



Broadcasting Decision CRTC 2004-5

Ottawa, 14 January 2004

MTS Communications Inc.

Winnipeg and surrounding areas, Manitoba

Application 2003-1270-3

Suspension of the provision set out in Broadcasting Decision CRTC 2002-235 relating to the requirements regarding non-simultaneous program deletion

The application

1. The Commission received an application by MTS Communications Inc. (MTS) to suspend the provision set out in *New cable broadcasting distribution undertaking*, Broadcasting Decision CRTC 2002-235, 14 August 2002 (Decision 2002-235) relating to the requirements regarding non-simultaneous program deletion.
2. In Decision 2002-235, the Commission approved an application by MTS for a cable distribution undertaking to distribute the following services on a digital basis:
 - any Canadian signal listed on the *List of Part 3 eligible satellite services*¹ (the List); 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 (the U.S. signals).
3. The decision also included the following provision designed to protect the program rights acquired by local broadcasters:

The distribution on a discretionary basis on the licensee's digital service of a second set of U.S. 4+1 signals, in addition to the set of such signals already carried by the system, and of Canadian distant signals contained in the List, 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

¹ Appendix B of *Revised lists of eligible satellite services*, Broadcasting Public Notice CRTC 2003-43, 5 August 2003, as amended from time to time. This appendix provides for the distribution, by Class 3 cable systems, of the programming service of any licensed television programming undertaking received from a licensed satellite relay distribution undertaking (SRDU).

section 43 of the *[Broadcasting] Distribution Regulations* (the Regulations). The Commission may suspend the application of this provision 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 Canadian distant signals solely on the applicant's digital service, as approved in this decision.

4. In its current application, MTS indicated that it had reached a comprehensive agreement with the Canadian Association of Broadcasters (CAB) and provided a copy of the agreement.
5. The agreement offers two streams of compensation in lieu of program deletion and opportunities for simultaneous substitution in addition to those that exist under section 30 of the Regulations. The agreement also contains terms and conditions with respect to:
 - monthly fees payable by MTS to the CAB for MTS' carriage of the Canadian distant signals and the U.S. 4+1 signals; and
 - the list of the Canadian distant signals that MTS may carry.
6. In addition, the agreement considers the negotiation of final monthly fees retroactive to the date digital customers subscribe to the signals. It also considers the possibility of future amendments to the list of Canadian distant signals.
7. In light of the agreement, MTS requested that the provision set out in Decision 2002-235 relating to the requirements regarding non-simultaneous program deletion be suspended.

The Commission's determination

8. In light of the agreement between the two parties, the Commission **suspends** the application of the provision that the licensee adhere to the requirements regarding non-simultaneous program deletion.
9. The Commission notes that, in the event that the agreement between MTS and the CAB is terminated at any time or if it is not renewed upon expiry, the provision will no longer be suspended, and MTS will once again be required, in accordance with the provision, to adhere to the requirements regarding non-simultaneous program deletion set out in the Regulations.

10. As confirmed by MTS, the application by MTS and the agreement executed between MTS and the CAB will be placed on the public file.

Secretary General

This decision is to be appended to the licence. It is available in alternative format upon request, and may also be examined at the following Internet site: <http://www.crtc.gc.ca>