



Broadcasting Decision CRTC 2006-207

Ottawa, 2 June 2006

Bragg Communications Incorporated

Bridgewater, Nova Scotia

Access Communications Incorporated

Dartmouth, Nova Scotia

Bay Communications Incorporated

St. Margaret's Bay and Kentville, Nova Scotia

Halifax Cablevision Limited

Halifax, Nova Scotia

K-Right Communications Limited

Bedford, Debert, Great Village, Masstown, Mount Uniacke, New Glasgow, Sydney and Truro, Nova Scotia; and Charlottetown, Prince Edward Island

Application 2005-1585-1

Broadcasting Public Notice CRTC 2006-17

10 February 2006

Licence amendment to replace condition of licence relating to the use of local availabilities in non-Canadian satellite services

1. The Commission received an application by Bragg Communications Incorporated, on behalf of itself and four of its wholly owned subsidiaries, namely Access Communications Incorporated, Bay Communications Incorporated, Halifax Cablevision Limited and K-Right Communications Limited, all carrying on business as Eastlink (collectively, Eastlink), to amend the broadcasting licences for the cable broadcasting distribution undertakings (BDUs) serving the above-mentioned locations. Specifically, Eastlink requested that the Commission amend a condition of licence applicable to most of these BDUs relating to the use of local availabilities. The condition of licence reads:

The licensee may, at its option, insert certain promotional material as a substitute for the “local availabilities” (i.e. non-Canadian advertising material) of non-Canadian satellite services. At least 75% of these local availabilities must be made available for use by licensed Canadian programming services for the promotion of their respective services, for the promotion of the community channel and for unpaid Canadian public service announcements. A maximum of 25% of the commercial

availabilities may be made available for the promotion of discretionary programming services and packages, customer service information, channel realignments, cable FM service and additional cable outlets.

2. Eastlink proposed that this condition of licence be amended so as to authorize the BDUs to use the local availabilities in non-Canadian satellite services to promote non-programming services, including its telephone and Internet services, and “bundles” that include these non-programming services.
3. The BDUs serving Bedford and Mount Uniacke, Nova Scotia, do not currently have any condition of licence relating to the use of local availabilities. The Commission has considered the present application, as it relates to those systems, as an application for such a condition of licence, with the amendments requested.
4. Eastlink’s request is essentially the same as those contained in two other applications that are the subject of decisions issued today, namely Broadcasting Decisions CRTC 2006-205 and 2006-206 (Decision 2006-205 and Decision 2006-206), both also entitled *Licence amendment to replace condition of licence relating to the use of local availabilities in non-Canadian satellite services*. Decision 2006-205 deals with an application by Rogers Cable Communications Inc. in respect of some 71 BDUs in Ontario, New Brunswick and Newfoundland and Labrador. Decision 2006-206 deals with an application by Shaw Communications Inc. on behalf of six wholly owned subsidiaries operating some 37 BDUs in British Columbia, Alberta, Saskatchewan and Ontario.
5. Six parties filed interventions to two of the applications, and four parties intervened to all three applications. The interveners fell into one or another of three groups. Two incumbent cable operators and the Canadian Cable Telecommunications Association were in support of the applications, two programmers and the Canadian Association of Broadcasters also supported the applications, but with certain qualifications, and the Association of Canadian Advertisers and three incumbent local exchange carriers (ILECs) either opposed the applications or submitted comments stating, among other things, that, should the Commission approve the applications, it should also act quickly to remove marketing restrictions that apply to the promotion of telecommunications services by ILECs.
6. The views of the three applicants and of the six interveners regarding the proposed use of local availabilities to promote non-programming services, such as Internet and local telephony, are discussed in *Promotion of non-programming services using local availabilities*, Broadcasting Public Notice CRTC 2006-69 of today’s date (Public Notice 2006-69). In that notice, the Commission sets out its conclusion, based on its analysis of the arguments presented in those applications and interventions, that it is appropriate to update its policy with respect to the use of local availabilities to permit BDUs to use these availabilities to promote non-programming services, subject to certain conditions.

7. Specifically, the Commission concluded that BDUs that seek and receive amendments to their conditions of licence so as to use local availabilities for this purpose will be authorized to use a maximum of 25% of local availabilities for the promotion of discretionary programming services and packages, customer service information, channel realignments, cable FM service, additional cable outlets and non-programming services, including Internet and telephone services.
8. In Public Notice 2006-69, the Commission added that the promotion of non-programming services in local availabilities should generally be limited to those non-programming services that are made available in conjunction with programming services, and that are offered by the BDU, by an affiliated company or by a third party pursuant to a marketing arrangement with the BDU. The Commission noted that, should a complaint arise, BDUs should ensure that they are in a position to provide, at the Commission's request, a report with respect to their use of local availabilities. With respect to the costs of broadcasting promotions in local availabilities, the Commission reiterated that BDUs may only charge Canadian programming services their share of the direct costs associated with the insertion of their promotional material in local availabilities.
9. Consistent with the Commission's updated policy regarding the use of local availabilities, the Commission **approves** the application by Eastlink, and amends the licences for the cable BDUs serving the above-mentioned locations by deleting, where applicable, the existing condition of licence relating to the use of local availabilities and by adding, in each case, the following **condition of licence**:

The licensee may, at its option, insert certain promotional material as a substitute for the "local availabilities" (i.e. non-Canadian advertising material) of non-Canadian satellite services. At least 75% of these local availabilities must be made available for use by licensed Canadian programming services for the promotion of their respective services, for the promotion of the community channel and for unpaid Canadian public service announcements. A maximum of 25% of the local availabilities may be used to provide subscribers with information regarding customer service and channel realignments, and for the promotion of discretionary programming services and packages, cable FM service, additional cable outlets and non-programming services, including Internet and telephone services.

Secretary General

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