



Broadcasting Decision CRTC 2019-231

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Reference: Part 1 application posted on 7 May 2019

Ottawa, 28 June 2019

Videotron Ltd.

Various locations in the province of Quebec

Public record for this application: 2019-0306-3

Various services – Licence amendments related to the national set-top box audience measurement system

*The Commission **denies** the application by Videotron Ltd. to replace certain conditions of licence related to the national set-top box-based audience measurement system (the measurement system).*

*Further, the Commission extends the deadline for the implementation of the measurement system to **15 January 2020**. At the same time, it invites licensees of broadcasting distribution undertakings subject to the applicable conditions of licence to file an application to reflect this new deadline.*

Application

1. Videotron Ltd. (Videotron) filed an application to replace conditions of licence 5 and 6 related to the national set-top box data-based audience measurement system (the measurement system) and to the sharing of these data imposed in Broadcasting Decision 2018-269 with the following condition of licence:

Where the licensee collects set-top box data on a programming service that it distributes, it shall provide to independent services the data from the set-top box regarding their service under the terms of a negotiated agreement between the parties.

2. According to Videotron, the measurement system being developed would only slightly improve Numeris's current system and would do little to help broadcasters make more effective programming and scheduling decisions or monetize advertising more effectively.
3. Videotron submitted that a system based on negotiated mutual agreements with all independent services wishing to obtain data applicable to them would facilitate the acquisition of better-targeted information, allowing independent services to better adapt their programming in accordance with viewership data, and would better meet the Commission's overall objectives.

4. Finally, Videotron argued that it owns the data in question and that this should remain the case. Videotron indicated that to counter the decline of the broadcasting industry, it must find new sources of income. According to Videotron, while the data from the set-top boxes could meet the needs of independent programming undertakings, the data could also serve as an opportunity for Videotron to diversify its revenues to be able to continue investing in its network, all of which would benefit consumers, the broadcasting system and the objectives of the *Broadcasting Act*.
5. The Commission received interventions in opposition to the application by Rogers Communications Inc., Blue Ant Media Inc., Pelmorex Weather Networks (Television) Inc., the Canadian Broadcasting Corporation, the Independent Broadcasters Group and Groupe V Média inc.

Commission's analysis

6. The Commission implemented the two suspensive conditions of licence specifically to incent the parties involved in the set-top box industry working group (the working group) to collaborate in reaching an agreement and to avoid further lengthy delays. The measurement system has been discussed in various proceedings by the Commission and the industry for several years, and the work of the working group and Numeris in that area is nearing completion. The timing of Videotron's application, its withdrawal from the working group and the working group's decision to cease its work until Videotron's application has been processed by the Commission make it virtually impossible for the measurement system to be implemented by the original 30 September 2019 deadline.
7. The Commission's determinations regarding the two conditions of licence in question were issued less than a year ago in Broadcasting Decision 2018-263. In that proceeding, Videotron opposed the proposed conditions of licence on the basis that broadcasting distribution undertakings (BDUs) would not be compensated for the information shared. The Commission did not accept that position, and Videotron has not raised any new evidence or arguments that would put into question the Commission's decision to impose the conditions of licence.
8. The Commission is of the view that the objectives of the measurement system set out in Broadcasting Decision 2018-263 are still relevant, even more so given the myriad of programming options, both old and new, available to consumers. It is also of the view that the arguments raised by Videotron to justify its application are not significantly different from the elements that the Commission took into consideration when it imposed the two conditions of licence relating to the measurement system in Broadcasting Decision 2018-269.
9. In addition, the Commission considers that at this point in the process further lengthy delays would be harmful to the broadcasting system and Canadians and therefore highly inappropriate. An increasing number of Canadians are choosing to unsubscribe from their BDU's service every day, and many decide to get their programming from non-conventional sources. The broadcasting industry is in need of all tools available

to counter this trend. The Commission considers that the measurement system is one of those tools.

Conclusion

10. In light of all the above, the Commission **denies** Videotron Ltd.'s application to delete conditions of licence 5 and 6 related to the measurement system. Consequently, Videotron's affected BDUs will remain subject to these conditions of licence.
11. However, given the delays caused by this application, the Commission finds it necessary to extend the deadline for the implementation of the measurement system to **15 January 2020**. Consequently, conditions of licence 5 and 6 applicable to Videotron's BDUs and setting out the deadline are amended as follows (the changes are in bold):

5. Where the licensee collects set-top box data regarding programming services it distributes, it shall, by no later than **15 January 2020**, provide this data to a national set-top box-based audience measurement system.

For the purposes of this condition of licence, "set-top box data" means viewership data that is obtained by the licensee through a set-top box or by comparable means, but does not include any portion of such data that would allow the recipient of the data to identify a particular subscriber or household.

6. Where the licensee collects set-top-box data regarding programming services it distributes, it shall, upon the written request of a Canadian programming service, provide that programming service with the set-top box data regarding that programming service, in the form of raw data or reports, within 30 days,
- at no cost; and
 - up to a maximum of two times per broadcast year, unless otherwise agreed to by the licensee and the Canadian programming service.

The application of the foregoing condition of licence is suspended until **15 January 2020** and, thereafter, so long as a national set-top box-based audience measurement system is operational.

For the purposes of this condition of licence, "set-top box data" means viewership data that is obtained by the licensee through a set-top box or by comparable means, but does not include any portion of such data that would allow the recipient of the data to identify a particular subscriber or household.

12. Any BDU wishing that its deadline be amended accordingly may now file an application with the Commission to that effect.

13. The Commission expects the measurement system to be implemented by the new deadline; otherwise, the suspensive condition of licence will come into force. The Commission will not be disposed to further extend the new 15 January 2020 deadline.
14. Finally, Videotron shall confirm with the Commission that it has rejoined the working group by **no later than 5 July 2019**.

Secretary General

Related documents

- *Videotron – Licence renewal for various terrestrial broadcasting distribution undertakings*, Broadcasting Decision CRTC 2018-269, 2 August 2018
- *Renewal of licences for various terrestrial broadcasting distribution undertakings that will expire in August 2018 – Introductory decision*, Broadcasting Decision CRTC 2018-263, 2 August 2018

This decision is to be appended to each licence.