter to the Commission, Bell Media committed to maintain a level of 9 hours and 55 minutes of local programming for the Barrie market each broadcast week and to keep the station in operation for the duration of its licence term.

Commission's analysis and decisions

12. After examining the public record for these applications in light of applicable regulations and policies, the Commission considers that the issue it must address is whether the

addition of the two transmitters would have a significant negative impact on other conventional television stations serving the Toronto EM.

13. In this regard, the Commission considers that since CKVR-DT is already distributed by BDUs in the proposed markets, there would not be an increase in direct tuning to the CKVR-DT service by BDU subscribers.

14. With respect to the additional tuning resulting from simultaneous substitution, the Commission analyzed BBM Canada data of major prime time programming and found that additional simultaneous substitution opportunities for CKVR-DT in the proposed markets could result in a modest increase in the station's prime time viewership.

15. In addition, the Commission notes that audiences tuning to the over-the-air signal contribute only a minor portion of the total tuning to CKVR-DT in the Toronto census metropolitan area, an area where CKVR-DT already has over-the-air coverage. As such, the Commission considers that the additional transmitters would not result in significant incremental tuning to CKVR-DT in the proposed markets.

16. In regard to the potential impact of the proposed amendment on the Toronto conventional television market, the Commission notes that estimates of the immediate impact resulting from the proposed amendment range from $2 to $2.5 million, as submitted by the applicant, to between $8 and $12.5 million, as estimated by interveners. The Commission notes that the immediate impact as estimated would only represent a modest proportion of the total revenues generated by the English-language conventional television stations in the Toronto EM, which represented approximately $625 million in 2010.

17. Given that the proposed amendment would result in only a modest gain in additional total tuning, that CKVR-DT is already available from BDUs in the proposed markets, and that impact estimates would represent only a small portion of the total revenues generated in the market, the Commission considers that any impact of approving the applications would be moderate. Therefore, the Commission considers that approval would not significantly alter the competitive landscape of the Toronto EM.

18. In its intervention, Channel Zero was concerned that its own station, CHCH-DT Hamilton, would be negatively affected by Bell Media's proposal, given what it characterized as the station's already tenuous financial position. In this regard, the Commission notes that Bell Media committed, in its application, not to solicit any local advertising in the markets served by the new transmitters. Moreover, as previously noted, the two new transmitters would not have a significant impact on viewership, as CHCH-DT and CKVR-DT are already distributed on all major BDUs and direct-to-home satellite distribution undertakings in the proposed markets.

19. Rogers, CBC and Shaw expressed concern that approval of the applications would be contrary to the Commission's common ownership policy, which generally permits ownership, by one person, of no more than one conventional television station in one language in a given market. The Commission is of the view that it already addressed this issue in *Transfer of effective control of CHUM Limited to CTVglobemedia Inc.*,

Broadcasting Decision CRTC 2007-165, 8 June 2007 when it approved the acquisition of the A-channel stations by CTVglobemedia Inc. In the Commission's view, the addition of the two transmitters would not be inconsistent with the common ownership policy given that CKVR-DT's over-the-air signal is already available in most of the Toronto EM.

Conclusion

20. In light of the above, the Commission **approves** the applications by Bell Media Inc. to amend the broadcasting licence for the English-language conventional television programming undertaking CKVR-DT Barrie in order to add two digital transmitters to serve the areas of Burlington, Fonthill, Fort Erie, Hamilton, Niagara Falls, St. Catharines, Oakville and Welland, Ontario.

21. The Commission notes the commitments made by Bell Media to maintain a level of 9 hours and 55 minutes of local programming for the Barrie market each broadcast week, which is higher than its current requirement of 7 hours of local programming; to keep the station in operation for the duration of its licence term; and not to solicit local advertising in the markets served by the new transmitters. The Commission requires Bell Media to abide by these commitments.

22. The Commission reminds the licensee that, pursuant to section 22(1) of the *Broadcasting Act*, this authority will only be effective when the Department of Industry (the Department) notifies the Commission that its technical requirements have been met and that broadcasting certificates will be issued.

23. The transmitters must be operational at the earliest possible date and in any event no later than 24 months from the date of this decision, unless a request for an extension of time is approved by the Commission before 26 January 2014. In order to ensure that such a request is processed in a timely manner, it should be submitted in writing at least 60 days before that date.

Secretary General

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

Dissenting opinion by Commissioners Rita Cugini and Peter Menzies

We respectfully disagree with the Commission's decision to approve applications by Bell Media Inc. to amend the broadcasting licence for the conventional television station CKVR-DT Barrie in order to add two digital transmitters to serve the areas of Burlington, Fonthill, Fort Erie, Hamilton, Niagara Falls, St. Catharines, Oakville and Welland, Ontario. We believe that this decision is inconsistent with and threatens the integrity of the Common Ownership Policy, fails to take into consideration the significant impact it will have on competition in the Greater Toronto Area and the Golden Horseshoe and is not in the best interest of competition and therefore the consumer/citizen.

Common Ownership Policy

The Commission reviewed its Common Ownership Policy in 2008 and concluded in Broadcasting Public Notice 2008-4 that the policy, which generally permits ownership of no more than one conventional television station in one language in a given market by a single entity, is designed to ensure that a diversity of voices exists in a given market and to maintain competition in each market. Moreover, the Commission concluded that the existing Common Ownership Policy for over-the-air television must be maintained to ensure that a plurality of editorial voices in local markets is preserved.

The majority decision of our colleagues concludes in paragraph 19 that the addition of the two transmitters would not be inconsistent with the Common Ownership Policy given that CKVR-DT's over-the-air signal is already available in most of the Toronto Extended Market. However, the decision fails to assess the reasons why the exception was confirmed in 1994 and whether or not those reasons still apply today.

In Decision 94-745, the Commission stated:

> The Commission's general policy not to permit the common ownership of two undertakings in the same language, class and market, while directed primarily at ensuring diversity among broadcast voices in a given community, is also designed to avoid conferring upon one broadcaster an unfair competitive advantage over others providing service to the same market. In the case of CKVR-TV and CITY-TV, the Commission's underlying purpose in continuing to allow an exception to its general policy is to ensure that the two stations remain in operation as viable undertakings, offering valued local service to their respective audiences.[1]

Nowhere in that decision or in any other decision granting the exception has the Commission ever stated that the exception shall be granted in perpetuity to the same company and in every market it wishes to enter.[2]

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[1] *Disaffiliation of CKVR-TV Barrie from the CBC English-language television network*, Decision CRTC 94-745, 14 September 1994.

[2] It is worth noting that Decision 94-745 refers back to Decision 78-513, wherein the Commission first created the exception to the Common Ownership Policy by approving CHUM's application to acquire control of CITY-TV. In that decision, the Commission acknowledged the station's difficult financial circumstances.

Much has changed since that decision in 1994. In 2007, CHUM Limited (CHUM) was purchased by CTVglobemedia Inc. (CTVgm) and the Citytv stations were purchased by Rogers Media Inc. In 2010, BCE Inc. in turn purchased CTVgm.

In Broadcasting Decision 2007-165,[3] the Commission was given another opportunity to review its Common Ownership Policy as CTVgm would acquire and retain CHUM's Citytv group of conventional stations. As a result of its acquisition of the Citytv stations, CTVgm would own two English-language television stations in each of the markets of Vancouver/Victoria, Edmonton, Calgary, Portage La Prairie/Winnipeg and Toronto/Hamilton. Approval of the transaction therefore required that the Commission grant exceptions to its Common Ownership Policy. The Commission was not convinced that such an exception was warranted and required CTVgm to divest itself of the Citytv stations.

We submit that Bell Media is effectively recreating the exception which was denied to CTVgm in 2007.

As noted, the Commission has granted exceptions to its Common Ownership Policy in cases where:

- there is a proven need to sustain strong, locally focused programming for smaller cities located adjacent to larger urban centres; and

- the financial ability of the licensee to provide such local programming and thus contribute to the diversity of voices, while maintaining a viable enterprise, is in question.

We submit that Bell Media's application fails to meet either of the two criteria for which an exception is warranted. If Bell Media is currently under financial duress, it has not made the Commission aware of its challenge as part of these applications.

CKVR-DT Barrie is not adjacent to any of the markets it is now "licensed to serve" as a result of this decision. The areas of Burlington, Fonthill, Fort Erie, Hamilton, Niagara Falls, St. Catharines, Oakville and Welland are a fair distance from Barrie and moreover these communities will not be served with any additional local programming. Bell/CTV has "promised" in this decision to increase its local Barrie programming from 7 hours to 9 hours and 55 minutes a week and to keep CKVR-DT in operation until the completion of its licence term in 2017. Given the drastic declines—close to one-third of local staff laid off and the cancellation of a reportedly well-received local breakfast program little more than two years ago—, it is remarkable that anyone would see this as a major commitment. The latter promise to keep the station in operation is even more difficult to make sense of as it implies an "obligation to serve" normally associated with monopolistic structures in the telecommunications sphere and appears to indicate that the Commission shares the apparent Bell/CTV view that it is the only organization with the ability to operate CKVR-DT and is therefore a quasi-public entity.

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[3] *Transfer of effective control of CHUM Limited to CTVglobemedia Inc.*, Broadcasting Decision CRTC 2007-165, 8 June 2007.

Nevertheless we concede there is some modest benefit to Barrie residents in terms of local programming. There is, however, absolutely no evidence of any benefit accruing to the residents of the Golden Horseshoe with this approval.

On the second criterion, the financial viability of CKVR-DT is not or certainly should not currently be an issue. That station has been among the beneficiaries of money from the Local Programming Improvement Fund (LPIF) and in Broadcasting Decision 2011-163 the Commission allowed BCE to spend $30 million in tangible benefits on sustaining the A-Channel stations (of which CKVR-DT is one) for at least three years.[4] We submit that Bell Media has the opportunity, resources and expertise to run CKVR-DT without the need for an extension to the exception to the Common Ownership Policy. Large sums of money have been directed to the Barrie operation both directly from CTV through tangible benefits and via the LPIF, which is collected from broadcasting distribution undertaking (BDU) and direct-to-home subscribers through a 1.5% fee on their bills.

Impact on competition

Paragraph 3 of this decision notes that the addition of the new transmitters would allow CKVR-DT to require simultaneous substitution for its signal in those markets and repatriate advertising revenues from American border stations. It concludes in paragraph 13 that since CKVR-DT is already distributed by BDUs in the proposed markets, there would not be an increase in direct tuning to the CKVR-DT service by BDU subscribers. In paragraph 14, the decision sustains that the additional tuning resulting from simultaneous substitution would result in only a modest gain in additional total tuning and therefore **could result in a modest increase** in… prime time viewership (emphasis added).

In our opinion, nothing could be further from the truth.

There is no evidence that Canadian companies are advertising on U.S. stations in order to reach Canadian audiences in the Golden Horseshoe. Indeed, as those who are familiar with advertising rules and practices in this country are already aware, such purchases are severely discouraged by Canadian tax rules, which do not permit the deductibility of advertising purchased in foreign markets. We also find little solace in the aspect of the decision that restricts Barrie's sales staff from soliciting advertising in its new territories. The television business model derives the vast majority of its revenue not from local but from national sales and this decision will clearly enhance Bell/CTV's national sales revenue. The money to be "repatriated" will most likely come therefore not from the U.S. but from Bell/CTV's competitors in southern Ontario, including small independent operators.

Most significantly, this decision may be well intended but is naïve in its failure to recognize the increased opportunity that Bell Media now has to purchase even more top-rated U.S. programming to fill its two prime-time schedules through both CTV and CTV Two. In fact, its strategy is already paying off. While the Commission did analyze BBM Canada data, the data analyzed was a mere snapshot in time and did not provide the Commission with the

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[4] *Change in effective control of CTVglobemedia Inc.'s licensed broadcasting subsidiaries*, Broadcasting Decision CRTC 2011-163, 7 March 2011.

opportunity to examine the trend in viewership resulting from having two stations in a market.

For instance, on 15 December 2011, CTV issued a press release entitled “Fall Ratings Report Card: Hit CTV Schedules Make the Grade with More Top 20 Marks in 2011.” This press release reports that “with the Fall Television Season now complete, with data from BBM Canada from the end of the Fall Season (Dec. 2011), a fall ratings report card indicates that CTV and CTV Two have increased their number of Top 20 hits over the last year, powering the networks in growing their lead over their competitors.”

The press release goes on to claim that “CTV has more Top 20 programs than all other networks combined.”

On 22 December 2011, CTV issued a second press release, “TV Top 10: What Canadians Watched on Television in 2011,” in which it confirms that CTV has 8 of Canada’s Top 10 Television Programs of 2011. It is important to note that in both press releases, the most watched shows are all U.S. shows with which CTV can optimize its opportunities with the use of simultaneous substitution. Essentially, this decision enhances the ability of Bell/CTV to outspend its Canadian rivals by buying up large volumes of new American programming and using both of its platforms to monetize those purchases fully. This will result in further exploitation of an already dominant position in the marketplace or, just as likely, will inspire competitors to respond by spending even more on U.S. programming.

We commend CTV for being able to spot the winners in this category. However, the price competition may pay as CTV and CTV Two continue to widen the gap between them and all other over-the-air stations may just be too high.

In conclusion, this decision has allowed Bell/CTV to work around previous Commission decisions aimed at ensuring a competitive framework by creating the opportunity for further market and therefore advertising dominance in the nation’s single most important market. It will challenge the Common Ownership Policy now in other major markets across the country and will allow Bell/CTV to, in a preferential fashion, further exploit a dominant competitive position. It further risks reducing revenue opportunities for those currently licensed to serve the citizens of Burlington, Fonthill, Fort Erie, Hamilton, Niagara Falls, St. Catharines, Oakville and Welland. In exchange, it offers a shallow improvement in service for the people of Barrie and no assurance whatsoever that even that service, which is already publicly subsidized, will survive for more than five years.