



Broadcasting Decision CRTC 2008-289

Ottawa, 20 October 2008

TBayTel

Thunder Bay and surrounding areas, Ontario

Application 2008-0168-0, received 31 January 2008

Public Hearing in the National Capital Region

7 July 2008

Class 1 terrestrial broadcasting distribution undertaking

*The Commission **approves** the application by TBayTel to operate a Class 1 terrestrial broadcasting distribution undertaking to serve Thunder Bay and the surrounding area, Ontario.*

Introduction

1. The Commission received an application by TBayTel for a broadcasting licence to operate a Class 1 terrestrial broadcasting distribution undertaking to serve Thunder Bay and the surrounding area, Ontario.
2. As part of its application, TBayTel requested authorization to distribute, at its option, the signals of WCCO-TV (CBS) Minneapolis, WHDH-TV (NBC), WCVB-TV (ABC), WFXT (FOX) and WGBH-TV (PBS) Boston, as part of the basic service. TBayTel also requested authorization 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.
3. The Commission received two interventions in support of this application.

Commission's analysis and determinations

4. The Commission considers that the primary issue to be determined in its evaluation of this application is whether TBayTel, a telephone company owned by a municipality, is eligible to hold a broadcasting licence.
5. On 27 June 1985, the Federal Government (the Government) issued *Direction to the CRTC (Ineligibility to Hold Broadcasting Licences)*, SOR/85-627 (the Direction). Pursuant to section 3 of the Direction, the Commission was prohibited from granting broadcasting licences to "municipal governments." The definition of "municipal government" included any "public body empowered to perform a function of government in a province."

6. On 19 April 2007, the Government issued *Order Amending the Direction to the CRTC (Ineligibility to Hold Broadcasting Licences)*, SOR/2007-73 (the Amended Direction). Pursuant to the Amended Direction, the definition of “municipal government” was amended so as to exclude “independent carriers.” The definition currently reads as follows:
- “municipal government” means any municipal or public body empowered to perform a function of government in a province, but does not include an independent carrier.
7. “Independent carrier” is then defined in the Amended Direction to include:
- ...a Canadian carrier, within the meaning of subsection 2(1) of the *Telecommunications Act*, whose transmission facilities are operated by a public utility service provider, where
- (i) the Commission determines that the public utility service provider is not directly controlled by the governing body of the municipal government; and
 - (ii) the public utility service provider enjoys freedom of expression and journalistic, creative and programming independence in the pursuit of its object and exercise of its powers.
8. In effect, municipally owned public utility service providers are now permitted to hold broadcasting licences provided that the requirements noted above have been met. The Commission finds that, in the present case, TBayTel meets the requirements set out in the Amended Direction and is therefore eligible to hold a broadcasting licence.
9. In light of the above, the Commission **approves** the application by TBayTel for a broadcasting licence to operate a Class 1 terrestrial broadcasting distribution undertaking to serve Thunder Bay and the surrounding area, Ontario. The licence will be subject to **conditions** specified therein, as well as to the terms and **conditions** set out in the appendix to this decision.

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 2008-289

Terms, conditions of licence, and encouragement for the Class 1 terrestrial broadcasting distribution undertaking serving Thunder Bay and the surrounding area

Terms

Issuance of the broadcasting licence to operate a Class 1 terrestrial broadcasting distribution undertaking to serve Thunder Bay and the surrounding area, Ontario

The operation of this terrestrial broadcasting distribution undertaking is 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 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 20 October 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, at its option, the signals WCCO-TV (CBS) Minneapolis, WHDH-TV (NBC), WCVB-TV (ABC), WFXT (FOX) and WGBH-TV (PBS) Boston, as part of the basic service.
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 (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.

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.