



## Broadcasting Decision CRTC 2011-438

PDF version

Route reference: 2010-826

Additional references: 2010-826-1, 2010-826-2

Ottawa, 22 July 2011

**Pelmorex Communications Inc.**  
Across Canada

*Application 2010-1511-5, received 30 September 2010  
Public Hearing in the National Capital Region  
8 February 2011*

### **The Weather Network/Météomédia – Licence renewal and extension of the mandatory distribution of the service**

*The Commission **renews** the broadcasting licence for the national, English- and French-language Category A specialty service The Weather Network/Météomédia (TWN/MM) from 1 September 2011 to 31 August 2018.*

*The Commission also grants the licensee's request to extend from 31 August 2015 to 31 August 2018 the mandatory distribution of TWN/MM on the digital basic service, subject to Pelmorex fulfilling certain conditions relating to the National Alert Aggregation and Dissemination (NAAD) System, as set out in the appendix to this decision. Should the licensee not provide confirmation by **15 January 2012** that those conditions have been fulfilled, the mandatory distribution of TWN/MM on the digital basic service will terminate on 31 August 2015, the current termination date set out in Broadcasting Order 2009-340.*

*The Commission expects the NAAD System to be able to continue operating without mandatory distribution of TWN/MM, beginning 1 September 2018.*

#### **Introduction**

1. At a public hearing held on 8 February 2011 in the National Capital Region, the Commission considered an application by Pelmorex Communications Inc. (Pelmorex) to renew the broadcasting licence for the national, English- and French-language specialty television programming undertaking The Weather Network/Météomédia (TWN/MM), which expires 31 August 2011. The licensee requested a full-term renewal period (i.e., seven years) for the service.
2. As part of its renewal application, Pelmorex requested that the term of the mandatory distribution order for TWN/MM, which was issued in Broadcasting Order 2009-340

pursuant to section 9(1)(h) of the *Broadcasting Act* (the Act), and which expires on 31 August 2015, be extended to 31 August 2018 to coincide with the end of the requested licence renewal period.

3. When it originally applied for the mandatory distribution of TWN/MM, Pelmorex committed to act as a national aggregator and distributor of emergency alert messages. At the hearing, the Commission also examined the effectiveness of Pelmorex's National Alert Aggregation and Dissemination (NAAD) System, which was launched on 9 July 2010, in order to determine whether further action is required to ensure that Canadians receive timely warnings of imminent perils.
4. The Commission received over 4,000 interventions in support of this application by members of the public, broadcasters, broadcasting distribution undertakings (BDUs), public officials, and public safety stakeholders. The Commission also received interventions offering general comments on the application, and interventions opposing the application. The interventions as well as the replies provided by the licensee can be found on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Public Proceedings."
5. After examining the application in light of applicable regulations and policies, and taking into account the interventions received and the licensee's replies, the Commission considers it appropriate to approve Pelmorex's application to renew the broadcasting licence for TWN/MM. Accordingly, the Commission **renews** the licence for the national, English- and French-language Category A specialty programming undertaking The Weather Network/Météomédia from 1 September 2011 to 31 August 2018. The licence will be subject to the terms, **conditions of licence** and expectations set out in the appendix to this decision. The Commission's analysis and specific determinations in regard to its approval of Pelmorex's licence renewal application are set out in paragraphs 7 to 21 of this decision.
6. Further, the Commission will grant Pelmorex's request for an extension of the mandatory distribution of TWN/MM from 1 September 2015 to 31 August 2018 once Pelmorex has demonstrated that the conditions set out in the appendix to this decision have been met. The Commission's analysis and specific determinations in regard to the granting of this request are set out in paragraphs 22 to 66 of this decision.

### **Licence renewal for The Weather Network/Météomédia**

7. In its review of Pelmorex's application to renew the broadcasting licence for TWN/MM, the Commission has examined the application in regard to, among other things, the issues set out below.

### **Canadian programming expenditure and exhibition requirements**

8. Pelmorex proposed to increase its annual Canadian programming expenditure (CPE) requirement to a minimum of 44% of its gross revenues from the previous broadcast year. The Commission notes that this represents a 19% increase over its current CPE requirement of 37%. Pelmorex also indicated that it would maintain its 100%

Canadian content exhibition requirement for the new licence term. The licensee noted that these proposals are conditional upon approval of its request to extend the mandatory distribution of TWN/MM. No interventions were received in regard to these proposals.

9. As a result of the proposed increase in CPE, TWN/MM's CPE requirement would be higher than the average CPE requirement of other Category A services. The Commission considers that this proposal is significant in light of other broadcasters' proposals to maintain or decrease their CPE requirements, as witnessed during the public hearing for the licensing of English-language television services affiliated with large Canadian broadcasting ownership groups.<sup>1</sup>
10. Accordingly, the Commission considers it appropriate to require Pelmorex, in each broadcast year of the new licence term, to expend not less than 44% of its gross revenues from the previous broadcast year on Canadian programming and to maintain its 100% Canadian content exhibition requirement. **Conditions of licence** to that effect are set out in the appendix to this decision.

#### **New regional feeds**

11. Pelmorex also proposed to originate regional programming from new regional feeds in British Columbia, Alberta, and a third region to be determined. The regional feeds would be operational by 1 December 2012, and would result in the creation of twelve new full-time equivalent positions (e.g., producers, on-air presenters and journalists). The licensee noted that more than \$6.2 million in new CPE would be incurred through this initiative over the next licence term. The licensee further noted that this proposal is conditional upon approval of its request to extend the mandatory distribution of TWN/MM. No interventions were received in regard to this proposal.
12. The Commission is of the view that the three new regional feeds, as proposed by Pelmorex, would significantly strengthen TWN/MM's ability to provide local and regional reflection. Accordingly, the Commission considers it appropriate to require Pelmorex to put into place three new regional feeds by no later than 1 December 2012. A **condition of licence** to that effect is set out in the appendix to this decision.
13. The Commission requires Pelmorex to inform the Commission of the third region to be served by no later than **22 August 2011**. It further expects Pelmorex to hire staff to fill twelve new full-time positions that are directly related to the programming activities of each of the three new regional feeds, by no later than 1 December 2012.

#### **Roll-out of high definition programming**

14. Pelmorex committed to launch high definition (HD) versions of its service over the course of TWN/MM's next licence term. This would entail a capital investment of over \$10 million to install new equipment in BDU headends across Canada, and an

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<sup>1</sup> That process was initiated by the issuance of Broadcasting Notice of Consultation 2010-952-1.

incremental operating cost of \$7.5 million over the service's next licence term. A **condition of licence** authorizing TWN/MM to make available for distribution a standard definition and an HD version of its service is set out in the appendix to this decision.

**Continued operation of the National Alert Aggregation and Dissemination System, and the distribution of emergency alert messages on The Weather Network/Météomédia**

15. Pelmorex also committed to continue to operate and improve the NAAD System and to work to increase the use and scope of that system. It further committed to distribute emergency alert messages on its programming service. The licensee noted that these proposed commitments are conditional upon approval of its request to extend the mandatory distribution of TWN/MM.
16. In Broadcasting Order 2009-340, the Commission announced its intention to impose, in the context of TWN/MM's licence renewal, certain conditions of licence relating to the distribution of emergency alert messages by Pelmorex. Accordingly, the Commission requires Pelmorex to ensure that emergency alert messages include audio information indicating the urgency and basic nature of the imminent threat, where provided by issuing authorities. It further requires Pelmorex to ensure that emergency alert messages distributed on the NAAD System and on TWN/MM are identical, including audio components. **Conditions of licence** to that effect are set out in the appendix to this decision.

**Accessibility**

17. In Broadcasting and Telecom Regulatory Policy 2009-430 (the Accessibility Policy), the Commission stated its intention to require television broadcasters, at licence renewal, to, among other things, adhere to quality standards for closed captioning that are being developed by industry working groups. It also set out a requirement for licensees to provide audio description for all key visual elements of news and information-based programs in which text, graphics and other such elements are referenced by the program host or through voice-over to make that information accessible to audiences with visual impairments.
18. Pelmorex indicated that it would accept a condition of licence requiring that advertising, sponsorship and promotional messages be captioned by no later than the fourth year of the licence term. However, it also indicated that it would be unable to commit to quality standards relating to captioning for live, unscripted programming until it has had an opportunity to review those standards. It also submitted evidence to support its position that it would be cost prohibitive to provide audio description for its 1200 local forecasts, which are broadcast every ten minutes. As an alternative, it has instituted five secondary audio program (SAP) channels on which it provides audio of one national and four regional weather overviews during the text segments of its local forecasts. The Commission did not receive any interventions in regard to these matters.

19. The Commission notes that parties will have an opportunity to comment on the closed captioning quality standards prior to their approval by the Commission, and that Pelmorex will have an opportunity at that time to assess its ability to adhere to those standards and to express any related concerns.
20. In regard to audio description, the Commission notes that Pelmorex has implemented measures, such as regular monitoring and annual workshops with the CNIB, to control and improve the quality of audio description on TWN/MM. The Commission also recognizes, however, the potential difficulties associated with providing audio description for the frequent broadcast of a large number of local forecasts, and considers that the solution proposed by the licensee would allow it to deal with such difficulties in an effective manner.
21. Accordingly, as set out in the appendix to this decision, TWN/MM will be subject to the standard **conditions of licence** and expectations relating to accessibility, consistent with the Accessibility Policy, except as it relates to the provision of audio description. In this regard, the Commission considers it appropriate to require Pelmorex to continue to provide five SAP channels rather than audio description for the local forecasts that are broadcast every ten minutes. A **condition of licence** to that effect is set out in the appendix to this decision.

### **Extension of the mandatory distribution of The Weather Network/ Météomédia**

22. In examining Pelmorex's request for an extension of the mandatory distribution of TWN/MM on the digital basic service, the Commission has considered the following:
  - the rationale for granting the request to extend the mandatory distribution of the service;
  - conditions on extending the mandatory distribution of the service; and
  - other matters relating to the distribution of emergency alert messages.

### **Rationale for granting the request to extend the mandatory distribution of The Weather Network/Météomédia**

#### ***Appropriateness of considering Pelmorex's request***

23. Shaw Communications Inc., Quebecor Media Inc., Cogeco Cable Inc. and Rogers Communications Inc. (the joint BDU interveners), as well as Bell Aliant Regional Communications, Limited Partnership and Bell Canada (collectively, the Bell Companies), objected to the Commission's consideration of Pelmorex's request to extend the mandatory distribution of TWN/MM. They argued that such a request would be better evaluated in 2015, given that the Commission granted TWN/MM time-limited mandatory distribution so that it could evaluate the impact of changes in the broadcasting environment on the service at that time. They also noted the Commission's determination set out in Broadcasting Regulatory Policy 2010-629 not

to consider applications for mandatory distribution on the digital basic service until soon after 1 June 2012.

24. In reply, Pelmorex maintained that it would be fair and appropriate to consider extending the distribution order at this time. It argued, among other things, that the impact of changes in the broadcasting environment on TWN/MM can be fully assessed today and that sufficient time has passed since the launch of the NAAD System to evaluate an extension of the mandatory distribution of the service.
25. While the Commission announced that it would not consider applications for mandatory distribution on the digital basic service until soon after 1 June 2012, the Commission notes the following in this case:
- TWN/MM has already been granted mandatory distribution pursuant to section 9(1)(h) of the Act;
  - TWN/MM is the only service for which a time-limited mandatory distribution order has been granted; and
  - the licensee has made this request as part of the licence renewal for the service.<sup>2</sup>

Accordingly, the Commission finds it appropriate to consider Pelmorex's request for an extension of the mandatory distribution of TWN/MM at this time.

***Fulfillment of criteria to justify the requested extension***

*Interveners' positions*

26. Several interveners, including members of the public, opposed the licensee's request for an extension of the mandatory distribution of TWN/MM, arguing that:
- mandatory carriage of TWN/MM is both inappropriate in a broadcast environment characterized by greater consumer choice, and unnecessary to support TWN/MM's programming;
  - the licensee has already absorbed the cost of establishing the NAAD System and its ability to operate the NAAD System is not connected to the mandatory distribution of TWN/MM;
  - the proposed extension is unwarranted as market forces will ensure the continued distribution of TWN/MM;

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<sup>2</sup> In Broadcasting Regulatory Policy 2010-629, the Commission determined that existing services granted mandatory distribution on the digital basic service pursuant to distribution orders issued under section 9(1)(h) of the Act would be required to justify such continued carriage status with reference to the new criteria as part of their licence renewal.

- while the service offers programming that is informative and reliable, it is not important enough to constitute an exceptional service and, ultimately, to warrant mandatory distribution; and
- there is no reason to suspect that the negotiated carriage rates and packaging for TWN/MM will be subject to change when the current mandatory distribution order expires in 2015.

*Pelmorex's position*

27. In its application, Pelmorex indicated that it has addressed all of the Commission's criteria for assessing applications for mandatory distribution on the digital basic service. These criteria, set out in Broadcasting Regulatory Policy 2010-629, relate to demonstrating the exceptional importance of a service to the achievement of the objectives of the Act and to how having mandatory distribution on the digital basic service will enable that service to contribute in meaningful ways to fulfilling the policy objectives of the Act. In order to address the criteria, Pelmorex submitted, among other things, the following:

- The live, local and interactive nature of TWN/MM's programming and the representation of all Canadians, including designated groups,<sup>3</sup> in its programming allow the service to make an exceptional contribution to Canadian expression and reflection.
- Pelmorex's commitments to 100% first-run Canadian programming on TWN/MM, as well as its proposed increase to its CPE obligations represent an exceptional contribution to Canadian programming.
- TWN/MM's business plan and implementation of specific commitments are dependent on mandatory distribution, given the implicit subsidies from the English-language markets and major urban centres to the French-language markets and smaller communities, respectively.
- The continuation of TWN/MM's wholesale rate at \$0.23 per subscriber for both the English- and French-language versions of its service will not have an impact on the cost of the digital basic service.
- The service makes an exceptional contribution to public safety, through its weather forecasts, road safety information and alerting, which is endorsed by thousands of Canadians, public officials, as well as public safety and alerting stakeholders.

28. In its reply to the above-noted interventions, Pelmorex submitted that interveners' financial assumptions regarding TWN/MM's forecasted revenues are flawed. It

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<sup>3</sup> Designated groups include women, Aboriginal persons, members of visible minorities and persons with disabilities.

further noted that the quality of its service and its ability to continue operating the NAAD system would be jeopardized should the Commission deny its request, a sentiment shared by various smaller independent broadcasters and smaller independent BDUs.

*Commission's analysis determinations*

29. In the Commission's view, in light of the points set out above in paragraphs 32 to 50, extending the mandatory distribution of TWN/MM would allow it to continue to offer programming that provides up-to-date local, regional and national weather and safety information to Canadians. Given the licensee's commitments to continue providing 100% Canadian content, to increase its CPE requirement, and to launch three new regional feeds, the Commission considers that the service would continue to make an exceptional contribution to Canadian programming and to Canadian expression and reflection. The Commission also notes the extraordinary need among Canadians for the proposed service, and that the extension of the mandatory distribution of TWN/MM would not have an impact on the fee that subscribers pay for digital basic service.
30. In addition, the Commission is of the view that the NAAD System, by providing Canadians with emergency alert messages and timely warnings of imminent perils, has contributed in an exceptional manner to public safety. To ensure that Pelmorex, through the NAAD System, continues to make a contribution to safeguarding the social and economic fabric of Canada, as set out in the Act, and to ensure that the NAAD System is used as intended, the Commission considers it appropriate to impose certain conditions on the extension of TWN/MM's mandatory distribution, as discussed below.

**Conditions on extending the mandatory distribution of The Weather Network/Météomédia**

***Issues for consideration***

31. The Commission considers that a national aggregator and disseminator of emergency alert messages for broadcast is an essential element of a national public alerting system, and that emergency alerting has taken a considerable step forward as a result of the implementation of the NAAD System by Pelmorex. The Commission notes that it granted mandatory distribution for TWN/MM in Broadcasting Order 2009-340 primarily because of the contribution of the NAAD System towards the establishment of a national public alerting system. It is therefore of the view that any extension of mandatory distribution of Pelmorex's service must result in a fully functional end-to-end national public alerting system.
32. In this regard, the Commission has examined the appropriateness of imposing certain conditions that Pelmorex would be required to fulfill prior to TWN/MM being granted an extension to its mandatory distribution on the digital basic service. In determining the nature of such conditions, the Commission has considered the following:

- the participation of emergency management organizations (EMOs);
- the governance of the NAAD System;
- the operation of the NAAD System;
- the identification of emergency alert messages for immediate broadcast; and
- public awareness and education.

*Participation of emergency management organizations*

33. Responsibility for the issuance of emergency alert messages rests with federal, provincial, and territorial (FPT) EMOs. Parties generally agreed that for a national public alerting system to be effective, all EMOs must be authorized to issue emergency alert messages through the NAAD System, pursuant to the terms of a user agreement with Pelmorex. Certain interveners also proposed that the full participation of the provinces, territories and Environment Canada be required for TWN/MM to retain its mandatory distribution until 2018.
34. In this regard, the Canadian Council of Emergency Management Organizations (CCEMO), which represents provincial and territorial EMOs, indicated that four provinces and one territory had executed NAAD System User Agreements, and that its member organizations that have yet to sign agreements with Pelmorex will be in a position to do so within a number of months. For its part, Environment Canada was hopeful that a user agreement could be concluded with Pelmorex, and noted that a number of issues surrounding the allocation of responsibilities must be resolved before such an agreement can be signed.
35. In reply to the above concerns, Pelmorex committed to make every effort to negotiate an agreement with Environment Canada as well as the remaining provinces and territories.
36. The Commission is of the view that the participation of all EMOs is essential in order for the overall system to be effective, and, therefore, that all EMOs must be authorized to issue emergency alert messages through the NAAD System. In light of the above, the Commission considers that, as a condition of granting TWN/MM an extension to its mandatory distribution, it would be appropriate to require Pelmorex to execute NAAD System User Agreements with all FPT EMOs, including Environment Canada, by no later than 1 January 2012.

*Governance of the National Alert Aggregation and Dissemination System*

37. In accordance with Broadcasting Order 2009-340, Pelmorex implemented a governance structure to oversee the operation of the NAAD System. The Pelmorex Alerting Governance Council (the Governance Council) includes representatives of

the Senior Officials Responsible for Emergency Management (SOREM),<sup>4</sup> which has federal, provincial and territorial oversight for emergency management, as well as representatives from other federal government departments, Pelmorex, broadcasters, BDUs, and the Canadian Association for Public Alerting and Notification (CAPAN).

38. In their initial submissions, some parties expressed concerns relating to governance, specifically relating to the effectiveness of the Governance Council. CAPAN and NetAlerts indicated, for example, that the role and the scope of the Council are limited and submitted that it has evolved into an advisory body rather than one providing direction to Pelmorex. At the hearing, however, a number of provinces and BDUs that are members of the Governance Council indicated that it is an effective governance body.
39. In reply, Pelmorex committed to continue operating the NAAD System on the advice and direction of the Governance Council using a consensus-based decision-making approach. Pelmorex added that this approach is consistent with the requirements of the CCEMO.
40. In light of the above, the Commission considers that the Governance Council operates effectively. Accordingly, in regard to the governance of the NAAD System, the Commission does not consider it necessary to impose a condition on the extension of TWN/MM's mandatory distribution on the digital basic service. The Commission expects Pelmorex to continue to be responsive to the needs and concerns of Governance Council members, consistent with the Governance Council's terms of reference. The Commission may initiate a review of the governance structure of the NAAD System if sufficient evidence is provided to demonstrate that the existing model is ineffective.

*Operation of the National Alert Aggregation and Dissemination System*

41. Over the course of the proceeding, parties including the Provinces of British Columbia and Saskatchewan, the Bell Companies, and CCEMO expressed concerns over the operation of the NAAD System, citing issues relating to functional requirements of the system. These concerns relate to, among other things, the availability of audio files associated with emergency alert messages, the inability of the system to save draft alerts, and limitations of the system's mapping components, which may prevent the full utilization of the system.
42. NetAlerts and CAPAN submitted that the emergency alert messages distributed by the NAAD System do not always comply with the Canadian Profile of the Common Alerting Protocol (CAP-CP).<sup>5</sup> CAPAN suggested that Pelmorex adopt a formal

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<sup>4</sup> SOREM consists of representatives responsible for emergency management from all provincial and territorial governments as well as Public Safety Canada.

<sup>5</sup> The Common Alerting Protocol is an internationally adopted XML-based format for the exchange of emergency alerting messages that allows for the dissemination of alerts over a variety of technologies and platforms. The CAP-CP addresses the specific needs of Canadian public alerting stakeholders.

compliance program that would allow broadcasters, BDUs and other last mile distributors to validate their alerting equipment as being Common Alerting Protocol (CAP) compliant.

43. The CCEMO and the Province of Nova Scotia suggested that Pelmorex fund an independent Threat Risk Vulnerability Assessment of the NAAD System to provide assurances that all the necessary safety and security processes and controls are in place to ensure a secure, reliable and robust alert aggregation and dissemination system. The CCEMO further suggested that Pelmorex provide a briefing to Council members concerning the security of the NAAD System.
44. In reply to the interventions, Pelmorex committed to reach consensus with the Governance Council as to which features and functionalities should be added to the NAAD System. It also committed to resolving CAP compliance issues in a software update and to ensuring that the NAAD System will continue to be compliant with CAP-CP. It further committed to providing a comprehensive briefing to the Governance Council on the security of the NAAD System, to fund a Threat Risk Vulnerability Assessment of the system, and to review the findings of such an assessment with the Council.
45. To ensure the use and effective operation of the NAAD System, the Commission considers it appropriate to require Pelmorex, as a condition of granting TWN/MM an extension to its mandatory distribution on the digital basic service, to file the Terms of Reference for a Threat Risk Vulnerability Assessment by no later than **24 October 2011**.
46. Further, the Commission requires Pelmorex to:
  - take direction from the Governance Council on matters identified in section 15 of the Governance Council's Terms of Reference, including matters relating to CAP compliance of alerts and equipment and to ongoing technical enhancements of the system, and;
  - seek advice from the Governance Council on matters identified in section 16 of the Governance Council's Terms of Reference.
47. **Conditions of licence** relating to these two requirements are set out in the appendix to this decision.

*Identification of emergency alert messages for immediate broadcast*

48. As the authoritative body for emergency management in Canada, SOREM has defined a list of emergency alert messages that represent an imminent or actual event of major proportion with significant threat to life, and for which immediate broadcast is required. The Commission notes that SOREM's criteria for broadcast intrusive alerts satisfy the conditions of section 7(d) of the *Broadcasting Distribution Regulations*, which authorizes BDUs to distribute these emergency alert messages without the consent of a programming service.

49. With a view to ensuring that all legitimate alerts of imminent danger, and only those alerts, are distributed to BDU subscribers, the joint BDU interveners and the Bell Companies initially suggested that Pelmorex be required to implement a separate feed of such alerts. They subsequently acknowledged that a flag to identify broadcast intrusive alerts would be sufficient to allow BDUs to filter these alerts from other alerts in the NAAD System alerting feed.
50. Pelmorex indicated that last mile distributors are able to filter alerts based on SOREM's list without a flag or separate feed of alerts given that they must already filter alerts based on the intended geographic area of the message. Notwithstanding the lack of a technical requirement to this effect, the licensee committed to implementing a broadcast intrusive flag, based on SOREM's criteria, as updated from time to time, to address BDUs' concerns in this regard. Pelmorex further committed to adding functionality to the NAAD System so as to require EMOs to confirm the issuance of a broadcast intrusive alert.
51. In light of the above, the Commission considers that, as a condition of granting TWN/MM an extension to its mandatory distribution on the digital basic service, it would be appropriate to require Pelmorex to implement a broadcast intrusive flag by no later than 1 January 2012. The Commission expects Pelmorex to take direction from the Governance Council on this matter, consistent with the Governance Council's terms of reference.

*Public awareness and education*

52. The Bell Companies suggested that Pelmorex, in consultation with last mile distributors, be required to fund, develop and implement a public education campaign that would prepare Canadians for the eventual use of the system. Pelmorex did not reply in regard to this issue.
53. To ensure general public awareness regarding emergency alerting and to ensure the effectiveness of the overall system, the Commission considers it appropriate for Pelmorex to fund, develop and implement a national public awareness and education campaign, in consultation with the Governance Council. In this regard, the Commission considers that as a condition of granting TWN/MM an extension to its mandatory distribution, it would be appropriate to require Pelmorex to file, for Commission approval, a detailed plan for this campaign, which should include a detailed two-year budget that provides no less than \$1 million per year towards educating the public on, and increasing public awareness of, the NAAD System. This plan must be filed with the Commission by no later than **20 September 2011**.
54. Further, in light of the role of federal, provincial and territorial governments in fostering broad public awareness, the Commission encourages these parties to participate in, or complement, Pelmorex's public awareness and education campaign.

## **Conclusion**

55. In light of the above, as set out in the appendix to this decision, the extension from 31 August 2015 to 31 August 2018 of the mandatory distribution of TWN/MM on the digital basic service is subject to Pelmorex fulfilling the following **conditions**:

- The licensee shall execute NAAD System User Agreements with all FPT EMOs, including Environment Canada, by no later than **1 January 2012**.
- The licensee shall file with the Commission the terms of reference for a Threat Risk Vulnerability Assessment by no later than **24 October 2011**.
- The licensee shall, by no later than **1 January 2012**, implement a broadcast intrusive flag, consistent with its commitments to implement such a flag based on criteria established by SOREM, as updated from time to time, and to add functionality to the NAAD System so as to require EMOs to confirm the issuance of a broadcast intrusive alert.
- The licensee shall, by no later than **20 September 2011**, file for Commission approval a detailed plan for its public awareness and education campaign, which should include a detailed two-year budget that provides no less than \$1 million per year toward educating the public on, and increasing public awareness of, the NAAD System.

56. In the Commission's view, the fulfillment of these conditions will result in an effective contribution of the broadcasting system to Canada's public alerting system.

57. Once Pelmorex has demonstrated in writing by no later than **15 January 2012** that all of the above conditions have been met, the Commission will issue a mandatory distribution order extending the mandatory carriage of TWN/MM on the digital basic service from 31 August 2015 to 31 August 2018.

58. The Commission reminds Pelmorex that failure to meet any of the four above-noted conditions will result in the mandatory distribution of TWN/MM on the digital basic service terminating on 31 August 2015, the current termination date announced in Broadcasting Order 2009-340. In addition, the Commission expects the NAAD System to be able to continue operating without mandatory distribution of TWN/MM, beginning 1 September 2018. Accordingly, it does not intend to renew the mandatory distribution of the service beyond that date solely for the purpose of maintaining the operation of the NAAD System.

## **Other matters relating to the distribution of emergency alert messages**

59. In Broadcasting Public Notice 2007-20, the Commission expressed the view that the broadcasting system has a vital role to play in the provision of emergency alert messages to the Canadian public.

60. The CCEMO, the Provinces of New Brunswick and Manitoba, as well as Environment Canada suggested that requiring broadcasters and BDUs to distribute emergency alerts issued through the NAAD System would ensure the establishment of an effective national public alerting system.
61. BDUs raised concerns regarding liability that could be incurred for damages suffered as a result of the failure to distribute alerts, or of the erroneous distribution of alerts, to the public. Notwithstanding these concerns, the joint BDU interveners and the Bell Companies indicated that they remain committed to the implementation of a national public alerting system and that they will be able to distribute alerts to Canadians by early 2012.
62. Other parties, such as the Canadian Cable Systems Alliance (CCSA), and Bragg Communications Inc., carrying on business as Eastlink, argued that mandatory participation is unwarranted at this time in light of unresolved legal and technical issues, and that sufficient social and competitive imperatives already exist to ensure the voluntary participation of last mile distributors.
63. In regard to concerns over liability, Pelmorex indicated that broadcasters and BDUs in various provinces have participated in public alerting for years without indemnification from liability.
64. The Commission considers that liability for the content of emergency alert messages lies first and foremost with the originator of the message. It further considers that holding a broadcasting licence is a privilege and that broadcasters and BDUs have a duty to inform the public of imminent perils as part of the operation of their undertakings. The Commission expects parties to continue to work together to resolve outstanding issues in this regard, but finds that these issues should not prevent the participation of last mile distributors in the national public alerting system.
65. The Commission reiterates that the broadcasting system has a vital role to play in the provision of emergency alerts to Canadians. It continues to expect all television and radio undertakings, as well as BDUs, to voluntarily participate in the national public alerting system, and strongly encourages the use of new media and mobile platforms to alert Canadians to imminent or unfolding dangers.
66. To ensure that Canadians receive timely warnings of imminent perils, the Commission will continue to monitor the participation of broadcasters and BDUs in the national public alerting system. The Commission notes that it may initiate a review in 2013 should further measures be required to ensure their full participation.

Secretary General

#### **Related documents**

- *Criteria for assessing applications for mandatory distribution on the digital basic service*, Broadcasting Regulatory Policy CRTC 2010-629, 27 August 2010

- *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2010-952, 22 December 2010, as amended by Broadcasting Notices of Consultation CRTC 2010-952-1, 24 December 2010, 2010-952-2, 7 January 2011, 2010-952-3, 29 March 2011, 2010-952-4, 15 April 2011, and CRTC 2010-952-5, 4 May 2011
- *Accessibility of telecommunications and broadcasting services*, Broadcasting Regulatory Policy CRTC 2009-430, 21 July 2010
- *Mandatory distribution order for The Weather Network and Météomédia*, Broadcasting Order CRTC 2009-340, 11 June 2009
- *Emergency alert services*, Broadcasting Public Notice CRTC 2007-20, 28 February 2007

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

## Appendix to Broadcasting Decision CRTC 2011-438

### Terms, conditions of licence, expectations and encouragement for the national, English- and French-language Category A specialty programming undertaking The Weather Network/Météomédia

#### Terms

##### Licence period

The licence will take effect 1 September 2011 and will expire 31 August 2018.

##### Conditions on the extension to 31 August 2018 of the mandatory distribution order for The Weather Network/Météomédia

As a condition on the extension from 1 September 2011 to 31 August 2018 of the mandatory distribution of The Weather Network/Météomédia (TWN/MM) on the digital basic service pursuant to section 9(1)(h) of the *Broadcasting Act*, the licensee shall:

- execute National Alert Aggregation and Dissemination System User Agreements with all federal, provincial and territorial emergency management organizations, including Environment Canada, by no later than **1 January 2012**;
- file with the Commission the terms of reference for a Threat Risk Vulnerability Assessment by no later than **24 October 2011**;
- implement a broadcast intrusive flag based on criteria established by Senior Officials Responsible for Emergency Management, as updated from time to time, and to add functionality to the National Alert Aggregation and Dissemination System so as to require emergency management organizations to confirm the issuance of a broadcast intrusive alert, by no later than **1 January 2012**; and
- file for Commission approval a detailed plan for its public awareness and education campaign, which should include a detailed two-year budget that provides no less than \$1 million per year toward educating the public on and increasing public awareness of the National Alert Aggregation and Dissemination System, by no later than **20 September 2011**.

Should the licensee not demonstrate in writing by **15 January 2012** that the above conditions have been fulfilled, the mandatory distribution of TWN/MM on the digital basic service will terminate on 31 August 2015, the current termination date set out in Broadcasting Order 2009-340.

#### Conditions of licence

1. The broadcasting undertaking licensed hereby is designated as a Category A service.

2. (a) The programming provided by the licensee shall be dedicated exclusively to video programming, text and graphics relating to
  - (i) meteorological, atmospheric and marine conditions for local, regional and national areas of Canada, and international areas as they may be of national interest to Canadians, as well as programming relating to the prevention and effects of these conditions;
  - (ii) alerts and messages related to imminent or unexpected threats to life or property caused by severe weather disturbances, natural disasters or other emergencies in local, regional and national areas of Canada for distribution on the licensee's services; and
  - (iii) such other messages as conform to the definition of "emergency alert message," contained in the Broadcasting Distribution Regulations, as amended from time to time for distribution on the licensee's services, and in cases where the licensee of a broadcasting distribution undertaking has entered into an agreement with Pelmorex, for the distribution of emergency alert messages on other channels offered by that broadcasting distribution undertaking.
- b) The programming shall be drawn exclusively from the following program categories set out in Item 6 of Schedule I to the *Specialty Services Regulations, 1990*, as amended from time to time:
  - 1 News
  - 2 (a) Analysis and interpretation
  - 3 Reporting and actualities
  - 5 (b) Informal education/Recreation and leisure
  - 11 (a) General entertainment and human interest
  - 11 (b) Reality television
  - 12 Interstitials
  - 13 Public service announcements
  - 14 Infomercials, promotional and corporate videos
3. The licensee shall devote 100% of the broadcast year to the distribution of Canadian programs.
4. a) The licensee shall, in each broadcast year of the licence term, expend not less than 44% of its gross revenue (Canadian subscription and advertising revenues) of the previous year, derived from that portion of the service described in condition of licence 2(a)(i) and condition of licence 2(a)(ii), on the investment in and/or acquisition of Canadian programs, excluding revenues derived from the distribution of emergency alert messages on channels other than those carrying its own services, pursuant to condition of licence 2(a)(iii).
  - (b) In each broadcast year of the licence term, excluding the final year, the licensee may expend an amount on Canadian programming that is up to five percent (5%) less than the minimum required expenditure for that year calculated

in accordance with this condition; in such case, the licensee shall expend in the next year of the licence term, in addition to the minimum required expenditure for that year, the full amount of the previous year's underspending;

(c) In any broadcast year of the licence term, including the final year, the licensee may expend an amount on Canadian programming that is greater than the minimum required expenditure for that year calculated in accordance with this condition; in such case, the licensee may deduct:

(i) from the minimum required expenditure for the next year of the licence term, an amount not exceeding the amount of the previous year's overspending; and

(ii) from the minimum required expenditure for any subsequent year of the licence term, an amount not exceeding the difference between the overspending and any amount deducted under paragraph (i) above.

(d) Notwithstanding the above, during the licence term, the licensee shall expend on Canadian programming, at a minimum, the total of the minimum required expenditures calculated in accordance with the licensee's condition of licence.

5. For the duration of the licence term, the licensee shall charge:

(a) each distributor of the portion of the service described in conditions of licence 2(a)(i) and 2(a)(ii), a maximum wholesale rate of \$0.23 per subscriber per month, where the service is distributed as part of the basic service; and

(b) each distributor that enters into an agreement with the licensee to distribute that portion of the service described in condition of licence 2(a)(iii), a wholesale rate per subscriber per month of an amount agreed upon by the licensee and the distributor, provided that that portion of the service described in condition of licence 2(a)(iii) has been launched on the distributor's undertaking.

6. (a) Subject to (b), the licensee shall not distribute more than 12 minutes of advertising material during each clock hour.

(b) The licensee shall not distribute any paid advertising material other than paid national advertising.

7. The licensee shall put into place three new regional feeds in British Columbia, Alberta, and a third region to be determined, by no later than 1 December 2012.

8. Where included by the issuing authority under rules endorsed by the Pelmorex Alerting Governance Council, the licensee shall ensure that emergency alerts include audio information indicating the urgency and basic nature of the imminent threat without having to rely on a secondary source of information.

9. The licensee shall ensure that the emergency alerts distributed on the alert aggregation and distribution system and on The Weather Network/Météomédia are identical, including audio components.
10. The licensee shall take direction from the Pelmorex Alerting Governance Council on matters identified in section 15 of the Governance Council's Terms of Reference, including matters relating to Common Alerting Protocol compliance of alerts and equipment and to ongoing technical enhancements of the system.
11. The licensee shall seek advice from the Pelmorex Alerting Governance Council on matters identified in section 16 of the Governance Council's Terms of Reference.
12. The licensee is authorized to make available for distribution both a standard definition (SD) and a high definition (HD) version of its service, provided that not less than 95% of the video and audio components of the HD and SD versions of the service are the same, exclusive of commercial messages and of any part of the service carried on a subsidiary signal. Further, all of the programming making up the 5% allowance shall be provided in HD.
13. The licensee shall ensure, as contemplated in *Mandatory distribution order for The Weather Network and Météomédia*, Broadcasting Order CRTC 2009-340, 11 June 2009, that the Pelmorex Alerting Governance Council includes at least one English-language broadcaster and one French-language broadcaster, as well as one distributor that serves an Anglophone market and one distributor that serves a Francophone market.
14. The licensee shall caption 100% of the programs broadcast over the broadcast day, consistent with the approach set out in *A new policy with respect to closed captioning*, Broadcasting Public Notice CRTC 2007-54, 17 May 2007.
15. Consistent with *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009, as subsequently amended by the Commission,<sup>6</sup> the licensee shall:
  - ensure that advertising, sponsorship and promotional messages are closed captioned by no later than the fourth year of the licence term;

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<sup>6</sup> See *Standard conditions of licence, expectations and encouragements for Category B pay and specialty services – Corrected Appendices 1 and 2*, Broadcasting Regulatory Policy CRTC 2010-786-1, 18 July 2011, *Conditions of licence for competitive Canadian specialty services operating in the genres of mainstream sports and national news – Implementation of the Accessibility Policy and other matters*, Broadcasting Regulatory Policy CRTC 2009-562-1, 18 June 2010; *Implementation of the Accessibility Policy with respect to new Category 2 pay and specialty services*, Broadcasting Regulatory Policy CRTC 2010-355, 8 June 2010.

- adhere to the quality standards on closed captioning developed by television industry working groups, as amended from time to time and approved by the Commission; and
  - implement a monitoring system to ensure that, for any signal that is closed captioned, the correct signal is captioned, the captioning is included in its broadcast signal and this captioning reaches the distributor of that signal in its original form. “Original form” means, at a minimum, that the captioning provided by the licensee reaches the distributor unaltered, whether it is passed through in analog or in digital, including in high definition.
16. The licensee shall provide audio description for all the key elements of information programs, including news programming, with the exception of the local forecasts that are broadcast every ten minutes. For those local forecasts, as a substitute for audio description, the licensee shall provide five secondary audio program (SAP) channels that will broadcast audio of one national and four regional weather overviews during the text segments of its local forecasts. For the purposes of this condition of licence, “audio description” refers to announcers reading aloud the textual and graphic information that is displayed on the screen during information programs.
  17. The licensee shall adhere to the *Equitable Portrayal Code*, as amended from time to time and approved by the Commission. However, the application of the foregoing condition of licence will be suspended if the licensee is a member in good standing of the Canadian Broadcast Standards Council.
  18. The licensee shall adhere to the *Broadcast Code for Advertising to Children*, as amended from time to time and approved by the Commission.
  19. The licensee shall adhere to the *Violence Code*, as amended from time to time and approved by the Commission. However, the application of the foregoing condition of licence will be suspended if the licensee is a member in good standing of the Canadian Broadcast Standards Council.

For the purpose of the conditions of this licence, all time periods shall be reckoned according to the eastern time zone.

For the purpose of the conditions of this licence:

the terms “broadcast day,” “broadcast month,” “broadcast year” and “clock hour” shall have the same meanings as those set out in the *Television Broadcasting Regulations, 1987*; and

“paid national advertising” shall mean advertising that is purchased at a national rate and receives national distribution on the service.

## **Expectations**

### **Accessibility**

When captions are available, the Commission expects the licensee to provide viewers with a closed captioned version of all programming aired during the overnight period.

The Commission expects the licensee to acquire and make available described versions of programming whenever possible.

The Commission expects the licensee to:

- display a standard described video logo and air an audio announcement indicating the presence of described video before the broadcast of each described program; and
- make information available regarding the described programs that it will broadcast.

### **New regional feeds**

In regard to the three new regional feeds identified in condition of licence 7, the Commission expects the licensee to inform the Commission of the regions to be served by no later than **22 August 2011**.

In regard to the three new regional feeds identified in condition of licence 7, the Commission expects the licensee to hire staff to fill the proposed twelve new full-time positions (e.g., as producers, on-air presenters and/or journalists) with its three new regional feeds by no later than **1 December 2012**.

### **National Alert Aggregation and Dissemination System**

The Commission expects the licensee to be responsive to the needs and concerns of the Governance Council members.

## **Encouragement**

### **Accessibility**

The Commission encourages the licensee to repeat the standard described video logo and audio announcement indicating the presence of described video following each commercial break.