



Broadcasting Decision CRTC 2011-259

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Route reference: 2010-935

Ottawa, 19 April 2011

2251723 Ontario Inc.

Greater Toronto Area, including Ajax, Aurora, Bolton, Brampton, Caledon, Claremont, Etobicoke, Georgetown, King City, Markham, Milton, Mississauga, Nobleton, North York, Pickering, Richmond Hill, Scarborough, Toronto, Vaughan and Woodbridge, and Kitchener-Waterloo, Ontario

Application 2010-1231-9, received 5 August 2010

Public hearing in the National Capital Region

11 February 2011

Class 1 regional licence to operate terrestrial broadcasting distribution undertakings to serve the Greater Toronto Area and Kitchener-Waterloo

*The Commission **approves** the application by 2251723 Ontario Inc. for a Class 1 regional broadcasting licence to operate terrestrial broadcasting distribution undertakings to serve the above-noted locations.*

The application

1. The Commission received an application by 2251723 Ontario Inc. for a Class 1 regional broadcasting licence to operate terrestrial broadcasting distribution undertakings (BDUs) to serve:
 - the Greater Toronto Area, including Ajax, Aurora, Bolton, Brampton, Caledon, Claremont, Etobicoke, Georgetown, King City, Markham, Milton, Mississauga, Nobleton, North York, Pickering, Richmond Hill, Scarborough, Toronto, Vaughan and Woodbridge; and
 - Kitchener-Waterloo.
2. 2251723 Ontario Inc. is wholly owned by Content Media Rights Inc. (CMR) and equally controlled by Alexei Tchernobrivets, Vadim Sloutsky and Ivan Smirnov through their ownership of CMR and their capacity to each nominate one of the three directors of CMR.
3. For both undertakings, the applicant requested authorization 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; and
 - distribute, 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 (referred to as the U.S. 4+1 signals).
4. For both undertakings, 2251723 Ontario Inc. also stated its willingness 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. The applicant also committed to meet the requirements regarding customer service and information set out in Broadcasting and Telecom Policy 2009-430 (the Accessibility Policy).
 5. The Commission received a comment from Rogers Communications Partnership¹ (Rogers). The intervention and the applicant's reply are available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Intervention

6. Rogers did not object to the application in principle but requested that 2251723 Ontario Inc. be held to the same regulatory requirements as have been imposed on Rogers as a Class 1 terrestrial 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 the policy frameworks for the distribution of digital television signals and high definition pay and specialty services. In this respect, Rogers noted that the applicant's proposed channel line-up for both BDUs did not include the English-language pay television service Super Channel even though BDUs in English-language markets are required to distribute this service under section 18(5) of the *Broadcasting Distribution Regulations* (the Regulations). Rogers therefore requested that the Commission confirm that the applicant would be offering this service to its subscribers.
7. Rogers also noted that the applicant's channel line-up did not include the third-language programming service ATN. Under section 18(5) of the Regulations, this service must be distributed if 10% or more of the total population of all cities, towns and municipalities encompassed in whole or in part within the licensed area of the licensee is of one or a combination of the ethnic origins to which the service is intended to appeal, according to the most recent population figures published by Statistics Canada. Rogers therefore requested that the Commission confirm if the applicant met the test regarding the distribution of ATN.

¹ Rogers Communications Inc. and Fido Solutions Inc., partners in a general partnership carrying on business as Rogers Communications Partnership.

8. Finally, Rogers noted that only one proposed channel line-up was filed with the application while the proposed service areas have different over-the-air priority television signals. Rogers therefore requested that the Commission require the applicant to file a separate proposed channel line-up for the Kitchener-Waterloo area prior to approving the application.

Applicant's reply

9. The applicant confirmed that it intended to comply with all requirements, including those relating to distribution and linkage, priority carriage and access. The applicant also stated that it would distribute all "must-carry" services, including Super Channel and, where required, ATN. The applicant further confirmed its intention to distribute all over-the-air priority signals as required under section 17 of the Regulations.

Commission's analysis and determinations

10. The Commission notes that the applicant stated in its application that the channel line-up provided would apply to both of the proposed undertakings. The Commission is satisfied with the applicant's response. Nevertheless, the Commission reminds the applicant that it must adhere to the requirements of the Regulations concerning the distribution of television stations, including those set out in section 17, and that channel line-ups must be listed on its website by licensed location.
11. In light of the above, the Commission **approves** the application by 2251723 Ontario Inc. for a Class 1 regional broadcasting licence to operate terrestrial BDUs to serve:
 - the Greater Toronto Area, including Ajax, Aurora, Bolton, Brampton, Caledon, Clarendon, Etobicoke, Georgetown, King City, Markham, Milton, Mississauga, Nobleton, North York, Pickering, Richmond Hill, Scarborough, Toronto, Vaughan and Woodbridge; and
 - Kitchener-Waterloo.
12. 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.

Other matters

General authorizations for broadcasting distribution undertakings

13. The Commission notes that under the conditions specified in the licence, the licensee is also authorized to distribute any service and to undertake any activity authorized in Broadcasting Regulatory Policy 2009-546, as amended from time to time, under the terms and conditions set out therein.

Implementation of the Commission's determinations regarding accessibility of services

14. In the Accessibility Policy, the Commission set out its determinations regarding the accessibility of telecommunications and broadcasting services to persons with

disabilities. As indicated above, the applicant stated that it was 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.

15. In addition, consistent with the Accessibility Policy, the Commission expects 2251723 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.
16. Finally, consistent with the Accessibility Policy and commitments made by the applicant, 2251723 Ontario Inc. is required to:
 - promote information on all of its disability-specific services and products in the accessible manner(s) of its choice;
 - incorporate an easy-to-find home page link to the special needs/disability sections of its website, if its website includes such sections;
 - make the information on its website accessible to the point of providing reasonable accommodation for persons with disabilities by 23 July 2012 (examples of what the Commission considers to be reasonable accommodations are listed in paragraph 66 of the Accessibility Policy);
 - ensure that where customer service functions on its website are not accessible, persons with disabilities will not incur a charge or otherwise be disadvantaged if they use an alternate avenue of customer service;
 - make accessible any customer service functions that are available solely over its website by 23 July 2012;
 - make its general call centers accessible to the point of providing reasonable accommodation to persons with disabilities by training customer service representatives in handling enquiries from persons with disabilities and familiarizing them with the service provider's products and services for persons with disabilities; and
 - ensure that its interactive voice response system is accessible to the point of reasonable accommodation for persons with disabilities, taking into account the needs of persons with different disabilities.
17. The Commission notes that it may impose further conditions of licence respecting accessibility matters five years into the licence term if deemed appropriate.

Mandatory distribution of 9(1)(h) services

18. The Commission reminds the applicant that as a Class 1 licensee it will be required to distribute in its licensed areas 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 2011-259

Terms, conditions of licence, reminder, expectations and encouragements for both undertakings

Terms

Issuance of the Class 1 regional broadcasting licence to operate terrestrial broadcasting distribution undertakings to serve various localities in the Greater Toronto Area and Kitchener-Waterloo

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

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 19 April 2013. 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.
- filed, at the same time it informs the Commission that it is ready to commence operations, a website address where its channel line-ups are posted.

The licence will expire 31 August 2017.

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 (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 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.

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.

Reminder

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.

Expectations

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.

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

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.