



Broadcasting Decision CRTC 2008-12

Ottawa, 21 January 2008

Reconsideration of Broadcasting Decision 2007-246 pursuant to Order in Council P.C. 2007-1604

*In this decision, the Commission **confirms** the approval set out in Broadcasting Decision 2007-246 for the Category 2 specialty service Avis de Recherche to be designated for mandatory distribution by all direct-to-home satellite distribution undertakings and by all Class 1 and Class 2 broadcasting distribution undertakings, excluding multipoint distribution undertakings, as part of their digital basic services in the province of Quebec.*

*As a result of this consideration, the Commission also **approves** an amendment to the broadcasting licence for Avis de Recherche in order to require the licensee of the service to expend on the acquisition of and/or investment in Canadian programs a minimum of 43% of the gross revenues derived from the operation of this service during the previous broadcast year.*

*The Commission also **confirms** that mandatory distribution of Avis de Recherche shall become effective **24 January 2008**.*

*In addition, the Commission **confirms** Broadcasting Decision 2007-246 as it relates to the wholesale rate approved for distribution of Avis de Recherche for subscribers living in Quebec, and **confirms** the percentage of the broadcast day and the evening broadcast period that the licensee must devote to the distribution of Canadian programming.*

*Finally, the Commission **confirms** its authority to issue mandatory distribution orders for any licence category of programming service, as set out in section 9(1)(h) of the Broadcasting Act.*

Background

The original decision

1. In Broadcasting Decision 2007-246, the Commission approved (in whole or in part) various applications for the mandatory distribution, under section 9(1)(h) of the *Broadcasting Act* (the Act), of new or existing television programming services on digital basic. As part of that decision, the Commission approved in part an application by Avis de recherche inc. (ADR) for the Category 2 specialty service known as Avis de Recherche to be designated for mandatory distribution by all direct-to-home (DTH) satellite distribution undertakings and all Class 1 and Class 2 broadcasting distribution undertakings, excluding multipoint distribution undertakings, as part of their digital basic services in the province of Quebec.¹

¹ See Distribution order 2007-3, set out in Appendix 4 to Broadcasting Decision 2007-246.

2. In light of the above, and as proposed by ADR, in Broadcasting Decision 2007-246, the Commission also approved new and amended conditions of licence for Avis de Recherche in order to enable the service to better attain the objectives of the broadcasting policy set out under subsection 3(1) of the Act.
3. In Broadcasting Decision 2007-246, Avis de Recherche was described as a media tool whose scope is to assist law enforcement agencies across the country to obtain clues, tips and leads that might help resolve matters of interest to the communities they serve, both on the local and national levels. In association with competent institutions and organizations, the service broadcasts prevention bulletins as well as programs on various security issues and related subjects.
4. Having approved the mandatory distribution of Avis de Recherche on digital basic, the Commission added the following two conditions to the licence for the service:
 1. The licensee shall charge each exhibitor of the service a maximum wholesale rate of \$0.06 per subscriber per month, where the service is carried as part of the basic service, for each subscriber living in Quebec.
 2. In each broadcast year of the licence term, the licensee shall expend on the acquisition of and/or investment in Canadian programs a minimum of 20% of the subscriber revenues derived from the operation of this service during the previous broadcast year.
5. Further, the Commission replaced Avis de Recherche's condition of licence relating to the distribution of Canadian programs with the following condition of licence:
 3. In each broadcast year, the licensee shall devote not less than 95% of the broadcast day and not less than 95% of the evening broadcast period to the distribution of Canadian programs.

The Order in Council

6. Following the issuance of Broadcasting Decision 2007-246, the Governor in Council received petitions requesting that the decision be referred back to the Commission for reconsideration and hearing of the matter.
7. After having considered the petitions filed, the Governor in Council issued Order in Council P.C. 2007-1604 (the Order in Council), in which it stated that it was satisfied that the decision to amend the broadcasting licence for Avis de Recherche derogated from the attainment of the objectives of the broadcasting policy set out in subsection 3(1) of the Act, and in particular subparagraph 3(1)(d)(ii), paragraphs 3(1)(e) and (f), and subparagraphs 3(1)(i)(v) and (s)(i).² The Governor in Council also indicated that, accordingly, Avis de Recherche's conditions of licence should encourage the attainment of those objectives.

² The complete text of the Order in Council is appended to this decision.

8. Moreover, it was stated in the Order in Council that Her Excellency the Governor General in Council, on the recommendation of the Minister of Canadian Heritage, pursuant to section 28 of the Act:
 - (a) hereby refers back to the Commission for reconsideration and hearing the decision, contained within Broadcasting Decision CRTC 2007-246 of July 24, 2007, to amend the broadcasting licence of Avis de recherche inc. to operate a French-language Category 2 specialty television service known as Avis de Recherche; and
 - (b) is of the opinion that it is material to the reconsideration and hearing that the Commission re-examine the conditions of licence imposed on Avis de recherche inc. in terms of its qualification of exceptional importance giving it the right to be distributed on the digital basic service.
9. Pursuant to the Order in Council, the Commission invited ADR, by letter dated 30 October 2007, to submit any comments it wished to make in regard to its application by no later than 8 November 2007.
10. ADR subsequently proposed an amendment to the licence for Avis de Recherche by which condition of licence number 2, relating to Canadian program expenditures, would be replaced by a condition of licence stating that the licensee shall expend on the acquisition of and/or investment in Canadian programs a minimum of 43% of its gross revenues, in lieu of 20% of its subscriber revenues, derived from the operation of the service during the previous broadcast year. ADR also submitted that the 43% of its gross revenues and the requirement to devote 95% of the broadcast day and of the evening broadcast period to the distribution of Canadian programs are both in line with the attainment of Canadian broadcasting policy objectives, and specifically those set out in paragraphs 3(e), (f) and (s) and in subparagraph 3(1)(d)(ii).
11. In Broadcasting Public Notice 2007-134, the Commission invited written comments addressing the issues raised in the Order in Council.
12. In response to Broadcasting Public Notice 2007-134, the Commission received five written comments, from Bell Video Group (Bell), Quebecor Media Inc. (QMI), Rogers Cable Communications Inc. (Rogers), Shaw Communications Inc. (Shaw) and TELUS Communications Inc. (TELUS). The comments and ADR's replies to the comments are available on the Commission's Web site at www.crtc.gc.ca under "Public Proceedings."

Issues relevant to the Commission's determinations

13. In the Order in Council, the Governor in Council expressed the opinion that “any service considered by the Commission to be of exceptional importance should be subject to conditions of licence that encourage the attainment” of the objectives of the broadcasting policy set out in the above-mentioned paragraphs and subparagraphs of subsection 3(1) of the Act. In referring the decision back to the Commission, the Governor in Council requested that the Commission “re-examine the conditions of licence imposed on Avis de recherche inc.” in light of its designation as a service of exceptional importance. Accordingly, the Commission considers that the issue to be determined is the adequacy of those conditions of licence to the attainment of the said objectives.
14. In response to Broadcasting Public Notice 2007-134, Bell questioned the Commission's decision that the licensee shall charge each distributor of the service a maximum wholesale rate of \$0.06 per subscriber per month, where the service is carried as part of the basic service, for each subscriber living in Quebec. Bell proposed instead that the Commission apply the \$0.06 wholesale rate only to subscribers living in Quebec that select a French-language or bilingual service package. Alternatively, should the Commission prefer a wholesale rate that would apply to all Quebec-based subscribers, Bell proposed that the Commission apply a discounted wholesale rate of \$0.03 to Quebec-based subscribers that select an English-language basic service, so as to reflect the lesser value of their revised basic service package.
15. In its reply to Bell, ADR submitted that its service is not limited to francophones and that its broadcast of all points bulletins is not carried out as a function of the language of the missing persons. Further, ADR submitted that authorizing DTH satellite distribution undertakings to begin parcelling out French-language services in Quebec francophone markets³ would be detrimental not only to Avis de Recherche, but also to other French-language services in Quebec.
16. None of the intervening parties addressed the issues regarding the other two conditions of licence, or questioned whether ADR's proposed increase in Canadian programming expenditures was sufficient in light of the concerns expressed in the Order in Council.
17. In determining whether the licence amendment proposed by ADR would satisfy the request made in the Order in Council, the Commission considered the following points.

³ “Francophone market” is defined in section 18(4)(a) of the *Broadcasting Distribution Regulations*.

Percentage of Canadian programming

18. The licensee is required, by condition of licence, to devote a minimum of 95% of the broadcast day and of the evening broadcast period to the distribution of Canadian programs. The Commission notes that the service distributing this Canadian programming is characterized by the following features:
 - it offers viewing citizens concrete tools for preventing crime, developing crime prevention habits and practices, and enhancing security within their communities;
 - the technologies it uses allow it to broadcast, within 20 minutes of having received a photograph of a missing person, an all points bulletin targeting viewers located in the area where the person went missing; and
 - the video programming distributed by the service is of high quality.
19. In addition, the minimum level of 95% for the distribution of Canadian programming, imposed on Avis de Recherche by condition of licence, is the highest of all programming services that have been granted mandatory distribution under section 9(1)(h) of the Act, including the Canadian programming services Le Réseau de l'information (RDI), CBC Newsworld and the Cable Public Affairs Channel (CPAC), all of which are required to broadcast 90% Canadian programming.
20. The Commission is of the view that this level of Canadian content is appropriate for the licensee to attain the objectives of the broadcasting policy set out in subparagraphs 3(1)(d)(i) and 3(1)(e) of the Act. Accordingly, the Commission considers that the level of 95% for the distribution of Canadian programming should be maintained.

Wholesale rate of \$0.06 per subscriber

21. The Commission considers that the wholesale rate of \$0.06 per subscriber, which is lower than the rate requested by ADR in its original application, is affordable and would make the service viable, allowing it to implement its business and programming plans. Moreover, it would allow the licensee to devote sufficient resources to its programming so as to make a significant contribution to the creation and presentation of Canadian programming, thereby allowing it to attain the objectives of the broadcasting policy set out in subparagraphs 3(1)(d)(ii) and 3(1)(s)(i) of the Act. In addition, it is the Commission's view that the same rate for the service should apply to all subscribers within the province of Quebec. Further, the Commission considers that the wholesale rate of \$0.06 per subscriber would allow Avis de Recherche to address numerous requests, from police and fire services as well as from school boards and prevention organizations, to produce various prevention messages that it has until now been unable to produce. Accordingly, it is the Commission's view that the wholesale rate of \$0.06 per subscriber should be maintained.

Canadian programming expenditures

22. The Commission considers that the proposal by ADR to increase its expenditures on Canadian programs from 20% of its subscriber revenues to 43% of its gross revenues is appropriate and reasonable, and notes that the proposed change to 43% of its gross revenues is identical to that imposed by the Commission, by condition of licence, on The Accessible Channel, a service that was also granted mandatory distribution in Broadcasting Decision 2007-246. The Commission further considers that the level of Canadian programming expenditures proposed by ADR will enable it to attain the objectives of the broadcasting policy set out in subsection 3(1) of the Act. Accordingly, the Commission considers that the proposal by ADR to increase its level of Canadian programming expenditures to 43% of its gross revenues derived from the operation of the service during the previous broadcast year adequately addresses the concerns expressed in the Order in Council.

Other matters

The granting of mandatory distribution to Avis de Recherche

23. In the comments submitted by QMI, Rogers, Shaw and TELUS, the following concerns were raised: granting mandatory distribution to services that are not of an exceptional nature; subscribers potentially seeking programming choices outside of the regulated system if charged a fee for a service they do not wish to receive; and the granting of mandatory distribution to programming services being counter-intuitive to the Commission's tendency towards less regulation.
24. QMI also questioned the procedure adopted by the Commission in granting mandatory distribution on digital basic to Avis de Recherche, and questioned the decision by the Commission to grant mandatory distribution on digital basic to a Category 2 specialty service.
25. In its reply, ADR noted that the Governor in Council did not call into question the mandatory distribution of Avis de Recherche, but asked the Commission to re-examine the conditions of licence imposed in Broadcasting Decision 2007-246. ADR submitted that the Commission must therefore dismiss all comments relating to the decision to grant mandatory distribution on digital basic to Avis de Recherche.
26. In the Commission's view, the Governor in Council's request, as set out in the Order in Council, was restricted to a re-examination by the Commission of the conditions of licence imposed on Avis de Recherche in the context of the service having been granted mandatory distribution on digital basic. The Commission therefore considers that any comments relating to its decision to grant mandatory distribution to Avis de Recherche for all digital subscribers living in the province of Quebec, as part of the digital basic service, should be dismissed.

27. In regard to the comments submitted by QMI, the Commission has already established the procedure and criteria it would use to examine applications for mandatory distribution on digital basic in Broadcasting Public Notice 2006-23. It reiterated these criteria in Broadcasting Notice of Public Hearing 2007-1, where it invited comments on various applications, including applications for issuance of mandatory distribution on digital basic. Further, under section 9(1)(h) of the Act, the Commission has the authority to grant mandatory distribution to any licence category of programming service, and in granting mandatory distribution to TVA, CPAC and the Aboriginal Peoples Television Network (APTN), for example, has exercised this authority.

Conclusion

28. In light of the above, the Commission **confirms** the approval set out in Broadcasting Decision 2007-246 for the Category 2 specialty service Avis de Recherche to be designated for mandatory distribution by all direct-to-home satellite distribution undertakings and by all Class 1 and Class 2 broadcasting distribution undertakings, excluding multipoint distribution undertakings, as part of their digital basic services in the province of Quebec.
29. Further, the Commission **approves** the amendment to condition of licence number 2 for Avis de Recherche, as set out in Broadcasting Decision 2007-246, to read as follows:
2. In each broadcast year of the licence term, the licensee shall expend on the acquisition of and/or investment in Canadian programs a minimum of 43% of the gross revenues derived from the operation of this service during the previous broadcast year.
30. In addition, the Commission **confirms** the wholesale rate of \$0.06 cents per subscriber per month, where the service is carried as part of the digital basic service, for each subscriber living in Quebec.
31. The Commission also **confirms** Avis de Recherche's condition of licence requiring the licensee to devote not less than 95% of the broadcast day and not less than 95% of the evening broadcast period to the distribution of Canadian programs
32. Furthermore, the Commission **confirms** its authority to issue mandatory distribution orders for any licence category of programming service, as set out in section 9(1)(h) of the Act.
33. Finally, the Commission notes that Distribution order 2007-3, as set out in Broadcasting Decision 2007-246, specified that mandatory distribution of Avis de Recherche would be effective 24 January 2008. Accordingly, the Commission **confirms** that mandatory distribution of Avis de Recherche shall become effective **24 January 2008**.

Secretary General

Related documents

- *Reconsideration of Broadcasting Decision CRTC 2007-246*, Broadcasting Public Notice CRTC 2007-134, 23 November 2007
- *Order in Council, P.C. 2007-1604*, 18 October 2007
- *New digital specialty described video programming undertaking; Licence amendments; Issuance of various mandatory distribution orders*, Broadcasting Decision CRTC 2007-246, 24 July 2007
- Broadcasting Notice of Public Hearing CRTC 2007-1, 25 January 2007, as amended by Broadcasting Notice of Public Hearing CRTC 2007-1-1, 7 February 2007, Broadcasting Notice of Public Hearing CRTC 2007-1-2, 20 February 2007, Broadcasting Notice of Public Hearing CRTC 2007-1-3, 2 March 2007, and Broadcasting Notice of Public Hearing CRTC 2007-1-4, 21 March 2007
- *Digital migration framework*, Broadcasting Public Notice CRTC 2006-23, 27 February 2006

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>

Appendix to Broadcasting Decision CRTC 2008-12

Order in Council P.C. 2007-1604, dated 18 October 2007

Whereas the Canadian Radio-television and Telecommunications Commission (“the Commission”) made a decision, contained within Broadcasting Decision CRTC 2007-246 of July 24, 2007, to amend the broadcasting licence of Avis de recherche inc. to operate a French-language Category 2 specialty television service known as Avis de Recherche;

Whereas, subsequent to the making of the decision to amend the broadcasting licence of Avis de recherche inc., the Governor in Council received petitions requesting that the decision be referred back to the Commission for reconsideration and hearing of the matter;

Whereas the Governor in Council, having considered those petitions, is satisfied that the decision to amend the broadcasting licence of Avis de recherche inc. derogates from the attainment of the objectives of the broadcasting policy set out in subsection 3(1) of the *Broadcasting Act*, and in particular subparagraph 3(1)(d)(ii), paragraphs 3(1)(e) and (f) and subparagraphs 3(1)(i)(v) and (s)(i) of that Act;

And whereas the Governor in Council is of the opinion that any service considered by the Commission to be of exceptional importance should be subject to conditions of licence that encourage the attainment of those objectives;

Therefore, Her Excellency the Governor General in Council, on the recommendation of the Minister of Canadian Heritage, pursuant to section 28 of the *Broadcasting Act*,

(a) hereby refers back to the Commission for reconsideration and hearing the decision, contained within Broadcasting Decision CRTC 2007-246 of July 24, 2007, to amend the broadcasting licence of Avis de recherche inc. to operate a French-language Category 2 specialty television service known as Avis de Recherche; and

(b) is of the opinion that it is material to the reconsideration and hearing that the Commission re-examine the conditions of licence imposed on Avis de recherche inc. in terms of its qualification as a service of exceptional importance giving it the right to be distributed on the digital basic service.