



Broadcasting Decision CRTC 2011-106

PDF version

Route reference: 2009-759

Ottawa, 18 February 2011

Rogers Communications Inc. and Fido Solutions Inc., partners in a general partnership carrying on business as Rogers Communications Partnership
Various locations in Ontario, New Brunswick, and Newfoundland and Labrador

Application 2009-1483-9, received 4 November 2009

Licence amendment relating to the distribution of the multicast service ThinkBright and Well Television by certain terrestrial broadcasting undertakings

*The Commission **denies** the application by Rogers Communications Inc. and Fido Solutions Inc., partners in a general partnership carrying on business as Rogers Communications Partnership, for an amendment to the regional broadcasting licences for its terrestrial broadcasting distribution undertakings serving various locations in Ontario, New Brunswick, and Newfoundland and Labrador that would authorize it to distribute, at its option and on a digital basis, the multicast service ThinkBright and Well Television that is transmitted as part of the digital signal of WNED-TV Buffalo.*

Introduction

1. The Commission received an application by Rogers Communications Inc. (RCI) and Fido Solutions Inc., partners in a general partnership carrying on business as Rogers Communications Partnership¹ (Rogers), to amend the regional broadcasting licences for its terrestrial broadcasting distribution undertakings (BDUs) serving various locations in Ontario, New Brunswick, and Newfoundland and Labrador. Specifically, Rogers proposed to add to those licences the following condition of licence:

The licensee is authorized to distribute, at its option and on a digital basis, the multicast service ThinkBright and Well Television that is transmitted as part of the digital signal of WNED-TV Buffalo.

¹ In Broadcasting Notice of Consultation 2009-759, the Commission identified the licensee as Rogers Cable Communications Inc. (RCCI). However, the ownership of RCCI's undertakings changed as a result of the amalgamation of RCCI with RCI and the subsequent corporate reorganization, set out in Broadcasting Decision 2010-793.

2. Launched in October 2004, ThinkBright and Well Television (together, ThinkBright) is a multicast (or multiplex) television service² owned and operated by Western New York Public Broadcasting (WNED), and is available on a channel of WNED-TV (PBS) Buffalo's digital television signal. In its application, Rogers described ThinkBright as a service that provides unique programming of general interest consisting of a combination of information, education, health and public affairs content.
3. Rogers noted that households capable of receiving digital over-the-air television signals already have access to ThinkBright on an over-the-air basis in many parts of its cable service areas in Ontario, and that awareness of the service is growing. It submitted that the distribution of ThinkBright would, among other things, increase the value of its digital cable offering and provide a further incentive for customers to migrate to digital. Rogers added that, as a non-commercial service, ThinkBright would not be competing with licensed Canadian programming services for advertising dollars.
4. The Commission received interventions in opposition to the application from the Directors Guild of Canada, Canwest Television Limited Partnership,³ Pelmorex Communications Inc., and the Independent Broadcasters Group. It also received interventions offering general comments from the S-VOX Group of Companies, Score Media Inc., the Canadian Film and Television Production Association (now the Canadian Media Production Association), the Writers Guild of Canada, and ACTRA National. The public record for this proceeding can be found on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Commission's analysis and determination

5. After examining the application in light of applicable regulations and policies and taking into account the interventions received and the licensee's reply, the Commission considers that the issues to be addressed in making its determinations are whether the addition of ThinkBright would constitute an exception to the Commission's policy regarding the distribution of U.S. 4+1 signals,⁴ and if so, whether an exception to this policy is warranted.
6. As noted in Broadcasting Public Notice 2008-100, the Commission's general policy regarding the distribution of U.S. 4+1 signals (which includes signals of non-commercial PBS networks) by direct-to-home (DTH) undertakings and terrestrial BDUs has been to limit their distribution to two sets of those signals.

² When a digital television signal is used to transmit more than one program stream, the signal having the highest picture quality is called the main or primary signal. The other secondary or subsidiary signals are known as multicast or multiplex signals. Multicast television services are those services that are broadcast on such signals.

³ The Commission notes that on 2 November 2010, Canwest Television Limited Partnership became known as Shaw Television Limited Partnership.

⁴ The term "U.S. 4+1 signals" refers to the set of signals that provide the programming of the four U.S. commercial networks (CBS, NBC, ABC and FOX) and the non-commercial PBS network.

7. In Broadcasting Public Notice 2003-61, the Commission stated that a BDU would be required to obtain prior authority if it wished to distribute a multicast service that was transmitted as part of the digital signal of a non-Canadian service. In this regard, the Commission determined that it would adopt a case-by-case approach in considering requests for such an authority. The Commission also stated that it would be disposed to authorize the distribution of new and innovative multicast services in preference to those that merely duplicate other services.
8. Certain intervening parties submitted that non-Canadian multicast services like ThinkBright could cause further audience fragmentation and, in turn, a reduction in advertising revenues for Canadian services. These parties also noted that ThinkBright is not a new and innovative service, but in fact offers some programming that is already available on other Canadian services. They further submitted that there is a lack of clear Commission policy on how to assess the impact of non-Canadian multicast services and that the Commission should conduct a public proceeding to establish such policy. Finally, some parties argued that the distribution of ThinkBright should be restricted to communities where it is already available over the air.
9. In its reply, Rogers addressed arguments that its proposal would unduly affect Canadian programming services. It noted, in particular, that ThinkBright does not broadcast advertising and that there are only small overlaps between ThinkBright's programming and that of Canadian services. Rogers submitted that, when the application was filed, only three of the 125 weekly programs offered on ThinkBright were also carried by a Canadian service. It also argued that BDUs must be able to match or exceed what is available over the air if they wish to keep their viewers.
10. In the Commission's view, based on information filed by Rogers in its reply, ThinkBright would appear to be accurately described as a general-interest service, presenting programming that is typical of other PBS services, such as those already authorized for distribution by Rogers.⁵ As noted above, the Commission would be more disposed to authorize the distribution of new and innovative multicast services, rather than a service such as ThinkBright that would duplicate programming already available to Rogers' subscribers.
11. The Commission's general policy regarding the distribution of U.S. 4+1 signals by DTH undertakings and terrestrial BDUs has been to limit the distribution to two sets. Given the substantial similarity of the programming offered by ThinkBright to programming available in the market from standard PBS services, the Commission considers that the programming offered by ThinkBright makes it akin to another PBS service in the market. The Commission notes that Rogers already distributes at least two PBS services to subscribers in the markets in question and that authorizing

⁵ In this regard, the Commission notes that Rogers was first granted the condition of licence authorizing the distribution of a second set of U.S. 4+1 signals on a digital discretionary basis in Decision 2000-437 and that the condition of licence was subsequently amended in Broadcasting Decisions 2005-198, 2006-614 and 2008-145.

Rogers to distribute ThinkBright would constitute an exception to the Commission's policy regarding the distribution of U.S. 4+1 signals.

12. Further, taking into consideration the similarities between ThinkBright and the main WNED-TV services, the Commission considers that the evidence submitted by Rogers has not demonstrated why an exception to the policy regarding the distribution of U.S. 4+1 signals would be justified. Nor does it appear to the Commission, based on the similarities between ThinkBright and other PBS services, that ThinkBright would provide sufficiently new and innovative programming to the Canadian broadcasting systems to merit such an exception.

Conclusion

13. In light of the above, the Commission **denies** the application by Rogers Communications Inc. and Fido Solutions Inc., partners in a general partnership carrying on business as Rogers Communications Partnership, for an amendment to the regional broadcasting licences for its terrestrial broadcasting distribution undertakings serving various locations in Ontario, New Brunswick, and Newfoundland and Labrador that would allow it to distribute, at its option and on a digital basis, the multicast service ThinkBright and Well Television that is transmitted as part of the digital signal of WNED-TV Buffalo.

Criteria to assess future applications to distribute non-Canadian multicast television services

14. The Commission may, in the future, consider authorizing multicast television services for distribution if it were to receive applications for such services that offer innovative programming that would provide consumers with greater viewing choices. It therefore wishes to provide parties with further guidelines on how the impact of such services on Canadian services might be assessed.
15. Many parties were of the view that the Commission should hold a further proceeding to determine whether the distribution of multicast services might be warranted and, if so, under what circumstances and by what means. However, the Commission is of the view that the criteria needed to assess applications for authorization to distribute such services already exist and have been well established.
16. Having reviewed the programming available on a number of multicast services, the Commission notes that the non-Canadian multicast services available appear to range from general-interest services (akin to conventional television stations) to more "niche" services that have more in common with pay or specialty services.
17. In the case of a general-interest service, the Commission will consider the impact of that service on Canadian general-interest conventional television stations in terms of both audience fragmentation and advertising revenues, as well as the impact on other Commission policies, including those regarding the distribution of U.S. 4+1 signals.

18. In regard to a more specialized service, the Commission will consider its competitiveness with Canadian pay and specialty services by applying the test that is used to assess the eligibility of services to be added to the lists of eligible satellite services for distribution on a digital basis (the digital lists). The Commission's approach to requests for the addition of non-Canadian, English- and French-language services to the digital lists is set out in Public Notice 2000-173. Under this approach, the Commission assesses such requests in the context of its general policy, which, among other things, precludes the addition of a non-Canadian satellite service that can be considered either totally or partially competitive with Canadian specialty or pay television services.
19. To determine the degree of overlap that might exist to make the non-Canadian service partially or totally competitive with any Canadian pay or specialty service, the Commission applies a case-by-case assessment taking into account the following factors: the nature and genre of the programming, the target audience, the language or languages in which the programming is broadcast, the source of programming, and any relevant competitive concerns raised by parties.

Secretary General

Related documents

- *Terrestrial broadcasting distribution undertakings – Corporate reorganization (acquisition of assets)*, Broadcasting Decision CRTC 2010-793, 26 October 2010
- *Notice of application received*, Broadcasting Notice of Consultation CRTC 2009-759, 8 December 2009
- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services – Regulatory policy*, Broadcasting Public Notice CRTC 2008-100, 30 October 2008
- *Distribution of additional signals on a digital discretionary basis – Licence amendments*, Broadcasting Decision CRTC 2008-145, 22 July 2008
- *Rogers cable distribution undertakings – Licence amendment*, Broadcasting Decision CRTC 2006-614, 31 October 2006
- *Amendments to authorization set out in Decision CRTC 2000-437*, Broadcasting Decision CRTC 2005-198, 16 May 2005
- *The regulatory framework for the distribution of digital television signals*, Broadcasting Public Notice CRTC 2003-61, 11 November 2003
- *Carriage of Canadian and U.S. 4+1 signals on a digital basis*, Decision CRTC 2000-437, 8 November 2000
- *Call for proposals to amend the lists of eligible satellite services through the inclusion of additional non-Canadian services eligible for distribution on a digital basis only*, Public Notice CRTC 2000-173, 14 December 2000