



Broadcasting Decision CRTC 2007-86

Ottawa, 16 March 2007

MTS Allstream Inc.

Winnipeg, Manitoba and surrounding areas

*Applications 2006-0843-2, 2006-0845-8
Broadcasting Public Notice CRTC 2006-138
26 October 2006*

Licence amendments related to the funding and provision of an outlet for local expression

*In this decision, the Commission **approves** an application by MTS Allstream Inc. (MTS Allstream) proposing conditions of licence establishing the terms under which it could provide an outlet for local expression as part of the service offered by its regional Manitoba-based video-on-demand (VOD) programming undertaking.*

*The Commission also **approves** MTS Allstream's application for a condition of licence in respect of its broadcasting distribution undertaking (BDU) serving Winnipeg and surrounding areas. The condition of licence will recognize eligible expenditures for local expression as contributions to local expression under the contribution scheme set out in section 29 of the Broadcasting Distribution Regulations (the Distribution Regulations). In the case of the BDU, these contributions may be deducted from the amount that the BDU would otherwise be required to direct to Canadian programming in accordance with that section of the Distribution Regulations.*

*However, the Commission **denies** the request by MTS Allstream that it be authorized to redirect to the outlet for local expression, a portion of the annual contribution that must be made by its VOD undertaking to an existing, independently-administered Canadian program production fund.*

The applications

1. The Commission received applications that contemplate the provision of community programming by MTS Allstream Inc. (MTS Allstream) on its English-language, regional video-on-demand (VOD) programming undertaking known as MTS Video-on-Demand (MTS VOD) and on its Class 1 broadcasting distribution undertaking (BDU) serving Winnipeg and surrounding areas, known as MTS TV. Community programming is not currently offered to subscribers of either of the above-noted undertakings.

The VOD application

2. MTS Allstream proposed an amendment to its licence to operate MTS VOD that would allow it to offer an outlet for local expression, to be called *Winnipeg on Demand*, that would be provided to BDU subscribers free of charge as part of its digital interactive VOD service. The community programming provided would differ from that distributed on a traditional community channel, where programs are delivered to subscribers at set times in accordance with a schedule. Instead of such a programming model, the proposed outlet for local expression would provide subscribers with access to a broad inventory of individual programs, each of which would be available to subscribers on demand, 24 hours per day, seven days per week. MTS Allstream proposed to work with independent producers, community groups, interested citizens, local media and educational institutions to reflect the needs and interests of people in Winnipeg, and to provide programming that would be built on ideas generated by members of the Winnipeg community.
3. MTS Allstream further proposed to adhere to conditions of licence that would be similar to the regulatory requirements applicable to community programming distributed by cable BDUs, as set out in sections 27, 27.1 and 28 of the *Broadcasting Distribution Regulations* (the Distribution Regulations).
4. MTS Allstream also requested an amendment to an existing condition of its VOD licence that requires adherence to the requirements of the *Pay Television Regulations, 1990* (Pay TV Regulations). Section 3(2)(e) of the Pay TV Regulations generally prohibits a licensee from distributing programming, other than filler programming, that is produced either by the licensee or by a person related to the licensee. As an exception to that prohibition, MTS Allstream requested that it be permitted to distribute on its proposed outlet for local expression, programming that would be produced by it or by a related person, to a maximum of 10%.
5. MTS Allstream requested a further amendment that would allow it to distribute sponsorship and commercial messages, on its proposed outlet for local expression, similar to that permitted on community channels of cable BDUs under section 27 of the Distribution Regulations. Since the Pay TV Regulations prohibit the distribution of programming that contains any commercial messages, MTS Allstream requested the addition of a condition of licence which would allow it to distribute such sponsorship and commercial messages.
6. Further, MTS Allstream requested an amendment to a current condition of its licence that requires it to contribute 5% of the gross annual revenues earned by its VOD undertaking to an existing, independently administered Canadian program production fund. MTS Allstream proposed that it be allowed to direct up to 2% of its gross annual revenues to the proposed outlet for local expression.
7. MTS Allstream noted that, in *Policy framework for community-based media*, Broadcasting Public Notice CRTC 2002-61, 10 October 2002 (Public Notice 2002-61), the Commission recognized that requirements such as closed captioning should be commensurate with the resources of the licensee and noted that minimal requirements for

captioning have been imposed on the community channels of other BDUs. MTS Allstream stated that, given the limited resources that would be available to its proposed outlet for local expression, any requirement to provide captioning could restrict the amount and quality of community programming to be made available. Nonetheless, MTS Allstream indicated that it would consider closed captioning for certain community programs that would reside in the *Winnipeg on Demand* library for longer periods. To ensure that MTS Allstream's current conditions of licence would not impede its ability to launch an outlet for local expression using VOD technology, it requested an amendment to the condition of its VOD licence to the effect that, no later than 1 September 2008 and until the end of the licence term, the licensee would caption at least 90% of all titles in its inventory, excluding titles made available as part of its outlet for local expression.

8. MTS Allstream indicated that it would actively encourage participation of Francophone, Aboriginal and cultural community groups to relate stories and provide perspective on life in Winnipeg. The applicant also noted that it would provide such programming in other languages in accordance with audience demand. MTS Allstream stated that it would promote community access to its outlet and would meet regularly with the Winnipeg community to outline opportunities available through *Winnipeg on Demand*.

The BDU application

9. Under section 29 of the Distribution Regulations, MTS Allstream is currently required to direct 5% of the gross annual revenues derived from the broadcasting activities of its BDU to Canadian programming. The applicant requested that it be allowed to redirect up to 2% of the gross annual revenues derived from the broadcasting activities of its BDU to its proposed VOD outlet for local expression. MTS Allstream proposed the addition of a condition of licence that would allow the redirected 2% to be considered as contributions to local expression, as defined in section 29 of the Distribution Regulations.

Interventions

10. The Commission received 10 interventions in support of these applications. The Commission also received comments from the Canadian Film & Television Production Association (CFTPA) and the Canadian Association of Broadcasters (CAB).
11. The CFTPA and the CAB expressed concern related to the proposed reduction of funding for the Canadian Television Fund (CTF) and other independent production funds. The interveners questioned whether this was appropriate or desirable, and whether it would be fair to stand-alone VOD licensees or consistent with the VOD licensing policy framework. Both the CFTPA and the CAB also suggested that approval of MTS Allstream's funding proposals could create a disincentive for the continued operation of analog community channels by cable BDUs, and encourage them to fund the operation of VOD services instead.

Canadian Film and Television Production Association

12. The CFTPA did not oppose MTS Allstream's plans to develop a VOD outlet for local expression, although it did oppose the request to redirect 2% of MTS Allstream's annual gross revenues derived from its VOD operations to the proposed outlet.
13. The CFTPA stated that it could not support a proposal that would divert critical funding from independently administered production funds used for the creation of Canadian programming. It noted that, as creators of quality Canadian programming, independent producers consider it essential that the modest contributions of BDUs to Canadian programming not be eroded. The intervener noted in particular that the CTF and other independently administered production funds support the production of programming in the under-represented categories of drama, documentary, children's, and musical performance.
14. The CFTPA also noted that, in *Licence amendments related to the funding and provision of an outlet for local expression*, Broadcasting Decision CRTC 2006-490, 8 September 2006 (Decision 2006-490), the Commission denied an application by Saskatchewan Telecommunications' (SaskTel) to reallocate from an independently administered production fund to SaskTel's proposed outlet for local expression, a portion of the Canadian programming contributions from its VOD operations. In that decision, the intervener stated that the Commission noted that approval of that aspect of SaskTel's application "would be inconsistent with the licensing framework for VOD services."
15. In the opinion of the CFTPA, MTS Allstream has provided no compelling argument for the redirection of funds to support the production of quality Canadian programming. In addition, the CFTPA expressed concern that approval of this aspect of MTS Allstream's request would set a precedent that would have unfortunate implications across the broadcasting system.
16. Finally, the CFTPA noted MTS Allstream's indication that "it intends to launch its proposed outlet for local expression whether or not the Commission grants MTS Allstream the flexibility to allocate up to 2% of its gross revenues from its VOD operations". In light of that statement, the CFTPA questioned the need for the funding flexibility MTS Allstream proposed.

Canadian Association of Broadcasters

17. The CAB did not oppose the proposal to establish a VOD outlet for local expression, so long as MTS Allstream would comply with all relevant policy and regulatory requirements generally applicable to community channels.
18. The CAB did oppose MTS Allstream's proposal to redirect 2% of its gross annual VOD revenues to the proposed outlet for local expression, with a corresponding reduction in the financial contribution that it would make to an existing independently administered production fund. The CAB noted that a similar proposal by SaskTel had been denied by the Commission in Decision 2006-490, and submitted that, for the same reasons set out

in that decision, the proposal to redirect 2% of MTS Allstream's gross annual VOD revenues should also be denied. In the CAB's view, the applicant has not provided any valid rationale in support of an exception to the VOD licensing framework that would allow the redirection of funding from its VOD service to the proposed outlet for local expression.

Applicant's reply

19. In its response to the CAB and the CFTPA interventions, MTS Allstream noted that both interveners had supported its proposal to develop an outlet for local expression using its VOD platform, and that both had also opposed its proposal to allocate 2% of its annual gross revenues derived from VOD operations to the proposed outlet for local expression.
20. MTS Allstream submitted that, as it has proposed to deliver its outlet for local expression on a VOD basis, it would follow reasonably that 2% of its VOD revenues should be contributed to the outlet for local expression. It further stated that VOD services have evolved considerably since the Commission first licensed such services and developed its policy framework for them. In *Licensing of New Video-On-Demand Programming Undertakings – Introduction to Decisions CRTC 97-283 to 97-287*, Public Notice CRTC 1997-83, 2 July 1997, the Commission recognised the potential for VOD services to mature and grow, and that certain aspects of the conditions of VOD licences might require later review. MTS Allstream stated that it was in that context that the Commission determined that it would require VOD licensees to contribute a minimum of 5% of their annual gross revenues to an existing Canadian program production fund administered independently of its undertaking.
21. In MTS Allstream's opinion, it is now time for the Commission's policy regarding VOD services to recognize the way in which these services have developed and the increasing potential offered by VOD capabilities.
22. With respect to the CFTPA statement that MTS Allstream's 2% BDU revenues are sufficient to fund its outlet for local expression, MTS Allstream noted that it is a new provider of BDU and VOD services, and does not have the same customer base or production facilities of an established BDU. MTS Allstream's proposal to allocate 2% of its annual gross revenues from its VOD service therefore represents an important source of additional funding that would help make the proposed outlet for local expression a success.
23. In response to the CFTPA's claim that the proposed redirection would erode support for the production of Canadian programming, and the CAB's concern that approval of the proposal would encourage other BDUs to adopt similar models, MTS Allstream noted that allowing the redirection would play a fundamental role in the development and support of Canadian programming, allowing Manitobans to produce Canadian programming that would be relevant to Manitoba viewers.

Commission's analysis and determinations

24. The Commission has carefully considered the positions of the applicant and of the interveners.
25. Sections 27, 27.1 and 28 of the Distribution Regulations contemplate the delivery of community programming, based on the operation of traditional linear community channels. Section 29 makes a provision for contributions to local expression by BDU licensees that distribute their own community programming on the community channel.
26. In *New Regulatory Framework for Broadcasting Distribution Undertakings*, Public Notice CRTC 1997-25, 11 March 1997 (Public Notice 1997-25), the Commission announced its policy determinations that subsequently led to publication of *Broadcasting Distribution Regulations*, Public Notice CRTC 1997-150, 22 December 1997 (Public Notice 1997-150). In Public Notice 1997-25, the Commission emphasized its intention “to give all terrestrial distributors the opportunity to present innovative proposals for providing outlets for local expression within the purview of the [*Broadcasting Act*].” Moreover, in Public Notice 1997-150, the Commission invited terrestrial distributors wishing to provide an outlet for local expression, other than a community channel, to present their proposals to the Commission.
27. The Commission notes that approval of MTS Allstream’s applications would allow for the provision of local expression that differs considerably from the traditional model followed over the last four decades, whereby community programming has been distributed on community channels. While such approval would also represent a departure from the offerings of conventional VOD undertakings, it would be in keeping with the Commission’s intention, as originally expressed in Public Notice 1997-25, to encourage innovative proposals for providing outlets for local expression.
28. The Commission places great importance on the role played by BDUs in the provision of community programming and on the value of such programming that is of particular relevance to the communities served. In this case, the Commission considers that there are a number of benefits that would be realized through implementation of the applicant’s plans, not the least of which would be the provision of community programming to MTS Allstream’s BDU subscribers, who do not currently have access to such programming. In addition, MTS Allstream subscribers would benefit from the ability of the applicant’s digital distribution platform to provide virtually unlimited availability of community programming and to offer diversity of choice on an on-demand basis, rather than in accordance with any fixed schedule.

29. The Commission also notes MTS Allstream's stated willingness to adhere to conditions of licence that would establish requirements for the provision of community programming, thereby ensuring that such programming would be comparable to that offered by BDUs on their community channels, pursuant to sections 27, 27.1 and 28 of the Distribution Regulations. In particular, the Commission notes that, consistent with section 27.1, at least 60% of the program offering for the licensed area would be local community television programming, and at least 30% would be community access television programming.
30. Given all of the above, the Commission considers that, as contemplated in section 29 of the Distribution Regulations, it would be appropriate to recognize as local expression, the programming proposed to be offered as part of the applicant's VOD service.
31. The Commission also considers that it would be appropriate to permit MTS Allstream to distribute programming on the proposed outlet for local expression, up to 10% of which would be produced by it or by a related person, and to distribute sponsorship messages as permitted on community channels.
32. MTS Allstream proposed to allocate to the proposed outlet for local expression up to 2% of the gross annual revenues derived from the broadcasting activities of its VOD undertaking and its BDU, and to reduce its required annual 5% contributions from each undertaking to independent Canadian program production funds by a corresponding percentage.
33. Section 29(6) of the Distribution Regulations permits a Class 1 BDU licensee having 20,000 or more subscribers and distributing its own community programming on the community channel in a licensed area to make a deduction of a maximum of 2% of its gross annual revenues earned from broadcasting activities from the amount it must otherwise contribute to the CTF and other independent production funds, to reflect its contribution to local expression.
34. Given that MTS Allstream holds a Class 1 BDU licence, the Commission considers it appropriate that this licensee be permitted to deduct from its contributions to Canadian programming up to 2% of the gross annual revenues that are derived from the broadcasting activities of its BDU, provided that it contributes that amount to local expression.
35. With respect to MTS Allstream's VOD undertaking, its current condition of licence requires it to contribute 5% of gross annual revenues to an independent Canadian program production fund. This condition of licence is consistent with the licensing framework for VOD and pay-per-view services set out in *Introductory statement to Decisions CRTC 2000-733 to 2000-738: Licensing of new video-on-demand and pay-per-view services*, Public Notice CRTC 2000-172, 14 December 2000. In the Commission's view, approval of this aspect of MTS Allstream's VOD application would be inconsistent with the licensing framework for VOD services.

36. Furthermore, the Commission notes the applicant's statement that it intends to launch its proposed outlet for local expression whether or not the Commission grants it the flexibility to redirect up to 2% of its gross annual revenues from its VOD operations. In light of the applicant's statement, the Commission questions the need for the funding flexibility that MTS Allstream is seeking.
37. Regarding MTS Allstream's request to exclude local expression from the requirement for closed captioning, the Commission is committed to improving service to viewers who are deaf or hard of hearing, and has consistently encouraged broadcasters to increase the amount of closed captioned programming that they provide. In Public Notice 2002-61, the Commission stated that licensees who elect to distribute community programming should endeavour to meet the needs of persons with hearing or visual impairment, but recognized that the financial resources available to each licensee are different. Therefore, the Commission will explore with MTS Allstream the appropriate commitments to captioning and program description, commensurate with its resources, at the time of its next application for renewal of its VOD licence.

Conclusion

38. Based on the forgoing, the Commission **approves** the application by MTS Allstream Inc. for licence amendments pertaining to its provision of an outlet for local expression as part of the service offered by its regional, Manitoba-based VOD programming undertaking. The Commission also **approves** MTS Allstream's application for licence amendments to its BDU undertaking recognizing the licensee's expenditures on local expression, for the purposes of section 29 of the Distribution Regulations.
39. However, the Commission **denies** the request by MTS Allstream Inc. that it be authorized to redirect to the outlet for local expression any portion of the annual contribution that, by condition of licence, must be made by its VOD undertaking to an existing, independently-administered Canadian program production fund.
40. Appendix A and Appendix B to this decision pertain to MTS Allstream's BDU licence and to its VOD licence, respectively. In those appendices, the Commission sets out the **conditions of licence** related to various requirements for the funding of, and the programming offered on, the outlet for local expression, in keeping with the licensee's commitments.

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>

Appendix A to Broadcasting Decision CRTC 2007-86

Amendments to the broadcasting licence issued to MTS Allstream Inc. to carry on a broadcasting distribution undertaking serving Winnipeg and surrounding communities

1. The licensee shall continue to be subject to the conditions set out in *New cable broadcasting distribution undertaking*, Broadcasting Decision CRTC 2002-235, 14 August 2002, in addition to the following conditions.
2. The licensee shall be subject to the following conditions of licence as an exception to the requirements set out in section 29 of the *Broadcasting Distribution Regulations*:

If the licensee has 20,000 or more subscribers in the licensed area of a broadcasting distribution undertaking (BDU) on August 31 of the previous broadcast year and distributes programming that qualifies as local expression on a video-on-demand service, the licensee shall make, in each broadcast year, a contribution to Canadian programming of not less than the greater of

- a) 5% of its gross revenues derived from broadcasting activities in the licensed area in the year, less any contribution to local expression made by the licensee in the licensed area in that year, and
- b) 3% of its gross revenues derived from broadcasting activities in the licensed area in the broadcast year.

If the licensee has 20,000 or more subscribers in the licensed area of a BDU on August 31 of the previous broadcast year and does not distribute programming that qualifies as local expression on a video-on-demand or pay-per-view service, and if a community programming undertaking is licensed in the licensed area, the licensee shall make, in each broadcast year, a contribution of not less than:

- a) 3% of its gross revenues derived from broadcasting activities in the licensed area in the broadcast year to Canadian programming, and
- b) 2% of its gross revenues derived from broadcasting activities in the licensed area in the broadcast year to the community programming undertaking.

For the purpose of these conditions:

“video-on-demand service” means the video-on-demand programming undertaking authorized in *Video-on-demand service for Manitoba*, Broadcasting Decision CRTC 2003-590, 21 November 2003, as amended from time to time;

“contribution to local expression” means the eligible expenses for local expression made in accordance with *New Regulatory Framework for Broadcasting Distribution Undertakings*, Public Notice CRTC 1997-25, 11 March 1997, as amended from time to time;

“local expression” refers to programming that qualifies as local expression in accordance with the conditions of licence applicable to the programming service.

“contribution to Canadian programming” shall have the meaning set out in section 29(1) of the *Broadcasting Distribution Regulations*.

Appendix B to Broadcasting Decision CRTC 2007-86

Amendments to the broadcasting licence issued to MTS Allstream Inc. to carry on a regional video-on-demand programming undertaking serving Winnipeg and surrounding areas

1. The licensee shall continue to be subject to the conditions set out in *Video-on-demand service for Manitoba*, Broadcasting Decision CRTC 2003-590, 21 November 2003, with the exception of condition of licence 1, which is replaced by the following condition:

The licensee shall adhere to the Pay Television Regulations, 1990, with the exception of section 3(2)(d) (commercial messages); section 3(2)(e) (programming produced by the licensee); section 3(2)(f) (programming produced by a person related to the licensee); and section 4 (logs and records).

2. The condition of licence approved in *MTS Video-on-demand – Licence amendments*, Broadcasting Decision CRTC 2006-131, dated 5 April 2006, is replaced by the following condition:

The licensee shall not include as part of its video-on-demand offering any program containing a commercial message except as otherwise provided in the conditions of licence relating to local expression, or where:

- a) the message was already included in a program previously broadcast by a Canadian programming service;
- b) the program's inclusion as part of the video-on-demand offering is in accordance with the terms of a written agreement entered into with the operator of the Canadian programming service that broadcast the program;
- c) the program is offered to subscribers on an on-demand basis at no charge; and
- d) the message is included in the licensee's outlet for local expression in accordance with the provisions concerning sponsorship advertising set out in the appendix to *Policy framework for community-based media*, Broadcasting Public Notice CRTC 2002-61, 10 October 2002.

3. The licensee is authorized, as an exception to sections 3(2)(e) and 3(2)(f) of the *Pay Television Regulations, 1990*, to distribute programming, other than filler programming, which is produced by the licensee or by a person related to the licensee, but such programming shall not exceed, in each broadcast year, 10% of the total hours of its Canadian programming broadcast in each broadcast year.
4. Beginning not later than 1 September 2008, and until the end of the licence term, the licensee shall caption at least 90% of all titles in its inventory, excluding titles made available as part of its outlet for local expression.
5. (1) Subject to 5(2) and 5(3) below, the following programming will qualify as local expression for the purpose of contributions to local expression by a broadcasting distribution undertaking:
 - a) community programming;
 - b) announcements promoting its own broadcasting services;
 - c) public service announcements;
 - d) information programs funded by governments, agencies or public service organizations;
 - e) Question Period of the Manitoba legislature;
 - f) community programming announcements;
 - g) commercial messages that mention or display the sponsors of community events or the goods or services actively sold or promoted by such sponsors, if the mention or display is in the course of, and incidental to the production of the community programming relating to the event;
 - h) oral or written acknowledgements, that may include visual presentations, contained in the community programming, that would be allowed in accordance with current restrictions identified in sections 27(1)(h) and (i) of the *Broadcasting Distribution Regulations* that would apply generally to a community channel;
 - i) still images programming service as described in *Exemption Order Respecting Still Image Programming Service Undertakings*, Public Notice CRTC 1993-51, 30 April 1993, if the service is produced by or for MTS Allstream Inc. or by members of the community; and
 - j) the programming of a community programming undertaking.

(2) The community programming offered pursuant to 5(1)(a) above may include:

- a) an announcement providing information about the community programming that is offered as local expression;
- b) a commercial message that mentions or displays the name of a person who sponsored a community event or the goods, services or activities sold or promoted by the person, if the mention or display is in the course of, and incidental to the production of, community programming relating to the event;
- c) an oral or written acknowledgement, that may include a moving visual presentation of no more than 15 seconds per message, contained in community programming that mentions no more than the name of a person, a description of the goods, services or activities that are being sold or promoted by the person, and their address and telephone number, if the person provided direct financial assistance for the community programming in which the acknowledgement is contained; and
- d) an oral or a written acknowledgement contained in community programming that mentions no more than the name of a person, the goods or services provided by the person and their address and telephone number, if the person provided the goods or services free of charge to the licensee for use in connection with the production of the community programming in which the acknowledgement is contained.

(3) The programming offered as local expression will qualify as local expression for purposes of the contributions to local expression by a broadcasting distribution undertaking if:

- a) the programming is offered to subscribers on an on-demand basis at no charge;
- b) the licensee devotes not less than 60% of the programming offered as local expression to local community television programming;
- c) the licensee devotes not less than 30% of the programming offered as local expression to community access television programming;
- d) the licensee devotes from 30% to 50% of the programming offered as local expression to community access television programming, according to requests;
- e) where one or more community television corporations are in operation in a licensed area, the licensee makes available to them for community access television programming, on an equitable basis, up to 20% of the programming offered as local expression;

- f) where, during an election period, the licensee offers programming in the licensed area that is of a partisan political character, the licensee shall allocate an equal number of titles of equal duration for all accredited political parties and rival candidates; and
 - g) the licensee shall not offer any programming of a partisan political character during provincial election periods.
6. The licensee shall retain a clear and intelligible audio-visual recording of each program offered as part of the programming that qualifies as local expression for a period of:
- a) four weeks after the latest date on which the program is offered; or
 - b) eight weeks after the latest date on which the program is offered, if the Commission receives a complaint from a person regarding the program or, for any other reason, wishes to investigate, and so notifies the licensee before the end of the period referred to in paragraph (a).
7. If before the end of the relevant period referred to in condition of licence 6, the Commission requests from a licensee a clear and intelligible audio or audio-visual recording of a program, the licensee shall immediately furnish the recording to the Commission.

For the purpose of these conditions, “community access television programming”, “community programming”, “licensed area”, and “local community television programming” shall have the meaning set out in section 1 of the *Broadcasting Distribution Regulations*.