



Broadcasting Decision CRTC 2017-322

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Reference: Part 1 application posted on 29 June 2017

Ottawa, 31 August 2017

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

Montréal, Montréal-Ouest and Terrebonne, Quebec

Application 2017-0530-3

Various broadcasting distribution undertakings – Licence amendments

*The Commission **approves** the application by Quebecor Media Inc., on behalf of Videotron Ltd. and 9227-2590 Quebec Inc., partners in a general partnership carrying on business as Videotron G.P., to be relieved from the requirement to distribute ICI (International Channel/Canal International) as part of the basic service of its terrestrial broadcasting distribution undertakings (BDUs) in Montréal, Montréal-Ouest and Terrebonne. These BDUs will instead distribute the Quebec feed of the OMNI Regional service, which provides the same programming, as part of the basic service.*

Background

1. In *OMNI Regional – National, multilingual multi-ethnic discretionary service*, Broadcasting Decision CRTC 2017-152 and Broadcasting Order CRTC 2017-153, 15 May 2017 (Broadcasting Decision 2017-152 and Broadcasting Order 2017-153), the Commission approved an application by Rogers Media Inc. (Rogers) to operate a national, multilingual multi-ethnic discretionary service to be known as OMNI Regional for a licence term beginning on 1 September 2017 and ending on 31 August 2020. Pursuant to Broadcasting Order 2017-153, OMNI Regional is to be distributed on the basic service of licensed and exempt broadcasting distribution undertakings (BDUs).
2. OMNI Regional will have four regional feeds specifically tailored to ethnic Canadians living in British Columbia, Alberta, Ontario and Quebec. Three of the feeds will mirror the programming offered on the OMNI stations in British Columbia, Alberta and Ontario. As regards the Quebec feed, Rogers Media indicated that it had reached an oral agreement with 4517466 Canada Inc., licensee of ICI (International Channel/Canal International) (ICI), a multilingual ethnic television station in Montréal. Under the agreement, the Quebec feed will be branded as “ICI Québec” and ICI will supply much of the programming.

3. In markets where an OMNI television station is operating as a local or regional station, Rogers proposed that the distribution order for OMNI Regional be structured in such a way as to provide BDUs with the option to substitute OMNI Regional for the OMNI television station as part of the basic service. In Broadcasting Decision 2017-152, the Commission stated that BDUs were free to request an exception should they wish to be relieved of the obligation to carry OMNI stations as part of the basic service.

Application

4. Quebecor Media Inc., on behalf of Videotron Ltd. and 9227-2590 Quebec Inc., partners in a general partnership carrying on business as Videotron G.P. (Quebecor), filed an application to be relieved by condition of licence from the requirement under sections 16.1 and 17(1) of the *Broadcasting Distribution Regulations* (the Regulations) to distribute the over-the-air version of ICI as part of the basic service of its terrestrial BDUs in Montréal, Montréal-Ouest and Terrebonne. As an alternative, these BDUs would distribute the Quebec feed of OMNI Regional as part of the basic service, as required by Broadcasting Order 2017-153. The condition of licence granting relief would take effect upon the launch of OMNI Regional and expire when the mandatory distribution order was no longer in effect.
5. Quebecor submitted that the requested relief was necessary as the ICI over-the-air signal in Montréal and the Quebec OMNI Regional feed will be identical. As a result, without the requested relief, the Videotron BDUs operating in the Greater Montréal area would have to distribute two identical signals on the basic service, which would waste network capacity, confuse subscribers and result in additional costs to Videotron without any benefit to subscribers or to the Canadian broadcasting system. Quebecor submitted that distributing only one of two identical signals in the Greater Montréal area would be in keeping with the objective set out in section 3(1)(t)(ii) of the *Broadcasting Act* (the Act) that distribution undertakings should provide efficient delivery of programming at affordable rates, using the most effective technologies available at reasonable cost.

Intervention

6. The Commission received an intervention regarding this application from ICI, to which Quebecor replied. The public record for this application can be found on the Commission's website at www.crtc.gc.ca or by using the application number provided above.
7. ICI noted that shortly after the publication of Broadcasting Decision 2017-152, it received a letter from Videotron dated 19 May 2017 advising it that its service was being repositioned from channels 16 in standard definition (SD) and 616 in high definition (HD) to channels 171 SD and 771 HD. According to the intervener, although Videotron verbally reassured it during a subsequent conference call that its channel would not be repositioned, it received a second letter from Videotron dated 22 June 2017 advising that ICI would be repositioned to channels 238 SD and 838 HD.

8. ICI submitted that approval of the requested relief should be made conditional on the same or comparable channel placement for the Quebec OMNI Regional feed (or ICI in the event that the distribution order was not renewed) as ICI was receiving on 15 May 2017. Specifically, it argued that moving its service out of the vicinity of other local channels could have a negative impact on its viewership and advertising revenues as it would create confusion and frustration among viewers who are accustomed to getting its programming as part of their local lineup. It added that without a significant marketing effort to promote the new channel location, current third-language viewers were unlikely to find ICI or the Quebec OMNI Regional feed.

Applicant's reply

9. Finally, the intervener urged Videotron to make the Quebec OMNI Regional feed available in HD across the province of Quebec.
10. Quebecor noted that the intervener had not objected to its request that the Videotron BDUs serving the Greater Montréal area be relieved of the obligation to distribute two ICI signals as part of the basic service, but rather had expressed concern with the channel placement of the Quebec OMNI Regional service and the format (SD or HD) in which it would be distributed.
11. Quebecor argued that the Commission should reject the intervener's proposal regarding channel placement on the grounds that issues of channel placement are left to the discretion of BDUs as long as sufficient notice is provided to programming services. In this respect, Quebecor submitted that it had provided sufficient notice to ICI of its planned channel realignment and that it had plans to move ICI from its existing channel well before Broadcasting Order 2017-153 was issued. Quebecor added that over the last two years Videotron had realigned more than 75 channels in theme-based groupings (ethnic, sports, news, music, children) and that it was relocating OMNI Regional alongside similar third-language services, such as OMNI 1 and OMNI 2.
12. Quebecor further noted Videotron's plans to notify consumers of the change in ICI's channel placement by superimposing a text bubble on the existing channel for two weeks before the realignment indicating the new channel placement and the date when the service would be moved. In addition, for one week following the realignment, consumers tuning into the previous channel would be advised of the new channel position. Quebecor argued that the change would serve OMNI Regional well as the realignment would increase its visibility to consumers that appreciate this type of service.
13. On the issue of the distribution of the Quebec OMNI Regional feed in HD, Quebecor noted that section 17(7) of the Regulations relating to programming services that are to be provided as part of the basic service states that a licensee that distributes a programming service under that section may also distribute the HD version of that programming service. Quebecor submitted that it had no obligation to distribute the feed in HD. It also noted that, contrary to the intervener's submission, Videotron does not distribute all programming services that are the subject of a distribution order

under section 9(1)(h) of the Act in HD. For example, Videotron distributes Ami télé, Ami TV and the English-language version of CPAC in SD only.

Commission's analysis and decision

14. The Commission considers that the application is consistent with Broadcasting Decision 2017-152, in which it stated that BDUs could request an exception should they wish to be relieved of the obligation to carry OMNI stations as part of the basic service where they were also required to distribute OMNI Regional. Further, no interveners raised any concerns regarding Quebecor's proposal to cease distributing ICI once OMNI Regional launches. The Commission is of the view that requiring BDUs to carry essentially duplicate programming services would constitute an inefficient use of their networks.
15. With respect to channel placement, the Commission has generally left this matter to negotiations between BDUs and programming services. Accordingly, assigning a specific channel to OMNI Regional would be contrary to the Commission's general policy in this regard.
16. Section 15.3 of the Regulations requires BDUs to give broadcasters appropriate written notice before effecting any channel realignment. Parties unable to reach an agreement on carriage terms may have recourse to the Commission's dispute resolution mechanisms, including the undue preference provisions set out in the Regulations.
17. Based on the above, the Commission rejects the intervener's request to modify the condition of licence proposed by Quebecor.
18. Finally, on the issue of the distribution of the OMNI Regional feed in HD throughout Quebec, the Commission is satisfied with the licensee's response.

Conclusion

19. In light of all of the above, the Commission **approves** the application by Quebecor Media Inc., on behalf of Videotron Ltd. and 9227-2590 Quebec Inc., partners in a general partnership carrying on business as Videotron G.P., to be relieved from the requirement set out in sections 16.1 and 17(1) of Regulations to distribute the over-the-air version of ICI as part of the basic service of its terrestrial BDUs in Montréal, Montréal-Ouest and Terrebonne.
20. Specifically, the Commission imposes the following **condition of licence**:

As an exception to sections 16.1 and 17(1) of the *Broadcasting Distribution Regulations*, in markets where ICI (International Channel/Canal International) is operated as a local or regional station, the licensee is not required to distribute ICI (International Channel/Canal International) as part of the basic service. This condition will come into effect upon the launch of the OMNI Regional discretionary service and

will expire if the mandatory order for the distribution of OMNI Regional is no longer in effect.

Secretary General

This decision is to be appended to each licence.