



Broadcasting Decision CRTC 2005-223

Ottawa, 31 May 2005

Request to rescind the Mandatory Order issued pursuant to section 12(2) of the *Broadcasting Act* against Vidéotron ltée and its subsidiaries

The Commission rescinds the Mandatory Order issued against Vidéotron ltée and its subsidiaries pursuant to section 12(2) of the Broadcasting Act.

Background

1. On 8 February 2002, Vidéotron ltée, CF Cable TV Inc., Videotron (Regional) Ltd., Vidéotron (RDL) ltée and Télé-Câble Charlevoix (1977) inc. (collectively referred to as “Vidéotron and its subsidiaries” or simply “Vidéotron”) entered into an agreement with Câblage QMI inc. (CQMI) under which Vidéotron contracted to sell to CQMI the inside wire it owned in multiple unit dwellings (MUDs) that had 20 units or more. CQMI was a subsidiary of Quebecor Media Inc. (Quebecor) and an affiliate of Vidéotron. Vidéotron and CQMI entered into a further agreement under which Vidéotron would pay CQMI \$5.00 per month for each unit served by Vidéotron for the right to use the inside wire that was the subject of the agreement. On 12 February 2002, CQMI notified in writing all other broadcasting distribution undertakings (BDUs) competing with Vidéotron and then providing service to subscribers in Vidéotron’s serving areas in Quebec, that CQMI would make inside wire available to each of them on the same terms and conditions that it made its inside wire available to Vidéotron.
2. Shortly after the events described above, the Commission received complaints from BDUs competing with Vidéotron. These BDUs submitted that Vidéotron had breached sections 9 and 10 of the *Broadcasting Distribution Regulations* (the Regulations), which respectively pertain to undue preference or disadvantage and the right to use inside wire owned by another licensed distributor upon payment of a just and reasonable fee.
3. On 3 September 2002, the Commission issued *Cable inside wire fee*, Broadcasting Public Notice CRTC 2002-51, 3 September 2002 (Public Notice 2002-51). In Public Notice 2002-51, the Commission found that \$0.52 per subscriber per month was a just and reasonable fee for the use of inside wire in MUDs.
4. On 9 October 2002, the Commission issued *Mandatory Order issued pursuant to subsection 12(2) of the Broadcasting Act against Vidéotron ltée and its subsidiaries*, Broadcasting Decision CRTC 2002-299, 9 October 2002 (Decision 2002-299). The mandatory order, set out in Appendix I to Decision 2002-299 (the Mandatory Order), provided that Vidéotron, its subsidiaries and its affiliates, including CQMI, could not use the inside wire ostensibly owned by CQMI for the delivery of broadcasting services

unless Vidéotron and its subsidiaries and/or CQMI offered third parties in competition with Vidéotron for such delivery the use of that wire at a monthly fee not exceeding \$0.52 per subscriber per month. The Mandatory Order also directed that no other fee was to be charged.

5. On 7 July 2004, the Commission received a request from Vidéotron asking that the Commission rescind the Mandatory Order. In its request, Vidéotron informed the Commission that, on 23 December 2003, it repurchased the inside wire that it had sold to CQMI on 8 February 2002. According to Vidéotron, it obtained the liquidation of CQMI on 27 December 2003, following the repurchase of this wire. In support of its request, Vidéotron provided documents as evidence that it had reacquired the inside wire and registered the transaction on the titles of the buildings, and that it had, in fact, liquidated CQMI.
6. In making its request, Vidéotron submitted that, since the issuance of the Mandatory Order, it has conformed rigorously to section 10 of the Regulations governing the use of inside wire and that it cooperates with other BDUs in order to facilitate use of the inside wire in an efficient and timely fashion and with minimal impact on consumers.
7. In light of the above, Vidéotron argued that it is no longer necessary for the Commission to maintain the Mandatory Order, and asked that it be rescinded. In *Request by Vidéotron to rescind a mandatory order issued pursuant to section 12(2) of the Broadcasting Act*, Broadcasting Public Notice CRTC 2004-99, 23 December 2004, the Commission called for comments on Vidéotron's request.

Intervention

8. The Commission received one intervention from Bell ExpressVu LP (ExpressVu).¹ ExpressVu opposed Vidéotron's request to rescind the Mandatory Order, arguing that it represents an important measure of protection that is necessary to ensure that Vidéotron continues to respect section 10 of the Regulations. ExpressVu also submitted that Vidéotron had provided no proof that the maintenance of the Mandatory Order was causing Vidéotron harm and should therefore be removed so soon after it was put into effect.
9. ExpressVu cited examples of how Vidéotron refused to allow its competitors access to the inside wire after it was transferred to CQMI, and only accepted, with reluctance, the directives of the Commission after all of its court appeals were rejected. Based on this, ExpressVu submitted that there is no reason to believe that, if the Mandatory Order were

¹ 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

removed, Vidéotron would not employ a similar strategy once again, since the ownership and management of Vidéotron have not changed since February 2002 when CQMI was created. ExpressVu expressed concern that, for Vidéotron's competitors, this could result in another long and costly period without access to Vidéotron's inside wire, if the latter were to engage in anti-competitive behaviour once again.

10. ExpressVu also submitted that the Commission should extend the application of the Mandatory Order to prevent Vidéotron from transferring its inside wire to unaffiliated companies, as well as to affiliated ones like CQMI.

Vidéotron's reply

11. In its reply comments, Vidéotron argued that it is at risk for harm if the Mandatory Order is maintained. Vidéotron noted that the Mandatory Order requires it to accommodate requests by other BDUs for access to customer service enclosures or distribution panels within 24 hours of receiving such a request and to provide them with a two-hour appointment window. Vidéotron submitted that, in day-to-day operations, it may not always be possible to meet this obligation for reasons such as traffic, mechanical breakdowns, accidents, illnesses, etc. While Vidéotron argued that these reasons may be considered legitimate by the Commission in the normal course of dealing with a complaint, the presence of the Mandatory Order puts Vidéotron at risk for legal actions involving significant costs and damage to personal reputation.
12. Vidéotron also argued that its efforts to pursue its point of view through the legal system should not be used as an argument to maintain the Mandatory Order. Vidéotron added that, since the release of Decision 2002-299, it has respected the determinations of the Commission.
13. Vidéotron argued that it has shown by its recent actions, including the repurchase of the inside wire, the liquidation of CQMI by Quebecor and its cooperation with other distributors, that it has no intention of reopening the debate on inside wire. Therefore, Vidéotron urged the Commission to reject ExpressVu's argument that removing the Mandatory Order would put Vidéotron's competitors in a "position of vulnerability."

The Commission's analysis and determination

14. Based on the record of this proceeding, the Commission concludes that Vidéotron has, in fact, reacquired the inside wire from CQMI, and has liquidated CQMI, as described in its application. Since Vidéotron is once again the owner of the inside wire, section 10 of the Regulations can be enforced against Vidéotron without the need for the Mandatory Order.

15. In light of Vidéotron's assurances that it has no intention of reopening the debate on inside wire, and since section 10 of the Regulations can be enforced directly against Vidéotron without the Mandatory Order, the Commission **rescinds** the Mandatory Order issued against Vidéotron ltée and its subsidiaries pursuant to section 12(2) of the *Broadcasting Act* (the Act). The Commission will therefore register an order to rescind the Mandatory Order in the appropriate court, in accordance with the provisions of section 13 of the Act.

Secretary General

This decision is to be appended to each 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>