



Broadcasting Decision CRTC 2006-22

Ottawa, 31 January 2006

Bell ExpressVu Inc. (the general partner), and BCE Inc. and 4119649 Canada Inc. (partners in BCE Holdings G.P., a general partnership that is the limited partner), carrying on business as Bell ExpressVu Limited Partnership
Across Canada

*Application 2004-1520-0
Broadcasting Public Notice CRTC 2005-59
10 June 2005*

Direct-to-home pay-per-view service – Licence renewal

*The Commission **renews** the broadcasting licence for the national English- and French-language direct-to-home pay-per-view programming undertaking operated by the partners of Bell ExpressVu Limited Partnership, from 1 February 2006 to 31 August 2012.*

The details regarding the licensee's specific proposals for the new licence term, and the conditions of licence and other obligations determined by the Commission are set out below.

The application

1. The Commission received an application by the partners of Bell ExpressVu Limited Partnership¹ (Bell ExpressVu) for the renewal of the broadcasting licence for the national English- and French-language direct-to-home (DTH) pay-per-view (PPV) programming undertaking.
2. Bell ExpressVu's DTH PPV service offers feature films and other acquired programming, including concerts, sports events and other special events as well as programming directed to children. Up to 10% of the programming offered by the service is in languages other than English or French.
3. The Commission received several interventions in connection with this application, most of which were in support. In addition, some interventions commented on or opposed Bell ExpressVu's proposal to amend its condition of licence setting out its requirements with respect to contributions to Canadian production funds. The comments and concerns expressed by those interveners and the Commission's determinations with respect to this issue and other matters are discussed below.

¹ Bell ExpressVu Inc. (the general partner), and BCE Inc. and 4119649 Canada Inc. (partners in BCE Holdings G.P., a general partnership that is the limited partner), carrying on business as Bell ExpressVu Limited Partnership

Contributions to Canadian production funds

Current condition of licence

4. Under its current condition of licence, Bell ExpressVu must contribute at least 5% of its gross annual revenues derived from its PPV broadcasting activities to independently-administered Canadian production funds to support the development of Canadian programming. At least 80% of its annual contribution must be directed to the Canadian Television Fund (CTF), as defined in the *Broadcasting Distribution Regulations*, while up to 20% may be directed to one or more independently-administered production funds other than the CTF, provided that these other funds meet the criteria set out in *Contributions to Canadian programming by broadcasting distribution undertakings*, Public Notice CRTC 1997-98, 22 July 1997 (Public Notice 1997-98), as may be amended from time to time.
5. Bell ExpressVu stated that, for the purposes of this condition of licence, it currently calculates its gross revenues as the total amount remitted to it by the DTH broadcasting distribution undertaking (BDU) that receives retail PPV revenues from subscribers. The licensee indicated that, in its first licence term, it allocated the retail revenues collected by the DTH BDU into two components: the amount paid to third-party suppliers for content, or the cost of goods sold, and the residual. The licensee also stated that its practice has been to set its gross revenues at a level sufficient to cover the cost of goods sold plus one-half of the residual amount.

Licensee's request

6. Bell ExpressVu requested that the Commission amend this condition of licence for the new licence term. First, Bell ExpressVu proposed that it be allowed to direct its entire 5% annual contribution to a single, independently-administered Canadian production fund, namely the Bell Broadcast and New Media Fund (the Bell Fund). Bell ExpressVu submitted that increasing the contributions made by its DTH PPV service to the Bell Fund would offset the reduction in funding from its DTH satellite undertaking resulting from that undertaking's requirement to contribute to the small market fund, as set out in *Licence amendment for ExpressVu – relief from requirements for simultaneous program deletion*, Broadcasting Decision CRTC 2003-257, 16 July 2003. The licensee further noted that Astral Media Inc.'s terrestrial and DTH PPV services, each known as Viewer's Choice, are not required to direct a portion of their 5% contribution to the CTF.

7. Second, Bell ExpressVu requested that it be allowed to change the method of calculating its gross annual revenues for the purposes of this condition of licence. Bell ExpressVu proposed that, for the purposes of calculating its financial support for independent production in the new licence term, its gross annual revenues would be deemed to be 50% of the total retail revenues received from subscribers to the BDU. The licensee noted that this method would be consistent with the Commission's determination for video-on-demand (VOD) services that are affiliated to or integrated with a distributor, as set out in *Introductory statement to Decisions CRTC 2000-733 to 2000-738: Licensing of new video-on-demand and pay-per-view services*, Public Notice CRTC 2000-172, 14 December 2000 (Public Notice 2000-172).
8. The Commission asked Bell ExpressVu to file documentation comparing the level of contributions to Canadian independent production that would be required over a seven-year licence term under the current method of calculation with the level of contributions that would be required over the same period if the proposed method of calculation were approved. In response, the licensee filed detailed comparative calculations based on the 2002/2003 broadcast year that demonstrated that its total contributions for that year would have decreased by 33% under the proposed method.

Interventions

9. The Canadian Film and Television Production Association (CFTPA) stated that, while it is generally opposed to any reduction in contributions to the CTF, it supported Bell ExpressVu's request to direct its entire annual programming contribution to the Bell Fund because such an approach would provide a more stable funding base for the Bell Fund. However, the CFTPA opposed Bell ExpressVu's request to change the method of calculating its annual contributions. The CFTPA contended that the proposed method of calculating gross revenues would result in a smaller overall contribution to content creation, which in its view, would be unacceptable.
10. The CTF opposed Bell ExpressVu's proposal to direct its entire 5% annual contribution to the Bell Fund because such an approach would result in a significant loss to the CTF. The intervener contended that, if the Commission were to approve only the proposal to redefine gross revenues, the impact on the CTF would be less, but would nevertheless represent a loss to the CTF. The CTF thus maintained that approval of the proposed amendments would constitute a substantial reduction in the CTF's capacity to support Canadian drama, documentary, children's and variety programs.
11. Several producers supported the proposed changes to the licensee's spending obligations, notwithstanding that the redefinition of gross revenues would result in a decrease in the total level of contribution to Canadian independent program production.

Licensee's reply

12. In response, Bell ExpressVu pointed out that the CFTPA and several producers supported its proposal to direct its full contribution to the Bell Fund, and that these interveners acknowledged the important role played by the Bell Fund in the creation of Canadian programming.

Exhibition of Canadian programming

13. As part of the deficiency process, the Commission asked Bell ExpressVu whether it would be willing to accept a condition of licence for the new licence term requiring that, in each broadcast year, it devote 20% of all program titles other than feature films to Canadian programs.
14. In response, Bell ExpressVu indicated that it wished to maintain its current conditions of licence, which require that it adhere to minimum ratios for Canadian to non-Canadian feature films and events.² Bell ExpressVu noted that, under its current conditions of licence, the obligations of its DTH PPV service with respect to the exhibition of Canadian programming are the same as those imposed on its terrestrial PPV service and on its competitors.
15. Bell ExpressVu also proposed that, during the new licence term, it be subject to a condition of licence requiring that all French-language drama series (series, mini-series, films for television, etc.) and French-language educational television programs be broadcast on a ratio of one (1) Canadian program for ten (10) non-Canadian programs. Bell ExpressVu noted that the proposed condition of licence is similar to one imposed on its French-language competitor, Canal Indigo.

Commission's analysis and determinations

Contributions to Canadian production funds

16. With respect to the licensee's request for authority to direct its entire 5% annual contribution to a single, independently-administered production fund, namely the Bell Fund, the Commission notes that no other terrestrial or DTH PPV licensee is required to direct a proportion of its contributions to the CTF. Further, the Commission is of the view that, while approval of this proposal will result in decreased contributions to the CTF, it will increase the level of funding to the Bell Fund, which is also a recognized and important contributor to the Canadian broadcasting system. Accordingly, the Commission **approves** the licensee's request to amend its condition of licence in order to be allowed to direct its entire annual contribution to one or more independently-administered Canadian production fund.

² For English-language programming, the licensee must currently maintain the following minimum yearly ratios of Canadian to non-Canadian programs: 1:20 for first-run feature film titles, and 1:7 for events. For French-language programming, the licensee must maintain the following minimum yearly ratios of Canadian to non-Canadian programs: 1:12 for first-run feature films and 12:20 for events.

17. At the same time, the Commission notes that the methodology currently used by the licensee for calculating its gross revenues is consistent with the Commission's treatment of other terrestrial and DTH PPV licensees. Although the Commission has deemed gross annual revenues for affiliated VOD undertakings to be 50% of the total retail revenues received from customers, it has not applied this definition to any terrestrial or DTH PPV service. In practice, gross revenues for terrestrial and DTH PPV services are deemed to be the programming service's total revenues, as reported in the licensee's annual returns.
18. The Commission's analysis of the documentation submitted by Bell ExpressVu indicates that, under the licensee's proposed method of calculating its gross revenues, the total contributions to Canadian independent program production over the next licence term would be approximately one-third less than they would have been under the current approach. The Commission considers that approval of the licensee's request would result in a significant reduction in the level of its contributions to Canadian independent program production. Furthermore, in the Commission's view, the licensee has not demonstrated that any financial harm will result from maintaining the existing method of calculating its gross revenues for the purposes of this condition of licence. Accordingly, the Commission **denies** the licensee's request that it be allowed to change the method of calculating its gross annual revenues for the purposes of its condition of licence with respect to its contributions to Canadian production funds.
19. In light of the above, the Commission is imposing a **condition of licence**, as set out in the appendix to this decision, requiring the licensee to contribute at least 5% of its gross annual revenues derived from its PPV broadcasting activities to one or more independently-administered Canadian production funds, to support the development of Canadian programming. The licensee's gross revenues must be calculated on a basis that is consistent with its past practices, as described in paragraph 5 above.

Exhibition of Canadian programming

20. The Commission considers that, given the evolving programming strategies of PPV services, and their ability to broadcast programming from a range of programming categories or genres in addition to feature films and events, it is becoming increasingly important to ensure that a proportion of all program titles other than feature films, be Canadian. Accordingly, for the new licence term, rather than imposing minimum yearly ratios of Canadian to non-Canadian feature films and events, the Commission is imposing **conditions of licence**, as set out in the appendix to this decision, requiring the licensee to abide by minimum percentages of Canadian programs. For English-language programming, the licensee must, in each broadcast year, ensure that a minimum of 5% of feature film titles and 20% of all program titles other than feature films are Canadian. For French-language programming, the licensee must, in each broadcast year, ensure that a minimum of 8% of feature film titles and 20% of all program titles other than feature films are Canadian.
21. In light of the above, the Commission is not imposing the condition of licence proposed by the licensee respecting French-language drama series and educational television programs.

Adult programming

22. In 2001, the Commission received a complaint against Bell ExpressVu relating to the broadcast of adult films on its PPV channels. During the Commission's investigation of the matter, Bell ExpressVu acknowledged that it had failed to adhere to its obligation to oversee all programming broadcast, which had resulted in the broadcast of inappropriate content in contravention of the codes to which it was subject, specifically, the *Sex-role portrayal code for television and radio programming* and the *Pay television and pay-per-view programming code regarding violence*.
23. Following the investigation, Bell ExpressVu removed certain of its adult channels, made changes in its operations, and made revisions to its internal policy for adult programming. In a letter dated 3 August 2001 responding to the complaint, the Commission found that Bell ExpressVu had reacted in an appropriate and responsible manner and had taken adequate steps to ensure that any such contravention would not occur in the future.
24. In August 2001, the Commission asked the industry to develop a new code in order to more effectively address the broadcast of adult programming on pay, PPV and VOD services. The Commission approved and announced the code in *Industry code of programming standards and practices governing pay, pay-per-view and video-on-demand services*, Broadcasting Public Notice CRTC 2003-10, 6 March 2003 (Public Notice 2003-10; Industry code of programming standards). Subsequently, in *Licence amendment for the terrestrial and the direct-to-home pay-per-view services*, Broadcasting Decision CRTC 2003-151, 13 May 2003, the Commission approved Bell ExpressVu's application to amend the licences for its DTH and terrestrial PPV services by adding reference to the code as conditions of licence for each service.
25. The Commission notes that it has not received any complaints respecting adult content broadcast by Bell ExpressVu since these measures have been put in place. The Commission also notes that Bell ExpressVu included a copy of its internal policy on adult programming as part of its licence renewal application, as contemplated in Public Notice 2003-10.
26. The Commission expects the licensee to adhere to its internal policy on adult programming. Further, the Commission is imposing a **condition of licence**, as set out in the appendix to this decision, requiring the licensee to abide by the Industry code of programming standards.

Offering programs in packages

27. Consistent with the Commission's approach set out in Public Notice 2000-172, the Commission expects that, with the exception of the events programming identified in the paragraph below, the licensee will only offer programming packages where the total period during which the programming is to be viewed does not exceed one week.

28. The Commission recognizes that some packages of events programming, such as seasonal sports or a Christmas concert series, make attractive programming packages that naturally continue longer than one week and that such programming is particularly appropriate for PPV television services. For this reason, the Commission will not apply the limitation of one week to packages that are exclusively comprised of events. The Commission, nevertheless, expects that the events programming will be limited to the events themselves and not include “wrap around” programming that would tend to give the package the characteristics of a specialty service.

Cultural diversity

29. The Commission expects the licensee to endeavour, through its programming and employment opportunities, to reflect the presence in Canada of cultural and racial minorities, Aboriginal peoples, and persons with disabilities. The Commission further expects the licensee to ensure that the on-screen portrayal of such groups is accurate, fair and non-stereotypical.

Employment equity

30. Because this licensee is subject to the *Employment Equity Act* and files reports concerning employment equity with the Department of Human Resources and Skills Development, its employment equity practices are not examined by the Commission.

Service to persons who are deaf or hard of hearing

31. The Commission is committed to improving service to viewers who are deaf or hard of hearing, and has consistently encouraged broadcasters to increase the amount of closed captioned programming they broadcast. The Commission generally requires all broadcasters to offer a minimum percentage of closed captioned programs.
32. Bell ExpressVu made a commitment to close caption 90% of all English-language programming beginning in the first year of the new licence term. The licensee also made a commitment to close caption 65% of all French-language programming beginning in the first year of the new licence term, increasing to 90% of all French-language programming beginning in the sixth year. The licensee indicated that it would adhere to these commitments by conditions of licence.
33. Consistent with the Commission’s general approach and with the licensee’s commitments, the Commission is imposing **conditions of licence** requiring the licensee to close caption at least 90% of all English-language programming aired during the broadcast year, beginning no later than 1 September 2006, and at least 90% of all French-language programming aired during the broadcast year, beginning no later than 1 September 2009. The conditions of licence are set out in the appendix to this decision.

34. The Commission expects the licensee to focus on improving the quality, reliability and accuracy of its closed captioning, and to work with representatives of the deaf and hard of hearing community to ensure that captioning continues to meet that community's needs.

Service to persons who are blind or whose vision is impaired

35. The Commission is committed to improving the television service available to persons with visual impairments through the provision of audio description and video description (also known as described video).
36. Bell ExpressVu indicated it provides audio directions on its barker channel to enable subscribers whose vision is impaired to access its service with a telephone. It also stated that it would include promotions for described PPV programming on its audio electronic program guide. In addition, the licensee stated that it would endeavour to acquire described video programming to the extent that it is made available by suppliers. The licensee noted that such programming would be primarily films, as the normal play-by-play commentary of sporting events makes described video unnecessary.
37. Consistent with these commitments and with the Commission's general approach to service to persons who are blind or whose vision is impaired, the Commission expects the licensee to:
- provide audio description (defined as the provision of basic voice-overs of textual or graphic information on screen) wherever appropriate;
 - acquire and broadcast the described versions of a program wherever possible; and
 - take the necessary steps to ensure that its customer service responds to the needs of viewers who have visual impairments.

Conclusion

38. On the basis of its review of this licence renewal application, the Commission **renews** the broadcasting licence held by Bell ExpressVu Inc. (the general partner), and BCE Inc. and 4119649 Canada Inc. (partners in BCE Holdings G.P., a general partnership that

is the limited partner), carrying on business as Bell ExpressVu Limited Partnership, for the national, English- and French-language direct-to-home pay-per-view programming undertaking, from 1 February 2006 to 31 August 2012³. The licence will be subject to the **conditions** specified therein and to the **conditions** set out in the appendix to this decision.

Secretary General

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>

³ The licence was renewed to 30 November 2005 in *Administrative renewal*, Broadcasting Decision CRTC 2005-423, 18 August 2005, and, subsequently to 31 January 2006 in *Administrative renewal*, Broadcasting Decision CRTC 2005-540, 9 November 2005.

Appendix to Broadcasting Decision CRTC 2006-22

Conditions of licence

1. The service shall consist of programming drawn from the categories set out in Item 6 of Schedule 1 of the *Pay Television Regulations, 1990*, as amended from time to time, generally consisting of feature films, but also including concerts, sports events and other special events, and sold on both an individual and series basis.
2. The licensee shall maintain the channels in a ratio of French to English of 1:3, with a minimum of 5 French-language signals in addition to the French-language barker channel.
3. With respect to English-language programming, the licensee shall, through its agreements with the licensees of DTH broadcasting distribution undertakings, ensure that in, each broadcast year, the following is made available by these licensees to their PPV subscribers:
 - a) a minimum of 12 Canadian feature films (including all new Canadian feature films suitable for PPV exhibition that meet the *Industry code of programming standards and practices governing pay, pay-per-view and video-on-demand services*);
 - b) a minimum of 4 English-language Canadian-based events; and
 - c) the following minimum percentages of Canadian programs: 5% of feature film titles, and 20% of all program titles other than feature films.
4. With respect to French-language programming, the licensee shall, through its agreements with the licensees of DTH broadcasting distribution undertakings, ensure that, in each broadcast year, the following is made available by these licensees to their PPV subscribers:
 - a) a minimum of 20 Canadian feature films in the original French-language version, or dubbed in French, which have been exhibited in theatres in French-language markets (including all new Canadian feature films suitable for PPV exhibition that meet the *Industry code of programming standards and practices governing pay, pay-per-view and video-on-demand services*);
 - b) a minimum of 12 French-language events; and
 - c) the following minimum percentages of Canadian programs: 8% of feature film titles, and 20% of all program titles other than feature films.

5. The licensee shall ensure that both English-language and French-language Canadian feature films are scheduled, repeated and promoted in the same manner as non-Canadian feature films.
6. The licensee shall contribute at least 5% of its annual gross revenues derived from its PPV broadcasting activities to one or more independently-administered Canadian production funds, to support the development of Canadian programming, provided that these funds meet the criteria set out in *Contributions to Canadian programming by broadcasting distribution undertakings*, Public Notice CRTC 1997-98, 22 July 1997, as amended from time to time. Contributions shall take the form of monthly instalments, to be remitted within 45 days of month's end, and representing a minimum of 5% of that month's gross revenues.
7. The licensee shall remit to the rights holders of all English-language Canadian films and two Canadian-based events per year, 100% of the gross revenues earned by the licensee from the exhibition of these films and events. With respect to French-language Canadian feature films, the licensee shall remit 100% of the gross revenues earned by the licensee from the exhibition of these films to distributors and providers, with a minimum of 60% to the programming providers.
8. The licensee shall not enter into an affiliation agreement with the licensee of a DTH broadcasting distribution undertaking, unless the agreement incorporates a prohibition against linkage of the licensee's service with any non-Canadian discretionary service.
9. With respect to English-language programming, the licensee shall provide closed captioning for not less than 90% of all programming aired during the broadcast year, beginning no later than 1 September 2006.
10. With respect to French-language programming, the licensee shall provide closed captioning for not less than 90% of all programming aired during the broadcast year, beginning no later than 1 September 2009.
11. The licensee shall adhere to the *Pay Television Regulations, 1990*, as amended from time to time.
12. The licensee shall adhere to the guidelines on gender portrayal set out in the Canadian Association of Broadcasters' *Sex-role portrayal code for television and radio programming*, as amended from time to time and approved by the Commission. The application of the foregoing condition of licence will be suspended as long as the licensee remains a member in good standing of the Canadian Broadcast Standards Council.
13. The licensee shall adhere to the *Industry code of programming standards and practices governing pay, pay-per-view and video-on-demand services*, as amended from time to time and approved by the Commission.

14. The licensee shall adhere to the *Pay television and pay-per-view programming code regarding violence*, as amended from time to time and approved by the Commission.

For the purpose of the above conditions of licence, “broadcast year” means that period between 1 September in any year and terminating the following 31 August.