



Broadcasting Decision CRTC 2010-524

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Route reference: 2010-72

Ottawa, 28 July 2010

768812 Ontario Inc.

Application 2009-1446-7, received 28 October 2009

Public Hearing in the National Capital Region

14 April 2010

Class 1 terrestrial broadcasting distribution undertaking to serve Greater Sudbury

*The Commission **approves in part** the application by 768812 Ontario Inc. for a broadcasting licence to operate a Class 1 terrestrial broadcasting distribution undertaking to serve Greater Sudbury. Consistent with the Commission's policy, the applicant is authorized to distribute distant Canadian television signals and a second set of U.S. 4+1 signals on a digital discretionary basis only, rather than on the digital basic service.*

The application

1. The Commission received an application by 768812 Ontario Inc. for a broadcasting licence to operate a Class 1 terrestrial broadcasting distribution undertaking (BDU) to serve Greater Sudbury. 768812 Ontario Inc. is wholly owned and controlled by Mr. Will Gasteiger. The Commission did not receive any interventions concerning this application.
2. 768812 Ontario Inc. also requested authorization to:
 - distribute, as part of the digital basic service, the signals WIVB-TV (CBS), WGRZ-TV (NBC), WKBW-TV (ABC), WUTV (FOX), and WNED-TV (PBS) Buffalo, New York (referred to as the first set of U.S. 4+1 signals);
 - distribute, as part of the digital basic service, the signals KIRO-TV (CBS), KING-TV (NBC) and KOMO-TV (ABC) Seattle, KCPQ (FOX) Tacoma, and KCTS-TV (PBS) Seattle, Washington (referred to as the second set of U.S. 4+1 signals); and
 - distribute, as part of the digital basic service, any of the distant Canadian television signals set out in the *List of Part 3 eligible satellite services*.

3. 768812 Ontario Inc. stated its willingness to accept a condition of licence requiring that it provide one or more simple means of accessing described programming, whether in an open or embedded format. 768812 Ontario Inc. also committed to meet the requirements regarding customer service and information set out in Broadcasting and Telecom Regulatory Policy 2009-430 (the Accessibility Policy).

The Commission's analysis and determinations

4. The Commission has examined and **approves in part** the application by 768812 Ontario Inc. for a broadcasting licence to operate a Class 1 terrestrial broadcasting distribution undertaking (BDU) to serve Greater Sudbury. Specifically, the Commission approves the application for a broadcasting licence. The operation of this undertaking will be regulated pursuant to the *Broadcasting Distribution Regulations* (the Regulations). The licence will be subject to the **conditions** specified therein, as well as to the **conditions of licence** set out in the appendix to this decision.
5. Further, based on its examination of the application, the Commission has identified the distribution of two sets of U.S. 4+1 signals and distant Canadian television signals as part of the digital basic service as an issue to be addressed in its determinations.

Distribution of two sets of U.S. 4+1 signals and distant Canadian television signals as part of the digital basic service

6. The applicant requested authority to distribute two sets of U.S. 4+1 signals as part of the digital basic service. The applicant stated that the second set of U.S. 4+1 signals as part of the digital basic service is for time-shifting purposes.
7. The applicant also requested authority to distribute distant Canadian signals as part of the digital basic service.
8. The Commission notes that it has already authorized BDUs to distribute, as part of the basic service, the first set of U.S. 4+1 signals. The authorization requested by the applicant to distribute a first set of U.S. 4+1 signals on basic is consistent with authorizations previously granted by the Commission in similar cases.
9. Accordingly, the Commission authorizes 768812 Ontario Inc. to distribute, at its option, as part of the digital basic service, the signals WIVB-TV (CBS), WGRZ-TV (NBC), WKBW-TV (ABC), WUTV (FOX), and WNED-TV (PBS) Buffalo, New York (referred to as the first set of U.S. 4+1 signals). A **condition of licence** to that effect is set out in the appendix to this decision.
10. The Commission notes, however, that the applicant's request to distribute distant Canadian television signals and a second set of U.S. 4+1 signals as part of the digital basic service is not in accordance with the Commission's policy approach. Therefore, the Commission **denies** this request.

11. However, the Commission notes that it has generally authorized the distribution of distant Canadian signals and a second set of U.S. 4+1 signals on a digital discretionary basis on the condition that the licensee adhere to the requirements regarding non-simultaneous program deletion set out in section 43 of the Regulations.
12. The Commission may suspend the application of this provision upon its approval of an executed agreement between the licensee and broadcasters. The agreement must deal with issues related to the protection of program rights arising in connection with the discretionary carriage of a second set of U.S. 4+1 signals and of distant Canadian television signals solely on the licensee's digital service.
13. Given that such an authorization would be consistent with authorizations previously granted in similar cases, the Commission authorizes 768812 Ontario Inc. to distribute, on a digital discretionary basis only, distant Canadian signals and a second set of U.S. 4+1 signals. A **condition of licence** to that effect is set out in the appendix to this decision.

Other matters

General authorizations for broadcasting distribution undertakings

14. The Commission notes that, pursuant to the conditions specified in the licence and to Broadcasting Regulatory Policy 2009-546 (the Regulatory Policy), licensees are also authorized to distribute any service and to undertake any activity authorized in the Regulatory Policy, as amended from time to time, under the terms and conditions set out in that Regulatory Policy.

Implementation of the Commission's determinations regarding accessibility of services

15. The Accessibility Policy sets out the Commission's policy determinations regarding the accessibility of telecommunications and broadcasting services to persons with disabilities.
16. As indicated above, 768812 Ontario Inc. stated that it is prepared to accept a condition of licence requiring it to provide one or more simple means of accessing described programming, whether in an open or embedded format. Those means must require little or no visual acuity. A **condition of licence** to that effect is set out in the appendix to this decision.
17. In addition, consistent with the Accessibility Policy, the Commission expects 768812 Ontario Inc. to ensure that subscribers are able to identify programming with described video in the electronic program guide, and to make information available in alternative formats to subscribers regarding, among other things, the programming and services offered and the channel line-up.

18. The Commission also encourages 768812 Ontario Inc. to ensure that its set-top boxes are accessible to subscribers with vision and fine motor skill disabilities.
19. With regard to customer service, the Commission notes 768812 Ontario Inc.'s commitments as set out in its licence application to meet the obligations specified in the Accessibility Policy. The Commission reminds 768812 Ontario Inc. that, at paragraph 71 of the Accessibility Policy, the Commission stated that it will consider imposing requirements on Class 1 and direct-to-home (DTH) BDUs regarding customer information, service and support in the form of conditions of licence at the time of their licence renewals if such regulatory mechanisms are necessary to ensure compliance with the Commission's goals.
20. The Commission notes that it may impose further conditions of licence respecting accessibility matters five years into the licence term, if deemed appropriate.

Local digital television signals

21. The Commission reminds the applicant that it must provision its network in such a way as to be able to provide the high definition signals of all stations that may be received over-the-air in the Greater Sudbury licensed area to its entire subscriber base, without exception. The Commission notes that any BDU unable to meet this requirement may file an application with supporting justification asking the Commission for relief, by condition of licence.

Mandatory distribution of 9(1)(h) services

22. The Commission reminds the applicant that, as a Class 1 BDU, it is required to distribute within its licensed area all services licensed for mandatory carriage as part of the basic service of distribution undertakings pursuant to section 9(1)(h) of the *Broadcasting Act*.

Secretary General

Related documents

- *General authorizations for broadcasting distribution undertakings*, Broadcasting Regulatory Policy CRTC 2009-546, 31 August 2009
- *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009

**This decision is to be appended to the licence.*

Appendix to Broadcasting Decision CRTC 2010-524

Terms, conditions of licence, expectations and encouragements

Terms

Issuance of the broadcasting licence to operate a Class 1 terrestrial broadcasting distribution undertaking to serve Greater Sudbury

The operation of this undertaking will be regulated pursuant to the *Broadcasting Distribution Regulations* and all related policies.

The licence will expire 31 August 2016.

The applicant is required to file an executed copy of its amended By-Laws by 28 July 2011.

A licence will be issued once the applicant has:

- informed the Commission in writing that it is prepared to commence operations. The undertaking 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 28 July 2012. In order to ensure that such a request is processed in a timely manner, it should be submitted at least 60 days before that date; and
- filed, at the same time it informs the Commission that it is ready to commence operations, a website address where its distribution grid is posted.

Conditions of licence

1. The licensee is authorized to distribute, at its option, as part of the digital basic service, the signals WIVB-TV (CBS), WGRZ-TV (NBC), WKBW-TV (ABC), WUTV (FOX), and WNED-TV (PBS) Buffalo, New York.
2. The licensee is authorized to distribute the following signals on a digital discretionary basis:
 - any of the distant Canadian television signals set out in the *List of Part 3 Eligible Satellite Services*; and
 - a second set of signals that provides the programming of the four U.S. commercial networks (CBS, NBC, ABC, FOX) and the non-commercial PBS network (hereafter referred to as the U.S. 4+1 signals).

The distribution on a discretionary basis on the licensee's digital service of a second set of U.S. 4+1 signals and distant Canadian 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 Regulations). The Commission may suspend the application of this provision, with respect to the signals to be distributed, 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 second set of U.S. 4+1 signals and distant Canadian signals solely on the licensee's digital service.

The Commission reminds the licensee that the requirements set out in section 30 of the Regulations regarding simultaneous substitution apply also in the case of U.S. 4+1 signals and distant Canadian signals.

3. The licensee shall provide one or more simple means of accessing described programming, whether in an open or embedded format, that requires little or no visual acuity.

Expectations

The Commission expects the licensee to ensure that subscribers are able to identify programming with described video in the electronic program guide.

The Commission expects the licensee to make information available in alternative formats to subscribers regarding, among other things, the programming and services offered and the channel line-up.

Encouragements

The Commission encourages the licensee to ensure that its set-top boxes are accessible to subscribers with vision and fine motor skill disabilities.

Employment equity

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.