



Broadcasting Decision CRTC 2012-292

PDF version

Route reference: 2011-600

Ottawa, 17 May 2012

Various licensees

Across Canada

The application numbers are set out below.

Various national and regional video-on-demand programming undertakings – Licence renewals and amendments

*The Commission **renews** to 31 August 2016 the broadcasting licences for the video-on-demand (VOD) programming undertakings of the following licensees:*

- *Bell ExpressVu Inc. (the general partner) and Bell Canada (the limited partner), carrying on business as Bell ExpressVu Limited Partnership*
- *Cogeco Cable Canada Inc.*
- *Rogers Communications Inc. and Fido Solutions Inc., partners in a general partnership carrying on business as Rogers Communications Partnership*
- *TELUS Communications Inc., and 1219823 Alberta ULC and Emergis Inc. in partnership with TELUS Communications Inc. in TELE-MOBILE Company, partners in a general partnership carrying on business as TELUS Communications Company*
- *Videon Cablesystems Inc. (Videon)*

*The Commission **renews** to 31 August 2015 the broadcasting licences for the VOD programming undertakings of the following licensees:*

- *MTS Inc. (MTS)*
- *Saskatchewan Telecommunications (SaskTel)*

*The Commission **renews** to 31 August 2014 the broadcasting licence for the VOD programming undertaking of the following licensee:*

- *Videotron Ltd. and 9227-2590 Québec inc., partners in a general partnership carrying on business as Videotron G.P. (Videotron)*

*The Commission **denies** the various requests made by certain of the above-noted licensees for exceptions to the conditions of licence set out in Standard requirements for video-on-demand undertakings, Broadcasting Regulatory Policy CRTC 2011-59, 31 January 2011 (Broadcasting Regulatory Policy 2011-59).*

In regard to requests for licence amendments relating to requirements not set out in Broadcasting Regulatory Policy 2011-59:

*The Commission **approves** the requests by Videotron and Videon relating to the expansion of their authorized service areas.*

*The Commission **denies** the request by SaskTel to delete the condition of licence relating to the licensee's Independent Programming Committee for its VOD programming undertaking.*

The Commission notes that other requests relating to requirements not set out in Broadcasting Regulatory Policy 2011-59 have been addressed in Standard requirements for video-on-demand undertakings – Provision of an outlet for local expression, measures to control the loudness of commercial messages and annual filing of aggregate statistical data, Broadcasting Regulatory Policy CRTC 2011-59-1, 8 May 2012.

*The Commission requires MTS and SaskTel, by **condition of licence**, to inform the Commission by no later than **16 July 2012** that they are in compliance with their requirements relating to closed captioning. The Commission also requires MTS and Sasktel, by **condition of licence**, to inform the Commission by no later than **16 July 2012** of the measures that they have taken in order to ensure their compliance. In addition, the Commission requires MTS and SaskTel, by **condition of licence**, to file quarterly compliance reports in regard to their closed captioning requirements.*

*The Commission requires Videotron, by **condition of licence**, to inform the Commission by no later than **16 July 2012** that it is in compliance with its requirements relating to its English-language feature film inventory. The Commission also requires Videotron, by **condition of licence**, to inform the Commission by no later than **16 July 2012** of the measures that it has taken in order to ensure its compliance. In addition, the Commission requires Videotron, by **condition of licence**, to file quarterly compliance reports in regard to its requirements relating to its English-language feature film inventory.*

Introduction

1. The Commission received applications to renew the broadcasting licences for various national video-on-demand (VOD) programming undertakings from the following licensees (application numbers are indicated in parentheses):

- Bell ExpressVu Inc. (the general partner) and Bell Canada (the limited partner), carrying on business as Bell ExpressVu Limited Partnership (Bell ExpressVu) (2011-0039-6);

- Rogers Communications Inc. and Fido Solutions Inc., partners in a general partnership carrying on business as Rogers Communications Partnership (Rogers) (2011-0042-9); and
 - TELUS Communications Inc., and 1219823 Alberta ULC and Emergis Inc. in partnership with TELUS Communications Inc. in TELE-MOBILE Company, partners in a general partnership carrying on business as TELUS Communications Company (TELUS) (2011-0037-0).
2. The Commission also received applications to renew the broadcasting licences for various regional VOD programming undertakings from the following licensees (the current authorized service areas for these services as well as the application numbers are indicated in parentheses):
- Cogeco Cable Canada Inc.¹ (Cogeco) (Quebec and Ontario – 2011-0206-1);
 - MTS Inc.² (MTS) (Manitoba – 2011-0041-1);
 - Saskatchewan Telecommunications (SaskTel) (Saskatchewan – 2011-0043-7);
 - Videon Cablesystems Inc. (Videon) (British Columbia, Alberta, Saskatchewan, Manitoba and Ontario – 2011-0046-1); and
 - Videotron Ltd. and 9227-2590 Québec inc., partners in a general partnership carrying on business as Videotron G.P. (Videotron) (Quebec – 2011-0038-8).
3. The broadcasting licences for these VOD programming undertakings expire 31 May 2012.³
4. In their applications, the licensees made various requests relating to exceptions to the standard requirements for VOD programming undertakings set out in Broadcasting Regulatory Policy 2011-59, as well as to licence amendments that do not relate to those standard requirements. These requests are set out in the sections that follow.

¹ The Commission issued Cogeco's licence renewal application under the name "Cogeco Cable Canada GP Inc. (the general partner) and Cogeco Cable Canada Inc. (the limited partner), carrying on business as Cogeco Cable Canada LP." However, in Broadcasting Decision 2011-782, the Commission approved an application by Cogeco Cable Canada Inc. for authority to acquire, as part of a corporate reorganization, the assets of the regional VOD programming undertaking from Cogeco Cable Canada GP Inc. (the general partner) and Cogeco Cable Canada Inc. (the limited partner), carrying on business as Cogeco Cable Canada LP, which resulted in a change of name for this licensee.

² On 1 January 2012, MTS Allstream Inc. changed its name to MTS Inc.

³ The broadcasting licences for these VOD programming undertakings were administratively renewed from 1 September 2011 to 29 February 2012 in Broadcasting Decision 2011-526, and from 1 March 2012 to 31 May 2012 in Broadcasting Decision 2012-116.

5. In Broadcasting Notice of Consultation 2011-600, the Commission noted that Videotron, MTS and SaskTel may have failed to comply with certain of their conditions of licence relating to the provision of closed captioning. In addition, it noted that Videotron may have failed to comply with its condition of licence relating to the percentage of English-language feature films in the inventory available to subscribers that must be Canadian. Finally, the Commission noted that SaskTel may have failed to comply with its condition of licence requiring that not less than 20% of all programming other than feature films in the inventory available to subscribers be Canadian.
6. The Commission received interventions in support of certain of the above-noted applications. It also received interventions in opposition to or offering general comments on certain of those applications, from Bell Media Inc. (Bell Media); Shaw Media Inc. (Shaw Media); Corus Entertainment Inc. and Astral Media Inc. (joint intervention) (Corus/Astral); the Alliance of Canadian Cinema, Television and Radio Artists and the Canadian Federation of Musicians (joint intervention) (ACTRA/CFM); the Writers Guild of Canada (WGC); and the Canadian Media Production Association (CMPA). The public record for these applications, including the replies provided by the licensees, can be found on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Commission's analysis and decisions

7. After examining the public record for the applications in light of applicable regulations and policies, the Commission considers that it must address the following issues:
 - whether it is appropriate to grant the requested exceptions to the standard requirements for VOD programming undertakings;
 - whether it is appropriate to grant the requested additions/deletions of various conditions of licence not relating to the standard requirements for VOD programming undertakings;
 - other issues pertaining to requirements;
 - whether the authorized service areas of Videotron's and Videon's VOD programming undertakings should be expanded;
 - whether MTS, SaskTel and Videotron are in non-compliance with certain of the conditions of licence for their respective VOD programming undertakings; and
 - the appropriate length of licence term that should be granted for the above-noted VOD programming undertakings, including those that are in apparent non-compliance with their respective conditions of licence.

Exceptions to the standard requirements for video-on-demand programming undertakings

Licensees' requests

8. In their applications, TELUS, Rogers, Videotron, Cogeco and SaskTel requested exceptions to certain of the standard conditions of licence, expectations and encouragement for VOD programming undertakings set out in Broadcasting Regulatory Policy 2011-59 (standard requirements for VOD programming undertakings). These requests are set out below.

Requirements relating to a service's feature film inventory (condition of licence 3)

9. Part (c) of condition of licence 3 of Broadcasting Regulatory Policy 2011-59 reads as follows: "the feature film inventory includes all new Canadian feature films that are suitable for video-on-demand exhibition and that meet the approved *Industry Code of Programming Standards and Practices Governing Pay, Pay-Per-View and Video-On-Demand Services*." Cogeco requested that this be amended to include the following: "if it can get access via its distributors." Noting that the condition of licence as worded works with the majority of large main distributors, this licensee submitted that it can be difficult to reach agreements with all distributors and that such agreements are sometimes difficult to reach with producers because the distribution is sometimes done by the producers themselves.

Requirements relating to contributions to an existing Canadian program production fund administered independently of its undertaking (condition of licence 5)

10. Videotron and Cogeco argued that VOD programming undertakings affiliated with broadcasting distribution undertakings (BDUs) already contribute to Canadian program production funds through their BDUs based on 100% of their revenues, and that the requirement for VOD programming undertakings to contribute as well therefore amounts to "double taxation."

Requirements relating to the offer of a subscription video-on-demand package (condition of licence 7)

11. Rogers submitted that being granted an exception to the requirement relating to the offer of a subscription video-on-demand (SVOD) package would allow it to create a "4A" multiplatform strategy (i.e., a multiplatform strategy characterized by "Any content, Any time, Any place, Any device"), which would match content across all platforms and would keep subscribers in the regulated broadcasting system. Noting that it could respond to offerings on the Internet-based SVOD by providing comparable service on Rogers On Demand Online, the licensee indicated that it has chosen not to adopt that strategy as it wishes to implement the 4A multiplatform strategy.
12. Videotron submitted that due to this condition of licence, VOD programming undertakings cannot be as diversified as Netflix or Apple, and must be able to compete on equal footing with over-the-top (OTT) services.

13. Cogeco submitted that to have this condition of licence locked in for seven years (i.e., a full licence term) is unrealistic and would not allow it to compete with unregulated direct competitors, such as Netflix. It argued that this condition of licence imposes a logistical and administrative burden given the ever increasing range of Canadian services available, and given that it requires it to draw up an inventory of the Canadian and non-Canadian SVOD packages on the market before making these packages available to subscribers, thereby delaying availability. Finally, it argued that since it has already collaborated with Canadian services for many years in order to obtain SVOD content, the protection given by this condition of licence is superfluous.

Requirements relating to commercial messages in video-on-demand programming (condition of licence 8)

14. Rogers submitted that relief from restrictions on inserting commercial messages into programming obtained from non-Canadian and unlicensed Canadian sources would allow it to compete with OTT services and would increase the quantity of free on-demand content, which would be a further incentive for customers to remain within the regulated broadcasting system.
15. Videotron specifically requested that this condition of licence be amended to give VOD programming undertakings the latitude to insert, when they deem appropriate, commercial messages in any programming, whether the undertaking providing the programming is related or not and whether the programming was previously distributed by a linear service or not. It argued that this would allow VOD programming undertakings to compete with OTT services.

Requirement relating to the provision of closed captioning (condition of licence 12)

16. Videotron stated that the requirement to provide closed captioning does not apply to programming provided directly without closed captioning from linear television channels.
17. Cogeco requested an exception to this condition of licence, or that it be amended to specify the types of programming for which closed captioning is not applicable (for example, adult content; content geared toward young children; musical content and “karaoke”; free programming; and community channel programming from its BDUs). Both Cogeco and SaskTel requested that when it pertains to community programming, 100% closed captioning be required only by the end of the licence term, as stipulated in Broadcasting Regulatory Policies 2010-622 and 2010-622-1. TELUS also requested authorization to exclude titles made available as part of its outlet to local expression from the 100% closed captioning requirement.

Requirement relating to quality standards on closed captioning (condition of licence 13)

18. Cogeco noted that the quality standards on closed captioning have not yet been finalized by the television industry’s Working Group. It further noted that it would adhere to those quality standards once they are finalized and if they are determined to

be applicable to anyone that is subject to closed captioning requirements, including VOD programming undertakings, programmers, or other parties.

Requirement relating to closed captioning monitoring systems (condition of licence 14)

19. Cogeco argued that the condition of licence relating to a closed captioning monitoring system is only applicable to undertakings that transmit linear signals, and therefore is not applicable to VOD programming undertakings, which do not transmit a signal.

Various expectations relating to accessibility

20. TELUS requested an exception to any new condition of licence regarding audio description⁴ that will result from the Commission's Community television policy (see Broadcasting Regulatory Policies 2010-622 and 2010-622-1). The Commission notes that this request relates to expectation 5 set out in the appendix to Broadcasting Regulatory Policy 2011-59. The licensee noted that it would not be able to maintain its community channel programming at its current level or at a reduced funding level if it is expected to provide audio description for information and news programming.
21. Cogeco requested an exception to expectations 2, 3 and 4 of Broadcasting Regulatory Policy 2011-59, which relate to the closed captioning of advertising, sponsorship messages and promos; the provision of described video; and announcements of described video programming and the provision of information on the described programs that are broadcast, as well as an exception to expectation 5 relating to audio description. It indicated that it would comply with these expectations only if these accessibility features were already included in the version of programming that it is provided.

Encouragement relating to the sharing of information by video-on-demand programming undertakings

22. Cogeco requested an exception to the encouragement set out in Broadcasting Regulatory Policy 2011-59, which relates to the sharing of aggregate information on viewing of VOD programs with broadcasters, if such information is available. The licensee indicated that it will not share such information with broadcasters whom it regards as competitors that offer their content on unregulated platforms and that are vertically integrated with BDUs.

Interventions

23. Bell Media, Shaw Media and Corus opposed the requested exceptions to conditions of licence 7 (SVOD packaging restrictions) and 8 (advertising restrictions). Among the concerns expressed in their interventions were the following:

⁴ Audio description refers to announcers reading aloud the key textual and graphic information that is displayed on the screen during information programs and does not require a separate audio track.

- The licensees requested exceptions based on their inability to compete with unregulated alternative platforms and new programming sources, and offered speculation in this regard rather than hard evidence.
- This rationale is also inconsistent with the Commission's announcements in October 2011 that additional information is required before taking any regulatory action and that another OTT fact-finding exercise is scheduled for May 2012.
- Commission approval of the requested exceptions would amount to an almost immediate and material deviation from the VOD framework, set out in Broadcasting Regulatory Policy 2010-190, which was re-affirmed when the standard requirements for VOD programming undertakings were established in Broadcasting Regulatory Policy 2011-59.
- The requested exceptions would allow for the creation of new Canadian and non-Canadian SVOD packages that are directly competitive with licensed pay and specialty services and the sale of advertising for insertion into those packages.
- Commission approval of the requested exceptions would be tantamount to permitting the launch of new pay and specialty services on VOD platforms without any obligation to adhere to genre protection, policies or other requirements normally applicable to such services.
- Commission approval of the requested exceptions would give those licensees requesting packaging and advertising flexibility an unfair competitive head start, conferring an undue preference on themselves and an undue disadvantage on other licensees of VOD programming undertakings.
- Since these conditions of licence were already subject to public comment prior to the issuance of Broadcasting Regulatory Policy 2011-59, the licensees' requests in regard to these conditions of licence should be subject to a full public consultation process.

24. ACTRA/CFM supported the licensees' requests relating to condition of licence 8 (advertising restrictions), noting that the proposed exception would have a minimal impact on conventional broadcasters given that advertising revenues in general appear to be rebounding and that it would subsequently increase the contributions licensees are required to make to Canadian production funds. The CMPA supported more advertising flexibility, as well as extending such flexibility to all VOD licensees, but only if there is also an increase in VOD Canadian programming expenditures (CPE). In this regard, it recommended that CPE be increased from 5% to 10% of gross annual revenues. TELUS stated that the flexibility requested should be standard for all licensees of VOD programming undertakings.

25. These interveners, as well as the WGC, also supported the request relating to condition of licence 7 (SVOD packaging restrictions) as long as the Canadian programming obligations set out in the various standard conditions of licence in Broadcasting Regulatory Policy 2011-59 were maintained. In ACTRA/CFM's and the CMPA's view, this SVOD flexibility would assist the licensees in competing with unlicensed OTT services, such as Netflix. The WGC and the CMPA stated that the above-noted SVOD flexibility should be extended to all of the other VOD services for which the licences are being renewed. TELUS added that this flexibility as well should be standard for all licensees of VOD programming undertakings.
26. ACTRA/CFM and the WGC opposed, however, any relief from condition of licence 3(a), whereby not less than 5% of the English-language feature films in a VOD programming undertaking's inventory available to subscribers are Canadian. In regard to Videotron in particular, the WGC and the CMPA argued that there is no legitimate excuse for Videotron's failure to meet such a requirement, given that other VOD programming undertakings are able to do so. The CMPA also recommended that Cogeco and Videotron be required to file annual compliance reports. It submitted that this requirement be imposed on Cogeco due to that licensee's apparent failure to comply with that condition of licence for its VOD service to Quebec subscribers.
27. ACTRA/CFM, the WGC and the CMPA opposed any relief from condition of licence 5, whereby a licensee of a VOD programming undertaking shall contribute 5% of its gross annual revenues to an existing Canadian program production fund administered independently of its undertaking. In this regard, the WGC and the CMPA dismissed the claim that this requirement results in "double taxation" since VOD programming undertakings and BDUs are licensed and regulated as distinct categories of broadcasting undertakings, with separate licences and revenue streams.

Replies

28. In regard to condition of licence 7 (SVOD packaging restrictions), Rogers indicated in its reply that it had no objections to the stipulations set out by certain interveners should the Commission grant the requested relief. It stated that granting its request would simply allow it to acquire rights to programs that Canadian linear services do not have and have no intention of obtaining.
29. In regard to condition of licence 8 (advertising restrictions), Rogers and Videon objected to the CPE for VOD programming undertakings to be increased from the current 5% to 10% in exchange for greater advertising flexibility, as recommended by the CMPA. Rogers noted that any increase in its revenues would commensurately increase its contributions to Canadian programming.
30. Videotron rejected the arguments by Bell Media, Shaw Media and Astral/Corus, and stated that the Commission's announcement regarding OTT services should not be used as a pretext to deny requests for lightening the VOD regulatory burden. It also suggested that any amendments to the standard conditions of licence be applicable to

all VOD programming undertakings, so as to eliminate any possible undue preference.

31. Finally, Cogeco confirmed that the relief sought in regard to condition of licence 7 (SVOD packaging restrictions) is not a way to avoid Canadian programming obligations under conditions of licence 3 and 4 of Broadcasting Regulatory Policy 2011-59.
32. Videon supported the views expressed by the CMPA, ACTRA/CFM, and the WGC regarding greater flexibility for VOD programming undertakings, but stated that it did not request such relief.
33. In regard to condition of licence 3(a) (the requirement that 5% of the English-language feature films in the inventory be Canadian), Videotron reiterated its position on its non-compliance by stating that it is a *prima facie* non-compliance, and that it should therefore not be penalized. It noted that Cogeco did not reach the 5% threshold when calculating the Quebec market only, and stated that the condition of licence should be amended to factor in the Quebec market. In its reply, Cogeco stated that it has one regional licence covering Quebec and Ontario, and, therefore, that the 5% calculation applies as a whole and not per province served.
34. In regard to condition of licence 5 (the 5% contribution to a production fund), Videotron reiterated its position that such a contribution amounts to double taxation. It requested that the Commission reconsider its position and delete, from the standard requirements, the obligation for VOD programming undertakings that are affiliated with BDUs to contribute to the fund, since licensees such as Illico contribute amply to Canadian programming and since BDUs such as Videotron already do so based on 100% of their revenues.
35. For its part, Cogeco submitted that the interveners failed to demonstrate that the situation described above is not double taxation, and firmly stood by the position it took during a prior consultation.

Commission's decisions

36. In Broadcasting Regulatory Policy 2010-190, the Commission, following a public process, set out its determinations regarding a regulatory framework for VOD programming undertakings. In Broadcasting Regulatory Policy 2011-59, also following a public process, the Commission set out the standard requirements for VOD programming undertakings. The Commission considers that any concerns regarding the various requirements for VOD programming undertakings were addressed in the context of those public processes. Further, the Commission considers that in order to be consistent with its own approach, any amendments to the standard requirements for VOD programming undertakings should be determined only after a further public policy process and not through applications by specific licensees in the context of the renewal of the broadcasting licences for their services. Accordingly, the Commission **denies** the various requests by licensees relating to exceptions to the

standard conditions of licence, expectations and encouragement set out in Broadcasting Regulatory Policy 2011-59.

37. In regard to parties' arguments that some of the standard conditions of licence will make it difficult for VOD programming undertakings to compete with OTT services, the Commission, in its October 2011 report entitled [*Results of the fact-finding exercise on over-the-top programming services*](#), stated its intent to conduct a second fact-finding exercise in May 2012. However, based on subsequent stakeholder consultations in November 2011, its continued monitoring of consumer behaviour, technology and financial trends, as well as the review of publicly available analysis by third-party experts, the Commission, in a [Commission letter](#) dated 16 April 2012, considered that OTT programming services have not had an impact sufficient to warrant another fact-finding exercise at this time. Nevertheless, as stated in that letter, the Commission will continue to closely monitor OTT services in the context of the evolving Canadian communications landscape.
38. The Commission notes that the CMPA in its intervention recommended that Cogeco and Videotron be required to file annual compliance reports in regard to condition of licence 3 of Broadcasting Regulatory Policy 2011-59. As discussed below, the Commission will require the licensees of VOD programming undertakings to file aggregate statistical data in their annual returns, and will require the quarterly filing of compliance reports for licensees that are in non-compliance with certain of their obligations. Accordingly, the Commission does not consider it appropriate to impose on Cogeco and Videotron the requirement specified by the CMPA. Furthermore, the Commission agrees with Cogeco that it is in compliance with condition of licence 3.
39. In regard to the request by TELUS for an exception to any new condition of licence relating to audio description, the Commission considers it important to clarify the difference between "audio description" and "described video." Described video is typically a post-production technique whereby a narrator provides a description of a program's key visual elements during natural pauses in the dialogue so that persons who are blind or have visual impairments can understand what is occurring on the screen. As noted above, audio description, which is often confused with described video, refers to announcers reading aloud the key textual and graphic information that is displayed on the screen during information programs and does not require a separate audio track. This difference is important since audio description, unlike described video, does not incur costs for licensees since it involves ensuring, among other things, that on-air personalities read out numbers that are presented onscreen. As noted earlier, the requirement relating to audio description is set out as an expectation, not a condition of licence, in Broadcasting Regulatory Policy 2011-59.
40. As set out in each of the appendices to the present decision, the Commission has imposed a condition of licence requiring the licensees of the eight VOD programming undertakings that are the subject of the present decision to adhere to the conditions of licence set out in Broadcasting Regulatory Policy 2011-59-1, as amended from time to time.

Addition/deletion of various conditions of licence not relating to the standard requirements for video-on-demand programming undertakings

41. In their applications, TELUS, Bell ExpressVu, Videon, Videotron, MTS and SaskTel requested certain licence amendments for their respective services that do not relate to the standard requirements for VOD programming undertakings.

Addition of a condition of licence relating to local expression

42. TELUS, MTS and SaskTel requested to maintain authorization by condition of licence to use their VOD platforms as an outlet for local expression.

43. The Commission notes that it has addressed this issue in Broadcasting Regulatory Policy 2011-59-1 and has set out in that regulatory policy a condition of licence in this regard.

Addition of a condition of licence relating to 100% closed captioning by the end of the licence term

44. In regard to the above-noted requests by Cogeco and SaskTel that licensee-produced programming be 100% closed captioned by the end of the licence term for those programs forming part of a VOD programming undertaking's outlet for local expression, the Commission notes that it has addressed this issue in Broadcasting Regulatory Policy 2011-59-1 and has set out in that regulatory policy a condition of licence in this regard. In regard to TELUS's request to exclude titles made available as part of its outlet for local expression from the closed captioning requirement, the Commission reminds TELUS that it is required to adhere to the standard condition of licence to close caption 100% of original licensee-produced community programming by the end of its licence term, as stated in Broadcasting Regulatory Policy 2011-59-1.

Deletion of SaskTel's condition of licence relating to its Independent Programming Committee

45. SaskTel requested the deletion of its condition of licence requiring the establishment and maintenance of an Independent Programming Committee (IPC), which is set out in Broadcasting Decision 2006-490. The Commission imposed this condition of licence when it authorized SaskTel to use its VOD platform as an outlet for local expression. The licensee argued that since its VOD programming undertaking is free from political influence or influence from the Government of Saskatchewan, the safeguard that the IPC provides is no longer required. It also stated that its firm commitment to, and proven record in regard to freedom of expression and journalistic creativity make the IPC unnecessary. SaskTel further noted that it has consulted with the current IPC representatives, who stated that the removal of the IPC is a move in the right direction.

46. Bamboo Shoots, a video and multimedia production and post production facility that submitted an intervention, supported the deletion of SaskTel's condition of licence relating to the IPC for its VOD programming undertaking. It noted that the partnership between the viewer, participant and provider has been firmly established

and that deleting the IPC requirement would not have an impact on the frequency or diversity of community programming.

47. In its reply, SaskTel submitted that its relationship with the community, its freedom of expression, and its journalistic, creative and programming independence are accurately reflected in Bamboo Shoots' intervention. It reaffirmed that its broadcasting services remain free from political influence, and that its record with the Commission reflects no programming interference or wrong-doing.
48. The Commission considers that the justification provided by SaskTel in regard to its proven record reflects the merits of the existing condition of licence relating to the licensee's IPC, which was put into place to ensure that the programming fully reflects and preserves the licensee's "freedom of expression and journalistic, creative and programming independence." The Commission notes that SaskTel has not provided any compelling arguments or sufficient evidence to support its proposal to delete the condition of licence in question. In addition, SaskTel has not provided alternative mechanisms that would ensure compliance at all times with the *Directions to the CRTC (Ineligibility to Hold Broadcasting Licences)*. Accordingly, the Commission **denies** SaskTel's request to delete the condition of licence relating to the IPC for its VOD programming undertaking. The appropriate **condition of licence** is set out in Appendix 5 to this decision.
49. In Appendix C to Broadcasting Decision 2006-490, the Commission set out the Terms of Reference for the IPC of SaskTel's VOD service. The purpose of these Terms of Reference is to ensure programming independence. The first Term of Reference reads as follows:

There shall be a committee of nine (9) persons, one person from each of the broadcasting distribution undertaking's licensed areas, to be known as the Independent Programming Committee that shall be responsible for making all programming decisions.
50. The Commission notes that since 2010, seven of the nine BDUs have been operating as exempt undertakings. Accordingly, the Commission considers it appropriate to amend this Term of Reference to reflect that the committee will be comprised of nine persons, one person from each of the BDUs' service areas, licensed and exempt, instead of from the nine licensed areas. This Term of Reference will therefore read as follows (changes in bold):

There shall be a committee of nine (9) persons, one person from each of the broadcasting distribution undertakings' **service areas, licensed and exempt**, to be known as the Independent Programming Committee that shall be responsible for making all programming decisions.
51. The revised Terms of Reference are set out in Appendix 5 to this decision.

Other issues pertaining to requirements

Programming calculations and content responsibility

52. In its intervention, the CMPA requested that the Commission cap at 10% the total hours of community programming forming part of the Canadian programming in a VOD programming undertaking's inventory. It also requested that such programming be excluded when calculating the requirement set out in part (d) of condition of licence 3 to Broadcasting Regulatory Policy 2011-59, which reads as follows: "not less than 20% of all programming other than feature films in the inventory available to subscribers is Canadian." Finally, the CMPA requested that the Commission confirm that there is no delegation of responsibility to meet the standard requirements for VOD programming undertakings. For example, it stated that films and programs offered in SVOD packages that are extensions of Canadian linear services, such as Movie Central On Demand, should not be considered for the purpose of meeting standard VOD requirements.
53. In its reply, TELUS stated that it disagrees with the CMPA's proposal that SVOD programming be excluded from Canadian content inventory calculations. It further opposed the CMPA's proposal to exclude community programming content from Canadian content calculations and to limit community channel programming to a maximum of 10% of the total hours of Canadian programming in the inventory, although it noted that it would meet Canadian content requirements with such additional measures.
54. For its part, Rogers objected to the CMPA's recommendation to exclude programming offered within SVOD packages that are linked to linear programming services, as well as community programming offered on the VOD platform, when assessing compliance with its conditions of licence. It confirmed, as requested by the CMPA, that it is solely responsible for ensuring compliance with its conditions of licence, including those related to the distribution of Canadian content, and agreed that it cannot and should not be delegated to any other entity such as a program supplier.
55. In this regard, the Commission notes that it did not make the above distinction when it authorized conditions of licence for an outlet for local expression. Furthermore, in the standard requirements for VOD programming undertakings, the Commission excluded the prohibition, contained in sections 3(2)(e) and (f) of the *Pay Television Regulations, 1990*, on the distribution of programming produced by a licensee or by a person related to a licensee. Finally, the Commission notes that since community programming is by definition Canadian programming, it qualifies for the above-noted 20% Canadian programming requirement.
56. The Commission reminds the licensees of VOD programming undertakings that they are responsible for all content (community programming as well as all other programming) that is broadcast on their platforms. Furthermore, the Commission reminds these licensees that they are responsible for ensuring the closed captioning of

any programming that they receive that is not already closed captioned, as per their conditions of licence and expectations.

Filing of aggregate statistical data

57. In Broadcasting Regulatory Policy 2010-190, the Commission requested that aggregate statistical data be provided with licence renewal applications. The Commission considered that this information is important as it allows it to remain informed of VOD programming undertaking activities in a rapidly evolving broadcasting environment. Therefore, in Broadcasting Regulatory Policy 2011-59-1, it added a standard condition of licence requiring the annual filing of such information in annual returns on 30 November following the end of each broadcast year.

Loudness of commercial messages

58. In Broadcasting Regulatory Policy 2012-273, the Commission amended various regulations stemming from the public proceeding relating to measures to control the loudness of commercial messages. In that regulatory policy, the Commission also stated that, in Broadcasting Regulatory Policy 2011-59-1, it had also amended the standard requirements for VOD programming undertakings to include this requirement. In Broadcasting Notice of Consultation 2011-803-1, the Commission stated that this requirement would be imposed on VOD programming undertakings that have already applied to renew their broadcasting licences. Accordingly, this condition of licence applies to the eight VOD programming undertakings that are the subject of the present decision, and will be effective as of 1 September 2012.

Expansion of authorized service areas

59. Videon requested that its regional broadcasting licence be amended in order for the undertaking to operate on a national basis. It stated that this would permit it to accommodate possible future BDU acquisitions outside its currently authorized VOD service area and provide its VOD service to other BDUs.
60. Videotron requested that its regional broadcasting licence be amended in order for the undertaking to operate in Ontario as well as in Quebec. It stated that this would permit it to provide its VOD service to its BDU in Rockland, Ontario.
61. The Commission notes that it has no concerns in regard to the requests by Videon and Videotron to expand their authorized service areas. Accordingly, the Commission **approves** the request by Videon to amend its regional broadcasting licence for its VOD programming undertaking in order for that undertaking to operate on a national basis. The Commission also **approves** the request by Videotron to amend the regional broadcasting licence for its VOD programming undertaking in order for the undertaking to operate in Ontario as well as in Quebec.

Non-compliance

MTS – closed captioning

62. Since 1 September 2008, MTS has been required by condition of licence to close caption no less than 90% of all titles in its inventory excluding titles that are part of its outlet for local expression. The Commission notes, however, that as of June 2011, only 66% of this VOD programming undertaking's applicable titles had been closed captioned.
63. In its application, the licensee indicated that this non-compliance resulted from a complex and intermittent technology failure. It further indicated that this issue was resolved two years prior to the submission of its licence renewal application, and that the effect of the noted failure has been diminishing as older programs come to the end of their licence periods.
64. In order to ensure future compliance, MTS indicated that it is deleting approximately one-third of its VOD library in order to remove those programs that are embedded with Society of Cable Telecommunications Engineers captioning and/or preceded by viewer advisories that are not closed captioned, which it stated was a main source of the technical problem.
65. The Commission considers that MTS's condition of licence relating to 90% closed captioning was clearly set out in Broadcasting Decision 2003-590, in which the Commission approved an application for a broadcasting licence to operate this VOD programming undertaking (hence, prior to the actual launch of that VOD programming undertaking). The Commission further considers that it was clear in that decision that this condition of licence would not take effect until 1 September 2008, five years after the licensee received its initial authorization to launch a VOD programming undertaking. While noting the technical difficulties experienced by the licensee, the Commission considers that MTS had ample time to take the measures necessary to ensure compliance with its conditions of licence.
66. The Commission therefore directs MTS to inform the Commission by no later than **16 July 2012** that it is in compliance with its requirements relating to closed captioning. The Commission also directs MTS to inform the Commission by no later than **16 July 2012** of the measures that it has taken in order to ensure its compliance. Finally, the Commission directs MTS to provide the Commission with quarterly compliance reports in regard to closed captioning. **Conditions of licence** in regard to the above are set out in Appendix 3 to this decision.
67. The Commission reminds MTS that, with the exception of its outlet for local expression, it is required to close caption 100% of its titles in its inventory as of the licence renewal date for its VOD programming undertaking.

SaskTel

Closed captioning

68. Since 1 September 2008, SaskTel has been required by condition of licence to close caption no less than 90% of all titles in its inventory excluding titles that are part of its outlet for local expression. The Commission notes, however, that the percentage of SaskTel's VOD programming undertaking's applicable titles that are closed captioned reached only 62% in September 2008 and increased to only 87% in January 2011.
69. The licensee indicated that its ability to achieve its VOD closed captioning requirement is heavily dependent on content suppliers as well as on its financial resources to out-source captioning duties to a third-party, as necessary. It admitted that it has fallen short of its requirement in this regard, despite its strategy to acquire captioned versions of programming.
70. In regard to future compliance, SaskTel stated that as the Commission's closed captioning policy becomes applicable to linear, pay and specialty programming services, the provision of closed captioning by the original suppliers will assist all broadcasters in the system to meet the requirements. It further noted that major film production studios have recently adopted a general policy of captioning new content produced, on a going forward basis.
71. The Commission considers that SaskTel's condition of licence relating to 90% closed captioning was clearly set out in Broadcasting Decision 2003-451, in which the Commission approved an application for a broadcasting licence to operate this VOD programming undertaking (hence, prior to the actual launch of the VOD programming undertaking). The Commission further considers that it was clear in that decision that this condition of licence would not take effect until 1 September 2008, five years after the licensee received its initial authorization to launch a VOD programming undertaking. The Commission considers that SaskTel had ample time to take the measures necessary to ensure compliance with its conditions of licence, and that its explanation for being non-compliant is unacceptable.
72. The Commission therefore directs SaskTel to inform the Commission by no later than **16 July 2012** that it is in compliance with its requirements relating to closed captioning. The Commission also directs Sasktel to inform the Commission by no later than **16 July 2012** of the measures that it has taken in order to ensure its compliance. Finally, the Commission directs SaskTel to provide the Commission with quarterly compliance reports in regard to closed captioning. **Conditions of licence** in regard to the above are set out in Appendix 5 to this decision.
73. The Commission reminds SaskTel that, with the exception of its outlet for local expression, it is required to close caption 100% of its titles in its inventory as of the licence renewal date for its VOD programming undertaking.

Percentage of programming in the inventory, other than feature films, that must be Canadian

74. SaskTel is required by condition of licence to ensure that 20% of all programming in its VOD programming undertaking's inventory (other than feature films) is Canadian. However, an examination of the licensee's inventory for the sample month provided of January 2011 revealed that only 19.2% of that programming was Canadian.
75. SaskTel stated that its VOD title library evolves daily with staggered content release dates and content availability timeframes specified by content suppliers. It further stated that it needs to balance the provision of its content with server capacity, competitive attractiveness, promotional activities and other business related decisions in the composition of its VOD title inventory. It submitted that, as a result, short-term fluctuations in programming titles can be expected but are effectively managed over the long term.
76. In regard to future compliance, SaskTel indicated that it is improving processes and updating corresponding process documentation to continue to ensure total titles available and Canadian content titles are reported accurately. It further indicated that it is increasing the frequency of Canadian content checks from quarterly to bi-monthly. Finally, SaskTel stated that should results reveal that Canadian content requirements are not at required levels, it will identify the parties accountable and develop action plans.
77. The Commission notes that SaskTel excluded titles made available as part of its outlet for local expression when providing data in this regard, and that when the Commission imposed the condition of licence relating to an outlet for local expression, it at no time stated that a licensee was required to exclude such titles when calculating Canadian content requirements. SaskTel indicated that, had it included such programming in its calculations, its Canadian content level would have been "materially higher."
78. Since the percentage of Canadian programming in January 2011 was 19.2%, excluding titles made available as part of its outlet for local expression, the Commission considers that the inclusion of that programming would have, in all likelihood, placed SaskTel above the 20% threshold. Accordingly, the Commission finds that SaskTel was in compliance with its condition of licence requiring that 20% of all programming in its VOD programming undertaking's inventory, other than feature films, is Canadian.

Videotron

Closed captioning

79. Since 1 September 2006, Videotron has been required by condition of licence to close caption no less than 90% of its programming. The Commission notes, however, that the percentage of Videotron's VOD programming undertaking's titles that are closed captioned reached only 44% in September 2006 and increased to only 88% in November 2009. Videotron indicated that VOD services were still an emerging

platform in the early 2000s, and argued that the costs related to closed captioning were exorbitant and unjustified in the context of a VOD service. It further indicated that, in order to ensure future compliance, it has invested considerable resources in order to include closed captioned programming in its inventory.

80. The Commission further notes that, since November 2009, Videotron has been in compliance with the above-noted condition of licence relating to closed captioning. In this regard, the Commission reminds Videotron that it is required to close caption 100% of its titles in its inventory as of the licence renewal date for its VOD programming undertaking.

Percentage of English-language feature films in the inventory that must be Canadian

81. All VOD programming undertakings are subject to a condition of licence whereby not less than 5% of the English-language feature films in their inventories available to subscribers must be Canadian. The Commission notes, however, that in regard to Videotron's VOD programming undertaking, in the sample month provided of September 2010, only 2.6% of those films were Canadian, whereas in January 2011, only 3.3% of those films were Canadian.

82. The licensee argued that the 5% requirement is unattainable given that the 2.6% figure for September 2010 and the 3.3% figure for January 2011 represent the total inventory available to them at that time under their existing agreements. It further argued that the above-noted percentages are justifiable since the available number of Canadian English-language feature films is less than the available number of American English-language feature films. It submitted that it should not be penalized due to a lack of Canadian feature film producers.

83. In regard to future compliance, Videotron argued that since it made available the total inventory at its disposal, it is theoretically impossible to comply with the 5% requirement in the Quebec market. It stated that it therefore considers itself to be in compliance.

84. In regard to comments made by the CMPA, as well as by Videotron in its above-mentioned reply to the interventions received, that Cogeco does not meet its required 5% for the Quebec market, the Commission notes that Cogeco has one regional licence for Quebec and Ontario, and that the 5% calculation applies to that regional licence as a whole, as argued by Cogeco, and not per province, as argued by the CMPA. Further, the Commission notes that Videotron has been operating in Ontario without Commission authority, and considers that, given its decision that it would be appropriate to extend Videotron's service area, the 5% figure, which has been attainable by other licensees, including Cogeco, is also attainable by Videotron.

85. The Commission therefore directs Videotron to inform the Commission by no later than **16 July 2012** that it has revised its inventory accordingly and is in compliance with this condition of licence. The Commission also directs Videotron to inform the Commission by no later than **16 July 2012** of the measures that it has taken in order to ensure its compliance. Finally, the Commission directs Videotron to provide the

Commission with quarterly compliance reports in regard to its English-language feature films inventory. **Conditions of licence** in regard to the above are set out in Appendix 8 to this decision.

Imposition of orders of restitution or compensation

86. During the public proceeding leading to the Commission's decision on its regulatory framework for vertical integration, which is set out in Broadcasting Regulatory Policy 2011-601, the Commission sought comments on its jurisdiction under the *Broadcasting Act* to impose administrative monetary penalties (AMPs) in situations where a party has been found in violation of the Commission's regulatory framework. In that regulatory policy, the Commission stated the following:

The Commission agrees with the position advanced by Bell Canada that, in order to impose AMPs on specific entities, legislative authority is required. However, where non-compliant behaviour causes specific harm, the Commission can make orders of restitution or compensation. Similarly, in instances where non-compliant behaviour causes general harm to the overall broadcasting system, it can make orders to repair the harm caused. This can include orders requiring contribution to a specific fund for the benefit of the system as a whole or for the benefit of a large group that cannot be reasonably defined or identified.

In the appropriate case, the Commission will impose a financial remedy in the form of an order to pay an amount into a fund for the benefit of the Canadian broadcasting system.

87. The Commission intends to consider pursuing this avenue for licensees that are found to be in non-compliance in the future.

Appropriate length of licence term

88. In their interventions, ACTRA/CFM, the WGC and the CMPA stated that the licence renewal terms for the services that are the subject of the present decision should be set at five years. The following reasons were provided in support of a shorter licence renewal term:

- the rapid pace of change in the broadcasting industry and the emergence of currently unregulated OTT services;
- the important role that VOD and SVOD programming services are expected to play in the broadcasting environment;
- it would allow the Commission to reassess the requirements imposed in an earlier time frame; and
- it would be consistent with the length of the licence terms granted by the Commission through its group-based policy, set out in Broadcasting Regulatory Policy 2010-167, to various English-language television stations

and services for which the broadcasting licences were renewed in Broadcasting Decisions 2011-444, 2011-445 and 2011-446, as well as with the five-year licence renewal term that the Commission is considering for French-language television services.

89. In their replies, TELUS, Rogers, SaskTel, Cogeco and Videon all argued that the broadcasting licences for their VOD programming undertakings should be renewed for a period of seven years. They noted, among other things, that:

- VOD services were specifically excluded from the group-based licensing regime;
- given the completion of the extensive three-year review of the VOD regulatory framework, there is no need to assess the impact of that framework and, consequently, no need to impose short-term licence renewals;
- a full seven-year licence term would reduce the regulatory burden on VOD licensees and allow them to focus on the same rapid change occurring within the digital marketplace;
- there is no evidence of significant changes in the industry to warrant short-term licence renewals;
- the Commission recently granted full seven-year licence terms to new VOD programming undertakings that were authorized in August 2011 and that will be operated by Bell Aliant and FreeHD, and imposing short-term licence renewals on the services that are the subject of the present decision would place them at a competitive disadvantage to the other two services; and
- a full seven-year licence term would provide the stability required for VOD licensees to continue to grow and expand their businesses.

90. As noted above, in the context of its group-based policy, the Commission adopted a general approach of renewing the broadcasting licences for various television stations and services for a period of five years. Given the rapidly evolving broadcasting environment, the Commission considers that it is appropriate to adopt this same general approach for the renewal of the broadcasting licences for VOD programming undertakings. The Commission notes, however, that its general policy in regard to licensees that are found to be in non-compliance with their services' conditions of licence and with the Commission's regulations is to impose shorter licence renewal periods for those services. As noted above, the Commission has found that MTS and SaskTel are in non-compliance with their conditions of licence relating to closed captioning, and that Videotron was in non-compliance with its condition of licence relating to closed captioning and continues to be in non-compliance with its condition of licence relating to the percentage of the English-language feature films in its inventory that must be Canadian.

91. In light of the above, the Commission considers that it is appropriate to renew the broadcasting licences for the VOD programming undertakings that are in compliance with their conditions of licence (i.e., the VOD programming undertakings of TELUS, Bell ExpressVu, Rogers, Cogeco and Videon) for a period of five years; to renew the broadcasting licences for the VOD programming undertakings of MTS and SaskTel for a period of four years; and to renew the broadcasting licence for Videotron's VOD programming undertaking for a period of three years.

Conclusion

92. In light of all of the above, the Commission **renews** to 31 August 2016 (five-year licence term) the broadcasting licences for the VOD programming undertakings of the following licensees:

- Bell ExpressVu Inc. (the general partner) and Bell Canada (the limited partner), carrying on business as Bell ExpressVu Limited Partnership
- Cogeco Cable Canada Inc.
- Rogers Communications Inc. and Fido Solutions Inc., partners in a general partnership carrying on business as Rogers Communications Partnership
- TELUS Communications Inc., and 1219823 Alberta ULC and Emergis Inc. in partnership with TELUS Communications Inc. in TELE-MOBILE Company, partners in a general partnership carrying on business as TELUS Communications Company
- Videon Cablesystems Inc.

93. The Commission **renews** to 31 August 2015 (four-year licence term) the broadcasting licences for the VOD programming undertakings of the following licensees:

- MTS Inc.
- Saskatchewan Telecommunications

94. Finally, the Commission **renews** to 31 August 2014 (three-year licence term) the broadcasting licence for the VOD programming undertaking of the following licensee:

- Videotron Ltd. and 9227-2590 Québec inc., partners in a general partnership carrying on business as Videotron G.P.

95. The licensee of each of the above-noted VOD programming undertakings shall adhere to the **conditions** specified in their respective licences, to the **conditions of licence** set out in Broadcasting Regulatory Policy 2011-59-1, as amended from time to time, as well as to the **conditions of licence** set out in the appropriate appendices to this decision. The standard expectations and encouragements applicable to these licensees are also set out in Broadcasting Regulatory Policy 2011-59-1.

Employment equity

96. Since SaskTel is a crown corporation, the expectation relating to employment equity set out in Broadcasting Regulatory Policy 2011-59-1 does not apply to this licensee. Accordingly, in Appendix 5 to this decision, the Commission has set out for SaskTel an encouragement relating to employment equity issues.

Secretary General

Related documents

- *Amendments to various regulations and an exemption order to implement measures to control the loudness of commercial messages*, Broadcasting Regulatory Policy CRTC 2012-273 and Broadcasting Order CRTC 2012-274, 8 May 2012
- *Standard requirements for video-on-demand undertakings – Provision of an outlet for local expression, measures to control the loudness of commercial messages and annual filing of aggregate statistical data*, Broadcasting Regulatory Policy CRTC 2011-59-1, 8 May 2012
- *Administrative renewals – Video-on-demand programming undertakings*, Broadcasting Decision CRTC 2012-116, 24 February 2012
- *Call for comments on amendments to various regulations, standard conditions of licence and an exemption order to implement measures to control the loudness of commercial messages*, Broadcasting Notice of Consultation CRTC 2011-803, 22 December 2011, as amended by *Call for comments on amendments to various regulations, standard conditions of licence and an exemption order to implement measures to control the loudness of commercial messages – Addition to paragraph 7*, Broadcasting Notice of Consultation CRTC 2011-803-1, 2 February 2012.
- *Video-on-demand service – Acquisition of assets (corporate reorganization)*, Broadcasting Decision CRTC 2011-782, 16 December 2011
- *Regulatory framework relating to vertical integration*, Broadcasting Regulatory Policy CRTC 2011-601, 21 September 2011
- *Administrative renewals – Video-on-demand programming undertakings*, Broadcasting Decision CRTC 2011-526, 25 August 2011
- *Corus Entertainment Inc. – Group-based licence renewals*, Broadcasting Decision CRTC 2011-446, 27 July 2011
- *Shaw Media Inc. – Group-based licence renewals*, Broadcasting Decision CRTC 2011-445, 27 July 2011

- *Bell Media Inc. – Group-based licence renewals*, Broadcasting Decision CRTC 2011-444, 27 July 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, as amended by *Community television policy – Correction*, Broadcasting Regulatory Policy CRTC 2010-622-1, 13 September 2010
- *Regulatory framework for video-on-demand undertakings*, Broadcasting Regulatory Policy CRTC 2010-190, 29 March 2010
- *A group-based approach to the licensing of private television services*, Broadcasting Regulatory Policy CRTC 2010-167, 22 March 2010
- *Licence amendments related to the funding and provision of an outlet for local expression*, Broadcasting Decision CRTC 2006-490, 8 September 2006
- *Video-on-demand service for Manitoba*, Broadcasting Decision CRTC 2003-590, 21 November 2003
- *New video-on-demand service for Saskatchewan*, Broadcasting Decision CRTC 2003-451, 5 September 2003

**This decision and the appropriate appendix are to be appended to each licence.*

Appendix 1 to Broadcasting Decision CRTC 2012-292

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

Application 2011-0039-6, received 31 March 2011

Term, conditions of licence, expectations and encouragement for the national video-on-demand programming undertaking

Term

The licence will expire 31 August 2016.

Conditions of licence

1. The licensee shall adhere to the standard conditions of licence set out in *Standard requirements for video-on-demand undertakings – Provision of an outlet for local expression, measures to control the loudness of commercial messages and annual filing of aggregate statistical data*, Broadcasting Regulatory Policy CRTC 2011-59-1, 8 May 2012, as amended from time to time.

Expectations

The standard expectations applicable to this licensee are set out in *Standard requirements for video-on-demand undertakings – Provision of an outlet for local expression, measures to control the loudness of commercial messages and annual filing of aggregate statistical data*, Broadcasting Regulatory Policy CRTC 2011-59-1, 8 May 2012, as amended from time to time.

Encouragement

The standard encouragement applicable to this licensee is set out in *Standard requirements for video-on-demand undertakings – Provision of an outlet for local expression, measures to control the loudness of commercial messages and annual filing of aggregate statistical data*, Broadcasting Regulatory Policy CRTC 2011-59-1, 8 May 2012, as amended from time to time.

Appendix 2 to Broadcasting Decision CRTC 2012-292

Cogeco Cable Canada Inc.

Application 2011-0206-1, received 1 April 2011

Term, conditions of licence, expectations and encouragement for the regional video-on-demand programming undertaking serving Quebec and Ontario

Term

The licence will expire 31 August 2016.

Conditions of licence

1. The licensee shall adhere to the standard conditions of licence set out in *Standard requirements for video-on-demand undertakings – Provision of an outlet for local expression, measures to control the loudness of commercial messages and annual filing of aggregate statistical data*, Broadcasting Regulatory Policy CRTC 2011-59-1, 8 May 2012, as amended from time to time.

Expectations

The standard expectations applicable to this licensee are set out in *Standard requirements for video-on-demand undertakings – Provision of an outlet for local expression, measures to control the loudness of commercial messages and annual filing of aggregate statistical data*, Broadcasting Regulatory Policy CRTC 2011-59-1, 8 May 2012, as amended from time to time.

Encouragement

The standard encouragement applicable to this licensee is set out in *Standard requirements for video-on-demand undertakings – Provision of an outlet for local expression, measures to control the loudness of commercial messages and annual filing of aggregate statistical data*, Broadcasting Regulatory Policy CRTC 2011-59-1, 8 May 2012, as amended from time to time.

Appendix 3 to Broadcasting Decision CRTC 2012-292

MTS Inc.

Application 2011-0041-1, received 31 March 2011

Term, conditions of licence, expectations and encouragement for the regional video-on-demand programming undertaking serving Manitoba

Term

The licence will expire 31 August 2015.

Conditions of licence

1. The licensee shall adhere to the standard conditions of licence set out in *Standard requirements for video-on-demand undertakings – Provision of an outlet for local expression, measures to control the loudness of commercial messages and annual filing of aggregate statistical data*, Broadcasting Regulatory Policy CRTC 2011-59-1, 8 May 2012, as amended from time to time.
2. The licensee shall inform the Commission by no later than **16 July 2012** that it is in compliance with its requirements relating to closed captioning.
3. The licensee shall inform the Commission by no later than **16 July 2012** of the measures that it has taken in order to ensure its compliance in regard to its requirements relating to closed captioning.
4. Beginning June 2012, the licensee shall file with the Commission quarterly compliance reports that include the titles of programs available in each preceding quarter, and whether or not the programs are closed captioned. The reports must be approved by a member of the licensee's senior management and submitted to the Commission on the fifteenth day of the month that follows the end of each quarterly period.

Expectations

The standard expectations applicable to this licensee are set out in *Standard requirements for video-on-demand undertakings – Provision of an outlet for local expression, measures to control the loudness of commercial messages and annual filing of aggregate statistical data*, Broadcasting Regulatory Policy CRTC 2011-59-1, 8 May 2012, as amended from time to time.

Encouragement

The standard encouragement applicable to this licensee is set out in *Standard requirements for video-on-demand undertakings – Provision of an outlet for local expression, measures to control the loudness of commercial messages and annual filing of aggregate statistical data*, Broadcasting Regulatory Policy CRTC 2011-59-1, 8 May 2012, as amended from time to time.

Appendix 4 to Broadcasting Decision CRTC 2012-292

Rogers Communications Inc. and Fido Solutions Inc., partners in a general partnership carrying on business as Rogers Communications Partnership

Application 2011-0042-9, received 31 March 2011

Term, conditions of licence, expectations and encouragement for the national video-on-demand programming undertaking

Term

The licence will expire 31 August 2016.

Conditions of licence

1. The licensee shall adhere to the standard conditions of licence set out in *Standard requirements for video-on-demand undertakings – Provision of an outlet for local expression, measures to control the loudness of commercial messages and annual filing of aggregate statistical data*, Broadcasting Regulatory Policy CRTC 2011-59-1, 8 May 2012, as amended from time to time.

Expectations

The standard expectations applicable to this licensee are set out in *Standard requirements for video-on-demand undertakings – Provision of an outlet for local expression, measures to control the loudness of commercial messages and annual filing of aggregate statistical data*, Broadcasting Regulatory Policy CRTC 2011-59-1, 8 May 2012, as amended from time to time.

Encouragement

The standard encouragement applicable to this licensee is set out in *Standard requirements for video-on-demand undertakings – Provision of an outlet for local expression, measures to control the loudness of commercial messages and annual filing of aggregate statistical data*, Broadcasting Regulatory Policy CRTC 2011-59-1, 8 May 2012, as amended from time to time.

Appendix 5 to Broadcasting Decision CRTC 2012-292

Saskatchewan Telecommunications

Application 2011-0043-7, received 31 March 2011

Term, conditions of licence, expectations and encouragements for the regional video-on-demand programming undertaking serving Saskatchewan

Term

The licence will expire 31 August 2015.

Conditions of licence

1. The licensee shall adhere to the standard conditions of licence set out in *Standard requirements for video-on-demand undertakings – Provision of an outlet for local expression, measures to control the loudness of commercial messages and annual filing of aggregate statistical data*, Broadcasting Regulatory Policy CRTC 2011-59-1, 8 May 2012, as amended from time to time.
2. The licensee shall inform the Commission by no later than **16 July 2012** that it is in compliance with its requirements relating to closed captioning.
3. The licensee shall inform the Commission by no later than **16 July 2012** of the measures that it has taken in order to ensure its compliance in regard to its requirements relating to closed captioning.
4. Beginning June 2012, the licensee shall file with the Commission quarterly compliance reports that include the titles of programs available in each preceding quarter, and whether or not the programs are closed captioned. The reports must be approved by a member of the licensee's senior management and submitted to the Commission on the fifteenth day of the month that follows the end of each quarterly period.
5. The licensee shall maintain an Independent Programming Committee in accordance with the Terms of Reference set out below, as amended and approved by the Commission from time to time, with a view to ensuring that the licensee enjoys freedom of expression and journalistic, creative and programming independence in the pursuit of its objectives and in the exercise of its powers.

Terms of Reference for the licensee's Independent Programming Committee

1. In order to ensure programming independence, the licensee will establish an Independent Programming Committee in accordance with the following:

There shall be a committee of nine (9) persons, one person from each of the broadcasting distribution undertaking's service areas, licensed and

exempt, to be known as the Independent Programming Committee (IPC), that shall be responsible for making all programming decisions.

“Programming decisions” means all decisions relating to or affecting the programming offered as local expression by the pay-per-view and video-on-demand undertakings, and includes decisions relating to the content and presentation of this programming.

2. The IPC shall ensure the programming is in conformity with any applicable conditions, regulations, and policies of the Canadian Radio-television and Telecommunications Commission (the Commission), as well as with the *Broadcasting Act*.
3. The licensee shall seek nominations of individuals from non-profit cultural, sporting, and recreational organizations who have strong associations with the communities in which they reside and a strong desire to showcase a balanced view of their community.
4. To ensure a high level of citizen participation and community involvement in the outlet for local expression, members of the IPC shall seek opportunities for program proposals and encourage submissions that reflect the makeup of their communities from within the communities they represent.
5. No member of the IPC shall be a member of the Board, a director, or an employee of the licensee or any of its affiliates.
6. All of the members of the IPC shall be residents of the serving community they represent.
7. Members of the IPC shall be appointed for a period of two (2) years.
8. A quorum of the IPC shall be a majority of its members.
9. Decisions of the IPC shall be made by a majority of the members present at a meeting of the committee, either in person or by telephone.
10. No change shall be made to these criteria unless prior Commission approval is obtained.

Expectations

The standard expectations applicable to this licensee are set out in *Standard requirements for video-on-demand undertakings – Provision of an outlet for local expression, measures to control the loudness of commercial messages and annual filing of aggregate statistical data*, Broadcasting Regulatory Policy CRTC 2011-59-1, 8 May 2012, as amended from time to time. The Commission notes that the expectation relating to employment equity set out in that regulatory policy does not apply to this licensee.

Encouragements

Standard encouragement for video-on-demand programming undertakings

The standard encouragement applicable to this licensee is set out in *Standard requirements for video-on-demand undertakings – Provision of an outlet for local expression, measures to control the loudness of commercial messages and annual filing of aggregate statistical data*, Broadcasting Regulatory Policy CRTC 2011-59-1, 8 May 2012, as amended from time to time.

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 6 to Broadcasting Decision CRTC 2012-292

TELUS Communications Inc., and 1219823 Alberta ULC and Emergis Inc. in partnership with TELUS Communications Inc. in TELE-MOBILE Company, partners in a general partnership carrying on business as TELUS Communications Company
Application 2011-0037-0, received 31 March 2011

Term, conditions of licence, expectations and encouragement for the national video-on-demand programming undertaking

Term

The licence will expire 31 August 2016.

Conditions of licence

1. The licensee shall adhere to the standard conditions of licence set out in *Standard requirements for video-on-demand undertakings – Provision of an outlet for local expression, measures to control the loudness of commercial messages and annual filing of aggregate statistical data*, Broadcasting Regulatory Policy CRTC 2011-59-1, 8 May 2012, as amended from time to time.

Expectations

The standard expectations applicable to this licensee are set out in *Standard requirements for video-on-demand undertakings – Provision of an outlet for local expression, measures to control the loudness of commercial messages and annual filing of aggregate statistical data*, Broadcasting Regulatory Policy CRTC 2011-59-1, 8 May 2012, as amended from time to time.

Encouragement

The standard encouragement applicable to this licensee is set out in *Standard requirements for video-on-demand undertakings – Provision of an outlet for local expression, measures to control the loudness of commercial messages and annual filing of aggregate statistical data*, Broadcasting Regulatory Policy CRTC 2011-59-1, 8 May 2012, as amended from time to time.

Appendix 7 to Broadcasting Decision CRTC 2012-292

Videon Cablesystems Inc.

Application 2011-0046-1, received 5 April 2011

Term, conditions of licence, expectations and encouragement for the national video-on-demand programming undertaking

Term

The licence will expire 31 August 2016.

Conditions of licence

1. The licensee shall adhere to the standard conditions of licence set out in *Standard requirements for video-on-demand undertakings – Provision of an outlet for local expression, measures to control the loudness of commercial messages and annual filing of aggregate statistical data*, Broadcasting Regulatory Policy CRTC 2011-59-1, 8 May 2012, as amended from time to time.

Expectations

The standard expectations applicable to this licensee are set out in *Standard requirements for video-on-demand undertakings – Provision of an outlet for local expression, measures to control the loudness of commercial messages and annual filing of aggregate statistical data*, Broadcasting Regulatory Policy CRTC 2011-59-1, 8 May 2012, as amended from time to time.

Encouragement

The standard encouragement applicable to this licensee is set out in *Standard requirements for video-on-demand undertakings – Provision of an outlet for local expression, measures to control the loudness of commercial messages and annual filing of aggregate statistical data*, Broadcasting Regulatory Policy CRTC 2011-59-1, 8 May 2012, as amended from time to time.

Appendix 8 to Broadcasting Decision CRTC 2012-292

Videotron Ltd. and 9227-2590 Québec inc., partners in a general partnership carrying on business as Videotron G.P.

Application 2011-0038-8, received 1 April 2011

Term, conditions of licence, expectations and encouragement for the regional video-on-demand programming undertaking serving Quebec and Ontario

Term

The licence will expire 31 August 2014.

Conditions of licence

1. The licensee shall adhere to the standard conditions of licence set out in *Standard requirements for video-on-demand undertakings – Provision of an outlet for local expression, measures to control the loudness of commercial messages and annual filing of aggregate statistical data*, Broadcasting Regulatory Policy CRTC 2011-59-1, 8 May 2012, as amended from time to time.
2. The licensee shall inform the Commission by no later than **16 July 2012** that it has revised its inventory so that no less than 5% of the English-language feature films in the inventory of its video-on-demand programming undertaking are Canadian, and that it is therefore in compliance with its requirement relating to Canadian English-language feature films.
3. The licensee shall inform the Commission by no later than **16 July 2012** of the measures that it has taken in order to ensure its compliance with its requirement relating to Canadian English-language feature films in its inventory.
4. Beginning June 2012, the licensee shall file quarterly compliance reports that include the total number of Canadian English-language feature films on its servers and the total number of English-language feature films on its servers. The reports must be approved by a member of the licensee's senior management and submitted to the Commission on the fifteenth day of the month that follows the end of each quarterly period.

Expectations

The standard expectations applicable to this licensee are set out in *Standard requirements for video-on-demand undertakings – Provision of an outlet for local expression, measures to control the loudness of commercial messages and annual filing of aggregate statistical data*, Broadcasting Regulatory Policy CRTC 2011-59-1, 8 May 2012, as amended from time to time.

Encouragement

The standard encouragement applicable to this licensee is set out in *Standard requirements for video-on-demand undertakings – Provision of an outlet for local expression, measures to control the loudness of commercial messages and annual filing of aggregate statistical data*, Broadcasting Regulatory Policy CRTC 2011-59-1, 8 May 2012, as amended from time to time.