



Broadcasting Decision CRTC 2006-301

Ottawa, 17 July 2006

**Bell ExpressVu Inc. (the general partner), and BCE Inc.
and 4119649 Canada Inc. (partners in BCE Holdings G.P.,
a general partnership that is the limited partner), carrying on
business as Bell ExpressVu Limited Partnership**
Across Canada

*Application 2006-0175-9
Broadcasting Public Notice CRTC 2006-43
5 April 2006*

Vu! – Licence amendments

*In this decision, the Commission **approves** an application to amend the broadcasting licence for the national, English- and French-language direct-to-home pay-per-view programming undertaking known as Vu!, in order to authorize the licensee, by conditions of licence, to distribute programming that contains commercial messages where those messages are already included in a program previously aired by a Canadian programming undertaking and that program is subsequently offered at no charge to the subscriber.*

The application

1. The Commission received an application by Bell ExpressVu Inc. (the general partner), and BCE Inc. and 4119649 Canada Inc. (partners in BCE Holdings G.P., a general partnership that is the limited partner), carrying on business as Bell ExpressVu Limited Partnership, (Bell ExpressVu) to amend the broadcasting licence for the national English- and French-language direct-to-home (DTH) pay-per-view (PPV) programming undertaking known as Vu!, in order to add a condition of licence authorizing it to distribute programming that contains commercial messages where those messages are already included in a program previously aired by a Canadian programming undertaking and that program is subsequently offered at no charge to the subscriber.
2. One of Bell ExpressVu's current conditions of licence reads as follows:

The licensee shall adhere to the *Pay Television Regulations, 1990*, as amended from time to time.

3. Bell ExpressVu requested that the Commission amend this condition of licence to read as follows:

The licensee shall adhere to the *Pay Television Regulations, 1990*, as amended from time to time, with the exception of section 3(2)(d) (commercial messages).

4. Bell ExpressVu also proposed to add the following condition of licence:

The licensee shall not include as part of its direct-to-home (DTH) pay-per-view (PPV) offering any program including a commercial message except where:

- a) the message was already included in a program previously broadcast by a Canadian programming service;
- b) the program's inclusion as part of the DTH PPV offering is in accordance with the terms of a written agreement entered into with the operator of the Canadian programming service that broadcast the program; and
- c) the program is offered to subscribers at no charge.

5. Bell ExpressVu argued that the purpose of the application is to ensure competitive equity among its service Vu!, Canadian video-on-demand (VOD) services and newly evolving PPV media.

Interventions

6. The Commission received one intervention in support of this application by Rogers Cable Communications Inc. (Rogers) as well as a comment by the Canadian Association of Broadcasters (CAB). As part of its intervention, Rogers commented on how the Commission should address such amendment applications in the future. Rogers submitted that the Commission should amend the *Pay Television Regulations, 1990* (the Regulations) to provide all VOD and PPV licensees with the authority to offer programming that contains commercial messages under the condition of licence noted above. Rogers maintained that it would be in the public interest to grant this authority on a general basis rather than on a case-by-case basis as it is currently done.
7. The CAB also filed comments on Bell ExpressVu's licence amendment application. The CAB indicated that it did not oppose this application and noted that "this application represents the first time that such an amendment has been requested with respect to a PPV undertaking." The CAB added that the nature of service of both the VOD and PPV services are similar.

Commission's analysis and determination

8. In *Illico sur demande – Licence amendments*, Broadcasting Decision CRTC 2005-498, 18 October 2005 and in *Rogers on Demand – Licence amendments*, Broadcasting Decision CRTC 2005-497, 18 October 2005, the Commission approved applications for amendments to the broadcasting licences for these VOD programming undertakings to permit them to offer programming that includes commercial messages. The commercial messages are restricted to those contained in programs previously broadcast by other Canadian programming undertakings. The programs must be obtained by these licensees under the terms of written agreements with the licensees of those Canadian programming undertakings, and offered on an on-demand basis at no charge to subscribers. In these decisions, the Commission indicated that the approval of these applications “would not represent a significant departure from the Commission’s framework for the licensing of VOD undertakings.”
9. In light of the above and given the similarity between the nature of service of the VOD and PPV services, the Commission **approves** the application by Bell ExpressVu Inc. (the general partner), and BCE Inc. and 4119649 Canada Inc. (partners in BCE Holdings G.P., a general partnership that is the limited partner), carrying on business as Bell ExpressVu Limited Partnership, to amend the broadcasting licence for the national, English- and French-language DTH PPV programming undertaking known as Vu!, in order to add a condition of licence authorizing it to distribute programming that contains commercial messages where those messages are already included in a program previously aired by a Canadian programming undertaking and that program is subsequently offered on an on-demand basis at no charge to the subscriber.
10. With respect to Rogers’ comment that the Regulations should be amended, the Commission will review the appropriateness of any amendments to the Regulations in the context of its review of the regulatory framework for the discretionary services announced as part of its *Three-year work plan*, published on 28 April 2006.
11. The licence will continue to be subject to the **conditions** set out in *Direct-to-home pay-per-view service – Licence renewal*, Broadcasting Decision CRTC 2006-22, 31 January 2006, with the exception of condition of licence no. 11, which is replaced by the following **condition**:

The licensee shall adhere to the *Pay Television Regulations, 1990*, as amended from time to time, with the exception of section 3(2)(d) (commercial messages).

12. The licence for this undertaking will also be subject to the following **condition**:

The licensee shall not include as part of its direct-to-home (DTH) pay-per-view (PPV) offering any program containing a commercial message except where:

- a) the message was already included in a program previously broadcast by a Canadian programming service;

- b) the program's inclusion as part of the DTH PPV offering is in accordance with the terms of a written agreement entered into with the operator of the Canadian programming service that broadcast the program; and
- c) the program is offered to subscribers at no charge.

Secretary General

This decision is to be appended to the licence. It is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>