



Broadcasting Decision CRTC 2004-496

Ottawa, 18 November 2004

Bell Canada

Toronto, Hamilton/Niagara, Oshawa, Kitchener, London, Windsor, Ottawa, and surrounding area at each location in Ontario; and Montréal, Gatineau, Sherbrooke, Québec, and surrounding area at each location in Quebec

*Applications 2004-0008-6; 2004-0007-8
Public Hearing in the National Capital Region
9 August 2004*

Regional broadcasting distribution undertakings in Ontario and Quebec

*The Commission **approves** the applications by Bell Canada to carry on new terrestrial broadcasting distribution undertakings to serve various communities in Ontario and Quebec.*

The applications

1. The Commission received applications by Bell Canada for two regional licences to carry on Class 1 broadcasting distribution undertakings (BDUs). One of the regional licences would be in respect of proposed BDUs serving Toronto, Hamilton/Niagara, Oshawa, Kitchener, London, Windsor, Ottawa, and the area surrounding each of these locations in Ontario. The second regional licence would be in respect of BDUs serving Montréal, Gatineau, Sherbrooke, Québec, and the area surrounding each of these locations in Quebec.
2. Bell Canada is controlled by BCE Inc. (BCE). Services offered by BCE companies include telephony, Internet access and content, satellite and cable broadcasting distribution, news and entertainment television, print, and E-commerce services.
3. In its applications, Bell Canada proposed to offer a range of broadcasting services, and requested authority to distribute, on a discretionary basis, any of the Canadian signals on the Commission's List of Part 3 eligible satellite services, as amended from time to time. The most recent List of Part 3 eligible satellite services is set out in *Revised lists of eligible satellite services*, Broadcasting Public Notice CRTC 2004-88, 18 November 2004.
4. In addition, Bell Canada requested authority to distribute, on a discretionary basis, a second set of signals of stations affiliated with the four U.S. commercial networks (CBS, NBC, ABC and FOX) and the non-commercial network of the Public Broadcasting System (PBS), collectively known as the U.S. 4+1 signals.

5. Bell Canada indicated that, as a Class 1 licensee, it would abide by the Commission's priority carriage requirements, and would offer services in compliance with all other Commission requirements, including those regarding distribution and linkage, the delivery of a preponderance of Canadian services, and the delivery of a basic service package to every subscriber as a prerequisite to the delivery of any discretionary service.
6. Bell Canada stated that, while the availability of direct-to-home (DTH) services has produced substantial benefits for Canadians, including vastly improved access to broadcasting services by consumers residing outside of cabled areas, DTH services do not provide a sufficiently competitive alternative to cable for many Canadians. Bell Canada submitted that the licensing of its proposed terrestrial distribution services would provide a viable alternative to incumbent cable companies, arguing that consumers would benefit from the choice, innovation, efficiency, lower prices and economic growth that the increased competition would generate.

Overview of interventions

7. The Commission received 22 interventions addressing Bell Canada's applications. Seven of these were in opposition. Seven others offered qualified support while also expressing concern or opposition to one or more elements of the applications. The eight remaining interventions were in support of the applications. The issues raised by Bell Canada's applications, and the comments contained in the interventions concerning those issues, are discussed in the following sections of this decision.

Issues raised by the applications

Competitive issues

Positions of parties - Overview

8. Several interveners expressed concern over possible market dominance by Bell Canada. They noted that the applicant is owned by BCE, which, as Canada's largest broadcasting and telecommunications conglomerate, already benefits from the most widely and fully integrated position in Canadian communications. These interveners noted, among other things, that Bell Canada's affiliate, Bell Globemedia Inc., owns CTV Inc., Canada's largest private broadcaster, as well as the Globe and Mail, Canada's largest national newspaper. They added that another Bell Canada affiliate, Telesat Canada, is currently Canada's only satellite carrier, operating both direct broadcasting satellites and fixed satellite service facilities used for the provision of DTH services by Bell ExpressVu Inc., (the general partner), and BCE Inc. and 4119649 Canada Inc. (partners in BCE Holdings G.P., a general partnership that is the limited partner), carrying on business as Bell ExpressVu Limited Partnership (ExpressVu), and by ExpressVu's competitors.
9. Intervenors noted that Bell Canada is Canada's largest incumbent local exchange carrier (ILEC), as well as its largest Internet service provider. They added that Bell Canada, together with its affiliate ExpressVu, has more than 21 million connections to Canadian households through local telephony, wireless telephony, Internet and DTH services.

10. Cogeco Inc. (Cogeco), VDN Cable Inc. (VDN), Rogers Cable Communications Inc. (Rogers), Quebecor Media Inc. (QMI), the Canadian Cable Telecommunications Association (CCTA), and Kincardine Cable T.V. Ltd. (Kincardine Cable) expressed concern relating to Bell Canada's dominance in local telephone markets. The CCTA was also concerned that awarding BDU licences to Bell Canada would distort the local telephone market. The CCTA submitted that Bell Canada would use its presence in the BDU market to protect its monopoly position in local telephony, and would also leverage that monopoly to gain unfair advantages and dictate outcomes in the BDU market.
11. The CCTA and other interveners expressed particular concern that approval of the applications would give Bell Canada the ability to bundle local telephone services with video services. They took the position that this would provide Bell Canada with an opportunity to leverage its local telephony monopoly to gain market share in the BDU market. The CCTA and Rogers submitted that Bell Canada should not be permitted to require customers to take local telephone service in order to obtain video services. In addition, the CCTA requested that the Commission require Bell Canada to obtain prior tariff approval if it wished to offer local telephone service and video services as a bundle.
12. Cogeco submitted that planned upgrades to Bell Canada's plant would give it the ability to distribute a number of competitive services using the broadband Internet Protocol (IP) platform. It argued that none of these competitive services should be cross-subsidized in any way by monopoly local telephone services.
13. Some interveners were concerned that, if the applications were approved, synergies between Bell Canada and ExpressVu would create the potential for anti-competitive behaviour. In order to remedy this situation, the CCTA and VDN submitted that structural separation between Bell Canada's terrestrial and DTH distribution undertakings would be necessary. Kincardine Cable submitted that, if the applications were approved, Bell Canada should have to divest itself of all other broadcasting assets. Of particular concern to Rogers was the possibility that Bell Canada and ExpressVu would enter into joint sales and marketing arrangements with building owners, and share confidential and affiliate information. As a result, Rogers contended that Bell Canada should be subject to specific safeguards similar to those that apply to companies affiliated with Shaw Cablesystems Limited, i.e., Star Choice Television Network Incorporated (Star Choice) and Canadian Satellite Communications Inc. (Cancom).
14. The Public Interest Advocacy Centre (PIAC), the Miracle Channel and a number of individuals expressed support for the applications, arguing that approval would increase competition in the BDU market, to the benefit of subscribers.
15. Cogeco submitted that, prior to approving the applications, the Commission should conduct a complete review of the regulatory framework for the distribution of broadcasting services. In Cogeco's view, the *Broadcasting Distribution Regulations* (the Regulations) need to be streamlined. It also suggested that the Commission should clarify its position on a number of issues, including: the acceptable level of concentration

and integration in the converged communications market; the dual status and modified dual status of “analog” specialty services under the distribution and linkage requirements; the bundling of local access telephone services with competitive broadcasting distribution and Internet access services; a timeframe for new regulations; the Commission’s role and criteria for competition; the migration of specialty programming services from analog to digital service tiers on large cable systems; and the Commission’s role in relation to that of the Competition Bureau in this new marketplace.

16. In reply to these interventions, Bell Canada argued that it is not dominant in any line of business other than local telephony. It also stated that the market for local telephony is open to competition, and that cable companies could have and still can enter that market at any time. Bell Canada also submitted that safeguards are in place on both the telecommunications and broadcasting sides of the business, and that these preclude the possibility of anti-competitive behaviour. In particular, Bell Canada noted that it is already subject to a requirement that it obtain prior tariff approval when it offers local telephony services and video services on a bundled basis. Bell Canada went on to state that the Commission has prohibited an ILEC from requiring a customer to subscribe to the ILEC’s local exchange service in order to obtain services based on digital subscriber line (DSL) technology. Bell Canada added that the Commission has already rejected the view that a carrier’s bundle of DSL and non-tariffed services requires tariff approval.
17. With regard to structural separation, Bell Canada replied that it was Shaw Communication Inc.’s dominance in the BDU marketplace that necessitated its structural separation from Star Choice. Bell Canada stated that the Commission has commented in a number of previous decisions and public notices on the continued non-dominant status of DTH in general, and ExpressVu specifically, and on the sustained dominance of cable in the distribution marketplace. Bell Canada noted that its proposed terrestrial BDUs would be new entrants in the provision of cable services, with no market share.
18. In Bell Canada’s view, all of the concerns raised by interveners have been met or are being addressed in other proceedings. Bell Canada argued that the substance of these submissions is well-covered regulatory ground, apparently resurrected to slow down the current process and/or to impede Bell Canada’s entry into wireline cable distribution.

The Commission’s analysis and determinations

General

19. The Commission notes that interveners have raised a range of concerns with respect to the various lines of business in which the applicant and its affiliates compete. In the Commission’s view, the fact that the applicant and/or its affiliates may be involved in broadcasting, telecommunications and other lines of business does not, in and of itself, offer a sufficient basis to conclude that approval of the current applications would give Bell Canada or its affiliates an undue competitive advantage or enable them to exercise dominance as a terrestrial BDU with respect to some or all of the various markets in question.

20. The Commission notes that many of the BDUs, or their affiliates, with which the applicant would compete are also engaged in various aspects of broadcasting, telecommunications or other lines of business. Further, although the applicant and/or its affiliates have successfully entered and achieved a significant share of several markets, the Commission considers that the only market in which Bell Canada or a Bell Canada affiliate can properly be considered dominant is the market for local telephone services in Ontario and Quebec. Specific competitive issues raised by interveners, including those related to Bell Canada's provision of local telephone service, are discussed in the sections that follow.

Bundling of BDU services with local telephone service

21. As mentioned above, some interveners expressed concern that Bell Canada would have the ability to bundle local telephone services with broadcasting services. The Commission notes that, in *Local Competition*, Telecom Decision CRTC 97-8, 1 May 1997, it permitted the ILECs to bundle local exchange service with services that were subject to forbearance pursuant to section 34 of the *Telecommunications Act*. However, the Commission required that ILECs file tariffs for such bundles for prior Commission approval.
22. In *Joint marketing and bundling*, Telecom Decision CRTC 98-4, 24 March 1998 (Telecom Decision 98-4), the Commission defined rules, including requirements for prior Commission approval, for the bundling of tariffed telecommunications services with services of an affiliated or non-affiliated company, and with other services provided in-house by a telephone company, such as broadcasting services. Further, to prevent anti-competitive pricing, the Commission specified that an imputation test must be submitted with the application for approval of the tariff for such bundled services.
23. As stated in various decisions, including Telecom Decision 98-4, in order for a package of services to constitute a bundle, there must be a single rate or single rate structure, as well as a benefit, financial or otherwise, to the customer arising out of the aggregation of the services.¹
24. The Commission notes that Telecom Decision 98-4 applies to the bundling of tariffed services with services offered pursuant to the *Broadcasting Act*. Thus, pursuant to the above, should Bell Canada wish to bundle local telephony with broadcasting services, it would be obligated to file a tariff for Commission approval, along with imputation test information.
25. The rules governing the bundling of monopoly and competitive services by incumbent telephone companies are currently under review in the process announced in *Amendments to Telecom Public Notice CRTC 2003-8, Review of price floor safeguards for retail and tariffed services and related issues*, Telecom Public Notice CRTC

¹ See, for example, *Call-Net Enterprises Inc. – Request to lift restrictions on the provision of retail digital subscriber line Internet services*, Telecom Decision CRTC 2003-49, 21 July 2003, and *Shaw Communications G.P. v. TELUS Communications Inc. – Violation of bundling safeguards*, Telecom Decision CRTC 2004-23, 2 April 2004.

2003-10, 8 December 2003. The Commission notes that any changes adopted as a result of that proceeding would apply generally to all ILECs, absent circumstances unique to a particular carrier.

26. In light of the above, the Commission sees no need to impose a special condition of licence pertaining to Bell Canada's bundling of local telephone and broadcasting services. The Commission notes that this is consistent with the approach taken in the case of licences issued to other DSL-based BDUs operated by ILECs.

Tied selling of DSL and local telephone service

27. Rogers and the CCTA noted instances in the past where Bell Canada had refused to provide DSL service to customers who are not Bell Canada's local telephone service customers. Specifically, Rogers cited Bell Canada's submission of 4 May 2004, filed in connection with a complaint by FCI Broadband and Maskatel Inc., under Part VII of the *CRTC Telecommunications Rules of Procedure*, regarding Bell Canada's provision of DSL-based services. The CCTA noted Bell Canada's claim that, for technical reasons, it cannot offer any DSL-based service to a residential customer unless the customer also takes local exchange service over the same loop. The CCTA added that the technological limitation that applies to Bell Canada's DSL Internet service would also apply to Bell Canada's DSL BDU service. Rogers submitted that the tied selling of Bell Canada's BDU services with its local residential services would mean that the Commission, by approving the current applications, would be using its jurisdiction under the *Broadcasting Act* to enable Bell Canada to strengthen its local telephone monopoly. Both Rogers and the CCTA submitted that the Commission should not grant a BDU licence to Bell Canada unless it makes its BDU services available on a stand-alone basis.
28. In response to the interveners, Bell Canada confirmed that, for technical reasons, a DSL-based service can only be provided on a line carrying local telephone service. Bell Canada stated that this is a technical constraint stemming from the need to maintain a certain sealing current on the wire in order to prevent oxidation.
29. The applicant emphasized that it need not be Bell Canada that uses the enabling circuit to provide local service; rather, the local service could be provided by any local service competitor leasing the loop from Bell Canada. In this regard, the Commission notes that, in *Call-Net Enterprises Inc. – Request to lift restrictions on the provision of retail digital subscriber line Internet services*, Telecom Decision CRTC 2003-49, 21 July 2003, the Commission directed the ILECs to provide retail DSL Internet service upon the request of any customer who received local telephone service from a competitive local exchange carrier, provided that the customer is served via a local loop leased from the ILEC and would otherwise qualify for the service. The Commission further directed the ILECs to remove any restriction that would make their DSL access services available to competitive service providers only when the ILEC provides the end-customer's residential primary exchange service. Thus, Bell Canada is not permitted to oblige a customer to subscribe to Bell Canada's local telephone services in order to obtain DSL-based services such as high-speed Internet service from Bell Canada or a Bell Canada affiliate. Rather, it is sufficient that the customer subscribe to local telephone services

provided either by Bell Canada or a competitor, using a Bell Canada local loop.

30. The Commission considers that it would be in Bell Canada's interest, as a new entrant with no share in the distribution market, to eliminate the existing need to maintain a sealing current on the wire, thereby facilitating access by customers to its distribution services. The Commission notes in this regard that, in Bell Canada's 4 May 2004 response to the above-mentioned complaint by FCI Broadband and Maskatel Inc., Bell Canada stated that it is working with various DSL equipment suppliers to develop a technically and economically viable means to eliminate the need to maintain a sealing current on wires used for local telephone service. Bell Canada noted that the growth of wireless services as an alternative to local exchange service, coupled with the anticipated entry of cable companies into the local telephone market and its own desire to increase wholesale DSL opportunities, provides strong incentives for it to investigate solutions to the sealing current problem. In its response of 4 May 2004, and again in supplementary responses dated 14 July 2004 and 21 July 2004, Bell Canada stated that it expected to be able to offer DSL Internet services to new and existing customers over "dry" copper loops (loops without local exchange service) by the end of 2004 or early 2005. It indicated that the actual deployment of the capability would be contingent upon the final design solution adopted.
31. As also noted above, Bell Canada would have to receive prior Commission approval for a tariff in order to bundle its local telephone service with any broadcasting service unless there was no benefit to the subscriber, financial or otherwise, in receiving the two services on a bundled basis. Accordingly, the Commission considers that Bell Canada would not be able to use its position as a distributor of programming services to impede competition in the provision of local telephone service, or to use its position in the provision of local telephone services to distort the market for distribution services.

Possibility of cross-subsidization

32. Cogeco expressed the view that competitive services provided over Bell Canada's upgraded broadcast IP platform should not be cross-subsidized by Bell Canada's monopoly local telephone service. The Commission addressed such cross-subsidy concerns in *Quebecor Media – Alleged anti-competitive cross-subsidization of Bell ExpressVu*, Telecom Decision CRTC 2002-61, 8 October 2002 (Telecom Decision 2002-61). In that decision, the Commission referred to the fact that section 27(1) of the *Telecommunications Act* provides it with the authority to ensure that rates charged by Bell Canada and other telephone companies are just and reasonable. The Commission noted that Bell Canada was subject to the regulatory constraints contained in *Regulatory framework for second price cap period*, Telecom Decision CRTC 2002-34, 30 May 2002 (Telecom Decision 2002-34). The Commission also noted that, in Telecom Decision 2002-34, it had imposed additional constraints to ensure that the ILECs' rates, including those of Bell Canada, continued to be just and reasonable, pursuant to the price cap regime.

33. In Telecom Decision 2002-61, the Commission further noted that, pursuant to section 34 of the *Telecommunications Act*, it had forborne from regulating certain other services, where it had determined that competition was sufficient to protect the interests of users. The Commission concluded that it had implemented appropriate measures and constraints to ensure that rates for regulated services were just and reasonable, and that the existing mechanisms, including those that it had adopted earlier in Telecom Decision 2002-34, were appropriate and sufficient to prevent inappropriate cross-subsidization of ExpressVu by Bell Canada, at the expense of users of telecommunications services.
34. The Commission notes that Bell Canada remains subject to the regulatory measures generally applicable to ILECs pursuant to the Commission's jurisdiction under the *Telecommunications Act*. As it determined in the case of ExpressVu, the Commission considers these mechanisms sufficient to ensure that rates charged by Bell Canada for telecommunications services are just and reasonable, and that no inappropriate cross-subsidization of the applicant's proposed BDU services occurs at the expense of telecommunications services.

Relationship between the applicant and Bell ExpressVu

35. Some interveners argued that structural separation requirements were necessary to govern the relationship between the applicant and Bell ExpressVu. The Commission notes in this regard that, in *Star Choice Television Network Incorporated*, Decision CRTC 97-677, 22 December 1997 (Broadcasting Decision 97-677), the Commission approved the merger of Star Choice and Homestar Services Inc. (Homestar), both of which had been authorized to carry on national DTH broadcasting distribution undertakings. In that decision, the Commission determined that effective control of Star Choice would reside with Shaw following the merger. Given Shaw's activities in the cable broadcasting distribution industry, and in the interest of fair and equitable competition, the Commission considered that safeguards were necessary to ensure that no undue preference or advantage passed between Star Choice and Shaw, or between Star Choice and any of Shaw's affiliates. Accordingly, the Commission amended Star Choice's licence to add conditions specifying, among other things, that the DTH undertaking must remain independent of, and legally separate and distinct from, Shaw and all companies controlled directly or indirectly by Shaw.
36. In *Amalgamation of Cancom and Star Choice*, Decision CRTC 99-169, 9 July 1999, the Commission approved the merger of the satellite relay distribution undertakings (SRDUs) operated by Cancom and Star Choice. In so doing, the Commission revised the conditions related to structural separation in Star Choice's SRDU and DTH licences, and amended Cancom's SRDU licence to impose conditions related to structural separation. In this context, the Commission stated as follows:

The objective of such conditions is to prevent the possibility of undue preference and disadvantage that Shaw could confer, due to its dominant position in the cable distribution sector and its vertically- and horizontally-integrated corporate

structure, which includes both programming and cable distribution arms. In approving these applications, the Commission considers that, as a result of the influence that Shaw could have on the merged entity, the continuation of conditions of licence creating structural separation is necessary.

37. The Commission notes that, in *Amendments to conditions of licence relating to structural separation for Cancom and Star Choice*, Broadcasting Decision CRTC 2002-84, 12 April 2002 (Broadcasting Decision 2002-84), the structural separation conditions of licence were eliminated, and were replaced by less onerous requirements related to the separation of certain specified activities and to the confidentiality of information and related procedures. The Commission considered these sufficient to address the concerns that had given rise to the structural separation conditions of licence, namely Shaw's dominant position in the cable distribution sector.
38. The Commission notes that, in the present case, while Bell Canada seeks to enter the distribution market, it is not seeking approval to acquire a competitor or to conduct any other transaction that would potentially reduce the number of competitors in the market. Further, while ExpressVu has a considerable share of the market for distribution services when measured on a national level, and at least a small share of local markets, it cannot be considered, by any estimation, to dominate the market for such services. Rather, the Commission agrees with the applicant's general assertion that cable remains the dominant supplier of broadcasting distribution services. Given that ExpressVu is not in a dominant position, and that the applicant will enter the market with no market share, the Commission considers it unlikely that the applicant or ExpressVu would be able to conduct themselves, either individually or jointly, in such a way as to adversely affect the level of competition in the distribution market.
39. The Commission notes that ExpressVu, like other BDUs under the Regulations, is subject to a requirement that it not give an undue preference to any person, including itself, or subject any person to an undue disadvantage. The applicant, upon licensing, would also become subject to this requirement. The Commission considers this general requirement sufficient.
40. In light of the above, the Commission concludes that structural separation conditions of licence, or conditions of licence such as those imposed on Cancom and Star Choice in Broadcasting Decision 2002-84, are unwarranted.

Need for a policy review

41. Cogeco requested that the Commission, prior to approving the applications, conduct a complete review of the regulatory framework for the distribution of broadcasting.
42. The Commission first addressed the need to introduce competition in the broadcasting distribution market in its 19 May 1995 report to the Government of Canada, *Competition and Culture on Canada's Information Highway*. In its report, the Commission stated that, in light of the dominance of the cable industry relative to other potential entrants, there was no need to limit competition by other entrants in the broadcasting distribution

market. The Commission stated that it would endorse increased competition in the cable industry's core business in order to provide consumers with increased choice among distributors of broadcasting services. The Commission recommended opening the broadcasting distribution market to telephone companies once legislative and regulatory barriers to competition in local telephone service were eliminated.

43. In *Applications by telephone companies to carry on broadcasting distribution undertakings*, Public Notice CRTC 1997-49, 1 May 1997, the Commission concluded that barriers to entry into the local telephone service market would be sufficiently addressed by 1 January 1998, and that telephone companies could apply for licences authorizing them to carry on BDUs that could enter into operation as of that date. Subsequently, the Commission has issued BDU licences to several telephone companies, specifically The New Brunswick Telephone Company, Saskatchewan Telecommunications, MTS Communications Inc. and TELUS Communications Inc.
44. The Commission considers that what is primarily at issue in this proceeding is the applicant's ability and intent to provide a competitive broadcasting distribution service that facilitates the objectives of the *Broadcasting Act* and operates according to the regulatory requirements generally applicable to the type of undertakings proposed. In this context, the Commission notes that the applicant has requested authorizations and conditions of licence substantially similar to those of other BDUs operated by telephone companies.
45. The Commission notes that any new policies or regulations adopted as a result of future policy reviews would apply to the applicant's BDUs, as well as to existing BDUs. Similarly, Bell Canada would be subject to any new, generally applicable regulatory requirements adopted under the *Telecommunications Act*.
46. In light of the above, the Commission does not consider it necessary to conduct a policy review of the distribution framework prior to issuing distribution licences to the applicant.

General conclusions

47. The Commission is not persuaded by the arguments of interveners that the approval of Bell Canada's applications would have anti-competitive effects in either the local telephony or the broadcasting distribution market. The Commission considers that the applicant, whether alone or in conjunction with ExpressVu, will not be in a position to behave in such a fashion as to distort the market for distribution or for local telephony. Should the applicant behave in an anti-competitive fashion, the Commission is satisfied that it has adequate tools to address that behaviour.
48. With regard to the applicant's affiliation to CTV Inc., the Commission notes that pay and specialty services are similarly subject to regulations prohibiting undue preference or disadvantage. Further, other distributors are affiliated with programming undertakings.

49. In light of the above, the Commission is not persuaded that there are competitive concerns that would preclude issuing Class 1 BDU licences to the applicant, or that would require particular conditions of licence aimed at addressing the concerns raised by interveners, such as conditions requiring structural separation or prescribing procedures intended to ensure the confidentiality of certain information. Rather, the Commission considers that general rules, under either the *Broadcasting Act* or the *Telecommunications Act*, are sufficient to address any competitive issues that might arise.
50. The Commission notes Bell Canada's arguments that, while DTH services have produced substantial benefits for Canadians, including improved access to broadcasting services for consumers outside of cabled areas, DTH does not provide a sufficiently competitive alternative to cable BDUs for many consumers, and that the licensing of Bell Canada's terrestrial distribution service would provide such consumers with a viable alternative to those of existing cable BDUs. The Commission also notes the submissions of PIAC and other individuals that the licensing of these services will improve competition in the BDU market to the benefit of subscribers and the furtherance of the objectives of the *Broadcasting Act*.
51. Having considered the views of the parties, the Commission expects that licensing of the applicant will serve to increase competition in the distribution market, resulting in associated benefits for the Canadian broadcasting system such as increased choice and greater efficiency.

Distribution of high definition programming

52. Both the CCTA and the Canadian Association of Broadcasters (CAB) raised concerns as to whether Bell Canada was technically capable of distributing high definition (HD) programming. Bell Canada responded that HDTV programming is an important component of its marketing plan. It confirmed that it intends to distribute all priority and "must carry" programming services that are available in HD format.

The Commission's analysis and determinations

53. In *A licensing policy to oversee the transition from analog to digital, over-the-air television broadcasting*, Broadcasting Public Notice CRTC 2002-31, 12 June 2002, the Commission announced its intention to issue "transitional digital television" licences to existing television station licensees. Under such licences, stations could broadcast over-the-air digital programming, including up to 14 hours of such programming that is not duplicative of the analog programming broadcast. Further, in *The regulatory framework for the distribution of digital television signals*, Broadcasting Public Notice CRTC 2003-61, 11 November 2003 (Broadcasting Public Notice 2003-61), the Commission announced its regulatory framework with respect to the distribution of signals provided by digital over-the-air television stations. In Broadcasting Public Notice 2003-61, the Commission stated that BDUs would be required to distribute the signals of priority digital television stations, including those with HD programming, such that, where a BDU is required to distribute the analog signal of a television station as part of its basic

service, it is also required to distribute the digital signal.² As stated in Broadcasting Public Notice 2003-61, the Commission will issue for public comment proposed amendments to the Regulations to implement this regulatory framework.

54. In *Call for comments on a proposed framework for the licensing and distribution of high definition pay and specialty services*, Broadcasting Public Notice CRTC 2004-58, 6 August 2004 (Broadcasting Public Notice 2004-58), in order to promote the transition to high definition technology, the Commission called for comment on licensing and distribution policies for transitional high definition pay and specialty services.
55. The Commission notes that Bell Canada has indicated that it is technically capable of distributing programming services in HD format and that it intends to distribute all priority and “must-carry” services that are available on a digital basis, including their programming in HD format. The regulatory amendments with respect to the distribution of the programming services of over-the-air digital transitional television licensees will apply to Bell Canada and other Class 1 licensees. Further, the Commission expects that any requirements adopted in the proceeding initiated by Broadcasting Public Notice 2004-58, with respect to the distribution of HD versions of pay and specialty services by Class 1 licensees, will apply to DSL-based Class 1 BDUs such as Bell Canada, absent such technological or other distinctions as may justify a different approach.
56. The Commission further notes that, should Bell Canada or any other BDU licensee wish to depart from the regulations adopted by the Commission in its future proceedings, it would have to apply to the Commission for permission to do so. Parties would have an opportunity to intervene at that time.

Distribution of a second set of US 4+1 signals and of distant Canadian signals

57. The CAB submitted that the applicant’s carriage of distant Canadian signals and of a second set U.S. 4+1 signals should be approved only if Bell Canada adheres to the requirements respecting non-simultaneous program deletion described in section 43 of the Regulations, as generally required by the Commission. The CAB acknowledged that the Commission generally suspends the requirement of program deletion upon approval of an agreement between a distributor and the CAB that deals with issues related to the protection of program rights.
58. Bell Canada confirmed that it intends to sign the standard CAB agreement for wireline distributors, and that the program rights of local broadcasters in the markets to be served will be protected.

The Commission’s analysis and determinations

59. Class 1 and Class 2 BDUs that apply to distribute a second set of U.S. 4+1 signals and distant Canadian signals from the Part 3 list of eligible satellite services are generally authorized to do so on a digital, discretionary basis provided that they either perform

² Assuming the contours of the two signals are the same.

program deletion with respect to these services, as described in section 43 of the Regulations, or sign an agreement with affected broadcasters or their representative concerning the distribution of these services.

60. The Commission authorizes Bell Canada to offer the above-noted signals, by **condition of licence**. As is the Commission's normal practice, this authorization is contingent upon Bell Canada performing program deletion with respect to these signals, as described in section 43 of the Regulations. Consistent with its normal practice, the Commission is prepared to suspend the requirements for program deletion with respect to these signals, should Bell Canada file and the Commission approve an agreement with the CAB. The Commission reminds Bell Canada that, until such an agreement is approved by the Commission, Bell Canada will be required to perform program deletion with respect to these services as described in section 43 of the Regulations.

Distribution and linkage rules

61. Both Rogers and the CAB submitted that Bell Canada, as a fully digital BDU, must operate under the same distribution and linkage rules as other Class 1 BDUs. Specifically, these parties were concerned that Bell Canada adhere to requirements pertaining to the treatment of dual status and modified dual status programming services. In response, Bell Canada confirmed it would comply with all distribution and linkage requirements applicable to incumbent analog Class 1 cable BDUs, notwithstanding the fact that it would operate using digital distribution technology.

The Commission's analysis and determinations

62. The Commission agrees with the CAB's and Rogers' interpretation of the distribution and linkage rules, and specifically those related to dual status and modified dual status services. In the Commission's view, these rules apply equally to analog, hybrid and fully digital Class 1 BDUs. This position is consistent with the Commission's determinations in *Renewal of the licence for TV5 Québec Canada*, Broadcasting Decision CRTC 2003-77, 27 February 2003, with respect to the distribution of the TV5 programming service by Class 1 BDUs operated by QMI.
63. The Commission notes the applicant's commitment to abide by the same distribution and linkage rules that apply to analog Class 1 BDUs. Since these rules would already be applicable to the licensee's service offering, it is not necessary to include an additional requirement to this effect in the licences to be issued to Bell Canada.

Inside wire

64. In its submission, the CCTA contended that Bell Canada's proposed connection of its facilities to inside wire within the home, as described in its applications, would breach section 10 of the Regulations, and could create signal leakage harmful to cable facilities. Bell Canada replied that it would undertake to ensure that signal leakage did not take

place, and expressed a willingness to address the issue through the CRTC Interconnection Steering Committee working group on Cable Wiring (CW-CISC), should this become a problem.

The Commission's analysis and determinations

65. Section 10(1) of the Regulations states as follows:

A licensee that owns an inside wire shall, on request, permit the inside wire to be used by a subscriber, by another licensee, or by a broadcasting undertaking in respect of which an exemption has been granted, by order under subsection 9(4) of the Act, from the requirement to obtain a licence.

66. "Inside wire" is defined in the Regulations as:

...the wire that is used by a distribution undertaking for the distribution of programming services that extends from the demarcation point to one or more terminal devices inside a subscriber's residence or premises

67. "Demarcation point", in respect of the wire that is used by a distribution undertaking for the distribution of programming services, means

(a) if the subscriber resides in a single-unit dwelling,

(i) 30 cm outside the exterior wall of the subscriber's premises, or

(ii) any point to which the licensee and the customer have agreed; and

(b) if the subscriber resides in a multiple-unit dwelling,

(i) the point inside the dwelling at which the wire is diverted to the exclusive use and benefit of that subscriber, or

(ii) any point to which the licensee and the customer have agreed.

68. The Commission considers that it is not clear from Bell Canada's application whether the proposed point of interconnection between the applicant's facilities and a cable company's inside wire would be the demarcation point defined in the Regulations. As noted by Bell Canada, the Regulations do, however, contemplate alternate demarcation points to which the licensee and the customer have agreed. The Commission acknowledges Bell Canada's commitments (a) to ensure that signal leakage is avoided; and (b) to discuss concerns with its proposed arrangements through the CW-CISC. In addition, the Commission reminds the applicant that, although it is permitted to use

inside wire under section 10 of the Regulations³, this permission does not entail the right to remove or alter inside wire in such a way that it cannot reasonably be used by the incumbent cable company or by another BDU to provide service in the future.

Contribution to Canadian programming and community channel

69. La Fédération des télévisions communautaires autonomes du Québec and Lee Weston were concerned that Bell Canada would not offer a community channel. They also expressed concern that the increased competition created by approval of Bell Canada's applications would have an impact on the amount of money that BDUs contribute to community channel programming.
70. Other parties, including the Director's Guild of Canada and the Bell Broadcast and New Media Fund, considered that Bell Canada's contribution to Canadian production funds would provide much needed support, and supported its applications on this basis. They noted Bell Canada's proposal to provide 5% of its gross broadcasting revenues to Canadian production funds (4% to the Canadian Television Fund (CTF) and 1% to the Bell Broadcast and New Media Fund).

The Commission's analysis and determinations

71. The Commission has consistently taken the view that community programming is an important aspect of the Canadian broadcasting system, and offers a clear and significant contribution to the furtherance of the objectives of the *Broadcasting Act*. However, it remains the decision of each BDU licensee as to whether or not it will operate its own community channel.
72. Notwithstanding the BDU's discretion as to whether or not to offer a community channel, the Commission's policy with respect to community programming, as set out in *Policy framework for community-based media*, Broadcasting Public Notice CRTC 2002-61, 10 October 2002, provides for the licensing of community-based programming undertakings that would offer community programming. Depending on the service area, the community programming of such undertakings would receive mandatory carriage by BDUs.
73. The Commission's policy also provides for the licensing of community programming undertakings to operate a community channel. Under section 29 of the Regulations, if a BDU does not, itself, produce and distribute community programming on its community channel, and if such a community programming undertaking is licensed in the licensed area of that BDU, the community programming undertaking would be eligible to receive, depending on the number of subscribers to that BDU, either 2% or 5% of the BDU's gross revenues derived from broadcasting activities.

³ Such permission is subject to payment of a "just and reasonable fee", pursuant to section 10(2) of the Regulations.

74. The Commission notes that, since the applicant would be operating under regional licences, each authorizing it to carry on BDUs in a number of licensed areas, any such community programming undertaking would only be eligible to receive funding based on the revenues derived from the broadcasting activities of the BDU operating in the licensed area within which the community programming undertaking was licensed to operate. A **condition of licence** that deals with this matter is contained in the appendix to this decision.
75. Unless and until Bell Canada decides to offer a community channel, and subject to the possible licensing of a community programming undertaking or undertakings, the Commission considers that the applicant's commitment to contribute 5% of its gross broadcasting revenues to the CTF and other certified production funds is appropriate and consistent with section 29 of the Regulations.

The Commission's conclusions

76. The Commission considers it appropriate to license Bell Canada to offer broadcasting distribution services in the communities listed in the applications. Accordingly, the Commission **approves** the applications by Bell Canada for regional licences to serve the following licensed areas: (a) Toronto, Hamilton/Niagara, Oshawa, Kitchener, London, Windsor, Ottawa, and surrounding areas of each location (Ontario), and (b) Montréal, Gatineau, Sherbrooke, Québec, and surrounding areas of each location (Quebec).

Issuance of the licences

77. Subject to the requirements of this decision, the Commission will issue Class 1 regional broadcasting distribution licences to Bell Canada to operate cable BDUs to serve Toronto, Hamilton/Niagara, Oshawa, Kitchener, London, Windsor, Ottawa, and surrounding areas of each location (Ontario); and Montréal, Gatineau, Sherbrooke, Québec, and surrounding areas of each location (Quebec). The Regulations applicable to Class 1 licensees shall apply to these undertakings, including those relating to distribution on a digital basis. The licences will be subject to the **conditions of licence** set out in the appendix to this decision as well as in the licences to be issued. The licences will expire 31 August 2011.
78. The licences for these undertakings will be issued once the applicant has informed the Commission in writing that it is prepared to commence operations. The undertakings 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 18 November 2006. In order to ensure that such a request is processed in a timely manner, it should be submitted at least 60 days before this date.

Secretary General

This decision is to be appended to each licence. It is available in alternative format upon request, and may also be examined at the following Internet site: <http://www.crtc.gc.ca>

Appendix to Broadcasting Decision CRTC 2004-496

Conditions of licence applicable to specific licensed areas

Toronto

1. The licensee is authorized to distribute, as part of the basic service, the signals of WKBW-TV (ABC), WGRZ-TV (NBC), WIVB-TV (CBS), WUTV (FOX) and WNED-TV (PBS) Buffalo, or alternatively for each signal, the signal of a different affiliate of the same network located in the same time zone as that of the licensed area and received from a licensed SRDU.
2. The licensee is relieved of the obligation to distribute the signal of CFYZ Toronto.¹
3. The licensee is authorized to distribute on a discretionary basis the signal of WNYO-TV (Warner Brothers) Buffalo.

Oshawa

4. The licensee is authorized to distribute, as part of the basic service, the signals of WKBW-TV (ABC), WGRZ-TV (NBC), WIVB-TV (CBS), WUTV (FOX) and WNED-TV (PBS) Buffalo, or alternatively for each signal, the signal of a different affiliate of the same network located in the same time zone as that of the licensed area and received from a licensed SRDU.
5. The licensee is authorized to distribute on a discretionary basis the signal of WNYO-TV (Warner Brothers) Buffalo.

Hamilton

6. The licensee is authorized to distribute, as part of the basic service, the signal of a CBS-affiliated station, an ABC-affiliated station, an NBC-affiliated station, a FOX-affiliated station, and a PBS-affiliated station received over the air at the local head end, or alternatively for each signal, the signal of a different affiliate of the same network originating in the same time zone as that of the licensed area and received from a licensed SRDU.
7. The licensee is authorized to distribute on a discretionary basis the signal of WNYO-TV (Warner Brothers) Buffalo.

Kitchener

8. The licensee is relieved of the obligation to distribute the signal of CKNX-TV Wingham.²

¹ CFYZ is a low-power AM radio programming undertaking licensed to the Greater Toronto Airports Authority to provide information concerning the airport to those using the airport.

9. The licensee is authorized to distribute, as part of the basic service, the signals of WKBW-TV (ABC), WGRZ-TV (NBC), WIVB-TV (CBS), WUTV (FOX) and WNED-TV (PBS) Buffalo, or alternatively for each signal, the signal of a different affiliate of the same network located in the same time zone as that of the licensed area and received from a licensed SRDU.
10. The licensee is authorized to distribute on a discretionary basis the signal of WNYO-TV (Warner Brothers) Buffalo.

London

11. The licensee is authorized to distribute, as part of the basic service, the signals of WXYZ-TV (ABC), WDIV (NBC), WWJ-TV (CBS) and WJBK (FOX) Detroit, and WQLN (PBS), WJET-TV (ABC) and WICU-TV (NBC) Erie. Alternatively, the licensee is authorized to distribute a different set of 4+1 U.S. signals originating in the same time zone as that of the licensed area and received from a licensed SRDU.
12. The licensee is authorized to distribute, as part of the basic service, the signal of WUAB (UPN) Cleveland, either received over the air at a remote head end or received via satellite from a licensed SRDU.
13. The licensee is authorized to distribute, on a discretionary basis, the signal of WNYO-TV (Warner Brothers) Buffalo.
14. The licensee is relieved of the obligation to distribute the signal of VF 8016 St. Thomas.³

Windsor

15. The licensee is authorized to distribute, as part of the basic service, the signal of a CBS-affiliated station, an ABC-affiliated station, an NBC-affiliated station, a FOX-affiliated station, and a PBS-affiliated station received over the air at the local head end, or alternatively for each signal, the signal of a different affiliate of the same network located in the same time zone as that of the licensed area and received from a licensed SRDU.
16. The licensee is authorized to distribute the distant Canadian signals of CHCH-TV Hamilton, and CITY-TV and CFMT-TV (OMNI.1) Toronto as part of the basic service.⁴

Ottawa

² The programming of CKNX-TV Wingham largely duplicates that of CFPL-TV London, which the licensee is required to distribute pursuant to section 17 of the *Broadcasting Distribution Regulations*.

³ VF 8016 is a very low-power FM radio programming undertaking (0.8 watts), which is licensed to Faith Baptist Church of St. Thomas and broadcasts a church service information service.

⁴ The incumbent BDU is also authorized to distribute these signals as part of its basic service.

17. The licensee is relieved of the obligation to distribute the signal of the AM radio programming undertaking licensed to the Ottawa MacDonald-Cartier International Airport Authority in *New low-power information service*, Decision CRTC 2001-67, 14 February 2001.
18. The licensee is relieved of the obligation to distribute the signal of VF 8013 Ottawa.⁵
19. The licensee is authorized to distribute, as part of the basic service, the signals of WKBW-TV (ABC), WGRZ-TV (NBC), WIVB-TV (CBS) and WUTV (FOX) Buffalo, and WPBS-TV (PBS) Watertown, or alternatively for each signal, the signal of a different affiliate of the same network located in the same time zone as that of the licensed area and received from a licensed SRDU.
20. The licensee is authorized to distribute on a discretionary basis the signal of WNYO-TV (Warner Brothers) Buffalo.

Gatineau

21. The licensee is relieved of the obligation to distribute the signal of the AM radio programming undertaking licensed to the Ottawa MacDonald-Cartier International Airport Authority in *New low-power information service*, Decision CRTC 2001-67, 14 February 2001.
22. The licensee is relieved of the obligation to distribute the signal of VF 8012 Gatineau⁶.
23. The licensee is authorized to distribute, as part of the basic service, the signals of WKBW-TV (ABC), WGRZ-TV (NBC), WIVB-TV (CBS) and WUTV (FOX) Buffalo, and WPBS-TV (PBS) Watertown, or alternatively for each signal, the signal of a different affiliate of the same network located in the same time zone as that of the licensed area and received from a licensed SRDU.
24. The licensee is authorized to distribute on a discretionary basis the signal of WNYO-TV (Warner Brothers) Buffalo.

Montréal

25. The licensee is relieved of the obligation to distribute the signal of CHDO-FM Montréal.⁷

⁵ VF 8013 is a very low-power FM radio programming undertaking (0.8 watts), which is licensed to Fabrique de la Paroisse du Sacré-Coeur du diocese d'Ottawa and broadcasts a church service information service.

⁶ VF 8012 is a radio programming undertaking licensed to Fabrique de la Paroisse Saint-Joseph de Hull in Gatineau and broadcasts a church service information service.

⁷ CHDO-FM is a low-power FM radio programming undertaking licensed to Aéroports de Montréal to provide airport information to those using the airport.

26. The licensee is authorized to distribute, as part of the basic service, WVNY (ABC), WCAX-TV (CBS), WFFF-TV (FOX) and WETK (PBS) Burlington, and WPTZ (NBC) and WCFE-TV (PBS) Plattsburg. Alternatively, the licensee is authorized to distribute a different set of 4+1 U.S signals originating in the same time zone as that of the licensed area and received from a licensed SRDU.
27. The licensee is authorized to distribute, on a discretionary basis, the signal of WWBI-TV (PAX) Burlington/Plattsburg.

Sherbrooke

28. The licensee is authorized to distribute, as part of the basic service, the signals of WVNY (ABC), WCAX-TV (CBS), WFFF-TV (FOX) and WETK (PBS) Burlington, and WPTZ (NBC) Plattsburgh, or alternatively for each signal, the signal of a different affiliate of the same network located in the same time zone as that of the licensed area and received from a licensed SRDU.
29. The licensee is relieved of the obligation to distribute the signal of VF8000 Sherbrooke (Rock Forest).⁸

Québec

30. The licensee is authorized to distribute, as part of the basic service, the signals of WVNY (ABC), WCAX-TV (CBS) and WFFF-TV (FOX) Burlington, and WPTZ (NBC) and WCFE-TV (PBS) Plattsburg, or alternatively for each signal, the signal of a different affiliate of the same network located in the same time zone as that of the licensed area and received from a licensed SRDU.

Conditions of licence applicable to all licensed areas

31. The licensee is authorized to distribute, on a discretionary basis, a second set of 4+1 U.S. signals received from a licensed SRDU: KOMO-TV (ABC), KING-TV (NBC), KIRO-TV (CBS), KCPQ (FOX) and KCTS-TV (PBS) Seattle.
32. The licensee is authorized to distribute, on a discretionary basis, any of the Canadian television signals set out in the List of Part 3 eligible satellite services contained in Revised lists of eligible satellite services, as amended from time to time.
33. In the case of each signal distributed pursuant to conditions of licence 31 and 32 above, such distribution is subject to the provision that 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

⁸ VF8000 is a very low-power (0.8 watts) radio programming undertaking licensed to Fabrique de la Paroisse Saint-Roch de Rock Forest and broadcasts a church service information service.

application of this provision upon its approval of an executed agreement between the licensee and the broadcaster concerned or its representative. 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 4+1 U.S. signals and distant Canadian television.

34. For the purpose of sections 29(3) and 29(4) of the *Broadcasting Distribution Regulations*, the licensee's annual contribution to a community programming undertaking licensed in a licensed area shall be calculated on the basis of the licensee's gross revenues derived from broadcasting activities in that licensed area in each broadcast year.