



Broadcasting Decision CRTC 2008-135

Ottawa, 30 June 2008

**TELUS Communications Inc., and 1219823 Alberta ULC
in partnership with TELUS Communications Inc.
in TELE-MOBILE Company, partners in a general partnership carrying on
business as TELUS Communications Company
Across Canada**

*Application 2007-1410-7, received 5 October 2007
Broadcasting Public Notice CRTC 2008-24
20 March 2008*

Licence amendments related to the provision of an outlet for local expression by video-on-demand

*The Commission **approves** an application by TELUS Communications Inc., and 1219823 Alberta ULC in partnership with TELUS Communications Inc. in TELE-MOBILE Company, partners in a general partnership carrying on business as TELUS Communications Company proposing conditions of licence establishing terms under which the licensee could provide an outlet for local expression as part of the service offered by its national video-on-demand undertaking.*

The application

1. The Commission received an application by TELUS Communications Inc., and 1219823 Alberta ULC in partnership with TELUS Communications Inc. in TELE-MOBILE Company, partners in a general partnership carrying on business as TELUS Communications Company (TELUS) to amend the broadcasting licence for its national, video-on-demand (VOD) programming undertaking. TELUS requested the addition of a condition of licence and amendments to its existing conditions of licence, which are set out in Appendix 5 to Broadcasting Decision 2007-33, that would authorize it to offer an outlet for local expression through its digital interactive VOD service to provide subscribers with community programming.
2. Specifically, TELUS proposed the addition of a condition of licence stipulating that programming offered as local expression by its VOD service would qualify as local expression for purposes of the contributions to local expression by a broadcasting distribution undertaking if:
 - the programming is offered to subscribers on an on-demand basis at no charge;
 - at least 60% of the community programming inventory be local programming and at least 30% be community access programming for each individual community;

- from 30% to 50% of the programming is offered as local expression to community access television programming, according to requests;
 - where one or more community television corporations are in operation in a licensed area, the licensee makes available to them for community access television programming, on an equitable basis, up to 20% of the programming offered as local expression;
 - where, during an election period, the licensee offers programming in the licensed area that is of a partisan political character, the licensee shall allocate an equal number of titles of equal duration for all accredited political parties and rival candidates; and
 - the licensee shall not offer any programming of a partisan political character during provincial election periods.
3. TELUS also requested an amendment to an existing condition of its VOD licence that requires adherence to the requirements of the *Pay Television Regulations, 1990* (Pay TV Regulations). Section 3(2)(e) of the Pay TV Regulations generally prohibits a licensee from distributing programming, other than filler programming, that is produced either by the licensee or by a person related to the licensee. As an exception to that prohibition, TELUS requested that it be permitted to distribute, on its proposed outlet for local expression, programming that would be produced by it or by a related person, to a maximum of 10%.
 4. TELUS requested a further licence amendment that would authorize it to distribute commercial messages, on its proposed outlet for local expression, similar to that permitted on community channels of cable broadcasting distribution undertakings (BDUs) under section 27 of the *Broadcasting Distribution Regulations* (the Distribution Regulations). Since the Pay TV Regulations prohibit the distribution of programming that contains any commercial messages, TELUS requested the addition of a condition of licence that would allow it to distribute such commercial messages.
 5. The Commission notes that the community programming provided by TELUS' VOD service would differ from that distributed on a traditional community channel, where programs are delivered to subscribers at set times in accordance with a schedule. Instead of such a programming model, the proposed outlet for local expression would provide subscribers with access to a broad inventory of individual programs, each of which would be available to subscribers on demand, 24 hours per day, seven days per week.
 6. TELUS indicated that it would create original programming for its local expression outlet through its mobile production units in Edmonton, Calgary and Vancouver, respectively. It also proposed to work with independent producers, community groups and individuals in order to deliver programming that reflects the people residing in its licensed area.

Interventions

7. The Commission received interventions by the Fédération des Télévisions Communautaires Autonomes du Québec (the Fédération) and the Community Media Education Society (CMES) that opposed this application.
8. Among other things, the Fédération claimed that approval of TELUS' proposal could create a disincentive for the continued operation of analog community channels by cable BDUs, and encourage them to fund the operation of VOD services instead. The CMES expressed concerns about what it perceived as a lack of availability of VOD services, the higher cost of subscribing to packages offering VOD services and the limited opportunities for volunteers to participate in community programming offered by VOD services.
9. Both the Fédération and CMES requested that the Commission defer its decision on this application and any similar applications until it has completed the review of community-based radio and television policy announced in Broadcasting Public Notice 2008-4.
10. In response, TELUS pointed out that the Commission has approved similar licence amendments for two regional VOD services, namely those operated by Saskatchewan Telecommunications (SaskTel) and MTS Allstream Inc., respectively. TELUS argued that the Commission's review of community television policy should not impede TELUS' ability to proceed with its plans to provide community programming on its VOD service.

Commission's analysis and determinations

11. The Commission is satisfied with the licensee's response to the interventions. Since TELUS' proposal is consistent with the Commission's current criteria for community programming offered by VOD services, the Commission finds that it is not necessary to defer its decision on the present application. The concerns raised by the interveners will be discussed as part of the upcoming review of community-based radio and television policy.
12. In Broadcasting Decision 2006-490, the Commission approved an application by SaskTel proposing conditions of licence establishing terms under which it could provide an outlet for local expression on its regional VOD service. While noting that approval of SaskTel's application introduced a model for the provision of local expression that differed considerably from the traditional model, the Commission stated that such an approach was consistent with its intention, originally expressed in Public Notice 1997-25, to encourage innovative proposals for providing outlets for local expression.

13. The Commission notes that TELUS' VOD service operates under similar circumstances as those of SaskTel. The Commission concludes that, consistent with Broadcasting Decision 2006-490, it is appropriate to authorize TELUS to offer an outlet for local expression through its digital interactive VOD service that would provide subscribers with community programming.
14. Based on the foregoing, the Commission **approves** the application by TELUS Communications Inc., and 1219823 Alberta ULC in partnership with TELUS Communications Inc. in TELE-MOBILE Company, partners in a general partnership carrying on business as TELUS Communications Company for licence amendments authorizing it to provide an outlet for local expression as part of the service offered by its national video-on-demand programming undertaking.
15. In the appendix to this decision, the Commission sets out the licensee's **conditions of licence** including **conditions** related to various requirements for the programming offered on the outlet for local expression, in keeping with the licensee's commitments.

Secretary General

Related documents

- *Diversity of voices*, Broadcasting Public Notice CRTC 2008-4, 15 January 2008
- *Acquisition of assets – Corporate reorganization*, Broadcasting Decision CRTC 2007-33, 26 January 2007
- *Licence amendments related to the funding and provision of an outlet for local expression*, Broadcasting Decision CRTC 2006-490, 8 September 2006
- *New Regulatory Framework for Broadcasting Distribution Undertakings*, Public Notice CRTC 1997-25, 11 March 1997

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>

Appendix to Broadcasting Decision CRTC 2008-135

Conditions of licence for the national, English-language video-on-demand programming undertaking operated by TELUS Communications Inc., and 1219823 Alberta ULC in partnership with TELUS Communications Inc. in TELE-MOBILE Company, partners in a general partnership carrying on business as TELUS Communications Company

1. The licensee shall adhere to the *Pay Television Regulations, 1990*, with the exception of section 3(2)(d) (commercial messages); section 3(2)(e) (programming produced by the licensee); section 3(2)(f) (programming produced by a person related to the licensee); and section 4 (logs and records).
2. The licensee shall not include as part of its video-on-demand offering any programming containing a commercial message except as otherwise provided in the conditions of licence relating to local expression, or where:
 - a) the program is offered to subscribers on an on-demand basis at no charge; and
 - b) the message was already included in a program previously broadcast by a Canadian programming service and the program is offered on the licensee's video-on-demand service in accordance with the terms of a written agreement entered into with the operator of the Canadian programming service that broadcast the program; or
 - c) the message is included in the licensee's outlet for local expression in accordance with the provisions concerning sponsorship advertising set out in the appendix to *Policy framework for community-based media*, Broadcasting Public Notice CRTC 2002-61, 10 October 2002.
3. The licensee shall maintain for a period of one year, and submit to the Commission upon request, a detailed list of the inventory available on each file server, identifying each program by programming category and by country of origin, and indicating the period of time that each program was on the server and available to subscribers.
4. Except as authorized by the Commission, the broadcasting undertaking licensed herein shall be operated in fact by the licensee itself.
5. The licensee shall ensure that, at all times:
 - a) not less than 5% of the English-language feature films and not less than 8% of the French-language feature films in the inventory available to subscribers are Canadian;

- b) the feature film inventory includes all new Canadian feature films that are suitable for video-on-demand exhibition and which meet the approved *Industry code of programming standards and practices governing pay, pay-per-view and video-on-demand services*; and
 - c) not less than 20% of all programming other than feature films in the inventory available to subscribers is Canadian.
6. The licensee shall contribute 5% of its gross annual revenues to an existing Canadian program production fund administered independently of its undertaking.

For the purpose of this condition:

- a) “gross annual revenues” shall be 50% of the total revenues received from customers of the broadcasting distribution undertaking distributing the video-on-demand service, when the video-on-demand service is a “related service”;
 - b) a “related service” is one in which the broadcasting distribution undertaking distributing the video-on-demand service, or any of its shareholders owns, directly or indirectly, 30% or more of the equity of the video-on-demand service; and
 - c) “gross annual revenues” shall be the total amount received from the broadcasting distribution undertaking distributing the video-on-demand service, when the video-on-demand service is not a “related service.”
7. The licensee shall ensure that not less than 25% of the titles promoted each month on its barker channel are Canadian titles.
8. The licensee shall remit to the rights holders of all Canadian films 100% of revenues earned from the exhibition of these films.
9. The licensee shall not enter into an affiliation agreement with the licensee of a distribution undertaking unless the agreement incorporates a prohibition against linkage of its service with any non-Canadian discretionary service.
10. The licensee is authorized, as an exception to sections 3(2)(e) and 3(2)(f) of the *Pay Television Regulations, 1990*, to distribute programming, other than filler programming, which is produced by the licensee or by a person related to the licensee, but such programming shall not exceed, in each broadcast year, 10% of the total hours of its Canadian programming broadcast in each broadcast year.
11. The programming offered as local expression shall qualify as local expression for purposes of the contributions to local expression by a broadcasting distribution undertaking if:

- a) the programming is offered to subscribers on an on-demand basis at no charge;
 - b) the licensee devotes not less than 60% of the programming offered as local expression to local community television programming;
 - c) the licensee devotes not less than 30% of the programming offered as local expression to community access television programming;
 - d) the licensee devotes from 30 to 50% of the programming offered as local expression to community access television programming, according to requests;
 - e) where one or more community television corporations are in operation in a licensed area, the licensee makes available to them for community access television programming, on an equitable basis, up to 20% of the programming offered as local expression;
 - f) where, during an election period, the licensee offers programming in the licensed area that is of a partisan political character, the licensee shall allocate an equal number of titles of equal duration for all accredited political parties and rival candidates; and
 - g) the licensee shall not offer any programming of a partisan political character during provincial election periods.
12. Beginning not later than 1 September 2008, and until the end of the licence term, the licensee shall caption at least 90% of all titles in its inventory, excluding titles made available as part of its outlet for local expression.
13. The licensee shall adhere to the guidelines on gender portrayal set out in the Canadian Association of Broadcasters' *Equitable Portrayal Code*, as amended from time to time and approved by the Commission. The application of the foregoing condition of licence will be suspended as long as the licensee is a member in good standing of the Canadian Broadcast Standards Council.
14. The licensee shall adhere to the *Pay television and pay-per-view programming code regarding violence*, as amended from time to time and approved by the Commission.
15. The licensee shall adhere to the *Industry code of programming standards and practices governing pay, pay-per-view and video-on-demand services*, as amended from time to time and approved by the Commission.

For the purpose of these conditions, “community access television programming”, “community programming”, “licensed area”, and “local community television programming” shall have the meaning as set out in section 1 of the *Broadcasting Distribution Regulations*.