



## Broadcasting Decision CRTC 2019-387

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Reference: 2019-107

Ottawa, 29 November 2019

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

*Public record for this application: 2018-0755-4*

### **Bell TV – Licence renewal**

*The Commission **renews** the broadcasting licence for the national direct-to-home broadcasting distribution undertaking Bell TV from 1 December 2019 to 31 August 2026.*

*In addition, the Commission **approves** requests by the licensee relating to certain conditions of licence.*

### **Application**

1. Bell ExpressVu Inc. (the general partner), and Bell Canada (the limited partner), carrying on business as Bell ExpressVu Limited Partnership (Bell), filed an application to renew the broadcasting licence for its national direct-to-home (DTH) broadcasting distribution undertaking (BDU) Bell TV, which expires 30 November 2019.<sup>1</sup> In its application, Bell also requested the addition of, amendments to and deletion of certain conditions of licence, as discussed throughout this decision.

### **Interventions**

2. The Commission received interventions from RNC MEDIA Inc. and Télé Inter-Rives ltée (RNC/Télé Inter-Rives); Corus Entertainment Inc. (Corus); The Miracle Channel Association (Miracle Channel), the licensee of the television programming undertaking CJIL-DT Lethbridge, Alberta; the Local Independent Television Stations Group (LITS Group); Quebecor Media Inc. (Quebecor), on behalf of TVA Group Inc.; and Rogers Media Inc. (Rogers). Bell replied collectively to the interventions from RNC/Télé Inter-Rives, Miracle Channel, the LITS Group and Rogers.

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<sup>1</sup> This broadcasting licence was administratively renewed from 1 September 2019 to 30 November 2019 in Broadcasting Decision 2019-267.

## Issues

3. After examining the record for this application in light of applicable regulations and policies, the Commission considers that the issues it must address relate to the following:
- the requirement for the licensee to distribute additional television stations on the basic service of Bell TV;
  - a request by the licensee for an exception to the *Broadcasting Distribution Regulations* in regard to the distribution of OMNI television stations as part of the basic service;
  - a request by the licensee for an exception to the *Simultaneous Programming Service Deletion and Substitution Regulations*;
  - the distribution of local television stations in standard definition (SD) and/or high definition (HD);
  - the licensee's adherence to the Wholesale Code and to the Television Service Provider Code (TVSP), and participation in the Commission for Complaints for Telecom-television Services Inc.<sup>2</sup> (CCTS);
  - a request by the licensee to suspend certain conditions of licence relating to the Wholesale Code;
  - conditions of licence and expectations relating to accessibility;
  - the closed captioning of promotional material inserted in local availabilities;
  - previously identified non-compliance and the length of the new licence term; and
  - other matters.

### **Requirement to distribute additional television stations on the basic service**

4. Bell TV is currently subject to the following condition of licence, set out in the appendix to Broadcasting Decision 2012-608:<sup>3</sup>

The licensee shall distribute at least 43 additional television stations that meet the following criteria in standard definition by 1 November 2012, and as part of the basic package in the appropriate local markets:

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<sup>2</sup> Formerly the Commissioner for Complaints for Telecommunications Services Inc.

<sup>3</sup> The number of stations specified is over and above those required by the *Broadcasting Distribution Regulations*.

- (a) the following local stations:
- English- and French-language conventional stations serving markets in which the population with a knowledge of the official language of the station is less than one million (non-metropolitan areas);
  - in instances where local programming levels have been harmonized, English- and French-language stations that broadcast a minimum of seven and five hours, respectively, per broadcast week of local programming including news; and
  - in instances where local programming levels have not been harmonized, conventional stations in non-metropolitan markets that are meeting their current obligations relating to local programming.
- (b) non-branded community-based television services;
- (c) local stations, other than those subject to (a) above that meet the five-hour (French-language) and seven-hour (English-language) per broadcast week minimum local programming commitment; and
- (d) existing independent television stations that currently operate in markets that were required to convert to digital transmission on 31 August 2011.
5. Bell requested the deletion of this condition of licence, given that it had fulfilled the requirements by the specified deadline of 1 November 2012, and because it would continue distributing the services going forward, albeit within other tiers within its system. The licensee added, however, that should the Commission consider it appropriate, it would adhere to the following condition of licence, which is similar to that imposed by the Commission on Shaw Direct, the DTH BDU licensed to Star Choice Television Network Incorporated (Star Choice), in Broadcasting Decision 2012-606:

The licensee is required to distribute all the local television stations as part of the basic service in the appropriate markets that meet the following criteria:

- English- and French-language conventional stations serving markets in which the population with a knowledge of the official language of the station is less than one million (non-metropolitan areas);
- in instances where local programming levels have been harmonized, English- and French-language stations that broadcast a minimum of seven and five hours, respectively, per broadcast week of local programming including news; and
- in instances where local programming levels have not been harmonized, conventional stations in non-metropolitan markets that are meeting their current obligations relating to local programming.

## Interventions

6. Corus, Miracle Channel, RNC/Télé Inter-Rives, the LITS Group and Quebecor expressed support for a condition of licence requiring the distribution of local television stations by Bell TV, and emphasized that it is important for all DTH BDUs to carry their stations. Miracle Channel added that, if the Commission finds it appropriate to require Bell's undertaking to continue distributing local television stations, CJIL-DT should be included among the independently-owned stations that receive carriage.

## Commission's analysis and decisions

7. The previous condition of licence was imposed in the context of Bell TV's previous licence renewal, following the Commission's approval of a transfer of ownership and control of CTVglobemedia Inc.'s licensed broadcasting subsidiaries in Broadcasting Decision 2011-163. This condition was a means of operationalizing a commitment made by the licensee's parent company in the context of that ownership transaction. The Commission considers that this specific commitment has now been satisfied.
8. Nevertheless, the newly proposed condition of licence is consistent with the Commission's consideration set out in Broadcasting Regulatory Policy 2011-295 that distribution on an additional platform such as DTH, particularly in areas where DTH penetration is high, would allow local stations to maximize advertising revenue potential, which could in turn further contribute to enhancing the quantity and quality of local programming. Moreover, at a time where the Commission is implementing measures to improve support for the production of Canadian programming and for local television stations,<sup>4</sup> it would be inconsistent with those measures to lessen the obligations on DTH service providers in regard to the distribution of such stations.
9. In light of the above, the Commission finds it appropriate to delete the condition of licence relating to the distribution of local television stations set out in the appendix to Broadcasting Decision 2012-608 and to impose a new condition of licence as proposed by the licensee. The new **condition of licence** is set out in the appendix to this decision.
10. In regard to the distribution of CJIL-DT, the Commission is of the view that it should form part of the local television stations that are distributed as part of the basic service, where it meets the criteria set out in the new condition of licence.
11. Further, Bell indicated that it had no immediate plans to cease the distribution of non-branded community television stations. The Commission encourages Bell to continue to include non-branded community-based television services among the local television stations distributed on the basic service of Bell TV.

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<sup>4</sup> For example, under Broadcasting Regulatory Policy 2016-224, licensed BDUs are allowed to redirect a portion of the contributions to local expression to conventional local television stations for the production of local news. Further, the Commission created the Independent Local News Fund, which ensures that BDUs contribute to the production of local news by independently-owned local television stations.

**Request for an exception to the *Broadcasting Distribution Regulations* in regard to the distribution of OMNI television stations as part of the basic service**

12. Rogers currently operates OMNI, a Canadian television system that consists of five multicultural conventional television stations operating in Ontario (two stations), Alberta (two stations) and British Columbia (one station), along with the independent, multicultural conventional television station operating in Montréal under an agreement with 4517466 Canada Inc., licensee of ICI (International Channel/Canal International).
13. In addition, in Broadcasting Decision 2017-152, the Commission approved an application by Rogers to operate a national, multilingual multi-ethnic discretionary service to be known as OMNI Regional, which would consist of four feeds: “Pacific,” “Prairies,” “East” and “ICI Quebec.” The Commission granted Rogers a broadcasting licence for the service for a term beginning 1 September 2017 and expiring 31 August 2020. Pursuant to Broadcasting Mandatory Order 2017-153,<sup>5</sup> BDUs are currently required to distribute, as part of their digital basic service, the feed of OMNI Regional that is most relevant to their market until the end of the service’s licence term.
14. In Broadcasting Notice of Consultation 2017-154, the Commission called for applications from persons wishing to operate a national, multilingual multi-ethnic television service offering news and information programming. In Broadcasting Decision 2019-172, the Commission approved an application by Rogers to operate a new national, multilingual multi-ethnic discretionary service, also to be known as OMNI Regional. The broadcasting licence for that service will take effect 1 September 2020 and expire 31 August 2023. As set out in Broadcasting Order 2019-173,<sup>6</sup> pursuant to section 9(1)(h) of the *Broadcasting Act*, all BDUs, including Bell TV, will be required to distribute, as part of the digital basic service, the OMNI Regional feed that is most relevant to its market.
15. The programming currently broadcast on OMNI Regional substantially duplicates that broadcast on the OMNI conventional television stations. Consequently, in areas where the OMNI conventional television stations operate, BDUs must distribute, as part of the digital basic service, both the OMNI conventional television stations and the OMNI Regional service. However, in Broadcasting Decision 2017-152, the Commission noted that it would permit BDUs to request an exception to their obligation to carry the OMNI conventional television stations as part of the basic service where the distribution of the OMNI Regional service is required.

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<sup>5</sup> Set out in Appendix 2 to Broadcasting Decision 2017-152

<sup>6</sup> Set out in Appendix 2 to Broadcasting Decision 2019-172

16. Given the above, Bell requested the addition of the following condition of licence to the broadcasting licence for Bell TV:

As an exception to subsections 16.1 and 17(1) of the *Broadcasting Distribution Regulations*, in markets where an OMNI television station is operating as a local or regional television station, the licensee is not required to distribute the OMNI television station as part of the basic service. This condition will come into effect upon the launch of a regional feed of OMNI Regional and will expire if the mandatory order for the distribution of OMNI Regional is no longer in effect.

#### **Interventions**

17. Rogers submitted that it is important for DTH BDUs to choose the proper regional feed of OMNI Regional for their viewers. It expressed concern over the risk that such undertakings would opt to only carry one regional feed for national distribution to save capacity and associated costs. Accordingly, Rogers proposed the imposition of a condition of licence that would require Bell to distribute to each of Bell TV's subscribers the regional feed of OMNI Regional that is most relevant to the market in which the subscriber resides, and that would expire once a mandatory order for the distribution of OMNI Regional is no longer in effect.
18. Rogers further requested that the Commission encourage Bell to maintain OMNI's channel placement in the local channel lineup given that channel placement is important in driving viewership and advertising, and also aids in promoting the discoverability of the service.
19. In reply, Bell stated that it already distributes the relevant OMNI Regional feed to local areas, and that it is in its best interest to continue doing so. As such, the licensee submitted that the condition of licence proposed by Rogers is unnecessary. In regard to Rogers' request relating to OMNI's position in the local channel lineup, Bell stated that the Commission has clearly set out that channel placement is a matter of negotiation between BDUs and programming services, and cited Broadcasting Decision 2017-321 in this regard.

#### **Commission's analysis and decisions**

20. As noted by Bell, the Commission specified in Broadcasting Decision 2017-152 that BDUs could, where required, request an exception to the requirement to carry both the OMNI television stations and the OMNI Regional discretionary service as part of the basic service. Further, Broadcasting Mandatory Order 2017-153 specifies that a BDU licensee is deemed to be in compliance with that order if the BDU distributes the feed most relevant to its market. Finally, the Commission has already approved for other distribution licensees conditions of licence similar to that proposed by Bell.<sup>7</sup>

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<sup>7</sup> See, for example, Broadcasting Decision 2017-321 (Shaw Cablesystems Limited, Shaw Cablesystems (VCI) Limited and Star Choice) and Broadcasting Decision 2017-322 (Videotron Ltd. and 9227-2590 Quebec Inc., partners in a general partnership carrying on business as Videotron G.P.).

Accordingly, the Commission **approves** Bell's request. The new **condition of licence** is set out in the appendix to this decision.<sup>8</sup>

21. Further, given that Broadcasting Mandatory Order 2017-153 already requires BDUs to distribute the most relevant feed of OMNI to each market, the Commission finds that Rogers' proposed condition of licence relating to the OMNI Regional feed that must be distributed is unnecessary.
22. Finally, in regard to Rogers' request regarding OMNI's channel placement within Bell TV's channel lineup, Rogers made the same request when other licensees had applied to be relieved of the requirement to distribute the OMNI station as part of the basic service (see Broadcasting Decisions 2017-321 and 2017-322). In both these cases, the Commission stated that channel placement is a matter left to negotiations between BDUs and programming services. In the Commission's view, there is nothing on the record of the present proceeding that would justify a different approach for Bell TV.

#### **Request for an exception to the *Simultaneous Programming Service Deletion and Substitution Regulations***

23. One of the roles of BDUs, including DTH BDUs, is to provide Canadians with access to broadcasting programming services. Generally, they cannot alter or delete the signal of the programming services that they distribute. An exception to this rule is simultaneous substitution, which occurs when, following a request from a Canadian television station, a distributor temporarily replaces the signal of one television channel with that of a local or regional channel showing the same program at the same time. Prior to December 2015, provisions regarding simultaneous substitution were set out in the *Broadcasting Distribution Regulations*. These were replaced by the *Simultaneous Programming Service Deletion and Substitution Regulations* (see Broadcasting Regulatory Policy 2015-513).
24. Terrestrial BDUs use a market-by-market approach to simultaneous substitution. Bell TV performs simultaneous substitution at the satellite uplink, which does not allow for the use of the market-by-market approach. Instead, Bell typically performs simultaneous substitution by substituting a Toronto-based signal over a given signal in the eastern half of Canada, and a Vancouver-based signal in the western half.
25. Prior to December 2015, the *Broadcasting Distribution Regulations*<sup>9</sup> permitted DTH BDUs to delete a programming service without substitution where the DTH BDU could not properly implement the requested substitution. Neither the current *Broadcasting Distribution Regulations* nor the *Simultaneous Programming Service Deletion and Substitution Regulations* contain a provision allowing for this approach. Bell noted, however, that it currently performs deletion without substitution for

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<sup>8</sup> The Commission has modified the proposed condition of licence to reference the section of the *Broadcasting Distributions Regulations* applicable to DTH BDUs.

<sup>9</sup> Specifically, section 51(1)(b) of the *Broadcasting Distribution Regulations* that were in effect prior to December 2015.

Bell TV, which does not have the ability to properly perform simultaneous substitution, and admitted that this practice does not comply with applicable regulations.

26. Bell submitted that deletion without substitution is a reasonable approach for Bell TV in situations where it is unable to perform simultaneous substitution, and would be consistent with past regulations and practices. The licensee argued that this approach benefits smaller broadcasters as deletion without substitution (where substitution is not technically feasible) forces subscribers to tune in to the local station to view a program, thereby increasing audience for local broadcasters. In light of this, Bell proposed the following condition of licence for Bell TV:

The licensee is relieved from the requirements of section 3(2) of the *Simultaneous Programming Service Deletion and Substitution Regulations* where program substitution is not technically feasible due to bandwidth constraints. In these circumstances, the licensee will delete the programming service of a distant Canadian television station but will not be required, as an exception to the [*Simultaneous Programming Service Deletion and Substitution Regulations*], to substitute for it the programming service of the local television station.

#### **Intervention**

27. The only party to intervene on this issue was the LITS Group, who expressed support for Bell's request and the proposed condition of licence. It expressed concern, however, over Bell's practice of using postal codes as a proxy to determine the areas to apply simultaneous substitution. The LITS Group argued that postal codes rarely match the broadcasting contours of television stations, which results in independent television stations losing substitution and deletion rights in parts of their respective markets. It therefore proposed that DTH BDU operators should be expected to use real coverage areas when dealing with requests for simultaneous substitution when Grade B official broadcast contour population statistics deviate from postal codes by more than five percent.
28. In reply, Bell stated that it should not be required to adopt the LITS Group's proposal. The licensee submitted that the use of postal codes strikes a balance between the administrative burden placed on DTH BDUs and the effective application of simultaneous substitution or program deletion rights for independent television stations. It argued that deviations caused by using postal codes versus real coverage areas work both ways – in one case a small portion of a coverage area may not receive an appropriate program deletion, whereas in another, a small portion of territory outside of the real coverage area would receive program deletion. Bell also noted that no evidence was provided to show that the current practices have a meaningful negative impact on local stations.

## Commission analysis and decisions

29. Simultaneous substitution allows local television stations that own the Canadian rights to programming to maximize viewership numbers as well as associated advertising revenues. Independent broadcasters that provide local content mostly to smaller communities in Canada would benefit most from Bell being allowed to perform program deletion where simultaneous substitution is not technically feasible. These stations are generally more dependent on local advertising revenues than television stations in larger cities. Not allowing program deletion in such cases would mean that DTH BDU subscribers could opt to view programming on a distant television station that is simultaneously broadcasting the same program as the local station, with the result that independent broadcasters would be less able to effectively monetize their programming. The Commission considers that the benefits of allowing Bell TV to perform program deletion outweigh the inconvenience caused to subscribers on some occasions. Subscribers will ultimately be able to access the programming in question even if the deletion is permitted; they may simply have to do so by virtue of a local, rather than a distant, signal.
30. In light of the above, the Commission **approves** Bell's proposal that would permit Bell TV to perform program deletion when simultaneous substitution is not possible. A **condition of licence** to that effect is set out in the appendix to this decision.
31. In regard to the concern expressed by the LITS Group over Bell's use of postal codes to implement simultaneous substitution for Bell TV, the Commission considers that the technologies currently used by such undertakings are a reasonable compromise that has generally been accepted by the industry, as well as by the Commission since the emergence of DTH BDUs. Further, the LITS Group did not provide any evidence of whether the use of postal codes has a negative impact on the potential revenues of independent television stations. In the Commission's view, this issue would be more appropriately addressed through discussions between the affected television stations and DTH BDUs. Finally, the *Broadcasting Distribution Regulations* include undue preference provisions under which any programming undertaking that considers it is being treated unfairly in a specific case may seek a Commission determination. Accordingly, the Commission does not find it appropriate to impose on Bell TV any measures in regard to the use of postal codes when the undertaking addresses requests for simultaneous substitution.

## Distribution of local television stations in standard definition and/or high definition

32. The quality of the image displayed on a screen depends on the number of pixels contained in the image. Generally, the greater the number of pixels, the better the quality of the image. HD resolution offers a greater number of pixels (both vertically and horizontally on a screen) than does SD resolution. A consequence of this is that an HD television signal takes up more bandwidth than an SD television signal.

## **Intervention**

33. In its intervention, RNC/Télé Inter-Rives requested that the Commission impose a condition of licence that would require the distribution of all of its television stations in HD on Bell TV. For its part, the LITS Group requested that the Commission impose a condition of licence that would require Bell to distribute on Bell TV all independent local television stations in the format in which they are broadcast over the air, or, if provided via direct feed, in the format of that feed. It added that should Bell provide compelling evidence that it would be impossible or burdensome for it to distribute all remaining independent television stations in HD, the licensee should allocate available capacity to affected ownership groups on a rational basis, taking into account the level of success and amount of distinctive local programming on each station.
34. In its reply, Bell noted that there is no requirement for it to carry all local stations in HD and that whether or not a local station is carried in HD is a matter of negotiation. The licensee further noted that it has a proven track record of carrying most local television stations in HD, including most of those run by the independent operators. It added that its capacity to carry additional services has not significantly increased and that it would be impossible to carry all local television stations in HD without removing the same or similar number of existing HD stations or a much greater number of SD stations.

## **Commission analysis and decisions**

35. Section 46(9) of the *Broadcasting Distribution Regulations* sets out that a licensee that distributes a programming service under section 46 may also distribute the HD version of that service. Accordingly, unless specified in a condition of licence, DTH BDUs are permitted but not required to distribute local television stations in HD.
36. The number of services that a DTH BDU can distribute is limited by the hardware and software installed in its facilities and on its operating satellites. Due to such limitations, DTH BDUs have had to exercise some discretion in determining the signals to be distributed in HD. It is for this reason that the Commission specified in Broadcasting Decision 2011-163 that the above-noted 43 additional television signals would only have to be provided in SD. Since then, there has been no evidence that Bell has increased its satellite capacity to the point where it would be feasible to distribute all local stations in HD in the next licence term. Even so, Bell distributes on Bell TV a majority of television stations in HD including, based on evidence provided by interveners, 15 of the 24 local independent television stations.
37. In light of the above, the Commission does not find it appropriate to impose on Bell TV a condition of licence that would require all local television stations to be distributed in HD. Nevertheless, given the clear benefits of HD distribution to consumers and to television stations, the Commission encourages Bell to increase the number of independent television stations distributed in HD by Bell TV as the undertaking's capacity to do so becomes available.

**Adherence to the Wholesale Code and to the Television Service Provider Code, and participation in the Commission for Complaints for Telecom-television Services Inc.**

38. In Broadcasting Decision 2016-458, the Commission imposed on BDUs, including Bell TV, conditions of licence relating to the Wholesale Code (set out in the appendix to Broadcasting Regulatory Policy 2015-438), the TVSP Code (set out in the appendix to Broadcasting Regulatory Policy 2016-1) and participation in the CCTS (see Broadcasting and Telecom Regulatory Policy 2016-102), to take effect 1 November 2017 and expire at the end of the service's licence term.
39. Bell requested that these conditions of licence be maintained for Bell TV. The Commission considers that this would be appropriate and consistent with its approach to BDU licensing. Accordingly, the Commission **approves** the licensee's request. **Conditions of licence** relating to adherence to the Wholesale Code and to the TVSP Code, and to participation in the CCTS, are set out in the appendix to this decision.

**Request to suspend certain conditions relating to the Wholesale Code**

40. In Broadcasting Decision 2013-310, the Commission approved, subject to certain modifications, an application by Astral Media inc. (Astral) and its licensed broadcasting subsidiaries for authority to change the effective control of Astral's broadcasting undertakings to BCE Inc.<sup>10</sup> (BCE).
41. In that decision, so as to ensure a continued dynamic marketplace, the Commission put into place certain safeguards by imposing conditions of approval that required, among other things, that relevant sections of the Code of conduct for commercial arrangements and interactions (i.e., the vertical integration code of conduct), the precursor to the Wholesale Code, be imposed as conditions of licence on all of BCE's programming and television distribution services (see conditions of licence 1 through 4, 15 and 16 in Appendix 2 to Broadcasting Decision 2013-310).
42. In regard to Bell TV, Bell requested amendments to those conditions of licence so as to add to each the following:
- The application of the foregoing condition of licence is suspended so long as the Wholesale Code, set out in appendix to *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015, is in effect.
43. Bell argued that this approach would be consistent with that taken by the Commission in Broadcasting Decision 2017-149, in which it renewed the broadcasting licences for various English-language television stations and services that form the Bell Media Group. None of the interveners commented on this request.
44. In Broadcasting Decision 2017-148, the Commission renewed the broadcasting licences for English-language television services operated by the large ownership

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<sup>10</sup> BCE Inc. is the direct and indirect sole owner of Bell ExpressVu Inc. and Bell Canada.

groups. In that decision, the Commission stated that suspending conditions of licence relating to competitive safeguards while the Wholesale Code was in effect would provide regulatory consistency and simplicity in the commercial relationships between programming services and BDUs, while retaining the Commission's oversight into the commercial dealings of licensees at the wholesale level.

45. The Commission notes that Bell TV was required to adhere to the Wholesale Code by condition of licence during its previous licence term and, as discussed above, this condition will be maintained upon renewal of the broadcasting licence for the undertaking.
46. In light of the above, the Commission **approves** the licensee's request to make these conditions of licence relating to competitive safeguards suspensive. The amended **conditions of licence**, which shall be suspended so long as the licensee is required to adhere to the Wholesale Code, are set out in the appendix to this decision.

#### **Conditions of licence and expectations relating to accessibility**

47. The Commission's current policy regarding accessibility, set out in Broadcasting and Telecom Regulatory Policy 2009-430, includes a framework of conditions of licence, requirements, expectations and encouragements relating to the provision of closed captioning, described video and audio description, as well as requirements, expectations and encouragements relating to customer facing information. In Broadcasting Decision 2018-263, in which the Commission announced the renewal of the broadcasting licences for various BDUs, the Commission noted that BDU licensees that were subject to an encouragement relating to the accessibility of their set-top boxes no longer need that encouragement as it was superseded by the requirement in this regard set out in section 7.3 of the *Broadcasting Distribution Regulations*. That section was added to those regulations pursuant to the Commission's determination in this regard set out in Broadcasting Regulatory Policy 2015-104.
48. In that same decision, the Commission stated that all of the BDUs for which the licences were being renewed would be subject to the same conditions of licence and expectations relating to accessibility. In regard to the present case, Bell confirmed that it would adhere to the standard conditions of licence, requirements and expectations relating to accessibility. The licensee requested, however, that Bell TV not be subject to the standard conditions of licence relating to the provision of audio description for news and information programming given that the undertaking does not provide such programming.
49. In light of the above, the Commission has set out, in the appendix to this decision, the standard **conditions of licence** and expectations relating to accessibility for Bell TV, with the exception of the above-noted conditions of licence relating to audio description.

### **Closed captioning of promotional material inserted in local availabilities**

50. Local availabilities are periods of advertising time (normally two minutes per hour) in non-Canadian specialty services that are used for the promotion of first-run, original Canadian television programs and services offered by BDUs.
51. Bell noted that in Broadcasting Decision 2018-263, in which the broadcasting licences for various terrestrial BDUs were renewed, the Commission determined that it would be appropriate to expect those BDUs to close caption any advertising, sponsorship messages and promos inserted in local availabilities, rather than require them to do so by condition of licence. The licensee therefore requested that Bell TV be treated in the same manner as competing BDUs. None of the interveners to this proceeding commented on this issue.
52. In light of the above, and to allow Bell to build towards being capable of fulfilling such a closed captioning requirement, the Commission expects Bell, for the next licence term, to ensure that for Bell TV, promotional material inserted in local availabilities is closed captioned.

### **Non-compliance and length of new licence term**

53. As noted above, Bell indicated that it currently performs deletion without substitution for Bell TV, which does not have the ability to properly perform simultaneous substitution, and admitted that this practice is in non-compliance with the requirement set out in section 7 of the *Broadcasting Distribution Regulations*. Consequently, the Commission finds Bell in non-compliance with that section of the *Broadcasting Distribution Regulations*.
54. However, the Commission has found it appropriate to approve the licensee's request to be granted an exception to the *Simultaneous Programming Service Deletion and Substitution Regulations* that will allow it to continue that practice. Accordingly, given the totality of the circumstances, including Bell's self reporting of the non-compliance and the fact that this practice would ultimately benefit small, independent local television stations, the Commission finds that no further action is necessary, and that it would be appropriate to renew the broadcasting licence for Bell TV for a full term.

### **Other matters**

55. A joint effort by Innovation, Science and Economic Development Canada and the United States Federal Communications Commission to repurpose some of the 600 MHz spectrum currently used for television broadcasting for mobile wireless telecommunications services may require some television stations and rebroadcasting transmitters to change channels or convert to digital, or that transmitters be shut down where there is no business case for a conversion to digital.

56. The LITS Group submitted that the costs involved in relocating transmitters is forcing independent broadcasters to evaluate whether to continue operating several of their rebroadcasting transmitters, and expressed concern over whether those broadcasters would maintain the same distribution rights through BDUs and the same simultaneous substitution and deletion rights as was the case prior to shut down.
57. In the Commission's view, it would be difficult to meaningfully address the issue at this time since the LITS Group did not provide specific facts that could ground a substantive analysis of the issue or evidence to demonstrate the effects of an eventual determination. Further, the context of a licensee-specific renewal proceeding does not afford other interested persons an appropriately fulsome opportunity to comment on the broader considerations related to this issue. Accordingly, the Commission finds that the LITS Group's proposal is beyond the scope of the current proceeding.
58. Bell also requested that certain historical conditions of licence relating to, among other things, the distribution of an electronic program guide and marketing channels for its pay-per-view service be maintained. None of the interveners commented on these requests. The Commission finds that maintaining those conditions of licence would not raise any significant issues and, therefore, **approves** the licensee's requests. **Conditions of licence** in regard to the above are set out in the appendix to this decision.

## Conclusion

59. In light of all of the above, the Commission **renews** the broadcasting licence for the national direct-to-home broadcasting distribution undertaking Bell TV from 1 December 2019 to 31 August 2026. The terms and **conditions of licence** are set out in the appendix to this decision.

## Employment equity

60. Because this licensee is subject to the *Employment Equity Act* and files reports concerning employment equity with the Department of Employment and Social Development, its employment equity practices are not examined by the Commission.

Secretary General

## Related documents

- *Direct to home distribution undertakings and satellite relay distribution undertakings – Administrative renewals*, Broadcasting Decision CRTC 2019-267, 30 July 2019
- *Licensing of a national, multilingual multi-ethnic discretionary service*, Broadcasting Decision CRTC 2019-172 and Broadcasting Order CRTC 2019-173, 23 May 2019

- *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
- *Various broadcasting distribution undertakings – Licence amendments*, Broadcasting Decision CRTC 2017-322, 29 June 2017
- *Various licensed and exempt broadcasting distribution undertakings – Licence amendments and exemption*, Broadcasting Decision CRTC 2017-321, 31 August 2017
- *Calls for applications for a national, multilingual multi-ethnic television service offering news and information programming*, Broadcasting Notice of Consultation CRTC 2017-154, 15 May 2017
- *OMNI Regional—National, multilingual multi-ethnic discretionary service*, Broadcasting Decision CRTC 2017-152 and Broadcasting Order CRTC 2017-153, 17 May 2017
- *Bell Media Inc. – Licence renewals for English-language television stations and services*, Broadcasting Decision CRTC 2017-149, 15 May 2017
- *Renewal of licences for the television services of large English-language ownership groups*, Broadcasting Decision CRTC 2017-148, 15 May 2017
- *Licence renewal of broadcasting distribution undertakings – Review of practices relating to the small basic service and flexible packaging options and imposition of various requirements*, Broadcasting Decision CRTC 2016-458, 21 November 2016
- *Policy framework for local and community television*, Broadcasting Regulatory Policy CRTC 2016-224, 15 June 2016
- *Review of the structure and mandate of the Commissioner for Complaints for Telecommunications Services Inc.*, Broadcasting and Telecom Regulatory Policy CRTC 2016-102, 17 March 2016
- *The Television Service Provider Code*, Broadcasting Regulatory Policy CRTC 2016-1, 7 January 2016
- *Regulations to implement policy determinations regarding simultaneous substitution in the Let's Talk TV proceeding*, Broadcasting Regulatory Policy CRTC 2015-513, 19 November 2015
- *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015

- *Let's Talk TV – Navigating the Road Ahead – Making informed choices about television providers and improving accessibility to television programming*, Broadcasting Regulatory Policy CRTC 2015-104, 26 March 2015
- *Astral broadcasting undertakings – Change of effective control*, Broadcasting Decision CRTC 2013-310, 27 June 2013
- *Bell TV – Licence renewal*, Broadcasting Decision CRTC 2012-608, 31 October 2012
- *Shaw Direct – Licence renewal*, Broadcasting Decision CRTC 2012-606, 31 October 2012
- *Direct-to-home satellite distribution policy – Distribution of local conventional television stations and simultaneous substitution*, Broadcasting Regulatory Policy CRTC 2011-295, 4 May 2011
- *Change in effective control of CTVglobemedia Inc.'s licensed broadcasting subsidiaries*, Broadcasting Decision CRTC 2011-163, 7 March 2011
- *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009

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

## Appendix to Broadcasting Decision CRTC 2019-387

### Conditions of licence, expectations and encouragements for the national direct-to-home broadcasting distribution undertaking Bell TV

#### Conditions of licence

1. The licensee shall distribute all the local television stations as part of the basic service in the appropriate markets that meet the following criteria:
  - a) English- and French-language conventional television stations serving markets in which the population with a knowledge of the official language of the station is less than one million (non-metropolitan areas);
  - b) in instances where local programming levels have been harmonized, English- and French-language conventional television stations that broadcast a minimum of seven and five hours, respectively, per broadcast week of local programming including news; and
  - c) in instances where local programming levels have not been harmonized, conventional television stations in non-metropolitan markets that are meeting their current obligations relating to local programming.
2. In addition to those services identified in section 48 of the *Broadcasting Distribution Regulations*, the licensee is authorized to distribute the Electronic Program Guide, one English- and one French-language marketing channel for its own service, and one English- and one French-language marketing service for its pay-per-view service.
3. The licensee is relieved from the requirements of section 7 of the *Broadcasting Distribution Regulations* solely for the purpose of distributing, on a part-time basis, via partial and/or omnibus channels, the local and regional news, weather, sports and other unique local or regional programming exhibited by those licensed conventional television stations not distributed by the licensee in their entirety. Distribution of programming on a part-time basis is subject to the following requirements:
  - a. Distribution of part-time programming may only take place on a partial channel with the prior written consent of the television station originating the programming. In addition, the further prior written consent of the television station is necessary in order to distribute this part-time programming on an omnibus channel, or at a time that is not simultaneous with its original broadcast on the television station.
  - b. Prior notification must be given to the Commission before the programming of a television station to be distributed on a part-time basis is added to the licensee's channel line-up.
  - c. The licensee shall provide equitable distribution of participating television stations distributed in the manner described above, according to the principles set out in the Schedule to Appendix 1 of *ExpressVu – Licence renewal*, Broadcasting Decision CRTC 2004-129, 31 March 2004.

4. The licensee shall provide one or more simple means of accessing described programming, whether in an open or embedded format, that requires little or no visual acuity.
5. In regard to commercial arrangements:
  - a) The licensee shall not:
    - i. require an unreasonable rate (e.g., not based on fair market value);
    - ii. require a party that it is contracting to accept terms or conditions for the distribution of programming on a traditional or ancillary platform that are commercially unreasonable;
    - iii. require an excessive activation fee or minimum subscription guarantee; or
    - iv. impose, on an independent party, a most favoured nation clause or any other condition that imposes obligations on that independent party by virtue of a vertically integrated entity or an affiliate thereof entering into an agreement with any vertically integrated entity or any affiliate thereof, including its own.
  - b) When negotiating a wholesale rate for a programming service based on fair market value, the licensee shall take into consideration the following factors:
    - i. historical rates;
    - ii. penetration levels and volume discounts;
    - iii. the packaging of the service;
    - iv. rates paid by unaffiliated broadcasting distribution undertakings for the programming service;
    - v. rates paid for programming services of similar value to consumers;
    - vi. the number of subscribers that subscribe to a package in part or in whole due to the inclusion of the programming service in that package;
    - vii. the retail rate charged for the service on a stand-alone basis; and
    - viii. the retail rate for any packages in which the service is included.
  - c) The licensee shall file with the Commission all affiliation agreements to which it is a party with a television programming undertaking or broadcasting distribution undertaking within five days following the execution of the agreement by the parties.
  - d) If the licensee has not renewed an affiliation agreement to which it is a party with a licensed or exempt Canadian television programming undertaking or Canadian broadcasting distribution undertaking within the 120 days preceding the expiry date of the agreement, and if the other contracting party has

confirmed its intention to renew the agreement, the licensee shall refer the matter to the Commission for dispute resolution under sections 12 to 15 of the *Broadcasting Distribution Regulations*.

The application of the foregoing condition of licence is suspended so long as the licensee is required to adhere to the Wholesale Code, set out in appendix to *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015.

6. Where the licensee provides its related programming services with access to multiple distribution platforms, it shall offer reasonable terms of access that are based on fair market value to non-related programming services.

The application of the foregoing condition of licence is suspended so long as the licensee is required to adhere to The Wholesale Code, set out in appendix to *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015.

7. The licensee shall give unrelated programming services marketing support that is comparable to what is given to similar services, including related services.

The application of the foregoing condition of licence is suspended so long as the licensee is required to adhere to The Wholesale Code, set out in appendix to *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015.

8. The licensee shall adhere to the Wholesale Code, set out in the appendix to *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015, in its dealings with any licensed or exempt broadcasting undertaking.
9. The licensee shall adhere to the Television Service Provider Code, set out in the appendix to *The Television Service Provider Code*, Broadcasting Regulatory Policy CRTC 2016-1, 7 January 2016.
10. The licensee shall be a participant in the Commission for Complaints for Telecommunication Services Inc.
11. As an exception to subsections 45.1 and 46(1) of the *Broadcasting Distribution Regulations*, in markets where an OMNI television station is operating as a local or regional television station, the licensee is not required to distribute the OMNI television station as part of the basic service. This condition will expire when the mandatory order for the distribution of the discretionary service OMNI Regional is no longer in effect.
12. The licensee is relieved from the requirements of section 4(1) of the *Simultaneous Programming Service Deletion and Substitution Regulations* (the Regulations) where program substitution is not technically feasible due to bandwidth constraints. In these

circumstances, the licensee will delete the programming service of a distant Canadian television station but will not be required, as an exception to the Regulations, to substitute for it the programming service of the local television station.

13. As part of its annual reporting, the licensee shall include in its annual returns information relating to the following:
  - a) the availability of accessible set-top boxes (STBs) and remote controls, and their accessibility features;
  - b) the penetration of accessible STBs and remote controls with the broadcasting distribution undertaking's (BDU) customer base; and
  - c) the number of accessibility-related queries received by the BDU, and the number successfully resolved.
14. The licensee shall promote information on all of its disability-specific services and products, in the accessible manner(s) of its choice.
15. The licensee shall incorporate an easy-to-find home page link to the sections of its website dealing with the needs of persons with disabilities, if its website includes such sections.
16. The licensee shall make the information on its website accessible to the point of providing reasonable accommodation for persons with disabilities. Examples of what the Commission considers to be reasonable accommodations are listed in paragraph 66 of *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009.
17. Where customer service functions on its website are not accessible, the licensee shall ensure that persons with disabilities will not incur a charge or otherwise be disadvantaged if they use an alternate avenue of customer service.
18. The licensee shall make accessible any customer service functions that are available solely over its website.
19. The licensee shall make its general call centers accessible to the point of providing reasonable accommodation to persons with disabilities by:
  - a) training customer service representatives in handling enquiries from persons with disabilities and familiarizing them with the service provider's products and services for persons with disabilities; and
  - b) making its Interactive Voice Response systems accessible.

**Expectations**

The Commission expects the licensee to ensure that subscribers are able to identify programming with described video in the electronic program guide.

The Commission expects the licensee to make information available in alternative formats to subscribers regarding, among other things, the programming and services offered and the channel line-up.

The Commission expects the licensee to close caption any promotional materials inserted into local availabilities.

**Encouragements**

The Commission encourages the licensee to continue to include non-branded community-based television services among the local television stations distributed on the basic service of its undertaking.

The Commission encourages the licensee to increase the number of independent television stations distributed in high definition by the undertaking as the undertaking's capacity to do so becomes available.