



Broadcasting Decision CRTC 2009-713

Route reference: 2009-296

Ottawa, 23 November 2009

MTT Networks Ltd.

Toronto and surrounding areas, Ontario

Application 2009-0465-8, received 6 March 2009

Public hearing in the National Capital Region

21 July 2009

Class 1 terrestrial broadcasting distribution undertaking

*The Commission **approves** an application by MTT Networks Ltd. for a broadcasting licence to operate a Class 1 terrestrial broadcasting distribution undertaking to serve Toronto and surrounding areas, Ontario.*

Introduction

1. The Commission received an application by MTT Networks Ltd. (MTT) for a broadcasting licence to operate a Class 1 terrestrial broadcasting distribution undertaking (BDU) to serve Toronto and surrounding areas.
2. MTT is controlled by its majority shareholder and President / Chief Executive Officer, Selvaruban Ruban Selvarajah, a Canadian within the meaning of the *Direction to the CRTC (Ineligibility of non-Canadians)*, P.C. 1997-486, 8 April 1997, as amended by P.C. 1998-1268, 15 July 1998.
3. In its application, the applicant requested the following authorizations:
 - the authority to distribute, at its option, WIVB-TV (CBS), WGRZ-TV (NBC), WKBW-TV (ABC), WUTV-TV (FOX) and WNED-TV (PBS) Buffalo, as part of the basic service;
 - the authority to distribute, on a digital discretionary basis, the signal of WNYO-49 (Warner Brothers) Buffalo, New York;
 - 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.
4. The Commission received interventions in connection with this application from Rogers Cable Communications Inc. (Rogers) and from Quebecor Media Inc., on behalf of Sun TV Company (Sun TV), licensee of CKXT-TV Toronto. The interventions and the applicant’s replies can be found on the Commission’s website at www.crtc.gc.ca under “Public Proceedings.”

Commission’s analysis and determinations

5. After examining the application in light of applicable regulations and policies and taking into account the interventions received and the applicant’s replies to the interventions, the Commission considers that the issues to be addressed in its determinations are the following:
 - the applicant’s capacity to adhere to the applicable regulatory requirements;
 - the authorizations requested by the applicant; and
 - the implementation of the Commission’s determinations regarding accessibility of services.

Applicant’s capacity to adhere to the applicable regulatory requirements

Distribution of priority and mandatory signals

6. Sun TV submitted that CKXT-TV Toronto is a local station and that, pursuant to section 17(1)(c) of the *Broadcasting Distribution Regulations* (the Regulations), it must be carried by BDUs operating in Toronto. Sun TV indicated that MTT had not included CKXT-TV Toronto in its proposed basic service.
7. In its intervention, Rogers submitted that MTT had not included The Accessible Channel in its basic channel line-up, as is required by that service’s mandatory distribution order (Distribution Order 2007-1, Appendix 2 to Broadcasting Decision 2007-246).
8. In its reply, MTT indicated that it had inadvertently left CKXT-TV Toronto off its distribution grid and confirmed that it will carry this station. MTT also confirmed that it will distribute all television programming services that must be distributed pursuant to section 17 of the Regulations. MTT further specified that it will distribute The Accessible Channel as part of its basic service.
9. The Commission reminds the applicant that, pursuant to section 17 of the Regulations, MTT would be required to distribute all local, regional and extra-regional priority signals as part of its basic service. MTT would also be required to distribute all programming services that are mandatory pursuant to an order under section 9(1)(h) of the *Broadcasting Act*.

Distribution and linkage requirements

10. Rogers submitted that under section 18(14) of the Regulations, a BDU must distribute five non-affiliated Category 2 services for each affiliated Category 2 service that is distributed. Rogers urged the Commission to thoroughly review the proposed channel line-up to confirm that this requirement would be respected.
11. In its reply, MTT submitted that it intends to distribute a wide range of Category 2 services that are not currently distributed by larger cable and satellite companies.
12. The Commission reminds the applicant that, unless relief from section 18(14) of the Regulations regarding the distribution of Category 2 services is granted by condition of licence, it must adhere to this regulatory obligation at all times, and thus distribute at least five unaffiliated Category 2 services (unrelated programming undertakings) for each affiliated Category 2 service (related programming undertaking) that it chooses to distribute. Section 18(12) of the Regulations defines a “related programming undertaking” as a programming undertaking of which the licensee or an affiliate, or both, controls more than 10% of the total shares issued and outstanding.

Access rules

13. Rogers also submitted that the Commission’s access rules for Class 1 licensees require BDUs to carry at least one general interest pay-per-view (PPV) service. Rogers asked that the Commission confirm that MTT will distribute one PPV service. Rogers also submitted that, while MTT, as a Class 1 licensee, would be required to distribute Super Channel, it had not indicated whether it intends to do so.
14. Sections 18(5)(a)(ii) and 18(5)(a)(iii) of the Regulations respectively require a licensee operating in an anglophone market to distribute, to the extent of available channels, each English-language pay television service, the operator of which is authorized to provide the service to all or part of the licensed area of the undertaking, and at least one English-language general interest television PPV service. MTT stated that it will distribute the general interest pay television service Super Channel, as well as one PPV service. The Commission is satisfied with the applicant’s response.

Digital television signals

15. Rogers submitted that, if licensed, the applicant would be required to carry a number of digital television (DTV) signals that operate in the Greater Toronto Area (GTA), pursuant to Broadcasting Public Notice 2003-61. Rogers noted that the applicant proposed to carry a number of local over-the-air television stations, but that it had not specified whether it would be distributing only the standard definition DTV signals of these stations or the high definition (HD) signals as well. Rogers also noted that, if the applicant is not proposing to distribute the HD versions of these priority DTV signals, the applicant did not request relief from the requirement. Rogers requested that the Commission review this issue in order to determine whether the proposed BDU would be able to meet its distribution obligations in this respect.

16. Rogers also requested that the Commission review whether the applicant would be fully capable of passing through DTV signals to all subscribers in HD. Rogers questioned whether the applicant's access technology would permit the applicant to carry all of the local DTV services in HD.
17. The Commission notes that, in the GTA, there are DTV stations with operating over-the-air (OTA) transmitters offering HD content. Under the Commission's regulatory framework for the distribution of DTV signals, Broadcasting Public Notice 2003-61, digital OTA signals must be distributed as part of any digital basic service. Further, these signals must be passed through to all subscribers in HD, as originally broadcast.
18. Absent a condition of licence to the contrary, the applicant must provision its network in such a way to be able to provide, to its entire subscriber base, all mandatory HD signals that may be made available in the GTA.
19. The Commission notes that MTT indicated that it will carry the DTV licensees that operate in the GTA, as required, and that the use of MPEG-4 compression and VDSL access technology allow for the distribution of local channels in HD, where available. The Commission is satisfied with the applicant's response.

Video-on-demand service

20. Rogers noted that, while MTT indicated in its application that it would distribute a licensed video-on-demand (VOD) programming undertaking, it did not apply for a licence to operate such an undertaking. In its reply, MTT clarified that it would be filing a separate application to obtain a licence to operate a VOD service. The Commission is satisfied with the applicant's response in this regard.

Authorizations requested by the applicant

21. In its application, the applicant requested an authorization to insert certain promotional material as a substitute for the "local availabilities" (i.e., non-Canadian advertising material) of non-Canadian satellite services. In Broadcasting Regulatory Policy 2009-546, the Commission set out a number of general authorizations applicable to all BDUs, including the present authorization requested by MTT. Thus, once licensed, the applicant would already be authorized to insert certain promotional material as a substitute for the "local availabilities." Accordingly, given that there is no need for the requested specific authorization, the Commission dismisses the request.
22. In regard to the other authorizations requested by the applicant, the Commission considers that these are appropriate and do not conflict with any of the Commission's regulations and existing policy provisions.

Implementation of the Commission's determinations regarding accessibility of services

23. In Broadcasting and Telecom Regulatory Policy 2009-430 (the Accessibility Policy), the Commission set out its policy determinations regarding the accessibility of telecommunications and broadcasting services to persons with disabilities. Among other things, the Commission stated that it intends to require BDUs, by condition of licence, to provide one or more simple means of accessing described programming, whether in an open or embedded format, that requires little or no visual acuity. Therefore, in accordance with the Accessibility Policy, the Commission is imposing a **condition of licence** to that effect.
24. The Commission also expects the applicant to:
- ensure that subscribers are able to identify programming with described video in the electronic program guide;
 - promote disability-specific products and services;
 - make information available in alternative formats; and
 - make its website and call centre accessible.
25. The Commission also encourages the applicant to ensure that its set-top boxes are accessible to subscribers with vision and fine motor skill disabilities.
26. The Commission notes that it may impose further conditions of licence respecting accessibility matters five years into the licence term, if deemed appropriate.

Conclusion

27. In light of all of the above, the Commission **approves** the application by MTT Networks Ltd. for a broadcasting licence to operate a Class 1 terrestrial BDU to serve Toronto and surrounding areas, Ontario. The licence will be subject to the terms and **conditions of licence** set out in the appendix to this decision.

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

- *Distribution of the digital specialty described video programming service of the National Broadcast Reading Service Inc. known as The Accessible Channel by persons licensed to carry on certain types of broadcasting distribution undertakings, Distribution Order 2007-1, Appendix 2 to Broadcasting Decision CRTC 2007-246, 24 July 2007*
- *The regulatory framework for the distribution of digital television signals, Broadcasting Public Notice 2003-61, 11 November 2003*

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 2009-713

Terms, conditions of licence, expectations and encouragements for the Class 1 terrestrial broadcasting distribution undertaking serving Toronto and surrounding areas, Ontario

Terms

Issuance of the broadcasting licence to operate a Class 1 terrestrial broadcasting distribution undertaking to serve Toronto and surrounding areas, 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 2016.

The applicant must file an executed copy of its amended by-laws by 23 November 2010.

A licence will be issued once the applicant has met the following requirements:

- 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 23 November 2011. 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; and
- the applicant has filed, at the same time it informs the Commission that it is ready to commence operations, a website address where its distribution grid is posted.

Conditions of licence

1. The licensee is authorized to distribute, at its option, WIVB-TV (CBS), WGRZ-TV (NBC), WKBW-TV (ABC), WUTV-TV (FOX) and WNED-TV (PBS) Buffalo, as part of the basic service.
2. The licensee is authorized to distribute, on a digital discretionary basis, the signal of 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 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.

Expectations

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

The Commission expects the licensee to promote disability-specific products and services.

The Commission expects the licensee to make information available in alternative formats.

The Commission expects the licensee to make its website and call centre accessible.

Encouragements

Accessibility

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.