



Broadcasting Decision CRTC 2004-480

Ottawa, 8 November 2004

TELUS Communications Inc.

Calgary, Edmonton (including St. Albert, Sherwood Park, Spruce Grove and Stony Plain), Fort McMurray, Grande Prairie, Lethbridge, Medicine Hat and Red Deer, Alberta; Kamloops, Kelowna, Nanaimo, Penticton, Prince George, Terrace, Vancouver (including Lower Mainland and Fraser Valley), Vernon and Victoria, British Columbia

Application 2003-1262-9

Broadcasting Public Notice CRTC 2004-7

2 February 2004

Distribution of additional signals on a discretionary digital basis

*The Commission **approves** the application by TELUS Communications Inc. to amend authorizations and conditions of licence relating to signal carriage.*

The application

1. The Commission received an application by TELUS Communications Inc. (TELUS) requesting authority to amend the broadcasting licences of its cable distribution undertakings (BDUs) serving Alberta and British Columbia. The licensee proposed to:
 - add CKRD-TV (CBC) Red Deer to the basic service in Edmonton and Calgary,
 - distribute a set of U.S. 4+1 signals, at its option, as part of either the basic or the discretionary service of the undertakings serving Alberta and British Columbia, and replace KSPS-TV (PBS) Spokane with KCTS-TV (PBS) Seattle, as part of the U.S. 4+1 package on the undertaking serving Alberta, and
 - distribute CKUA-FM in replacement of CKUA, and distribute CBC Galaxie as part of the basic service.
2. TELUS stated that it proposes the above-mentioned changes in order to offer a more attractive set of services in order to stay competitive with direct-to-home (DTH) distributors and incumbent cable BDUs in its licensed service areas.

Carriage of CKRD-TV

3. TELUS is seeking authorization to distribute CKRD-TV as part of the basic service in both Edmonton and Calgary. In *Regional broadcasting distribution undertakings in Alberta and British Columbia*, Broadcasting Decision CRTC 2003-407, 20 August 2003 (Decision 2003-407), the Commission approved applications by TELUS to operate regional BDUs to serve various communities in Alberta and British Columbia. Decision 2003-407 authorized the licensee to distribute CKRD-TV (CBC) Red Deer as part of the discretionary service in Edmonton, Grande Prairie, Medicine Hat and Lethbridge. TELUS stated that, since CKRD-TV is currently available as part of the discretionary service, its carriage on the basic service would have no negative impact on local television programming undertakings in Edmonton. TELUS added that Shaw Cablesystems Limited (Shaw) is authorized to distribute CKRD-TV as part of the basic service in both Calgary and Edmonton, and that approval of its proposal would therefore result in competitive parity.
4. In *Competing applications proposing the introduction of new, over-the-air television services at Edmonton and Calgary*, Broadcasting Decision CRTC 2004-98, 26 February 2004 (Decision 2004-98), the Commission considered an application by Global Communications Limited (Global) for a licence amendment for CKRD-TV. The Commission approved Global's request to disaffiliate CKRD-TV from the Canadian Broadcasting Corporation (CBC) and to delete the authority for the transmitter CKRD-TV-1 Coronation from the licence for CKRD-TV. However, the Commission stated in that decision that CKRD-TV may only disaffiliate from the CBC at such time as the CBC commences the operation of new transmitters in Coronation and Red Deer to rebroadcast the programming of CBXT Edmonton, approved in *CBXT Edmonton – New transmitters in Coronation and Red Deer*, Broadcasting Decision CRTC 2004-100, 26 February 2004 (Decision 2004-100).

The interventions related to CKRD-TV

5. The Commission received two interventions in opposition to TELUS' proposal to distribute CKRD-TV on the basic service in Edmonton and Calgary. Those two interventions were submitted by CTV Television Inc. (CTV), licensee of CFRN-TV Edmonton and CFCN-TV Calgary, and Craig Media Inc. (Craig), licensee of CKEM-TV Edmonton, CKAL-TV Calgary, CHMI-TV Portage la Prairie/Winnipeg, and CKX-TV Brandon.
6. CTV opposed TELUS' proposal on the grounds that it is too early to permit other BDUs to carry CKRD-TV during its transition period of disaffiliation from the CBC. CTV expressed the view that approval of such a proposal would result in Global owning two stations serving Edmonton and Calgary, giving Global an advantage over CTV's stations CFRN-TV Edmonton and CFCN-TV Calgary.
7. Craig argued that, by disaffiliation from the CBC, CKRD-TV will become a Global station, offering a greater proportion of U.S. programming, resulting in a detrimental effect on incumbent broadcasters.

8. Both CTV and Craig suggested that the Commission revisit the status of CKRD-TV as a distant signal.

The applicant's reply

9. In reply, the applicant submitted that, being a new entrant to the Alberta BDU market, it would be appropriate that it have the option to offer the same channels as the incumbent, Shaw, which has the authority to distribute CKRD-TV as part of its basic service. TELUS added that, since the Commission did not question CKRD-TV's status as a distant signal in Decisions 2004-98 and 2004-100, it would be inappropriate to do so now.
10. Moreover, the applicant expressed the view that the interventions are premature, in presupposing that CKRD-TV should be treated as a new channel when it disaffiliates from the CBC. TELUS indicated that it had found no examples where a station disaffiliating from the CBC resulted in a change to its carriage as a distant signal, and stated that the Commission's policy does not contemplate the voiding of the authority of a BDU to distribute a distant signal should the source of the signal change its affiliation.
11. Finally, TELUS maintained that disaffiliation of CKRD-TV from the CBC might never occur, or might occur only at some later point, and in the interim, there would be no change to CKRD-TV's programming, its distant signal status, its impact in the markets where it is already carried, or any BDU's authority to distribute it.

The Commission's analysis and determination

12. In *Distant Canadian Television Signals*, Public Notice CRTC 1985-61, 22 March 1985 (Public Notice 1985-61), the Commission set out its test for the distribution of a distant Canadian signal on the basic service of a BDU:

(ii) Distribution on the Basic Tier:

The Commission will examine, on a case-by-case basis, applications from broadcasting receiving undertakings for the cable distribution of distant Canadian signals on the basic tier. In assessing these applications, the Commission will take into account the following considerations:

- (a) there should be no objection on the part of the originating station whose signal is being extended;
- (b) the originating station whose signal enters a distant market should not accept local advertising from such a market;
- (c) the originating station should continue to adhere to the local programming commitments of its licensing decision;

- (d) the distant station should enhance the diversity of Canadian programming in the market.

The Commission will also examine:

- (e) The number of local television services in existence or likely to be licensed in the distant market;
- (f) The degree of the distant signal's potential impact on the revenue base of the local broadcasters and on their ability to meet their programming commitments.

13. Section 19(j) of the *Broadcasting Distribution Regulations* (the Regulations) states that a licensee may distribute:
 - (j) the programming service of any distant television station that is not a Part 2 eligible satellite service and that was distributed throughout the licensed area by any licensee before June 3, 1993.
14. The Commission has considered the concerns expressed by the interveners with respect to this proposal, but has concluded that the interveners have presented no compelling evidence of potential financial harm to the incumbent broadcasters, should CKRD-TV be distributed by TELUS as part of the basic service in Calgary and Edmonton. The Commission further notes that the signal of CKRD-TV has been distributed by Shaw as part of the basic service in both Calgary and Edmonton for some time.
15. The Commission notes that the CBC has provided formal notification to its affiliate Global Television that the CBC will not renew their affiliation agreement with it after 31 August 2005. The CBC has also indicated to the Commission that it will provide the full English television service to Red Deer and Coronation, Alberta effective 1 September 2005.
16. The Commission notes that CKRD-TV currently devotes only 35% of its schedule to CBC programming, offering its audience the smallest amount of CBC-originated programming of any of the CBC affiliates, and that the disaffiliation of CKRD-TV from the CBC network will not take place until the fall of 2005 at the earliest.

17. The Commission has concluded that the distribution of CKRD-TV on the basic service of TELUS' undertakings serving Calgary and Edmonton is consistent with the Regulations and with the guidelines on the cable distribution of distant Canadian television signals first set out in Public Notice 1985-61 and reiterated in *Structural Public Hearing*, Public Notice CRTC 1993-74, 3 June 1993 and in *Proposed Broadcasting Distribution Regulations*, Public Notice CRTC 1997-84, 2 July 1997. Accordingly, the Commission **approves** the request by TELUS to distribute the signal of CKRD-TV on the basic service in Edmonton and Calgary, and amends the authorization for the undertaking serving Alberta as follows:

The licensee is authorized to distribute, at its option, CKRD-TV (CBC) Red Deer as part of its basic service in Edmonton and Calgary and as part of its discretionary service in Grande Prairie, Medicine Hat and Lethbridge.

Distribution of U.S. 4+1 signals and replacement of KSPS-TV with KCTS-TV

U.S. 4+1 signals

18. TELUS is currently authorized, by condition of licence, to distribute a set of U.S. 4+1 signals¹ on the basic service of the Class 1 cable BDUs serving Alberta and British Columbia. As noted above, TELUS is seeking authorization to distribute a set of U.S. 4+1 signals, at its option, on either the basic or the discretionary service of those undertakings.
19. In its application, TELUS indicated that approval of this application would allow it to move the existing 4+1 signals to its discretionary service, and offer a "stripped down" basic service, consisting only of local off-air programming services as well as a few Canadian specialty services.
20. Given that TELUS is presently authorized to carry these services as part of its basic service, TELUS was of the view that this would have no adverse impact on local licensed programming undertakings in Alberta or British Columbia. TELUS noted that it would continue to provide simultaneous substitution for the U.S. network signals, at the request of local broadcasters.
21. No interventions were submitted in respect of this proposal.

The Commission's analysis with respect to the authorization of the U.S. 4+1 package

22. The Commission notes that the authorization sought by TELUS will allow TELUS to offer an all-Canadian basic service. As noted by TELUS, the applicant is already authorized to offer these services on the basic service, so there will be no impact on any other undertaking.
23. In the Commission's view, the authorization sought by TELUS will provide enhanced flexibility and provide additional choice for subscribers.

¹ A set of signals that provides the programming of the four U.S. commercial networks (CBS, NBC, ABC, FOX) and of the non-commercial PBS network are collectively referred to as the U.S. 4+1 signals.

Replacement of KSPS-TV with KCTS-TV

24. TELUS proposed to replace the signal of a television station that provides the programming of the U.S. network PBS (KSPS-TV) with another station of the same affiliation (KCTS-TV), on the basic service of the cable BDUs serving Calgary, Edmonton (including St. Albert, Sherwood Park, Spruce Grove and Stony Plain), Fort McMurray, Grande Prairie, Lethbridge, Medicine Hat and Red Deer, Alberta. It proposed to substitute the signal of KSPS-TV (PBS) Spokane for the signal of KCTS-TV (PBS) Seattle, Washington, as part of its U.S. “4+1” package.
25. The applicant indicated that, since both KSPS-TV and KCTS-TV originate in the same time zone and that neither broadcasts commercial advertising, the proposed change would have no adverse impact on local broadcasters.

The intervention

26. An intervention was submitted by Linda G. Leonard opposing the replacement of KSPS-TV (PBS) Spokane with KCTS-TV (PBS) Seattle. Ms. Leonard expressed the view that Alberta has very little public or non-profit television broadcasting. The intervener stated that KSPS-TV provides some local programming for Alberta, and that while the programming of KCTS-TV is similar to that of KSPS-TV, there are regional differences.

The applicant’s reply

27. In reply to Ms. Leonard’s intervention, TELUS indicated that it shares the intervener’s concern with ensuring access to quality public broadcasting, and notes that nothing in its proposal would have an impact on such access. TELUS noted, however, that Ms. Leonard’s further concerns related to the potential impact of the proposed change on foreign television stations are not relevant to this process.

The Commission’s analysis with respect to the replacement of the PBS signal

28. The Commission is satisfied with the licensee’s reply to the intervention, and is of the view that the replacement of KSPS-TV with KCTS-TV in the U.S. 4+1 package offered on the basic service of the cable BDU serving Alberta will not have any significant negative impact on any part of the Canadian broadcasting system and is consistent with the requirements of the Regulations.

The Commission’s determinations

29. Accordingly, the Commission **approves** the application by TELUS to alter the distribution of the U.S. 4+1 signals, and to replace KSPS-TV with KCTS-TV in the U.S. 4+1 package offered on the basic service of the undertaking serving Alberta.

30. For the undertaking serving Alberta, condition of licence 1 is therefore replaced with the following:

In addition to the services required or authorized to be distributed pursuant to the applicable sections of the *Broadcasting Distribution Regulations*, the licensee is authorized, by condition of licence, to distribute, at its option and as part of either the basic service or its discretionary service:

KOMO-TV (ABC) Seattle
KIRO-TV (CBS) Seattle
KING-TV (NBC) Seattle
KCPQ (FOX) Tacoma
KCTS-TV (PBS) Seattle

31. For the undertaking serving British Columbia, condition of licence 1 is therefore replaced with the following:

In addition to the services required or authorized to be distributed pursuant to the applicable sections of the *Broadcasting Distribution Regulations*, the licensee is authorized, by condition of licence, to distribute, at its option and as part of either the basic service or its discretionary service:

KOMO-TV (ABC) Seattle
KIRO-TV (CBS) Seattle
KING-TV (NBC) Seattle
KCPQ (FOX) Tacoma
KCTS-TV (PBS) Seattle

32. The Commission notes that TELUS is currently authorized to distribute a set of U.S. 4+1 services as part of the basic service, and proposes to offer only the commercial services on the discretionary service. The Commission also notes that the same services are available from other licensed BDUs serving the same communities.

Replacement of CKUA with CKUA-FM and distribution of CBC Galaxie

33. TELUS proposed that it no longer distribute CKUA Edmonton for as long as it carries CKUA-FM Edmonton.
34. In support of its request to add the distribution of CBC Galaxie on the basic service, TELUS indicated that, because CBC Galaxie is offered by other licensed BDUs in the same communities, the carriage of the signal would provide competitive parity for TELUS.
35. No interventions were submitted in respect of these proposals.

The Commission's analysis and determinations

36. With respect to the carriage of CKUA-FM, section 22(1)(a) of the Regulations stipulates that:

Except as otherwise provided under a condition of its licence, a Class 1 licensee, and any Class 2 licensee that elects to distribute an audio programming service, shall distribute the programming services of all local radio stations.

37. Since the programming service of CKUA-FM is rebroadcast on CKUA, the Commission is of the view that the licensee is required to distribute the programming service only once. The Commission is satisfied that the proposal to replace CKUA with CKUA-FM is consistent with the provisions of the Regulations related to the carriage of audio programming services.

38. With respect to the carriage of CBC Galaxie, Section 23(1)(a) of the Regulations stipulates that:

Except as otherwise provided under a condition of its licence or in subsection (2), a licensee may distribute any audio Canadian programming service.

39. The Commission is satisfied that, under the provisions of the Regulations, the licensee may distribute, as part of its basic service, the pay audio service CBC Galaxie, without the Commission's prior approval.

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>