



Broadcasting Decision CRTC 2007-128

Ottawa, 4 May 2007

VENOA Communications Incorporated, on behalf of a corporation to be incorporated Toronto, Ontario

*Application 2006-1061-9, received 24 August 2006
Public Hearing in the National Capital Region
29 January 2007*

Class 1 terrestrial broadcasting distribution undertaking

*In this decision, the Commission **approves** the application by VENOA Communications Incorporated, on behalf of a corporation to be incorporated, to operate a Class 1 terrestrial broadcasting distribution undertaking to serve Toronto, Ontario.*

The application

1. The Commission received an application by VENOA Communications Incorporated, on behalf of a corporation to be incorporated (Venoa), for a broadcasting licence to operate a Class 1 terrestrial broadcasting distribution undertaking (BDU) to serve Toronto, Ontario.

Interventions

2. The Commission received numerous interventions in support of this application, as well as an intervention providing general comments from Rogers Cable Communications Inc. (Rogers).
3. Rogers did not oppose the application by Venoa, but requested that the applicant adhere to the same regulatory regime that applies to Rogers as a terrestrial Class 1 cable BDU. Specifically, Rogers requested that the applicant demonstrate that it would comply with the Commission's distribution and linkage, priority carriage and access requirements, as well as with the policy frameworks for the distribution of digital television (DTV) signals and high definition (HD) signals, and for the migration of services from analog to digital.
4. Rogers noted that Venoa, in its application, omitted a number of dual status services from its basic channel line-up and indicated that it would carry the remaining licensed English- and French-language services, as well as Category 1 specialty services, in its discretionary package. Rogers contended that should Venoa not be subject to the dual status / modified status rules, it would have much more flexibility than Rogers in its distribution of these services.

5. Rogers also stated that Venoa did not identify the specific programming packages that would be offered to customers, and that it neither specified the channels on which it plans to carry various over-the-air television stations, nor indicated whether those stations would be distributed within the basic band. Rogers urged the Commission to request this additional information in its assessment of whether Venoa would meet all of the Commission's distribution and linkage rules for Class 1 BDUs.
6. Rogers noted that Venoa's proposed line-up includes "Venoa PPV," a non-licensed pay-per-view (PPV) service. Citing the Commission's access rules for Class 1 licensees, which state, among other things, the requirement to carry at least one general-interest PPV service, Rogers urged the Commission to ensure that the applicant carry, as part of its service, a licensed PPV service such as Viewer's Choice.
7. Rogers also noted that Venoa did not propose to carry in its channel line-up the DTV signals of CIII (Global), CFTO (CTV), CKXT (SUN-TV), CBLT (CBC English), CBLFT (CBC French), OMNI.1 and OMNI.2. Rogers contended that Venoa, as a Class 1 BDU serving Toronto, would be required to carry these signals, in accordance with *The regulatory framework for the distribution of digital television signals*, Broadcasting Public Notice CRTC 2003-61, 11 November 2003 (Public Notice 2003-61), but that it did not apply for relief from the obligation to do so. Rogers therefore requested that the Commission review this issue with the applicant in order to determine whether Venoa would be able to meet its distribution obligations.
8. Citing section 22 of the *Broadcasting Distribution Regulations* (the Regulations), Rogers stated that a Class 1 BDU that chooses to distribute an audio programming service must distribute the programming services of "each local campus, community or native radio station," as well as the programming service of at least one English-language and one French-language CBC radio station. In that respect, Rogers noted that Venoa's proposed audio line-up does not include all the mandatory audio services that operate within the Greater Toronto Area, and urged the Commission to ensure that the applicant's channel line-up is compliant with the Regulations as they apply to Class 1 BDUs.

Applicant's reply

9. In its reply to Rogers, Venoa stated that it would, at all times, comply with all of the Commission's distribution and linkage, priority carriage and access requirements, as well as with the policy framework for the distribution of DTV signals and HD pay and specialty services. Venoa also stated that it would comply with all requirements applicable to incumbent analog cable BDUs, notwithstanding the fact that Venoa would be an all-digital distributor. In addition, Venoa confirmed that all local over-the-air stations would be carried in order of priority.

10. With respect to Rogers' concern that the applicant did not identify the specific discretionary program packages that would be offered to customers, Venoa argued that neither Bell Canada nor VDN Cable Inc. was required to do so as part of their licence applications. Furthermore, Venoa expressed its reluctance to providing this information, noting that many new services are constantly being added, that it would need time to build its head-end, and that the changing competitive landscape could be very different in the near future and could require an approach that is different from the one it would adopt today.
11. Regarding Rogers' concern relating to the applicant's ability to meet its distribution obligations with respect to the carriage of local DTV services, Venoa confirmed that its digital distribution system has the capacity to carry approximately 5,000 standard definition (SD) signals as well as approximately 1,000 HD signals. Venoa was of the view that such capacity is more than enough to carry all of the local SD and HD DTV services.
12. In regard to Rogers' concern that the proposed channel line-up does not comply with the Regulations as they apply to Class 1 BDUs, Venoa stated that its proposed audio line-up currently includes the Native radio station CFIE-FM, as well as at least one English-language (CBLA-FM) and one French-language (CJBC-FM) CBC radio station. Venoa also confirmed that it would distribute all mandatory audio services and would fully comply with the Commission's requirements for Class 1 BDUs.
13. Venoa did not reply to Rogers' comments regarding adherence to dual status / modified status rules or regarding carriage of at least one general-interest PPV service.

Commission's analysis and determinations

14. The Commission notes the applicant's commitment to adhere to the distribution and linkage rules applicable to all Class 1 BDUs.
15. In this regard, the Commission notes that it announced its intention to issue "transitional digital television" licences to existing television station licensees in *A licensing policy to oversee the transition from analog to digital, over-the-air television broadcasting*, Broadcasting Public Notice CRTC 2002-31, 12 June 2002. Under such licences, stations would be authorized to broadcast a maximum of 14 hours per week of over-the-air programming on the digital service that is not duplicated on the analog service. Further, in Public Notice 2003-61, which announced the Commission's regulatory framework with respect to the distribution of signals provided by digital over-the-air television stations, the Commission stated that BDUs would be required to distribute the signals of priority DTV stations, including those with HD programming. In Public Notice 2003-61, the Commission also specified that, where a BDU is required to distribute the analog signal of a television station as part of its basic service, it is also required to distribute the digital signal.

16. The Commission notes that CIII (Global) currently has no operational digital transmitter and that the DTV signal is provided via direct feed. In *Call for comments on a proposed policy framework for the distribution of digital television services*, Broadcasting Public Notice CRTC 2002-32, 12 June 2002 (Public Notice 2002-32), the Commission stated that, in the absence of an operational digital transmitter, the licensee of an over-the-air digital television service should not have priority carriage under section 17 of the Regulations. The Commission also made it clear that the distribution of direct feeds would be the subject of negotiations between the broadcaster and the BDU concerned.
17. The Commission notes that Venoa has indicated that it will be technically capable of distributing programming services in HD format and that it intends to distribute all priority and “must-carry” services that are available on a digital basis, including digital signals with HD content. Further, the Commission notes that all requirements set out in *Regulatory framework for the licensing and distribution of high definition pay and specialty services*, Broadcasting Public Notice CRTC 2006-74, 15 June 2006, apply to Class 1 BDUs, such as Venoa, that use Digital Subscriber Line (DSL) Technology. The Commission is satisfied that Venoa has sufficient capacity on its digital distribution system to fulfil its carriage requirements.
18. The Commission further notes that Venoa, should it wish to depart from current regulations or from regulations that may be adopted by the Commission in its future proceedings, would have to apply to the Commission for permission to do so. Parties would have an opportunity to intervene at that time.

Distribution of pay-per-view services

19. Section 18 of the Regulations states that, to the extent of available channels, and subject to distribution and linkage requirements, as a Class 1 licensee, Venoa must distribute, in addition to other services listed at section 18, at least one English-language general interest television pay-per-view service. Such a service must be licensed by the Commission. In that respect, the “Venoa PPV” service can only be offered as a general interest television PPV service if it is licensed by the Commission. The Commission has received no application for such a licence. The Commission notes that the licence authorized in this decision pertains only to Venoa’s proposed BDU, and does not include authorization to provide a PPV service within the meaning of section 18(5)(a) of the Regulations.

Distribution and linkage rules

20. The Commission reminds Venoa of its obligations to comply with the requirements set out in *Distribution and Linkage requirements for Class 1 and Class 2 licensees*, Broadcasting Public Notice CRTC 2006-135, 20 October 2006 (Public Notice 2006-135) with regard to the distribution of dual status / modified dual status services.
21. The Commission also reminds Venoa that in *Digital Migration Framework*, Broadcasting Public Notice CRTC 2006-23, 27 February 2006 (Public Notice 2006-23), the Commission determined that, in a digital distribution environment, the dual status and

modified dual status designations shall cease to apply to the distribution of specialty services on 1 September 2007, subject to exceptions set out in Public Notice 2006-23. The Commission notes that in its current proceeding, Broadcasting Notice of Public Hearing CRTC 2007-1, 25 January 2007, it is also considering applications for digital basic carriage pursuant to section 9(1)(h) of the *Broadcasting Act*.

Distribution of audio programming services

22. The Commission also reminds Venoa that, in accordance with section 22 of the Regulations, as a Class 1 BDU, it must distribute, in the licensed area, all local community, campus and native radio stations, as well as the programming services of at least one radio station that broadcasts in English and at least one that broadcasts in French that are owned and operated by the CBC.

Conclusion

23. The Commission considers that it is appropriate to licence Venoa to offer broadcasting distribution services to Toronto. Accordingly, the Commission **approves** the application by VENOA Communications Incorporated, on behalf of a corporation to be incorporated, for a broadcasting licence to operate a Class 1 terrestrial broadcasting distribution undertaking to serve Toronto, Ontario.
24. The operation of this undertaking will be regulated pursuant to the *Broadcasting Distribution Regulations*. The licence will expire 31 August 2013 and will be subject to the **conditions** set out therein, as well as to the **conditions** set out in the appendix to this decision.

Issuance of the licence

25. The Commission reminds the applicant that, pursuant to section 22(1) of the *Broadcasting Act*, no licence may be issued until the Department of Industry notifies the Commission that its technical requirements have been met, and that a broadcasting certificate will be issued.
26. A licence will be issued once the applicant has satisfied the Commission, with supporting documentation, that the following requirements have been met:
 - an eligible Canadian corporation has been incorporated in accordance with the application in all material respects; and
 - 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 4 May 2009. 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.

Employment equity

27. 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.

Secretary General

This decision is to be appended to the 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>

Appendix to Broadcasting Decision CRTC 2007-128

Conditions of licence

1. The licensee is authorized to distribute, as part of its basic service, the signals of WIVB-TV (CBS), WGRZ-TV (NBC), WKBW-TV (ABC), WUTV (FOX) and WNED-TV (PBS) Buffalo, New York, or, alternatively for each signal, the signal of a different affiliate of the same network located in the same time zone as that of the licensed area and received from a licensed satellite relay distribution undertaking.
2. The licensee is authorized to distribute, on a discretionary basis, the signal of WNYO-TV (Warner Brothers) Buffalo, New York.
3. 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) set out in the *List of Part 3 eligible satellite services*.

The distribution on a discretionary basis on the licensee's digital service of a second set of U.S. 4+1 signals and any of the distant Canadian television signals set out in the *List of Part 3 eligible satellite services* 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, 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 *Broadcasting Distribution Regulations* regarding simultaneous substitution apply also in the case of U.S. 4+1 signals and distant Canadian signals.

4. 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.