



Canadian Radio-television and
Telecommunications Commission

Conseil de la radiodiffusion et des
télécommunications canadiennes

Broadcasting Decision CRTC 2008-264

Ottawa, 19 September 2008

Ravinder Singh Pannu, on behalf of a corporation to be incorporated
Toronto, Ontario

Application 2008-0216-7, received 7 February 2008

Public Hearing in the National Capital Region

7 July 2008

Class 1 terrestrial broadcasting distribution undertaking

The Commission approves the application by Ravinder Singh Pannu, on behalf of a corporation to be incorporated, to operate a Class 1 terrestrial broadcasting distribution undertaking to serve the Greater Toronto Area, Ontario.

Introduction

1. The Commission received an application by Ravinder Singh Pannu, on behalf of a corporation to be incorporated, to operate a Class 1 terrestrial broadcasting distribution undertaking (BDU) to serve the Greater Toronto Area (GTA). The applicant proposed to use digital subscriber line (DSL) technology for the operation of this terrestrial BDU.
2. In its application, the applicant requested the following authorizations:
 - the authority to distribute, as part of the basic service, WIVB-TV (CBS), WGRZ-TV (NBC), WKBW-TV (ABC), WUTV (FOX) and WNED-TV (PBS) Buffalo, or, alternatively for each signal, the signal of a different affiliate of the same network located in the same time zone and received from a licensed satellite relay distribution undertaking;
 - the authority to distribute, on a digital discretionary basis, WNYO-49 (Warner Brothers) Buffalo;
 - the authority to distribute, on a digital discretionary basis, any of the distant Canadian television signals set out in the *List of Part 3 eligible satellite services*, as well as 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 (collectively, the U.S. 4+1 signals); and
 - the authority to insert, at its option, certain promotional material as a substitute for the “local availabilities” (i.e., non-Canadian advertising material) of non-Canadian satellite services.

3. The Commission received an intervention offering comments from Rogers Cable Communications Inc. (Rogers). The applicant did not reply to the intervention. The intervention and other documents pertaining to the proceeding can be found on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Commission's analysis and determinations

4. After examining the application, the intervention to the application and other documents pertaining to the proceeding, the Commission considers that the issues to be determined relate to the following:
 - the applicant's business plan, and
 - the applicant's capacity to adhere to regulatory requirements.

Applicant's business plan

5. Rogers did not object in principle to the applicant's proposal to operate a Class 1 terrestrial BDU to serve the GTA. However, in its intervention, Rogers raised concerns regarding the feasibility of the applicant's business plan. In this regard, Rogers cited Broadcasting Decisions 2008-76 and 2007-219, in which the Commission denied proposals put forward by YES TV and Lee David Weston, respectively, due to concerns regarding the feasibility of the proposed business plans.
6. Rogers contended that the proposed undertaking would not be sustainable because the applicant underestimated pre-operating costs for reception and distribution equipment and does not appear to have considered the capital expenditures necessary for the launch and ongoing operation of a BDU. Rogers further contended that the projections do not clearly account for programming costs and that the estimates for staffing do not realistically reflect what is required to provide a BDU service to consumers. On this basis, Rogers submitted that the application should be denied.
7. The Commission notes that the above-mentioned applications by YES TV and Lee David Weston were for new television services. In considering applications for new television services, the Commission requires clear financial projections so as to determine whether the proposed service would be viable and thus warrant mandatory carriage on BDUs that have limited distribution capacity. Further, as noted in Broadcasting Decision 2008-76, the provision of a clear and solid business plan also allows the Commission to determine whether a proposed service would warrant the use of limited broadcasting spectrum, such as that in the GTA, Canada's largest television market.
8. In regard to applications for licences to operate BDUs, in light of the introduction of competition and end-user choice, the Commission does not generally require evidence as to viability. Rather, the Commission considers that the onus is on the new entrant to launch the approved BDU within the Commission's prescribed period and to operate its BDU in accordance with its financial ability, while adhering at all times to the *Broadcasting Distribution Regulations* (the Regulations) and all related policies.

Applicant's capacity to adhere to regulatory requirements

9. Rogers submitted that, should the Commission decide to approve the application, it should require the applicant to adhere to the same regulatory regime that applies to Rogers as a cable BDU. The specific issues raised by Rogers, as well as the Commission's analysis and determination on each of these issues, are set out below.

Migration from analog to digital

10. Rogers requested that the applicant be required to demonstrate that it would comply with the Commission's policy framework for the migration of services from analog to digital.
11. In Broadcasting Public Notice 2006-23, the Commission set out a framework to guide the migration to a digital distribution environment of those pay and specialty services that were approved under the analog licensing framework. Provisions of that analog licensing framework pertaining, for example, to the mirroring of analog service offerings, do not apply to undertakings such as that proposed by the applicant, which will operate exclusively on a digital basis using DSL technology.

Dual status services

12. Rogers also indicated that the applicant omitted a number of dual status services in its proposed channel line-up. Noting that the applicant had indicated in its application that it would carry in its discretionary package all of the licensed English- and French-language services and Category 1 specialty services not distributed on basic, Rogers contended that, should the applicant not be subject to the dual status/modified status rules, the applicant would have much more flexibility than Rogers in its distribution of these services.
13. The Commission notes that the dual status and modified dual status designations ceased to apply to the digital distribution of specialty services on 1 September 2007, as set out in Broadcasting Public Notice 2006-23.

Affiliated and unaffiliated Category 2 services

14. As noted by Rogers in its intervention, under subsection 18(14) of the Regulations, a BDU must distribute five non-affiliated Category 2 services for each affiliated service that is distributed. In this regard, Rogers noted that the applicant proposed to distribute five unaffiliated Category 2 services and five affiliated Category 2 services (that is, in a one-to-one ratio rather than a five-to-one ratio).
15. The Commission notes that, unless relief from section 18(14) of the Regulations regarding the distribution of Category 2 services is granted by condition of licence, the applicant is required to adhere to the regulatory obligation contained therein at all times, and thus distribute at least five unaffiliated Category 2 services for each affiliated Category 2 service that it chooses to distribute.

Priority signals

16. Rogers submitted that the applicant did not specifically indicate the channels on which it would carry priority signals and did not indicate whether they would be distributed within the basic band (i.e., channels 2 to 13). In Rogers' view, the applicant should be required to demonstrate that all priority signals would be carried in order of priority.
17. The Commission notes that, in accordance with Broadcasting Public Notice 2003-61, distributors are free to place digital priority signals anywhere in their digital channel line-ups, as long as the services are included as part of the basic service and made available to all subscribers at no additional charge.

Local digital television signals

18. In Broadcasting Public Notice 2003-61, the Commission concluded that it is reasonable to require BDUs to distribute the primary digital signal of a licensed over-the-air (OTA) television service in accordance with the priorities that currently apply to the distribution of the analog version of the services. In light of this, Rogers submitted that, if licensed, the applicant would be required to carry a number of DTV signals that operate in the GTA. Rogers noted that the applicant proposed to carry the DTV signal of CITY-TV in its channel line-up, but did not propose to carry the DTV signals of CIII-TV (Global), CFTO-TV (CTV), CKXT-TV (Sun TV), CBLT (CBC English), CBLFT (CBC French), CHCH-TV (E!), CFMT-TV (OMNI.1) and CJMT-TV (OMNI.2), as required pursuant to Broadcasting Public Notice 2003-61. Rogers also noted that the applicant has not requested relief from the requirement to carry these signals, and requested that the Commission review this issue with the applicant in order to determine whether the proposed BDU would be able to meet its distribution obligations in this respect.
19. In regard to the applicant's proposal to deliver all broadcast services, Rogers stated that it does not believe that the access technologies proposed by the applicant have the capacity to permit the distribution of all local DTV signals, and noted that the applicant did not seek relief from this requirement. Noting the applicant's statement that it would be capable of offering HD in "due course of time," Rogers requested that the Commission either impose a condition of licence requiring the applicant to comply with the requirement to deliver all local DTV signals, or not approve the applicant's request for a broadcasting licence.
20. In regard to the DTV signals that are required to be distributed, the Commission notes that the applicant has, contrary to Rogers' statement, included, along with the DTV signal of CITY-TV, the DTV signals of CIII-TV (Global), CFTO-TV (CTV), CKXT-TV (Sun TV), CBLT (CBC English), CBLFT (CBC French), CHCH-TV (E!), CFMT-TV (OMNI.1) and CJMT-TV (OMNI.2) in its channel line-up.

21. In regard to Rogers' concern that the applicant would not be able to carry all of the local DTV signals using the proposed access technologies, the applicant, in its response of 11 April 2008 to a request for information from the Commission, indicated that a percentage of its subscribers would be served using access technologies that may not be capable of delivering HD services.
22. The Commission notes that, in the GTA, there are DTV stations with operating OTA transmitters offering HD content (Citytv and CTV). Under the Commission's regulatory framework for the distribution of DTV signals, these digital OTA signals must be distributed as part of any digital basic service. Since the applicant would be operating using only digital distribution technology, it would be obliged to distribute these signals to all of its customers as part of the basic service (i.e., at no additional fee), even if this requires it to limit its subscriber base to those customers who can receive these signals, unless it applies for and is granted a condition of licence providing for an exemption. Further, under the Commission's regulatory framework, these signals must be passed through to all subscribers in HD, as originally broadcast.
23. Absent a condition of licence to the contrary, the applicant must also provision its network in such a way to be able to provide, to its entire subscriber base, all other mandatory HD signals that may be made available in the GTA, including any pay and specialty services that may be accorded must-carry status under the framework established in Broadcasting Public Notice 2006-74.
24. In Broadcasting Public Notice 2006-74, the Commission noted that any BDU that was unable to meet the distribution requirements established in that notice has the option of applying to the Commission for relief from the requirements, bearing the onus of persuading the Commission that such relief is warranted. The Commission is of the view that, in the context of the delivery of HD OTA signals as well as mandatory HD pay and specialty services, individual BDUs should bear the onus of persuading the Commission that granting an exception to the normal distribution requirements would be appropriate. While it remains open to the applicant to file a further application, the Commission notes that no relevant arguments have yet been presented to persuade it that an exception is warranted.

Video-on-demand service

25. Noting that the applicant did not submit an application for a video-on-demand (VOD) licence and that the applicant, in response to a deficiency question by the Commission, stated that it is simply proposing to carry an existing VOD service on the proposed BDU, Rogers requested clarifications as to how the applicant intends to offer VOD content and charge a fee. Rogers added that BDUs are required to hold a VOD licence in order to offer VOD programming.

26. While the Commission notes that all VOD undertakings that are currently in operation are owned and operated by BDUs on their respective systems, the Commission has no concerns with the proposed BDU carrying a VOD service that is independent from the BDU. However, should the applicant wish to operate its own VOD service, it would require a separate licence for that service.

Mandatory audio services

27. Noting that the applicant's proposed audio line-up does not include all the mandatory audio services that operate within the GTA, Rogers urged the Commission to ensure that the applicant's channel line-up is in compliance with section 22 of the Regulations.
28. The Commission reminds the applicant 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 Canadian Broadcasting Corporation.

Other authorizations requested by the applicant

29. In regard to other authorizations requested by the applicant, the Commission considers that they are appropriate and do not conflict with any of the Commission's regulations and existing policy provisions.

Conclusion

30. In light of all of the above, the Commission **approves** the application by Ravinder Singh Pannu, on behalf of a corporation to be incorporated, for a broadcasting licence to operate a Class 1 terrestrial BDU to serve the GTA, Ontario. The licence will be subject to the **conditions** specified therein, and to the terms and **conditions of licence** set out in the appendix to this decision.

Secretary General

Related documents

- *High definition over-the-air digital television service in the Greater Toronto Area*, Broadcasting Decision CRTC 2008-76, 3 April 2008
- *Community-based digital television service in Toronto*, Broadcasting Decision CRTC 2007-219, 6 July 2007
- *Regulatory framework for the licensing and distribution of high definition pay and specialty services*, Broadcasting Public Notice CRTC 2006-74, 15 June 2006
- *Digital migration framework*, Broadcasting Public Notice CRTC 2006-23, 27 February 2006

- *The regulatory framework for the distribution of digital television signals*, Broadcasting Public Notice CRTC 2003-61, 11 November 2003
- *Implementation of an employment equity policy*, Public Notice CRTC 1992-59, 1 September 1992

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 2008-264

Terms, conditions of licence and encouragement for the Class 1 terrestrial broadcasting distribution undertaking serving the Greater Toronto Area, Ontario.

Terms

Issuance of the broadcasting licence to operate a Class 1 terrestrial broadcasting distribution undertaking to serve the Greater Toronto Area, Ontario.

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

The licence will expire 31 August 2015.

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 19 September 2010. 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.

Conditions of licence

1. The licensee is authorized to distribute, as part of the basic service, 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 and received from a licensed satellite relay distribution undertaking.
2. The licensee is authorized to distribute, on a digital discretionary basis, WNYO-49 (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).

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.

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.

Encouragement

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.