



Broadcasting Decision CRTC 2006-302

Ottawa, 17 July 2006

Cogeco Cable Canada Inc.
Provinces of Quebec and Ontario

Application 2005-1578-6
Broadcasting Public Notice CRTC 2006-32
16 March 2006

Video-on-demand – Licence amendments

*In this decision, the Commission **approves** an application to amend the broadcasting licence for the regional, English- and French-language video-on-demand programming undertaking, 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 on an on-demand basis at no charge to the subscriber.*

The application

1. The Commission received an application by Cogeco Cable Canada Inc. (Cogeco) to amend the broadcasting licence for the regional, English- and French-language video-on-demand (VOD) programming undertaking, 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.

2. One of Cogeco's current conditions of licence reads as follows:

The licensee shall adhere to the *Pay Television Regulations, 1990*, with the exception of section 4 (logs and records).

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

The licensee shall adhere to the *Pay Television Regulations, 1990*, with the exception of section 3(2)(d) (commercial messages) and section 4 (logs and records).

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

The licensee shall not include as part of its video-on-demand 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 video-on-demand 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 on an on-demand basis at no charge.
5. Cogeco submitted that the approval of this application would be in the public interest. Cogeco also noted the flexibility granted recently to Groupe Archambault Inc. and to Rogers Cable Communications Inc., two licensees of VOD programming undertakings who had proposed similar amendments to their conditions of licence, which were approved by the Commission in *Illico sur demande – Licence amendments*, Broadcasting Decision CRTC 2005-498, 18 October 2005 (Decision 2005-498) and in *Rogers on Demand – Licence amendments*, Broadcasting Decision CRTC 2005-497, 18 October 2005 (Decision 2005-497).

Intervention

6. The Commission received a comment by the Canadian Association of Broadcasters (CAB). While not opposing this application, the CAB noted that, in light of the changing nature of VOD services since the issuance of the original licences, the Commission should conduct a review of the regulatory framework for VOD and pay-per-view (PPV) services before considering the licence renewals for the existing VOD services expiring between 2007 and 2010.

Commission's analysis and determination

7. In Decision 2005-498 and in Decision 2005-497, 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.”

8. In light of the above, the Commission **approves** the application by Cogeco Cable Canada Inc. to amend the broadcasting licence for the regional, English- and French-language video-on-demand programming undertaking, 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.
9. With respect to the CAB’s comment that it would be appropriate to review the regulatory framework for VOD and PPV services before considering the licence renewals for the existing VOD services expiring between 2007 and 2010, the Commission intends to address these concerns and related issues in the context of the review of the regulatory framework for discretionary services, announced as part of its *Three-year work plan*, published on 28 April 2006.
10. The licence will continue to be subject to the **conditions** set out in *New video-on-demand services*, Decisions CRTC 2000-733 to CRTC 2000-736, 14 December 2000, with the exception of condition of licence no. 1, which is replaced by the following **condition**:

The licensee shall adhere to the *Pay Television Regulations, 1990*, with the exception of section 3(2)(d) (commercial messages) and section 4 (logs and records).

11. The Commission also adds the following **condition of licence**:

The licensee shall not include as part of its video-on-demand 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 video-on-demand 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 on an on-demand basis 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>