



Broadcasting Decision CRTC 2013-623

PDF version

Route reference: Part 1 applications posted on 4 June 2013

Ottawa, 22 November 2013

Bell Canada

Hamilton/Niagara, Kingston, Kitchener, London, Oshawa, Ottawa, Peterborough, Stratford, Toronto and Windsor, and their surrounding areas, Ontario

Drummondville (region of Centre-du-Québec), Gatineau, Joliette (region of Lanaudière), Montréal, Québec, Saint-Jérôme (region of Laurentides), Sherbrooke and Trois-Rivières (region of Mauricie), and their surrounding areas, Quebec

Applications 2013-0801-5 and 2013-0800-0

Terrestrial broadcasting distribution undertakings serving various communities in Ontario and Quebec – Licence amendments

*The Commission **approves** applications by Bell Canada to authorize its terrestrial broadcasting distribution undertakings serving various communities in Ontario and Quebec to redirect up to 2% of its gross annual revenues derived from broadcasting activities to each of its English- and French-language community video-on-demand channels in those markets. As a result, official language minority communities in Ontario and Quebec will benefit from greater service.*

Introduction

1. In Broadcasting Decision 2011-737, the Commission authorized Bell Canada (Bell) to distribute its own community channel on a video-on-demand (VOD) basis in the above-noted service areas. It also authorized Bell to redirect up to 2% of its gross annual revenues derived from broadcasting activities to local expression to fund the operation of its VOD community channel.
2. Bell now intends to launch VOD channels in some of its licensed markets in Ontario and Quebec, including Montréal and Ottawa, to serve official language minority communities (OLMC) in these markets. It therefore filed applications to amend the regional broadcasting licences for its terrestrial broadcasting distribution undertakings (BDUs) serving the above-noted areas to be authorized to redirect up to 2% of its gross annual revenues derived from broadcasting activities to each of its English- and French-language community VOD channels in those markets.

3. To this end, Bell proposed to amend condition of licence 5c), set out in the appendix to Broadcasting Decision 2011-737, to read as follows:

5. As a modification to sections 34(2), 34(3) and 34(5) of the *Broadcasting Distribution Regulations* (the Regulations):

c) If the licensee distributes its own community programming or produces programming made available on its VOD undertaking, the licensee shall make, in each broadcast year, a contribution to Canadian programming that is equal to 5% of its gross revenues derived from broadcasting activities in the broadcast year, less any allowable contribution to local expression made by the licensee in that broadcast year to its French- and English-language community channels, provided that the deduction for such contributions not exceed 2% of its gross revenues derived from broadcasting activities for each of these community channels. For the purpose of this condition of licence, “allowable contribution to local expression” shall have the same meaning as that set out in section 34(6) of the Regulations, and may include an additional contribution pursuant to section 34(7) of the Regulations.

Regulatory background

4. The Commission has examined the applications in light of the *Broadcasting Act* (the Act) and applicable regulations and policies, particularly as they pertain to community television programming.

Objectives of the *Broadcasting Act*

5. Pursuant to section 5(1) of the Act, the Commission’s mandate is to regulate and supervise all aspects of the Canadian broadcasting system in the public interest. Canadian broadcasting policy provisions relating to community programming set out in section 3(1) of the Act include the following:
 - the Canadian broadcasting system, operating primarily in the English and French languages and comprising public, private and community elements, makes use of radio frequencies that are public property and provides, through its programming, a public service essential to the maintenance and enhancement of national identity and cultural sovereignty; (section 3(1)(b))
 - the Canadian broadcasting system should
 - serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada; (section 3(1)(d)(i))
 - the programming provided by the Canadian broadcasting system should (i) be varied and comprehensive...(ii) be drawn from local, regional, national

and international sources...(iii) include educational and community programs; (section 3(1)(i)(i)-(iii)) and

- a range of broadcasting services in English and in French shall be extended to all Canadians as resources become available. (section 3(1)(k))

Community television programming

6. In regard to community television programming, section 34(5) of the *Broadcasting Distribution Regulations* (the Regulations) sets out the following:

Except as otherwise provided under a condition of its licence, if a licensee distributes its own community programming on the community channel in the licensed area, the licensee shall make, for each broadcast year, a contribution to Canadian programming that is equal to 5% of its gross revenues derived from broadcasting activities in the broadcast year less any allowable contribution to local expression made by the licensee in that broadcast year.

7. The Commission notes that the allowable contribution to local expression currently represents an amount between 1.5% and 2% of gross revenues derived from broadcasting activities. However, in Broadcasting Regulatory Policy 2010-622 (the Community television policy), the Commission indicated that licensees electing to distribute two community channels (one in each language) in a given market may apply under the Regulations for a condition of licence allowing them to allocate up to 2% of their required contribution to Canadian programming to each of the community channels.
8. The Commission notes that the provisions of the Regulations regarding contributions to local expression apply exclusively to the distribution of linear community channels. However, in recent years, to encourage innovative proposals for outlets for local expression, it has approved applications by BDUs to provide community programming uniquely on their VOD services, subject to conditions of licence establishing requirements for community programming that essentially parallel those applicable to linear community channels.¹

Interventions

9. The Commission received comments from the English-language Arts Network (ELAN), the Fédération des télévisions communautaires autonomes du Québec, the SAW Video Media Art Centre (SAW) and an individual. It also received an intervention opposing the application from the Canadian Association of Community

¹ For instance, the Commission has approved applications by Saskatchewan Telecommunications (Broadcasting Decision 2006-490), MTS Allstream Inc. (Broadcasting Decision 2007-86), as well as TELUS Communications Inc., and 1219823 Alberta ULC in partnership with TELUS Communications Inc. in TELE-MOBILE Company, partners in a general partnership carrying on business as TELUS Communications Company (Broadcasting Decision 2008-135).

Television Users and Stations (CACTUS), to which Bell replied. The public record for these applications can be found on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

10. In its intervention, CACTUS opposed Bell's applications on the basis that they did not address the need for a community-controlled bricks-and-mortar facility through which the community could learn about media production and work together to generate community-focused content. CACTUS also argued that having different kinds of community programming services and multiple community channels in the same licensed area divided by linguistic or other ethnic or cultural lines is divisive and contrary to the purpose of a community channel.
11. CACTUS submitted, however, that it would support the applications if Bell were required to allocate the additional amount to existing community resources that maintain bricks-and-mortar facilities, such as ELAN and its partners or SAW, or in partnership with an existing facility like the closed-circuit television channel at Concordia University.
12. Bell replied that it planned to operate its community channels in accordance with its proposed condition of licence, the Community television policy and all other applicable regulations. It added that the greater part of CACTUS's intervention consisted essentially of a critique of the Community television policy, and not of the substance of the applications.
13. Bell clarified that its VOD community channel would provide the local community with access to people, facilities, equipment and training, which it has already been doing with its channels in Montréal and Toronto. Bell indicated that the programming would be drawn from multiple sources including individuals, schools, not-for-profit organizations and television corporations. It also indicated that prior to the filing of interventions, it approached ELAN and CACTUS to express its willingness to work with them to help build a service that engages and reflects local communities.

Commission's analysis

14. The Commission notes that many of the concerns raised by CACTUS, such as the need for a community-controlled bricks-and-mortar facility, the disadvantages of having more than one community channel in a given licensed service area, and whether a VOD-only community channel is an appropriate replacement for a linear community channel, are policy issues that were discussed in the proceeding leading up to the Community television policy. Since policy issues generally do not form part of licence amendment decisions, the Commission considers that such issues fall outside the scope of these applications.
15. The Commission is of the view that OLMCs located in the markets that Bell has proposed to serve through its VOD community channel will benefit from this additional outlet for local expression. The Commission also finds that approval of Bell's applications would be consistent with the above-noted policy objectives set

out in section 3(1) of the Act, with the Community television policy and with previous decisions concerning community television offerings noted above.

Conclusion

16. In light of all of the above, the Commission **approves** the applications by Bell Canada to amend the broadcasting licences for its terrestrial BDUs serving various communities in Ontario and Quebec so that it be authorized to redirect up to 2% of its gross annual revenues derived from broadcasting activities to each of its English- and French-language community VOD channels in those markets. Accordingly, the Commission replaces the licensee's condition of licence 5c) with that proposed above.

Secretary General

Related documents

- *Regional broadcasting licences for terrestrial broadcasting distribution undertakings serving various communities in Ontario and Quebec – Licence renewals and amendments*, Broadcasting Decision CRTC 2011-737, 30 November 2011
- *Community television policy*, Broadcasting Regulatory Policy CRTC 2010-622, 26 August 2010
- *Licence amendments related to the provision of an outlet for local expression by video-on-demand*, Broadcasting Decision CRTC 2008-135, 30 June 2008
- *Licence amendments related to the funding and provision of an outlet for local expression*, Broadcasting Decision CRTC 2007-86, 16 March 2007
- *Licence amendments related to the funding and provision of an outlet for local expression*, Broadcasting Decision CRTC 2006-490, 8 September 2006

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