



Broadcasting Decision CRTC 2004-348

Ottawa, 16 August 2004

Image Wireless Communications Inc.

Saskatoon, Kenaston, Zenon Park, Caron, Birch Hills, Regina, North Battleford, Stranraer, Swift Current, Warmley, Watson and Yorkton, Saskatchewan; and Lloydminster, Alberta

Applications 2003-0045-0, 2003-0046-8, 2003-0047-6, 2003-0049-2, 2003-0050-0, 2003-0051-7, 2003-0052-5, 2003-0053-3, 2003-0054-1, 2003-0055-9, 2003-0056-7, 2003-0057-5; and 2003-0048-4

*Public Hearing in the National Capital Region
20 October 2003*

Image – MDS licence renewal

The Commission renews the broadcasting licences for thirteen Class 3 multipoint distribution system broadcasting distribution undertakings serving various urban and rural communities in Saskatchewan and Alberta. The licence term will be seven years, from 1 September 2004 to 31 August 2011.

The applications

1. At the 20 October 2003 hearing in the National Capital Region, the Commission considered applications by Image Wireless Communications Inc. (Image) for renewal of the thirteen Class 3 broadcasting distribution undertaking (BDU) licences it holds for the operation of multipoint distribution systems (MDS), including one to serve Lloydminster, Alberta, and the remainder to serve Regina, Saskatoon and ten other communities in Saskatchewan.
2. Also considered at the 20 October 2003 hearing were renewal applications by two other MDS licensees, namely Craig Wireless International Inc. (Craig) and LOOK Communications Inc. (LOOK). Craig holds a Class 1 BDU licence for the operation of an MDS undertaking serving Winnipeg and eight other Manitoba communities. LOOK holds two regional Class 1 BDU licences, one to provide MDS service to Toronto and 26 other communities in southern Ontario, and the other to serve the communities of Montréal and Québec and surrounding areas, the Saguenay/Lac St-Jean region, and Eastern Ontario and Western Quebec (including the National Capital Region). The licences held by Craig and LOOK, respectively, are renewed in *Craig – MDS licence renewal*, Broadcasting Decision CRTC 2004-349, and *LOOK – MDS licence renewal*, Broadcasting Decision CRTC 2004-347,¹ both of today's date.

¹ As part of LOOK's renewal decision, and at the applicant's request, the Commission has issued a single licence for the combined Ontario and Quebec service areas.

3. The Commission's general analysis and findings with respect to various matters affecting Image and the other two MDS licensees in common, including the role that MDS undertakings play within the Canadian broadcasting system, and the services they are permitted or required to distribute, are set out in *Licence renewal for various multipoint distribution system undertakings*, Broadcasting Public Notice CRTC 2004-63 (Public Notice 2004-63), also of today's date. In this decision, the Commission examines matters that are specific to Image and its licence renewal applications, such as the licensee's requests for modification of existing condition of licence requirements with respect to its financial contributions to an independently-administered Canadian program development fund, for the removal of a condition of licence requiring it to provide a community programming channel on each of its undertakings, and for relief from condition of licence requirements pertaining to program deletion and substitution. In this decision, the Commission also sets out its determination with respect to the request contained in an intervention by Access Communications Co-operative Limited (ACCL) that Image be regulated as a Class 1 or a Class 2 BDU licensee in those communities where it competes directly with cable BDUs that operate under a Class 1 or a Class 2 licence.

Contributions to community programming and the production of Canadian programming

4. One of the conditions of licence imposed in Decision CRTC 96-775, 4 December 1996 (Decision 96-775), Image's first licensing decision, required the licensee to operate a community channel. Another condition of licence required that, in each broadcast year, Image contribute, either to community programming or to the support of Canadian program production, a minimum of 5% of its gross revenues earned from the distribution of broadcasting services, exclusive of revenue from the rental of decoders. As part of the 5% contribution, and consistent with its commitments, Image was required to make direct contributions to an independently-administered fund in support of Canadian program production, "in accordance with the payment schedule set out in its application".
5. In its renewal application, Image claimed that, given its very small subscriber base², the obligation that it operate a community programming channel is unduly burdensome. It also stated that the payment schedule referred to in its conditions of licence had been derived from projected revenue and subscriber levels contained in its original licence application, but that its performance has fallen well short of these projections. As a consequence, the amounts specified in the payment schedule for each year have greatly exceeded the level of 5% of its gross annual revenues. Image therefore requested the removal from the renewed licences of any requirements for the operation of a community channel and of any payment schedule specifying direct contributions to an independently-administered fund in support of Canadian program production.

² In 2003, only one of Image's thirteen undertakings served more than 1,000 subscribers, and none of the others served more than a few hundred subscribers.

6. With respect to the operation of a community channel, the Commission notes that, while BDUs frequently elect to provide such a service, they are not generally required to do so. In the case of Image, given the very small number of subscribers that it serves, whether under any of its separate licences or cumulatively, the Commission agrees that for the licensee to provide a meaningful community programming service would be extremely difficult. Accordingly, the Commission **approves** the licensee's request and relieves Image of the requirement that it operate a community programming channel.
7. With respect to the direct contributions to an independently-administered fund specified in Decision 96-775, the Commission notes that Image did not contribute the amounts set out in the payment schedule. However, Image has adhered to the requirement that a minimum of 5% of its annual gross revenues be directed to the support of Canadian program production. The licensee has also indicated its preparedness to continue to do so, even though such contributions are not generally required of Class 3 BDUs. In the circumstances, the Commission considers that there would be no clear benefit derived from retaining a payment schedule as part of the condition of licence requirements for the new licence term, and that the licensee's request is reasonable. Accordingly, the Commission **approves** the licensee's request for removal of this requirement from the new conditions of licence.

Program deletion and substitution requirements

8. Image requested relief from its current obligations to perform simultaneous program deletion and substitution. Image noted in this regard that it has never received a request by a television licensee that it perform simultaneous program deletion and substitution. Instead of its adherence to these obligations, Image stated that it would distribute programming services received from a satellite relay distribution undertaking (SRDU), which would perform substitutions on its behalf.
9. The Commission notes that Class 3 BDUs are not generally required to perform simultaneous substitution of any kind. In the Commission's view, a requirement that Image maintain the capacity to perform simultaneous substitutions would constitute an unreasonable burden, especially in light of the fact that it has never been called upon to make such a substitution by a television licensee. Accordingly, the Commission **approves** the licensee's request, and relieves Image of its current program deletion and substitution requirements.

Carriage of additional Canadian conventional television signals

10. The licensee is currently authorized to distribute the signals of CFSK-TV Saskatoon, CFRE-TV Regina and CITV-TV Edmonton on certain of its MDS BDUs. Image requested authority to distribute these signals on all of its undertakings. None of the stations in question objected to the licensee's request.
11. As noted in Public Notice 2004-63, it is the Commission's view that an MDS licensee should generally be free to choose from the Lists of Eligible Satellite Services and to distribute the same range of Canadian and non-Canadian services that cable and other

BDUs are permitted to distribute, in accordance with the class of licence held by each. Accordingly, by condition of licence, the Commission has authorized Image, as a Class 3 licensee to distribute any of the services appearing in Appendix B – List of Part 3 Eligible Satellite Services (Appendix B).

12. Among other things, and subject to such requirements as are specified in Appendix B, this means that Image would be permitted to distribute, without the need for further application, the programming service of any licensed television programming undertaking received from a licensed SRDU, including the services of the three stations mentioned above. In the case of many of the licensee's BDUs, however, the signals of these stations would be available to the licensee over the air. Accordingly, and so that it is clear that the licensee is not obliged to acquire these particular signals from a licensed SRDU, the Commission has added the three signals to the list of services that the licensee is authorized to distribute at each location, without regard to the method of reception.
13. As further requested by Image, the Commission has updated other conditions of licence by replacing references to the repealed *Cable Television Regulations, 1986* with references, as appropriate, to the *Broadcasting Distribution Regulations* (the Regulations). The Commission notes that, although Image requested the removal of the requirement for it to operate a community channel, it nonetheless wished to retain the authority to distribute community programming. Accordingly, Image's new conditions of licence permit it to offer community programming. However, the Commission reminds the licensee that, should it elect to distribute community programming, it must do so in accordance with section 35 of the Regulations. By condition of licence, it must also adhere to the *Cable Community Channel Standards*, and the guidelines on the depiction of violence in television programming set out in the Canadian Association of Broadcasters' *Voluntary Code Regarding Violence in Television Programming*, as amended from time to time and approved by the Commission.

Employment equity

14. In accordance with *Implementation of an employment equity policy*, Public Notice CRTC 1992-59, 1 September 1992, the Commission encourages the licensee to consider employment equity issues in its hiring practices and in all other aspects of its management of human resources.

Intervention by ACCL

15. Access Communications Co-operative Limited requested that, wherever Image competes directly with a Class 1 or a Class 2 cable BDU, it should also be regulated as a Class 1 or a Class 2 licensee. The intervener noted that such treatment would be consistent with the Commission's policy to make competing BDUs subject to the same licensing requirements. In its response to the intervention, Image argued that its undertakings should continue to be licensed and regulated as Class 3 BDUs in recognition of their channel capacity limitations and low subscriber numbers.

16. The Commission has considered the submissions of the intervener and the licensee on this matter. Although it acknowledges the intervener's argument concerning the Commission's general policy to license and regulate competing BDUs in the same manner, it is satisfied that an exception is warranted in this case, essentially for the same reasons as those advanced by Image, but taking into account the further fact that all of the licensee's Class 3 MDS BDUs are subject to condition of licence requirements with respect to such things as contributions to Canadian programming that exceed those normally imposed on Class 3 BDUs. Accordingly the Commission has renewed Image's licences as Class 3 licences.

Licence term

17. The Commission is satisfied that a full licence term is warranted, and it accordingly **renews** the broadcasting licences issued to Image Wireless Communications Inc. for the Class 3 multipoint distribution system broadcasting distribution undertakings serving thirteen urban and rural communities in Saskatchewan and Alberta from 1 September 2004 to 31 August 2011. The licences will be subject to the conditions specified therein, to the conditions set out in the appendix to this decision, and to the applicable determinations found in Public Notice 2004-63.

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 2004-348

Conditions of licence

1. a) For the purposes of the *Broadcasting Distribution Regulations*, as amended from time to time, the licences held by the licensee are Class 3 licences;
- b) The licensee shall adhere to the *Broadcasting Distribution Regulations*, with the exception of sections 32 and 33.
2. Unless otherwise authorized by the Commission, the licensee is required to distribute the programming services from each transmitter site, as listed in the schedule to this appendix.
3. The licensee is authorized to distribute:
 - a) any licensed Canadian pay television service, specialty service, Category 1 service or Category 2 service;
 - b) no more than one set of U.S. 4+1 services;
 - c) any of the authorized Canadian or non-Canadian services set out in the List of Part 3 Eligible Satellite Services contained in appendix B of the *Revised list of eligible satellite services*, as amended from time to time; and
 - d) the following programming services:
 - CFSK-TV Saskatoon
 - CFRE-TV Regina
 - CITV-TV Edmonton
 - Saskatchewan Legislature Proceedings
 - Community programming
 - Electronic Program Guide
4. The non-Canadian programming services authorized for distribution under 3(c) above may only be offered in a package with Canadian pay television and/or Canadian specialty services, and are subject to the following linkage requirements:
 - a) each Canadian pay television service (excluding a pay-per-view service) may be linked in a single package with no more than five non-Canadian programming services from Section A or Section B of the List of Part 2 Eligible Satellite Services, but in no case can a licensee distribute more than five channels of non-Canadian-originated services linked with Canadian pay television services, regardless of the number of Canadian pay television services distributed by the licensee;

- b) each Canadian specialty service, distributed within a package that may include one or more Canadian specialty and/or pay television services, may be linked with no more than one of the non-Canadian-originated services specified in Section A of the List of Part 2 Eligible Satellite Services;
 - c) the licensee may designate one of the U.S. superstations specified in Section B of the List of Part 2 Eligible Satellite Services and distribute the signal of that superstation within a discretionary package that may include one or more Canadian specialty and/or pay television service; and
 - d) the licensee is not permitted to offer a package of services containing only non-Canadian programming services.
5. The licensee shall contribute to either community programming or support for Canadian program production through direct contributions to an approved independently administered fund, in each broadcast year, a minimum of 5% of its gross revenue from the distribution of broadcasting services, exclusive of revenue from the rental of decoders.
6. For community programming and any other programming of a service that it originates, the licensee shall adhere to the *Cable Community Channel Standards*, and the guidelines on the depiction of violence in television programming set out in the Canadian Association of Broadcasters' *Voluntary Code Regarding Violence in Television Programming*, as amended from time to time and approved by the Commission.

Schedule to the appendix to Broadcasting Decision CRTC 2004-348

Programming services that Image Wireless Communications Inc. must distribute from its thirteen MDS transmitter locations, pursuant to condition of licence 2

Birch Hills:	CBKST (CBC) Saskatoon, Saskatchewan CIPA-TV (CTV) Prince Albert, Saskatchewan CBKFT (SRC) Regina, Saskatchewan CITV-TV (Global) Edmonton, Alberta Saskatchewan Communications Network Corporation (SCN)
Caron:	CBKT (CBC) Regina, Saskatchewan CKCK-TV (CTV) Regina, Saskatchewan CFRE-TV (Global) Regina, Saskatchewan Saskatchewan Communications Network Corporation (SCN)
Kenaston:	CBKST (CBC) Saskatoon, Saskatchewan CFQC-TV (CTV) Saskatoon, Saskatchewan CFSK-TV (Global) Saskatoon, Saskatchewan CBKFT (SRC) Regina, Saskatchewan Saskatchewan Communications Network Corporation (SCN)
Lloydminster:	CKSA-TV (CBC) Lloydminster, Alberta CITL-TV (CTV) Lloydminster, Alberta CBKFT (SRC) Regina, Saskatchewan CITV-TV (Global) Edmonton, Alberta Saskatchewan Communications Network Corporation (SCN)
North Battleford:	CBKST (CBC) Saskatoon, Saskatchewan CFQC-TV (CTV) Saskatoon, Saskatchewan CBKFT (SRC) Regina, Saskatchewan CITV-TV (Global) Edmonton, Alberta Saskatchewan Communications Network Corporation (SCN)
Regina South:	CBKT (CBC) Regina, Saskatchewan CKCK-TV (CTV) Regina, Saskatchewan CFRE-TV (Global) Regina, Saskatchewan CBKFT (SRC) Regina, Saskatchewan Saskatchewan Communications Network Corporation (SCN)
Saskatoon:	CBKST (CBC) Saskatoon, Saskatchewan CFQC-TV (CTV) Saskatoon, Saskatchewan CFSK-TV (Global) Saskatoon, Saskatchewan CBKFT (SRC) Regina, Saskatchewan Saskatchewan Communications Network Corporation (SCN)

Stranraer:	CBKST (CBC) Saskatoon, Saskatchewan CFQC-TV (CTV) Saskatoon, Saskatchewan CBC French-language Television Service CITV-TV (Global) Edmonton, Alberta Saskatchewan Communications Network Corporation (SCN)
Swift Current:	CJFB-TV (CBC) Swift Current, Saskatchewan CKCK-TV (CTV) Regina, Saskatchewan CBC French-language Television Service CITV-TV (Global) Edmonton, Alberta Saskatchewan Communications Network Corporation (SCN)
Warmley:	CBKT (CBC) Regina, Saskatchewan CICC-TV (CTV) Yorkton, Saskatchewan CBC French-language Television Service CITV-TV (Global) Edmonton, Alberta Saskatchewan Communications Network Corporation (SCN)
Watson:	CBKT (CBC) Regina, Saskatchewan CICC-TV (CTV) Yorkton, Saskatchewan CBC French-language Television Service CITV-TV (Global) Edmonton, Alberta Saskatchewan Communications Network Corporation (SCN)
Yorkton:	CBKT (CBC) Regina, Saskatchewan CICC-TV (CTV) Yorkton, Saskatchewan CBC French-language Television Service CITV-TV (Global) Edmonton, Alberta Saskatchewan Communications Network Corporation (SCN)
Zenon Park:	CBKST (CBC) Saskatoon, Saskatchewan CIPA-TV (CTV) Prince Albert, Saskatchewan CBKFT (SRC) Regina, Saskatchewan CITV-TV (Global) Edmonton, Alberta Saskatchewan Communications Network Corporation (SCN)