



Broadcasting Decision CRTC 2010-771

PDF Version

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Ottawa, 19 October 2010

Atop Broadband Corp.

Greater Toronto Area (majority of), Ontario

Application 2010-0131-2, received 1 February 2010

Public Hearing in the National Capital Region

19 July 2010

Class 1 terrestrial broadcasting distribution undertaking to serve the majority of the Greater Toronto Area

*The Commission **approves** the application by Atop Broadband Corp. for a broadcasting licence to operate a Class 1 terrestrial broadcasting distribution undertaking (BDU) to serve the majority of the Greater Toronto Area. Specifically, the BDU will serve the area bounded by the City of Oshawa on the east, the City of Oakville on the south, the City of Orangeville on the west; and the City of East Gwillimbury on the north.*

The application

1. The Commission received an application by Atop Broadband Corp. (Atop) for a broadcasting licence to operate a Class 1 terrestrial broadcasting distribution undertaking (BDU) to serve the majority of the Greater Toronto Area (GTA). Specifically, the BDU would serve the area bounded by the City of Oshawa on the east, the City of Oakville on the south, the City of Orangeville on the west; and the City of East Gwillimbury on the north. Atop is a corporation controlled by its sole shareholder and sole director, Mr. Roberto Socci.
2. Atop also requested a condition of licence to be authorized to distribute, at its option, as part of the digital basic service, the signals WIVB-TV (CBS), WGRZ-TV (NBC), WKBW-TV (ABC), WUTV (FOX) and WNED-TV (PBS) Buffalo, New York or, alternatively for each signal, the signal of a different affiliate of the same network located in the same time zone as that of the licensed area and included on the appropriate list of eligible satellite services, as amended from time to time and approved by the Commission.
3. Atop stated that it was willing to accept a condition of licence requiring that it provide one or more simple means of accessing described programming, whether in an open or embedded format. Atop also committed to meet the requirements

regarding customer service and information set out in Broadcasting and Telecom Regulatory Policy 2009-430 (The Accessibility Policy).

4. The Commission received a general comment from Rogers Cable Communications Inc. (Rogers), to which Atop did not reply. Rogers' intervention is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Commission's analysis and determinations

5. The Commission has examined and **approves** the application by Atop Broadband Corp. for a broadcasting licence to operate a Class 1 terrestrial BDU to serve the majority of the GTA. Specifically, the BDU will serve the area bounded by the City of Oshawa on the east, the City of Oakville on the south, the City of Orangeville on the west; and the City of East Gwillimbury on the north. The Commission notes that the following municipalities fall within the authorized service area: Ajax, Aurora, Bolton, Brampton, Caledon, East Gwillimbury, Etobicoke, Georgetown, King City, Markham, Milton, Mississauga, Newmarket, Nobleton, Oakville, Orangeville, Oshawa, Pickering, Richmond Hill, Scarborough, Toronto, and Vaughan (Kleinberg, Maple and Woodbridge). The operation of this undertaking will be regulated pursuant to the *Broadcasting Distribution Regulations* (the Regulations). The licence will be subject to the **conditions** specified therein, as well as to the **conditions of licence** set out in the appendix to this decision.

Compliance with the applicable regulatory requirements

6. Rogers did not object to Atop's proposal in principle but requested that Atop be held to the same regulatory requirements that are imposed on Rogers as a Class 1 terrestrial BDU. Specifically, Rogers requested that the applicant demonstrate that it will comply with the Commission's distribution and linkage, priority carriage and access requirements, as well as the policy frameworks for the distribution of digital television (DTV) signals and high definition (HD) pay and specialty services.

Access rules

7. Rogers 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. Atop indicated that it intends to distribute "Venoa PPV," which, Rogers submitted, is not a licensed service. Rogers therefore requested that Atop confirm that it will distribute one licensed PPV service as well as the general interest pay television service Super Channel.
8. 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. For the purposes of these requirements, the Venoa PPV service can only be offered as a

general interest television PPV service if it is licensed by the Commission. The Commission has not received an application for a licence for this service.

9. The Commission therefore reminds the applicant of its obligations to comply with sections 18(5)(a)(ii) and 18(5)(a)(iii) of the Regulations with regard to the distribution of the general interest pay television service Super Channel, as well as one licensed PPV service.

Distribution rules: digital television signals

10. Rogers submitted that, if licensed, Atop would be required to carry the signals of a number of DTV licensees that operate in the GTA, pursuant to Broadcasting Public Notice 2003-61. Rogers noted that Atop proposed to distribute various local priority over-the-air (OTA) television stations, but that it had not specified whether it would distribute only the standard definition digital television signals of these stations or the HD signal as well. Rogers also noted that, if the applicant is not proposing to distribute the HD versions of these priority DTV signals, it did not request relief from the requirement. It therefore requested that the Commission review this issue and determine whether the applicant is fully capable of meeting its distribution obligations with respect to DTV signals.
11. Rogers also noted that the applicant stated that all subscribers would have access to HD signals. However, Rogers submitted that the very high bit rate digital subscriber line (VDSL) network that the applicant proposes to use to deliver broadcast services does not have the capacity to permit it to carry all of the local DTV services in HD. Rogers requested that the Commission clarify this issue with the applicant.
12. The Commission notes that certain DTV stations serving the GTA operate OTA transmitters that provide HD content. Under the Commission's regulatory framework for the distribution of DTV signals set out in 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.
13. The Commission reminds the applicant that it must provision its network in such a way as to be able to provide the HD signals of all stations received over the air in the licensed area to its entire subscriber base, without exception.
14. In this regard, the Commission notes that Atop confirmed, in its application, that all subscribers would be able to access HD content and to receive two or more HD signals simultaneously. Further, Atop indicated that its distribution will be based on multiple technologies – not only VDSL – to feed the local signals in HD. The Commission is satisfied with Atop's response.

Video-on-demand service

15. Rogers noted that, while Atop's channel line-up states that it will request a licence for a video-on-demand (VOD) service, Rogers remains unclear as to how the applicant intends to offer on-demand content.

16. The Commission notes that Atop is not required to distribute a VOD service. The Commission is satisfied with the response provided by Atop in its application.

Distribution of U.S. 4+1 signals as part of the basic service

17. The Commission notes that it has already authorized BDUs to distribute, as part of the basic service, the U.S. 4+1 signals or the signal of another affiliate of the same network located in the same time zone. The authorization requested by the applicant is consistent with authorizations previously granted by the Commission in similar cases.
18. Accordingly, the Commission authorizes Atop to distribute, at its option, as part of the digital basic service, the signals WIVB-TV (CBS), WGRZ-TV (NBC), WKBW-TV (ABC), WUTV (FOX) and WNED-TV (PBS) Buffalo, New York or, alternatively for each signal, the signal of a different affiliate of the same network located in the same time zone as that of the licensed area and included on the appropriate list of eligible satellite services, as amended from time to time and approved by the Commission. A **condition of licence** to that effect is set out in the appendix to this decision.

General authorizations for broadcasting distribution undertakings

19. The Commission notes that, pursuant to the conditions specified in the licence and to Broadcasting Regulatory Policy 2009-546 (the Regulatory Policy), licensees are also authorized to distribute any service and to undertake any activity authorized in the Regulatory Policy, as amended from time to time, under the terms and conditions set out in that regulatory policy.

Implementation of the Commission's determinations regarding accessibility of services

20. The Accessibility Policy sets out the Commission's policy determinations regarding the accessibility of telecommunications and broadcasting services to persons with disabilities.
21. As indicated above, the applicant stated that it is prepared to accept a condition of licence requiring it to provide one or more simple means of accessing described programming, whether in an open or embedded format. Those means must require little or no visual acuity. A **condition of licence** to that effect is set out in the appendix to this decision.
22. In addition, consistent with the Accessibility Policy, the Commission expects Atop to ensure that subscribers are able to identify programming with described video in the electronic program guide, and to make information available in alternative formats to subscribers regarding, among other things, the programming and services offered and the channel line-up.
23. The Commission notes that it may impose further conditions of licence respecting accessibility matters five years into the licence term, if deemed appropriate.

Mandatory distribution of 9(1)(h) services

24. The Commission reminds the applicant that, as a Class 1 BDU, it is required to distribute within its licensed area all services licensed for mandatory carriage as part of the basic service of distribution undertakings pursuant to section 9(1)(h) of the *Broadcasting Act*.

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
- *The regulatory framework for the distribution of digital television signals*, Broadcasting Public Notice CRTC 2003-61, 11 November 2003

* *This decision is to be appended to the licence.*

Appendix to Broadcasting Decision CRTC 2010-771

Terms, conditions of licence, expectations and encouragements

Terms

Issuance of the broadcasting licence to operate a Class 1 terrestrial broadcasting distribution undertaking to serve the majority of the Greater Toronto Area, specifically, the area bounded by the City of Oshawa on the east, the City of Oakville on the south, the City of Orangeville on the west; and the City of East Gwillimbury on the north

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

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 19 October 2012. 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
- 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.

The licence will expire 31 August 2017.

Conditions of licence

1. The licensee is authorized to distribute, at its option, as part of the digital basic service, the signals WIVB-TV (CBS), WGRZ-TV (NBC), WKBW-TV (ABC), WUTV (FOX) and WNED-TV (PBS) Buffalo, New York or, alternatively for each signal, the signal of a different affiliate of the same network located in the same time zone as that of the licensed area and included on the appropriate list of eligible satellite services, as amended from time to time and approved by the Commission.
2. 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 make information available in alternative formats to subscribers regarding, among other things, the programming and services offered and the channel line-up.

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

Encouragements

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.