



Broadcasting Decision CRTC 2020-393

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Reference: Part 1 application posted on 29 July 2020

Ottawa, 4 December 2020

0859291 B.C. Ltd.
Victoria, British Columbia

Public record for this application: 2020-0409-2

CHEK-DT Victoria – Licence amendment

*The Commission **approves** an application by 0859291 B.C. Ltd. to amend the condition of licence relating to described video (DV) for CHEK-DT.*

The amended condition of licence will require CHEK-DT to provide DV programming on all English- and French-language programming that is broadcast during prime time with the exception of U.S. programming received without DV less than 24 hours prior to air.

CHEK-DT will be required to monitor the impact of this issue, which will be reviewed at its next licence renewal.

CHEK-DT is also encouraged to consult with DV stakeholders and to engage with the Described Video Working Group formed as a result of Broadcasting Regulatory Policy 2019-392 to see how it can contribute, and is required to report annually to update the Commission on its participation in the Working Group.

Background

1. Paragraph 3(1)(p) of the *Broadcasting Act* stipulates that programming accessible by disabled persons should be provided within the Canadian broadcasting system as resources become available for the purpose. Along the same lines, in Broadcasting and Telecom Regulatory Policy 2009-430, the Commission stated that persons with disabilities should be able to access programming with described video (DV) from both the public and private sectors in French and English.
2. In Broadcasting Regulatory Policy 2015-104, the Commission stated that it would implement a tiered approach to the provision of DV. This approach would ramp up DV requirements over time in accordance with the size and resources of broadcasters.
3. In the same policy, the Commission required that, by September 2019, broadcasters who were already subject to a DV requirement increase the amount of DV they broadcast from

four hours per week to providing DV for all prime time hours (7 p.m. to 11 p.m. each day of the week). All other small broadcasters, who were not already required to provide DV, were also required to begin providing a minimum of four hours of DV a week. More specifically, it stated:

The licensee shall, by 1 September 2019, provide described video for all English- and French-language programming that is broadcast during prime time (i.e., from 7 p.m. to 11 p.m.) and that is drawn from program categories 2(b) Long-form documentary, 7 Drama and comedy, 9 Variety, 11(a) General entertainment and human interest and 11(b) Reality television, and/or is programming targeting preschool children (0-5 years of age) and children (6-12 years of age).

4. In March 2019, the Commission launched Broadcasting Notice of Consultation 2019-67 as a result of an application by Bell Media Inc. (Bell), Corus Entertainment Inc. (Corus) and Rogers Media Inc. (Rogers) requesting that the Commission amend their condition of licence that requires prime time programming to be broadcast with DV. Specifically, Bell, Corus, and Rogers requested an exception to that condition of licence to be allowed to air non-Canadian programs received less than 72 hours prior to broadcast without DV, and argued that the exception is necessary because a significant amount of U.S. content arrives without embedded DV very close to the time of broadcast and that there is insufficient time to produce or outsource DV in these circumstances.
5. In December 2019, the Commission issued Broadcasting Regulatory Policy 2019-392 in which it approved amendments to the condition of licence, but placed greater limits on the exception to the DV requirement than those proposed by Bell, Corus, and Rogers. Accordingly, their amended conditions now state that:

The licensee shall, by 1 September 2019, provide described video for all English- and French-language programming that is broadcast during prime time (i.e., from 7 p.m. to 11 p.m.) and that is drawn from program categories 2(b) Long-form documentary, 7 Drama and comedy, 9 Variety, 11(a) General entertainment and human interest and 11(b) Reality television, and/or programming targeting preschool children (0-5 years of age) and children (6-12 years of age) **with the exception of U.S. programming received without described video less than 24 hours prior to air. Such programs will be broadcast with described video for any repeat airings scheduled greater than 24 hours from delivery.**

6. Further to the publication of Broadcasting Regulatory Policy 2019-392, the Commission received applications from Newfoundland Broadcasting Corporation Limited and 2190015 Ontario Inc. asking to be granted the same amendment as Bell, Corus, and Rogers, submitting that they face the same challenges with respect to DV. The Commission granted these requests in Broadcasting Decision 2020-358 and Broadcasting

Decision 2020-359, encouraging the broadcasters to participate in the Described Video Working Group created as a result of Broadcasting Regulatory Policy 2019-392 and requiring them to report to the Commission on their contributions to the working group every year until their next licence renewal.

Application

7. 0859291 B.C. Ltd. filed a Part 1 application to amend the condition of licence regarding the provision of DV, so that CHEK-DT be granted the same condition of licence as Bell, Corus, and Rogers in Broadcasting Regulatory Policy 2019-392.
8. The Commission did not receive any interventions regarding this application.

Commission's analysis and decision

9. The Commission has the authority, pursuant to section 9(1) of the Act, to issue licences for such terms not exceeding seven years and subject to such conditions related to the circumstances of the licensee as it deems appropriate for the implementation of the broadcasting policy set out in section 3(1) of the Act, as well as to amend those conditions on application of the licensee.
10. Having examined the public record for this proceeding in light of applicable regulations and policies, the Commission considers that the issues it must examine are the following:
 - How much programming is potentially at issue?
 - What efforts has the licensee undertaken since Broadcasting Regulatory Policy 2015-104 to meet its prime time DV condition of licence?
 - Is the proposed amendment appropriate to effectively address the licensee's issues?
 - How can the Commission ensure that the requirement continues to meet the needs of DV users?

How much programming is potentially at issue?

11. The licensee submitted that the amount of affected content is similar in scope to that considered in Broadcasting Regulatory Policy 2019-392. The affected programs are first live run without DV received less than 24 hours prior to air and it is not yet known precisely which programs will be affected.

What efforts has the licensee undertaken since Broadcasting Regulatory Policy 2015-104 to meet its prime time DV condition of licence?

12. The licensee submitted that it is unable to negotiate the availability of DV when buying rights for first run programming from the U.S. studios. Though the Commission acknowledges that as a small independent broadcaster, the licensee has less negotiating power than Bell, Corus or Rogers, the Commission considers that the licensee did not provide evidence of actual efforts to influence its suppliers to support its assertions.

Is the proposed amendment appropriate to effectively address the licensee's issues?

13. While the licensee did not submit any specific information about the resources or time needed to provide DV for programming, the Commission notes that CHEK-DT faces the same challenges in delivering DV for live, near-live or embargoed programming as the licensees in Broadcasting Regulatory Policy 2019-392. As the Commission's understanding of these challenges has not changed as the result of this proceeding, the Commission considers that granting relief from DV requirements during primetime for CHEK-DT would be appropriate for first run programming arriving from the U.S. without DV less than 24 hours prior to air time.

How can the Commission ensure that the requirement continues to meet the needs of DV users?

14. In Broadcasting Regulatory Policy 2019-392, the Commission noted the Closed Captioning Working Group that was formed and supported by the English Broadcasters Group and encouraged Bell, Corus, and Rogers to hold regularly occurring consultations with DV stakeholders consistent with this approach, for the purpose of collaboratively developing solutions to address the issue requiring the 24 hours exception granted by the Commission in this policy. Further, it required them to file progress reports with the Commission every six months until their next licence renewal.
15. The licensee submitted that it would be pleased to participate in these Working Group discussions. The Commission considers that it would be appropriate to likewise encourage the licensee to do so. In Broadcasting Decision 2020-358 and Broadcasting Decision 2020-359, the Commission required the licensees to report to the Commission on its contributions to the Working Group on an annual basis as of December 2021. The Commission considers it appropriate for CHEK-DT to do the same in order to efficiently follow-up on the role of small broadcasters in these discussions. The reports are to be provided to the Commission no later than **3 December 2021** and **3 December 2022**. The reports will be made available on the Commission's website and will be reviewed during the proceeding to renew CHEK-DT's licence, which expires in 2023.

16. In order to fully assess the impact of the amendment to this condition of licence, the licensee is expected to keep logs detailing the receipt date of all U.S. programs received without DV and broadcast in prime time, including U.S. programming received without DV prior to the 24 hours exemption threshold that the licensee was required to describe. The logs should be submitted to the Commission at the time of its licence renewal as part of CHEK-DT's licence renewal application.

Conclusion

17. In light of all of the above, the Commission **approves** the amendment to 0859291 B.C. Ltd.'s condition of licence for the provision of DV during prime time. The changes to the condition of licence are in **bold**:

The licensee shall, by 1 September 2019, provide described video for all English- and French-language programming that is broadcast during prime time (i.e., from 7 p.m. to 11 p.m.) and that is drawn from program categories 2(b) Long-form documentary, 7 Drama and comedy, 9 Variety, 11(a) General entertainment and human interest and 11(b) Reality television, and/or programming targeting preschool children (0-5 years of age) and children (6-12 years of age) **with the exception of U.S. programming received without described video less than 24 hours prior to air. Such programs will be broadcast with described video for any repeat airings scheduled greater than 24 hours from delivery.**

18. The Commission requires the licensee to file a report with the Commission on its contributions to the Described Video Working Group every year until the next licence renewal. The reports are to be provided to the Commission no later than **3 December 2021** and **3 December 2022**.

Reminders

19. The Commission reminds the licensee that it is an exceptional measure and that it should make every effort possible to exhaust all avenues to procure the programs and/or episodes with DV.
20. For programming that is subject to the exception, a logo is to be displayed at the start of the first airing and an audio notification is to be provided indicating that repeat broadcasts will be aired with full DV at a future time.

Encouragement

21. The Commission encourages the licensee to consult with DV stakeholders and participate in the Working Group discussions as set out by the Commission in Broadcasting Regulatory Policy 2019-392.

Expectation

22. The Commission expects the licensee to keep logs detailing the receipt date of all U.S. programs received without DV and broadcast in prime time, including U.S. programming received without DV prior to the 24 hours exemption threshold that CHEK-DT was required to describe. The Commission further expects this information to be included in CHEK-DT's renewal application so that the impact of this exception can be assessed as the Commission intends to revisit this issue at the time of CHEK-DT's licence renewal. CHEK-DT's licence expires in August 2023.

Secretary General

Related documents

- *CJON-DT – Licence amendment*, Broadcasting Decision CRTC 2020-359, 27 October 2020
- *CHCH-DT – Licence amendment*, Broadcasting Decision CRTC 2020-358, 26 October 2020
- *Amendment proposed by Bell Media Inc., Corus Entertainment Inc. and Rogers Media Inc. to their condition of licence that requires prime time programming to be broadcast with described video*, Broadcasting Regulatory Policy CRTC 2019-392, 3 December 2019
- *Call for comments on an amendment proposed by Bell Media Inc., Corus Entertainment Inc. and Rogers Media Inc. to their condition of licence that requires prime time programming to be broadcast with described video*, Broadcasting Notice of Consultation CRTC 2019-67, 11 March 2019
- *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
- *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009