



Broadcasting Decision CRTC 2004-460

Ottawa, 19 October 2004

Vidéotron ltée, on its behalf and on behalf of its subsidiaries, CF Cable TV Inc. and Videotron (Regional) Ltd.

Montréal, Québec, Sherbrooke, Saguenay, Cap-de-la-Madeleine, Montréal and Laval, Ascot Corner, Buckingham, Coaticook, Cowansville, East Angus, Gatineau, Granby, Lachute, La Pocatière, Lennoxville, Rivière-du-Loup, Sorel, Terrebonne and Waterloo, Quebec; and Rockland, Ontario

Application 2003-1111-8

Broadcasting Public Notice CRTC 2004-35

28 May 2004

Distribution of additional signals on a discretionary digital basis

*The Commission **approves** the application to distribute, on a digital discretionary basis, a third set of U.S. commercial television services, as well as Canadian television signals included in the list of Part 3 Eligible Satellite Services.*

*The Commission also **approves** the agreement between Vidéotron ltée and the Canadian Association of Broadcasters regarding the distribution of these signals and the protection of program rights. Accordingly, the Commission suspends the usual requirement that the licensees perform non-simultaneous program deletion with respect to these signals.*

The application

1. The Commission received an application by Vidéotron ltée, on its behalf and on behalf of its subsidiaries, CF Cable TV Inc. and Videotron (Regional) Ltd. (Vidéotron), to distribute on its Class 1, 2 and 3 cable broadcasting distribution undertakings serving the above-mentioned localities the following services on a discretionary digital basis:
 - a) a third set of signals that provides the programming of the four U.S. commercial networks, namely KIRO-TV (CBS) Seattle, KING-TV (NBC) Seattle, KOMO-TV (ABC) Seattle, and KCPQ-TV (FOX) Tacoma, Washington; and

b) any of the Canadian television signals set out in the *List of Part 3 eligible satellite services*¹ (the List).

2. The applicant stated that the additional services would be offered on a discretionary basis, and as part of the applicant's digital service offering. Vidéotron further noted that the U.S. commercial network signals for which it is seeking authority to distribute would constitute a third set of such signals that it would distribute. The applicant indicated that it would accept a condition of licence that would prohibit it from distributing more than two sets of U.S. commercial network television signals to any subscriber.
3. Vidéotron further stated that it would accept a provision of approval that would serve to protect the program rights of local broadcasters, and submitted a copy of an agreement with the Canadian Association of Broadcasters (CAB) regarding the distribution, on a discretionary digital basis, of the signals noted above.

The intervention

4. The Commission received one intervention offering general comments in connection with this application. L'Association québécoise de l'industrie du disque, du spectacle et de la vidéo (ADISQ) questioned whether a third set of U.S. network signals, offering time-shifted existing programming, would add true diversity to the system.
5. ADISQ also expressed concern that the addition of more U.S. signals to Vidéotron's channel line-up would use limited cable capacity that, in its view, should be used for the distribution of digital Canadian French-language services. ADISQ argued that the Commission's first priority should be to encourage the implementation of national, digital, French-language specialty services.

The applicant's reply

6. In its reply to the intervener's comments, Vidéotron submitted that the ability to access a program through time-shifting, which would not otherwise be available, creates more diversity for viewers. The applicant also noted that some programming differs on eastern and western channels, particularly in newscasts.
7. With respect to channel capacity, the applicant indicated that the Commission has defined "available channels" in such a manner that recently-added foreign channels can be displaced by authorized Canadian channels in the language of the market, if capacity becomes an issue.

¹ Appendix B of *Revised lists of eligible satellite services*, Broadcasting Public Notice CRTC 2004-71, 16 September 2004, as amended from time to time. This appendix provides for the distribution, by Class 3 cable systems, of the programming service of any licensed television programming undertaking received from a licensed satellite relay distribution undertaking.

8. Vidéotron agreed with ADISQ, that the launch of digital French-language specialty services would make a distinct contribution to the penetration of digital technology. Vidéotron encouraged licensees of such services to launch in 2004 or 2005, stating that the penetration of digital technology has now reached a level that will allow these licensees to earn revenues that will enable them to meet the Commission's requirements, particularly those with respect to Canadian content.

The Commission's analysis and determination

9. Section 19(o) of the *Broadcasting Distribution Regulations* (the Regulations) stipulates that a licensee may distribute "any programming service authorized under a condition of its licence". One of the conditions of licence that appears on all licences to carry on a cable or multipoint distribution system (MDS) broadcasting distribution undertaking (generally, condition of licence no. 2) stipulates that:

The written approval of the Commission is required prior to the distribution of any service not authorized in:

- a) the *Broadcasting Distribution Regulations*;
- b) the most recent renewal decision or, if there has been no renewal, the initial licensing decision; or
- c) any subsequent written approvals granted during the term of this licence.

10. Vidéotron filed the present application as required by its condition of licence.
11. The Commission considers that the carriage, on a discretionary digital basis, of Canadian signals provided for in the *List of Part 3 eligible satellite services* and of an additional set of U.S. commercial signals, when coupled with other initiatives such as the carriage of newly licensed Canadian digital services, could serve as an incentive for cable customers to subscribe to the digital service offerings of cable undertakings. The distribution of such services would also increase the choice available to cable subscribers.
12. With respect to the issue of cable capacity raised by the intervener, the Commission notes that the capacity used to distribute these signals would qualify as "available channels" under the Regulations. Therefore, Videotron would have to remove the signals if the capacity was required in order for it to meet its obligations to distribute Canadian services.
13. Accordingly, the Commission **approves** the application by Vidéotron ltée, on its behalf and on behalf of its subsidiaries, CF Cable TV Inc. and Videotron (Regional) Ltd. to distribute, on a discretionary digital basis, a third set of U.S. commercial network signals and any of the Canadian television signals set out in the List. It is a **condition of licence** that the licensee shall not distribute to any subscriber more than two sets of U.S. commercial network signals.

14. In *Carriage of Canadian and U.S. 4+1 signals on a digital basis*², Decision CRTC 2000-437, 8 November 2000, the Commission recognized the need to protect the program rights acquired by local broadcasters, when authorizing the distribution of such signals. Accordingly, Vidéotron's distribution of a third set of U.S. commercial network signals and of the Canadian television signals set out in the List is also subject to the following:

The distribution on a discretionary basis on the licensee's digital service of a third set of U.S. commercial network signals and of Canadian distant signals is subject to the provision that, with respect to such signals, 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 application of this provision upon its approval of an executed agreement between the licensee and broadcasters. Such an agreement must deal with issues related to the protection of program rights arising in connection with the discretionary carriage of a third set of U.S. commercial network signals and Canadian distant signals solely on the applicant's digital service, as approved in this decision.

15. As noted earlier, Vidéotron filed an executed agreement with the CAB with respect to the signals authorized in this decision. Accordingly, the Commission suspends the above provision of approval with respect to these signals.

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>

² 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. In this application, Vidéotron has not requested the distribution of the PBS network signal.