



Broadcasting Decision CRTC 2011-662

PDF version

Route reference: 2011-317

Ottawa, 24 October 2011

**Bell ExpressVu Inc. (the general partner) and Bell Canada (the limited partner),
carrying on business as Bell ExpressVu Limited Partnership**
Across Canada

Application 2011-0019-8, received 7 January 2011

Video-on-demand service – Licence amendment

*The Commission **approves** an application by Bell ExpressVu Inc. (the general partner) and Bell Canada (the limited partner), carrying on business as Bell ExpressVu Limited Partnership to amend the broadcasting licence for its video-on-demand (VOD) service in order to add sections 3(2)(e) and 3(2)(f) of the Pay Television Regulations, 1990 to the list of exceptions set out in condition of licence 1. This will allow Bell ExpressVu to distribute programming produced by the licensee itself or by a person related to the licensee.*

*However, for the reasons set out in the decision, the Commission **denies** the applicant's request to add a condition of licence that would have allowed a third party to be fully responsible for the management of the community programming and the adherence to the applicable regulations related to the community programming to be offered on the applicant's VOD service.*

The application

1. The Commission received an application by Bell ExpressVu Inc. (the general partner) and Bell Canada (the limited partner), carrying on business as Bell ExpressVu Limited Partnership (Bell ExpressVu) to amend the broadcasting licence for its video-on-demand (VOD) programming undertaking in order to be authorized to offer community programming that would be produced by the affiliate Bell Aliant Regional Communications Inc. (the general partner), as well as limited partner with 6583458 Canada Inc. (the limited partners), carrying on business as Bell Aliant Regional Communications, Limited Partnership (collectively, Bell Aliant).
2. To be able to do this, the licensee proposed to replace condition of licence 1, which reads:

The licensee shall adhere to the *Pay Television Regulations, 1990*, with the exception of section 3(2)(d) (commercial messages) and section 4 (logs and records).

with the following condition:

The licensee shall adhere to the *Pay Television Regulations, 1990*, as amended from time to time, with the exception of sections 3(2)(d), 3(2)(e), 3(2)(f) and 4.

3. The licensee also proposed to add the following condition of licence:

Consistent with standard condition of licence number 2 set out in *Standard requirements for video-on-demand undertakings*, Broadcasting Regulatory Policy CRTC 2011-59, 31 January 2011, the Commission authorizes Bell ExpressVu's video-on-demand programming undertaking to operate a community programming subset of its service by the broadcasting distribution undertaking (BDU) that will distribute the community programming, provided that the BDU in question adheres to sections 30, 31 and 33 of the *Broadcasting Distribution Regulations* as set out in *Call for comments on amendments to the Broadcasting Distribution Regulations*, Broadcasting Notice of Consultation CRTC 2010-931, 10 December 2010.

4. The licensee stated that the aforementioned condition of licence would alleviate any concerns the Commission may have with respect to its proposal that Bell Aliant be fully responsible for the management of the community programming and the adherence to the applicable regulations related to the community programming that would be offered on Bell ExpressVu's VOD service. The Commission notes that in Broadcasting Decision 2011-663, also published today, it approved an application by Bell Aliant allowing it to distribute community programming over a VOD platform.

Interventions and applicant's reply

5. The Commission received interventions in opposition to the application from the Canadian Association for Community Television Users and Stations (CACTUS), the Canadian Communication Systems Alliance (CCSA) and the Fédération des télévisions communautaires autonomes du Québec (FTCAQ), as well as comments from Rogers Communications Partnership (Rogers) and Cogeco Cable Inc. (Cogeco). The public record for this proceeding is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."
6. Some of the interveners were concerned about how the Commission will ensure that the provision of community programming on the VOD platform will comply with Broadcasting Regulatory Policy 2010-622 (the community television policy). In its comment, Cogeco argued that the Commission should refrain from providing special accommodation for the use of community programs between the respective VOD platforms of the separately licensed broadcasting distribution undertakings (BDUs) of the Bell group.
7. In its reply to the interventions, Bell ExpressVu confirmed that it will abide by the community television policy. With respect to Cogeco's comment, Bell ExpressVu replied that its national terrestrial VOD service is not prohibited from striking an affiliation agreement for content distribution with any other BDU. It further argued that Cogeco is in effect proposing that VOD-based community programming should not be distributed

by any other distributor than a VOD licensee, which would create an impediment to the provision of community programming to BDU subscribers.

Commission's analysis and decisions

8. After examining the public record for this application in light of applicable regulations and policies, the Commission considers that the issues it must address are the following:
 - the proposed amendment to condition of licence 1; and
 - the proposed new condition of licence.

Proposed amendment to condition of licence 1

9. Bell ExpressVu requested that condition of licence 1 be amended in order to add sections 3(2)(e) and 3(2)(f) of the *Pay Television Regulations, 1990* (the Regulations) to the list of exceptions. If added, the applicant would not be prohibited from distributing programming produced by the licensee itself or a person related to the licensee.
10. In Broadcasting Regulatory Policy 2011-59, the Commission set out standard conditions of licence for VOD services. The Commission notes that the amendment requested by Bell ExpressVu mirrors condition of licence 1 from the standard conditions of licence. The Commission considers that allowing Bell ExpressVu to broadcast content produced by it or a related undertaking (in this case, Bell Aliant) would be consistent with the Commission's VOD policy set out in Broadcasting Regulatory Policy 2010-190 (the VOD policy). Accordingly, Bell ExpressVu will be subject to the following **condition of licence**:

The licensee shall adhere to the *Pay Television Regulations, 1990*, with the exception of section 3(2)(d), 3(2)(e), 3(2)(f) and 4.

Proposed new condition of licence

11. In its application, Bell ExpressVu requested that a new condition of licence be added to its licence in order to allow a third party, in this case Bell Aliant, to be fully responsible for the management of the community programming and the adherence to the applicable regulations related to the community programming that would be offered on the Bell ExpressVu VOD service.
12. In Broadcasting Regulatory Policy 2010-622, the Commission encouraged the use of VOD services to distribute community programming. However, in this case, the condition of licence proposed by Bell ExpressVu would constitute an exception to other aspects of the Commission's VOD policy. Specifically, pursuant to condition of licence 2 in the standard conditions of licence for VOD services set out in Broadcasting Regulatory Policy 2011-59, the VOD undertaking must be operated by the licensee itself. As the licensee of the VOD service, Bell ExpressVu must be responsible for all the content broadcast, including any community programming.

13. The above requirement, and other similar requirements imposed on other types of licensees, are intended to further the objective set out in section 3(1)(h) of the *Broadcasting Act* (the Act). This objective states that all persons who are licensed to carry on broadcasting undertakings have a responsibility for the programs they broadcast. Each licensee's regulatory responsibility for the content it broadcasts allows the Commission to address complaints and enforce compliance with applicable rules and regulations.
14. Under the proposed condition of licence, Bell Aliant, and not the licensee (Bell ExpressVu), would be responsible for the community content broadcast on the service. Although Bell Aliant and Bell ExpressVu are related undertakings, they are separate undertakings and licensees. The Commission is of the view that authorizing Bell Aliant to operate a subset of Bell ExpressVu's VOD service in this manner—by approving the proposed condition of licence—would not only be inconsistent with standard condition of licence 2 as set out in Broadcasting Regulatory Policy 2011-59 but also with the policy objective set out in section 3(1)(h) of the Act. The Commission is concerned with the consequences of such a departure from the VOD policy and the objectives of the Act.
15. The Commission notes that it approved an application by Bell Aliant for a broadcasting licence to operate a new VOD service to serve the Atlantic provinces in Broadcasting Decision [2011-534](#). Accordingly, Bell Aliant now has its own VOD platform through which it can broadcast its own community programming, and therefore will not require the use of Bell ExpressVu's VOD platform. As such, the Commission sees no need to grant the exception requested by Bell ExpressVu.

Conclusion

16. In light of the above, the Commission **approves** the application by Bell ExpressVu Inc. (the general partner) and Bell Canada (the limited partner), carrying on business as Bell ExpressVu Limited Partnership to amend the broadcasting licence for its VOD service in order to add sections 3(2)(e) and 3(2)(f) of the Regulations to the list of exceptions set out in condition of licence 1. However, for the reasons set out above, the Commission **denies** the applicant's request to add a condition of licence that would have allowed a third party to be fully responsible for the management of the community programming and the adherence to the applicable regulations related to the community programming to be offered on the Bell ExpressVu VOD programming undertaking.

Secretary General

Related documents

- *Regional terrestrial broadcasting distribution undertaking – Licence amendment*, Broadcasting Decision CRTC 2011-663, 24 October 2011
- *Video-on-demand service*, Broadcasting Decision CRTC 2011-534, 26 August 2011

- *Standard requirements for video-on-demand undertakings*, Broadcasting Regulatory Policy CRTC 2011-59, 31 January 2011
- *Community television policy*, Broadcasting Regulatory Policy CRTC 2010-622, 26 August 2010
- *Regulatory framework for video-on-demand undertakings*, Broadcasting Regulatory Policy CRTC 2010-190, 29 March 2010

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