



Broadcasting Decision CRTC 2008-231

Ottawa, 28 August 2008

MTS Allstream Inc.

Winnipeg and surrounding areas, Manitoba

*Application 2007-1680-6, received 26 November 2007
Broadcasting Public Notice CRTC 2008-43
14 May 2008*

Class 1 regional terrestrial broadcasting distribution undertaking serving Winnipeg and surrounding areas – Licence renewal and licence amendment

*The Commission **renews** the Class 1 regional broadcasting licence for the terrestrial broadcasting distribution undertaking serving Winnipeg and surrounding areas, Manitoba, from 1 September 2008 to 31 August 2015.*

*The Commission also **approves** the addition of a condition of licence.*

Introduction

1. The Commission received an application by MTS Allstream Inc. (MTS) to renew the Class 1 regional licence for its terrestrial broadcasting distribution undertaking (BDU) serving Winnipeg and surrounding areas. The current licence expires 31 August 2008.
2. MTS also requested the addition of a condition of licence authorizing it to distribute, at its option, the audio programming service of any licensed satellite subscription radio undertaking on a digital basis.
3. The Commission received an intervention offering general comments from the Canadian Association of Broadcasters (CAB). The intervention and the licensee's reply to the intervention 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 and the licensee's reply to the intervention, the Commission finds that the issues to be determined relate to the following:
 - the potential impact of the review of the regulatory framework for BDUs on the licensee's application;

- the addition of a condition of licence; and
- the distribution of distant Canadian signals and of a second set of signals that provides the programming of the four U.S. commercial networks (CBS, NBC, ABC, FOX) and of the non-commercial PBS network (collectively, the U.S. 4+1 signals), and the suspension of non-simultaneous program deletion requirements.

Potential impact of the review of the regulatory framework for BDUs on the licensee's application

5. In its intervention, the CAB noted that the Commission is currently reviewing the regulatory framework for BDUs and is expected shortly to issue revised policies and regulations governing the distribution of both Canadian and non-Canadian broadcasting services. The CAB submitted that it is essential that the Commission not take any action as part of the licence renewal process for MTS that would have the effect of superseding the upcoming BDU framework determinations or exempting the licensee from the application of that new framework.
6. Specifically, the CAB noted that MTS proposed a condition of licence that would be in effect for at least the first five years of the new licence term. The CAB submitted that, in making decisions on MTS' licence renewal and imposing new conditions of licence, the Commission should do so in a manner that will allow it to review and revise, as required, those conditions of licence that are inconsistent with the new BDU framework to be established by the Commission.
7. In its reply, MTS submitted that it would be inappropriate and unworkable for the Commission to delay rendering decisions or to grant short-term renewals pending a decision in the BDU Framework Proceeding. In its view, the postponement of new licence and licence renewal applications, when a broadcasting policy determination is pending, would result in the circumvention of section 9(1)(c) of the *Broadcasting Act*.
8. MTS also indicated that new policies resulting from reviews, revisions and updates to the broadcasting regulatory framework are continually articulated in public notices. MTS further stated that the vast majority of rules imposed on BDUs are implemented via the *Broadcasting Distribution Regulations* (the Regulations), which, under section 10, may be amended at any time, rather than via particular conditions of licence.
9. In Broadcasting Public Notice 2003-48, the Commission stated that it would begin the process of renewing the licenses for cable BDUs starting with those serving Atlantic Canada and concluding with those serving western Canada. To date, the Commission has renewed the licences for cable undertakings operating in Atlantic Canada, Quebec and Ontario. This year, the Commission is considering all cable licence renewal applications for the remainder of Canada.
10. The Commission considers that any forthcoming changes to the Regulations should not have a significant impact on any of the relatively routine conditions of licence being considered in this decision.

11. The Commission has considered the CAB's concerns and determines that it is appropriate to proceed with its plan announced in Broadcasting Public Notice 2003-48.

Addition of a condition of licence

12. The Commission considers that the condition of licence requested by MTS, as described briefly above, is appropriate and does not conflict with any of the Commission's regulations and existing policy provisions.

Distribution of distant Canadian signals and of a second set of U.S. 4+1 signals, and the suspension of non-simultaneous program deletion requirements

13. In Broadcasting Decision 2002-235, the Commission approved an application by the licensee to distribute on its Class 1 BDU serving Winnipeg and surrounding areas, on a digital discretionary basis, a second set of U.S. 4+1 signals, as well as any of the distant Canadian television signals set out in the *List of Part 3 eligible satellite services*. This approval was subject to the provision that the licensee adhere to the requirements regarding non-simultaneous program deletion set out in section 43 of the Regulations. The Commission also noted in Broadcasting Decision 2002-235 that the above provision may be suspended upon its approval of an executed agreement, as described in that decision, between the licensee and broadcasters.
14. In Broadcasting Decision 2004-5, the Commission approved a request by MTS to suspend the provision relating to the requirements for non-simultaneous program deletion. MTS indicated that it had reached a comprehensive agreement with the CAB and provided a copy of the agreement to the Commission. In light of the agreement between the two parties, the Commission suspended the application of the provision requiring the licensee to adhere to the requirements for non-simultaneous program deletion with respect to the signals that are the subject of the MTS' agreement with the CAB.
15. The Commission reminds the licensee that, in the event that the agreement between MTS and the CAB is terminated at any time, the requirement for non-simultaneous program deletion will no longer be suspended, and the licensee will once again be required to perform program deletions, as set out in section 43 of the Regulations. Should the agreement be terminated, the Commission is to be advised forthwith.

Conclusion

16. In light of all of the above, the Commission **renews** the Class 1 regional broadcasting licence for the terrestrial BDU serving Winnipeg and surrounding areas, Manitoba, from 1 September 2008 to 31 August 2015. The Commission also **approves** the licensee's request to add a condition of licence pertaining to the distribution of licensed satellite subscription radio undertakings on a digital basis. The licence will be subject to the **conditions** specified therein, and to the terms and **condition of licence** set out in the appendix to this decision.

17. The Commission notes that, since gazetting this licence renewal application, the Commission has also authorized, through an administrative process, an extension to the licensee's authorized service area to include the community of Portage la Prairie.

Employment equity

18. Because this licensee is subject to the *Employment Equity Act* and files reports concerning employment equity with the department of Human Resources and Social Development Canada, its employment equity practices are not examined by the Commission.

Secretary General

Related documents

- *Suspension of the provision set out in Broadcasting Decision CRTC 2002-235 relating to the requirements regarding non-simultaneous program deletion*, Broadcasting Decision CRTC 2004-5, 14 January 2004.
- *Video-on-demand service for Manitoba*, Broadcasting Decision CRTC 2003-590, 21 November 2003
- *A regional approach to licensing cable distribution undertakings – Adoption of related amendments to the Broadcasting Distribution Regulations*, Broadcasting Public Notice CRTC 2003-48, 17 September 2003.
- *New cable broadcasting distribution undertaking*, Broadcasting Decision CRTC 2002-235, 14 August 2002.
- *New regulatory framework for broadcasting distribution undertakings*, Public Notice CRTC 1997-25, 11 March 1997, as amended by *New regulatory framework for broadcasting distribution undertakings – Correction*, Public Notice CRTC 1997-25-1, 27 March 1997

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 2008-231

Terms, conditions of licence and expectation for the Class 1 regional terrestrial broadcasting distribution undertaking serving Winnipeg and surrounding areas, Manitoba

Terms

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

The licence will expire 31 August 2015.

Conditions of licence

1. The licensee is authorized to distribute, on a discretionary basis, the satellite to cable programming undertaking Manitoba Jockey Club Inc.
2. The licensee is authorized to distribute, at its option, WCCO-TV (CBS) and KARE-TV (NBC) Minneapolis, Minnesota, WDAZ-TV (ABC) Grand Forks, North Dakota, KMSP-TV (FOX) Minneapolis, Minnesota or WUHF-TV (FOX) Rochester, New York, and KFME-TV (PBS) Fargo, North Dakota, as part of the basic service at each community served. Alternatively, for each network signal, the licensee may distribute the signal of a different affiliate of the same network located in the same time zone as that of the licensed area and included in the *Lists of eligible satellite services*, as amended from time to time.
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 is authorized to receive, directly through its own facilities, at its option, any of the distant Canadian signals and U.S. 4+1 signals that are otherwise required to be received from a licensed satellite relay distribution undertaking. The licensee is not authorized to use any facilities other than its own for the reception of these signals. This condition does not authorize the licensee to provide these services to any other licensed or exempt distribution undertaking.
5. The licensee is authorized to distribute, at its option, the audio programming service of any licensed satellite subscription radio undertaking on a digital basis. The distribution of satellite subscription radio signals is subject to the following provisions:
 - (i) Subject to the exception outlined in (ii), the licensee may not count the signals of conventional radio programming undertakings for the purpose of fulfilling the preponderance requirement set out in section 6(2) of the *Broadcasting Distribution Regulations* (the Regulations) unless a subscriber is already receiving 40 channels of one or more licensed pay audio programming undertakings.
 - (ii) A licensee is entitled to count the signals of conventional radio programming undertakings that a licensee is required to distribute under section 22 of the Regulations for the purpose of fulfilling the preponderance requirement set out in section 6(2) of the Regulations.
 - (iii) The Canadian-produced channels offered by the satellite subscription radio undertaking are deemed to be "Canadian programming services" for the purposes of section 6(2) of the Regulations.
6. 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.
7. 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* (the Regulations):

- If the licensee has 20,000 or more subscribers in the licensed area of a broadcasting distribution undertaking (BDU) on 31 August 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 31 August 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 this condition of licence:

“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; and

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

Expectation

The Commission expects the licensee to calculate its required contribution to Canadian programming based on the gross revenues derived from its broadcasting activities by ascribing, to the portion of these gross revenues that consists of payment for a broadcasting service distributed within a bundled package, a dollar value equal to that which would be earned from subscribers, if the service was taken on a stand-alone, list price basis. The licensee shall accord similar treatment for broadcasting services offered on a free or discounted basis, whether bundled or not.