



## Broadcasting Decision CRTC 2011-89

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Route reference: 2010-715

Ottawa, 11 February 2011

### **MediaTube Corp.**

Greater Toronto Area, including Ajax, Aurora, Brampton, Castlemore, Erin Mills, Gormley, King City, Kleinberg, Maple, Markham, Mississauga, Oak Ridges, Oshawa, Pickering, Port Credit, Richmond Hill, Scarborough, Thornhill, Toronto, Unionville and Whitby; and Greater London Area, including Belmont, Dorchester, Ilderton, Lambeth, London, Mount Brydges, St. Thomas and Thorndale, Ontario

*Application 2010-1105-6, received 7 July 2010  
Public Hearing in the National Capital Region  
26 November 2010*

### **Class 1 regional terrestrial broadcasting distribution undertakings to serve the Greater Toronto and Greater London Areas**

*The Commission **approves** the application by MediaTube Corp. for a Class 1 regional broadcasting licence to operate terrestrial broadcasting distribution undertakings to serve the above-noted locations in the Greater Toronto and Greater London Areas.*

#### **The application**

1. The Commission received an application by MediaTube Corp. (MediaTube) for a regional broadcasting licence to operate terrestrial broadcasting distribution undertakings (BDUs) to serve the Greater Toronto Area (GTA), including Ajax, Aurora, Brampton, Castlemore, Erin Mills, Gormley, King City, Kleinberg, Maple, Markham, Mississauga, Oak Ridges, Oshawa, Pickering, Port Credit, Richmond Hill, Scarborough, Thornhill, Toronto, Unionville, and Whitby, and the Greater London Area (GLA), including Belmont, Dorchester, Ilderton, Lambeth, London, Mount Brydges, St. Thomas and Thorndale, Ontario.
2. MediaTube Corp. is controlled by its board of directors.
3. For the undertaking serving the GTA, MediaTube also requested authorization to:
  - distribute, at its option, as part of the 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 and included in the *Lists of eligible satellite services*, as amended from time to time;

- distribute, at its option, as part of the basic service, the signals WNLO and WNYO Buffalo, New York or, alternatively, the signal of another U.S. independent network included in the *List of Part 2 Eligible Satellite Services*, as amended from time to time; and
  - distribute, at its option, on a 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 (referred to as the second set of U.S. 4+1 signals).
4. For the undertaking serving the GLA, MediaTube also requested authorization to:
- distribute, at its option, as part of the basic service, the signals WWJ-TV (CBS), WDIV (NBC), WXYZ-TV (ABC), WJBK (FOX) Detroit, Michigan and WQLN (PBS) Erie, Pennsylvania or, alternatively for each signal, the signal of a different affiliate of the same network included in the *Lists of eligible satellite services* as amended from time to time;
  - distribute, at its option, as part of the basic service, the signals WICU-TV (NBC) and WJET-TV (ABC) Erie, Pennsylvania;
  - distribute, at its option, as part of basic the service, the signal WUAB-TV (IND) Cleveland, Ohio; and
  - distribute, at its option, on a 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 (referred to as the second set of U.S. 4+1 signals).
5. For both undertakings, MediaTube stated its willingness 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. MediaTube also committed to meet the requirements regarding customer service and information set out in Broadcasting and Telecom Regulatory Policy 2009-430 (the Accessibility Policy).
6. In order to ensure reliable access to its service by persons with disabilities, MediaTube committed to preparing an audit plan to ensure that the information on its website is accessible, to creating an action plan to further improve accommodations for persons with disabilities and to filing the results of the user testing and the action plan with the Commission by 23 July 2012.
7. The Commission received a general comment from Rogers Communications Inc. (Rogers). The public record for this proceeding can be found on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Public Proceedings."

## **Commission's analysis and determinations**

8. After examining the application in light of applicable policies and regulations, and taking into account the intervention received and the applicant's reply, the Commission considers that the key issues to be addressed in making its determinations is compliance with regulatory requirements.
9. The Commission notes that MediaTube has requested the authorization to distribute WNLO and WNYO Buffalo, New York as part of the basic service in the GTA. However, these signals have been approved for distribution on a discretionary basis by other BDUs in this region. In light of this, the Commission is of the view that MediaTube should be required to distribute these signals on a discretionary basis and not as part of the basic service, in order to be consistent with the authorization granted to other BDUs in the region. The **condition of licence** reflecting the authorization to distribute, on a discretionary basis, the signals WNLO and WNYO Buffalo, New York is set out in Appendix 2 to this decision.

## **Compliance with the applicable regulatory requirements**

10. In its intervention, Rogers did not object to MediaTube's proposal in principle but requested that MediaTube 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.
11. In reply, MediaTube confirmed that it intends to comply with all requirements, including those relating to distribution and linkage, priority carriage and access requirements, as discussed in the sections that follow.

## **Channel line-ups**

12. Rogers noted that MediaTube's proposed channel line-ups for the BDUs in the GTA and the GLA include the discretionary programming services Movie Central and Encore Avenue, i.e., regional services licensed for distribution in British Columbia, Alberta, Saskatchewan, Manitoba, Yukon, the Northwest Territories and Nunavut, and not authorized for distribution in the proposed service areas. Rogers therefore requested that the Commission confirm that MediaTube will not offer these services to its subscribers.
13. Further, Rogers noted that the proposed channel line-ups for MediaTube's BDUs in the GTA and the GLA both include two instances of The Weather Network: one as a basic service and one as a discretionary service. However, as set out in the appendix to Broadcasting Order 2009-340, a Class 1 licensee operating in an English-language market must distribute The Weather Network to all digital subscribers as part of the digital basic service. Rogers therefore requested that the Commission confirm that

MediaTube intends to distribute The Weather Network as part of the digital basic service and not as a discretionary service.

14. In its reply, MediaTube noted that Movie Central and Encore Avenue were included in its proposed channel line-ups in error and will not be offered to subscribers in the GTA and the GLA and that The Weather Network would only be carried as part of the digital basic service. The Commission is satisfied with MediaTube's response.

**Distribution rules: digital television signals**

15. Rogers noted that MediaTube proposed to distribute various local priority over-the-air (OTA) television stations<sup>1</sup> as part of the basic service, either in the GTA or in the GLA 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. Rogers 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. Rogers also noted that MediaTube did not propose to distribute the programming service consisting of proceedings of the Ontario Legislature.
16. With respect to the distribution obligations for DTV signals, MediaTube confirmed that it would distribute, as part of the basic service, any local OTA HD services, as originally broadcast.
17. The Commission reiterates that, as set out in Broadcasting Public Notice 2003-61, digital OTA signals must be passed through to all subscribers in HD, as originally broadcast. The Commission also 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 areas to its entire subscriber base, without exception.
18. Finally, the Commission notes that MediaTube is not required to distribute the programming service consisting of proceedings of the Ontario Legislature. However, pursuant to subsection 20(2) of the *Broadcasting Distribution Regulations* (the Regulations), should MediaTube wish to do so, it must offer it as part of the basic service.

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<sup>1</sup> The following local priority OTA television stations would be distributed as part of the basic service:

- Global Toronto, CTV Toronto, SUN-TV, CBC English (Toronto and Oshawa), CBC French (Toronto), CITS Hamilton, CHCH Hamilton, 'A' Channel Barrie, CITY-TV Toronto, OMNI.1 Toronto, OMNI.2 Toronto and CKCO (CTV Kitchener) in the GTA;
- Global Toronto, CTV Toronto, CTV Kitchener, CITY-TV Toronto, SUN-TV, CHCH Hamilton, CITS London, CBC London, CBC French (Toronto), CBC Toronto, OMNI.1, OMNI.2, 'A' Channel Barrie and 'A' Channel London in the GLA.

## Conclusion

19. In light of all of the above, the Commission **approves** the application by MediaTube Corp. for a regional broadcasting licence to operate terrestrial BDUs to serve the GTA, including Ajax, Aurora, Brampton, Castlemore, Erin Mills, Gormley, King City, Kleinberg, Maple, Markham, Mississauga, Oak Ridges, Oshawa, Pickering, Port Credit, Richmond Hill, Scarborough, Thornhill, Toronto, Unionville, and Whitby and the GLA, including Belmont, Dorchester, Ilderton, Lambeth, London, Mount Brydges, St. Thomas and Thorndale, Ontario. The operation of this undertaking will be regulated pursuant to the Regulations. The licence will be subject to the **conditions** specified therein, as well as to the **conditions of licence** set out in the appendices to this decision.
20. In addition, the Commission has amended the language of certain conditions of licence proposed by MediaTube related to the distribution of U.S. television stations so as to conform to the language used by the Commission in such authorizations.

## Other matters

### General authorizations for broadcasting distribution undertakings

21. 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

22. The Accessibility Policy sets out the Commission's policy determinations regarding the accessibility of telecommunications and broadcasting services to persons with disabilities.
23. 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 Appendix 1 to this decision.
24. In addition, consistent with the Accessibility Policy, the Commission expects MediaTube 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.
25. The Commission also encourages MediaTube to ensure that its set-top boxes are accessible to subscribers with vision and fine motor skill disabilities.

26. Additionally, consistent with the Accessibility Policy and commitments made by the licensee, MediaTube is required to:

- promote information on all of its disability-specific services and products, in the accessible manner(s) of its choice;
- incorporate an easy-to-find home page link to the special needs/disability sections of its website, if its website includes such sections;
- make the information on its website accessible to the point of providing reasonable accommodation for persons with disabilities by 23 July 2012 (examples of what the Commission considers to be reasonable accommodations are listed in paragraph 66 in the Accessibility Policy);
- ensure that, where customer service functions on its website are not accessible, persons with disabilities will not incur a charge or otherwise be disadvantaged if they use an alternate avenue of customer service;
- make accessible any customer service functions that are available solely over its website by 23 July 2012;
- make its general call centers accessible to the point of providing reasonable accommodation to persons with disabilities by training customer service representatives in handling enquiries from persons with disabilities and familiarizing them with the service provider's products and services for persons with disabilities; and
- make its Interactive Voice Response systems accessible, by 21 July 2011.

27. 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**

28. The Commission reminds the applicant that, as a Class 1 regional BDU, it is required to distribute within its licensed areas 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

- *Mandatory distribution order for The Weather Network and Météomédia,*  
Broadcasting Order CRTC 2009-340, 11 June 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 1 to Broadcasting Decision CRTC 2011-89

### Terms, conditions of licence, expectations and encouragements applicable to all licensed areas

#### Terms

**Issuance of the Class 1 regional broadcasting licence to operate terrestrial broadcasting distribution undertakings to serve the Greater Toronto Area, including Ajax, Aurora, Brampton, Castlemore, Erin Mills, Gormley, King City, Kleinberg, Maple, Markham, Mississauga, Oak Ridges, Oshawa, Pickering, Port Credit, Richmond Hill, Scarborough, Thornhill, Toronto, Unionville, and Whitby; and the Greater London Area, including Belmont, Dorchester, Ilderton, Lambeth, London, Mount Brydges, St. Thomas and Thorndale, Ontario**

The operation of these undertakings 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 11 February 2013. 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 grids are posted.

The licence will expire 31 August 2017.

#### Conditions of licence

1. The licensee is authorized to distribute the following signals on a 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 (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 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.

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.

## **Appendix 2 to Broadcasting Decision CRTC 2011-89**

**Conditions of licence applicable to the Greater Toronto service area, including Ajax, Aurora, Brampton, Castlemore, Erin Mills, Gormley, Kleinberg, Maple, Markham, King City, Mississauga, Oak Ridges, Oshawa, Pickering, Port Credit, Richmond Hill, Scarborough, Thornhill, Toronto, Unionville, and Whitby**

1. The licensee is authorized to distribute, at its option, as part of the 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 in the *Lists of eligible satellite services*, as amended from time to time and approved by the Commission.
2. The licensee is authorized to distribute, at its option, on a discretionary basis, the signals WNLO Buffalo and WNYO Buffalo, New York or, alternatively, the signal of another U.S. independent 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 and approved by the Commission.

## **Appendix 3 to Broadcasting Decision CRTC 2011-89**

### **Conditions of licence applicable to the Greater London service area, including Belmont, Dorchester, Ilderton, Lambeth, London, Mount Brydges, St. Thomas and Thorndale**

1. The licensee is authorized to distribute, at its option, as part of the basic service, the signals WWJ-TV (CBS), WDIV (NBC), WXYZ-TV (ABC), WJBK (FOX) Detroit, Michigan and WQLN (PBS) Erie, Pennsylvania 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 in the *Lists of eligible satellite services*, as amended from time to time and approved by the Commission.
2. The licensee is authorized to distribute, at its option, as part of the basic service, the signals WICU-TV (NBC) and WJET-TV (ABC) Erie, Pennsylvania.
3. The licensee is authorized to distribute, at its option, as part of the basic service, the signal WUAB-TV (IND) Cleveland, Ohio.