



Broadcasting Decision CRTC 2016-487

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Reference: 2016-349

Ottawa, 20 December 2016

MTS Inc.

Winnipeg and surrounding areas, Manitoba

Application 2016-0602-1, received 8 June 2016

Terrestrial broadcasting distribution undertaking serving Winnipeg and surrounding areas – Change of effective control

*The Commission **approves** an application for authority to effect a change in the ownership and effective control of the terrestrial broadcasting distribution undertaking (BDU) serving Winnipeg and surrounding areas, Manitoba, currently licensed to MTS Inc. (MTS), such that the effective control will be exercised by BCE Inc. (BCE).*

The Commission finds that the transaction does not raise concerns with respect to applicable Commission policies and regulations and that it does not trigger the payment of tangible benefits. Furthermore, Bell committed to invest in infrastructure in Manitoba, including in markets that are currently unserved, which will benefit the broadcasting system.

This application is part of a broader transaction between MTS and Bell Canada involving telecommunications services. The portion of the transaction involving telecommunications services is subject to the Telecommunications Act and does not require the Commission's prior approval. The Commission exclusively reviewed the change in ownership of the licensed BDU. The authorization in this decision is not sufficient, in and of itself, for BCE to go ahead with the broader transaction, which requires authorizations from other entities.

Application

1. MTS Inc. (MTS) filed an application for authority to effect a change in the ownership and effective control of the terrestrial broadcasting distribution undertaking (BDU) serving Winnipeg and surrounding areas, Manitoba, currently licensed to MTS, such that effective control will be exercised by BCE Inc. (BCE).
2. MTS is a wholly owned subsidiary of MTS Communications Holdings Inc. (MCH), which is wholly owned by Manitoba Telecom Services Inc. (Manitoba Telecom), a publicly held company. MTS is effectively controlled by its board of directors.
3. Bell Canada (Bell) is a wholly owned subsidiary of BCE, a publicly held company. The effective control of Bell is exercised by BCE, which in turn is controlled by its board of directors.

4. The proposed change in ownership and control of this BDU is part of a Plan of arrangement (the Plan) whereby BCE will purchase all issued and outstanding shares of Manitoba Telecom for approximately \$3.9 billion.
5. Pursuant to the Plan, the transaction also involves the telecommunications services of MTS. The application submitted by MTS does not include the telecommunications services. Pursuant to the *Telecommunications Act*, the change in ownership of the telecommunications services does not require prior approval from the Commission.
6. Bell would also acquire MTS's exempt BDUs serving various locations in Manitoba. Prior approval from the Commission is not required for that portion of the transaction.
7. The proposed transaction would be completed through a series of steps as set out below:

Step 1

The parent corporation of MTS, MCH, would be wound up into Manitoba Telecom.

Step 2

Bell would acquire all the issued and outstanding shares in the capital of Manitoba Telecom.

Step 3

BCE would incorporate a new wholly owned subsidiary (BCE Subco), which would acquire the shares of Manitoba Telecom from Bell. Manitoba Telecom would then amalgamate with BCE Subco and form MTS Public Amalco.

Step 4

Bell would acquire the shares of MTS held by MTS Public Amalco. As a result of this acquisition, MTS Public Amalco would no longer form part of the ownership structure of MTS.

Step 5

Bell would amalgamate with MTS and continue under Bell.

8. Immediately before the closing of the transaction, MTS would surrender its licence for a regional video-on-demand (VOD) service to the Commission.
9. Following the transaction, the licensed terrestrial BDU would be wholly owned by Bell and effectively controlled by BCE. Bell would continue to operate the undertaking under the same terms and conditions as those in effect under the current licence.

Interventions and reply

10. The Commission received interventions in support of the application, interventions in opposition and comments. MTS replied to the interventions and comments. The public

record for this application can be found on the Commission's website at www.crtc.gc.ca or by using the application number provided above.

11. In general, those in support of the application highlighted the investment promised by Bell and the technological features of Bell's IP television service (Bell Fibe TV) not offered by MTS, such as 4K Whole Home PVR with up to 320 hours of HD storage capacity, restart of live shows and look back up to 30 hours.
12. Some interveners, including Canadian citizens and some consumer advocacy groups, argued that the decrease in the number of competitors in Manitoba would lead to rate increases.
13. In its intervention, the Manitoba branch of the Consumers' Association of Canada (CAC Manitoba) argued that the transaction would significantly reduce competition in Manitoba, and therefore reduce choice. CAC Manitoba submitted that approving the application would place MTS's BDU within a vertically integrated conglomerate that has demonstrated less flexibility in terms of programming offered, while charging higher prices for individual channels.
14. Similarly, the Public Interest Advocacy Centre (PIAC) submitted that there is evidence that vertically integrated BDUs have less of an incentive to offer customers options that promote choice, flexibility and ultimately, affordability.
15. Furthermore, PIAC argued that the proposed transaction would warrant the payment of tangible benefits, given that the investments and product enhancements do not outweigh the potential harm of decreased competition and of a change of ownership of an independent operator to a vertically integrated BDU.
16. Should the application be approved, PIAC and CAC Manitoba submitted that the Commission should:
 - impose a condition of approval that Bell must maintain MTS's current offerings in regards to the small basic service, the standalone and small package offerings, as well as the equipment rental and purchase fees, for at least three years following the closing of the transaction; and
 - require the payment of tangible benefits.
17. Independent producers, notably On Screen Manitoba, were concerned with the funding of the *MTS Stories from Home* community programming currently available on MTS's VOD service. On Screen Manitoba added that there should be a provision requiring Bell to support the development, production and distribution of Manitoba-made content.

18. In its reply, MTS stated that there are currently six licensed BDUs in Manitoba, the largest being Shaw, as well as numerous exempt BDUs, which demonstrates that there is BDU competition in Manitoba. Furthermore, MTS stated that when assessing the competitive state of the market, Bell Satellite should be treated as a distinct service to Bell Fibe TV given that there is limited overlap between MTS's current subscriber base (primarily urban) and that of Bell Satellite TV (primarily rural). In terms of pricing, MTS indicated that both MTS and Bell are fully compliant with the Commission's new packaging policies and that, except for the small basic service, neither the retail pricing nor packaging of discretionary channels is regulated. Furthermore, Bell stated that placing restrictions on pricing would be a significant reversal of the Commission's approach to BDU rate deregulation.
19. MTS stated that, as set out in the Tangible Benefits Policy (Broadcasting Regulatory Policy 2014-459), the Commission does not require tangible benefits for a change in ownership and effective control of a BDU. MTS further stated that PIAC and CAC Manitoba did not provide adequate reasoning as to whether there would truly be a reduction in competition in the Manitoba market and how this would warrant a reversal in Commission policies.
20. Regarding community programming, MTS confirmed that Bell intends to continue investing in local expression, including in programs such as *Stories from Home*, and that the surrender of the VOD licence has no bearing on the continued funding of community programming. MTS stated that funding for community programming comes from the local expression contribution requirements set out in the *Broadcasting Distribution Regulations* (the Regulations) and is not linked to the VOD licence.

Commission's analysis and decisions

21. The application before the Commission is solely for the change in ownership of the licensed BDU, which represents a small part of the broader transaction between MTS and Bell. The larger portion of the transaction involves telecommunications services, which are subject to the *Telecommunications Act*, and does not require the Commission's prior approval. The telecommunications portion of the transaction therefore falls outside the scope of this proceeding.
22. The review of ownership transactions is an essential element of the Commission's regulatory and supervisory mandate under the *Broadcasting Act* (the Act). Since the Commission does not solicit competitive applications for changes in effective control of broadcasting undertakings, the onus is on the applicant to demonstrate that approval is in the public interest, that the benefits of the transaction are commensurate with the size and nature of the transaction and that the application represents the best possible proposal under the circumstances.
23. The Commission must consider each application on its merits, based on the circumstances specific to the application. In addition, the Commission must be assured that approval of a proposed ownership transaction furthers the public interest as expressed in the objectives set out in section 3(1) of the Act.

24. After examining the public record for this application in light of applicable regulations and policies, the Commission considers that the issues it must address relate to the following:

- impact of the proposed transaction on the Canadian broadcasting system;
- application of the tangible benefits policy; and
- considerations for community television.

Impact of the proposed transaction on the Canadian broadcasting system

25. Bell stated that it will offer IPTV product enhancements to MTS subscribers and invest in infrastructure improvements in Manitoba, including in markets that are currently unserved, which will benefit the broadcasting system.

26. Some interveners raised concerns in regards to the competitive state of the BDU market in Manitoba. In the Diversity of Voices Policy (Broadcasting Public Notice 2008-4), the Commission recognized that competition between BDUs is the most efficient way to serve consumers. In that policy, the Commission also stated that it is not prepared to allow one person to control all BDUs in any given market and that, as a general rule, it will not approve an application for a change in control of a BDU where in that market one person would be in a position to effectively control the delivery of programming services.

27. In this regard, Shaw would continue to be the largest BDU operator in Manitoba and Bell would not be the only BDU operator in any given market. Therefore, Bell would not be in a position to effectively control the delivery of programming services in the market. Accordingly, the Commission considers that the transaction is consistent with the Diversity of Voices Policy.

28. Some interveners were also concerned that the proposed transaction would have an impact on the affordability and choice of programming services. In this respect, the Commission considers that the BDU market share distribution in Manitoba, combined with the measures set out in the Regulations and in Broadcasting Regulatory Policy 2015-96, such as requiring BDUs to offer a \$25 entry-level service as well as pick-and-pay and small package options, are sufficient to ensure that consumers in Manitoba continue to have choices in television service providers and in packaging options for programming services. Further, with the exception of the entry-level service, the Commission does not regulate the retail pricing of BDU services.

29. In light of the above, the Commission finds that the transaction does not raise concerns with respect to Commission policies, regulations and the service's conditions of licence. Further, the added functionalities of Bell Fibe TV and Bell's commitment to invest in infrastructure improvements in Manitoba will benefit the broadcasting system as a whole.

Tangible benefits

30. As set out in the Tangible Benefits Policy, tangible benefits are generally required as part of transactions involving a change in effective control of broadcasting undertakings, with the exception of licensed BDUs.
31. PIAC and CAC Manitoba argued that the proposed transaction warrants the payment of tangible benefits given that the investments and product enhancements to be introduced by Bell do not outweigh the potential harm of decreased competition and of a change in ownership of an independent operator to a vertically integrated BDU.
32. The application before the Commission is solely for the change in control of the licensed BDU and does not raise concerns with applicable Commission policies and regulations. Accordingly, consistent with the Tangible Benefits Policy, this transaction does not trigger the payment of tangible benefits and the Commission is of the view that an exception requiring the payment of tangible benefits would be unwarranted for this transaction. Furthermore, the Commission considers that the flexibility and pricing concerns raised by CAC Manitoba and PIAC to justify imposing tangible benefits are mitigated by the regulatory measures intended to maximize choice for television viewers and foster a healthy and dynamic television market announced in Broadcasting Regulatory Policy 2015-96.

Community television

33. In the Policy Framework for Local and Community Television (Broadcasting Regulatory Policy 2016-224), the Commission set out regulatory measures to ensure that Canadians continue to have access to local programming that reflects their needs and interests. This includes the broadcast of high-quality local news on which Canadians rely to stay informed of issues that matter to them, as well as the broadcast of community programming through which Canadians can express themselves. Some of the measures adopted provide for a flexible approach to BDUs' contributions to local expression.
34. In light of the measures announced in the Policy Framework for Local and Community Television and Bell's stated commitment to community television in Manitoba, the Commission will not impose additional requirements on Bell to support the development, production and distribution of Manitoba-made content.

Conclusion

35. In light of all of the above, the Commission determines that the application is in the public interest and **approves** the application by MTS Inc. for authority to effect a change in the ownership and effective control of the terrestrial BDU serving Winnipeg and surrounding areas, currently licensed to MTS, such that effective control will be exercised by BCE Inc.
36. The Commission **expects** MTS to surrender its licence for a regional VOD service to the Commission.

Secretary General

Related documents

- *Policy framework for local and community television*, Broadcasting Regulatory Policy CRTC 2016-224, 15 June 2016
- *Let's Talk TV: A World of Choice – A roadmap to maximize choice for TV viewers and to foster a healthy, dynamic TV market*, Broadcasting Regulatory Policy CRTC 2015-96, 19 March 2015
- *Simplified approach to tangible benefits and determining the value of the transaction*, Broadcasting Regulatory Policy 2014-459, 5 September 2014
- *Diversity of voices – Regulatory policy*, Broadcasting Public Notice CRTC 2008-4, 15 January 2008

This decision is to be appended to the licence.