



## Broadcasting Decision CRTC 2007-307

Ottawa, 16 August 2007

**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**

Toronto, Hamilton/Niagara, Oshawa, Kitchener, London, Windsor, Ottawa and their surrounding areas, Ontario; and Montréal, Gatineau, Sherbrooke, Québec and their surrounding areas, Quebec

*Application 2007-0207-8, received 9 February 2007*

*Public Hearing in the National Capital Region*

*18 June 2007*

### **Pay-per-view service**

*The Commission **approves** an application for a broadcasting licence to operate a regional terrestrial pay-per-view service largely composed of live and pre-recorded sporting events, programs covering those sporting events, and entertainment programs such as live concerts, galas and other special performances.*

### **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 obtain a broadcasting licence to operate a regional terrestrial pay-per-view (PPV) programming undertaking to serve the above-noted locations and their surrounding areas in Ontario and Quebec.
2. The proposed service would consist primarily of live and pre-recorded sporting events, programs covering those sporting events, and entertainment programs such as live concerts, galas and other special performances. While the programming would be predominantly in the English language, the applicant made a commitment to offer approximately 10% of its programming in French.

3. The applicant also requested a condition of licence that would allow it, as an exception to sections 3(2)(e) and 3(2)(f) of the *Pay Television Regulations, 1990* (the Pay Television Regulations), to distribute programming produced by itself or a related person provided that it is limited to no more than 50% of the total hours of Canadian programming broadcast in each broadcast year.
4. The Commission did not receive any interventions in connection with this application.

#### **Service to persons who are deaf or hard of hearing**

5. Bell ExpressVu stated that it would provide closed captioning of its proposed terrestrial PPV programming to serve the needs of viewers who are deaf or hard of hearing. The applicant indicated that it would ensure that 90% of all English-language programming is closed captioned by the beginning of 2013 (year 6 of the licence term) and that all French-language programming is closed captioned by the beginning of 2014 (year 7 of the licence term as opposed to year 6 of the licence term as required). Bell ExpressVu stated that it could only achieve the 90% requirement for French-language programming in the last year of the licence term due to the technical challenges involved with captioning French-language programming. In support of its request for an exception to the regulatory requirement, the applicant referred to Broadcasting Decision 2004-162, in which a similar request was approved for the existing PPV service known as Canal Indigo.

#### **Service to persons who are blind or whose vision is impaired**

6. Bell ExpressVu stated that it would provide persons with visual impairments with improved access to its terrestrial PPV programming through audio description and video description (also known as “described video”) wherever appropriate. The applicant also indicated that it would take the necessary steps to ensure that its customer service responds to the needs of viewers who have visual impairments.

#### **Commission’s analysis and determinations**

7. Based on its examination of this application, the Commission is satisfied that the application is in conformity with the licensing framework for PPV services set out in Public Notice 2000-172. Accordingly, 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, for a broadcasting licence to operate a regional terrestrial PPV programming undertaking to serve the above-noted locations and their surrounding areas in Ontario and Quebec. The terms and **conditions of licence** are set out in the appendix to this decision.

8. Regarding Bell ExpressVu's request for permission to distribute programming produced by itself or a related person provided that it is limited to no more than 50% of the total hours of Canadian programming broadcast in each broadcast year, the Commission finds that approval of this request would be appropriate given that other PPV services offering similar types of programming have obtained such an exception to the Pay Television Regulations. Accordingly, the Commission **approves** the applicant's request. A **condition of licence** to this effect is set out in the appendix to this decision.
9. However, with respect to Bell ExpressVu's request to be permitted to achieve the required 90% of closed captioning of all French-language programming by year 7 rather than by year 6 of its licence term, the Commission is of the view that in this case the applicant did not demonstrate the need for such relief. Therefore, in conformity with the Commission's general approach regarding closed captioning, the Commission is imposing a **condition of licence** requiring the licensee to close caption at least 90% of all English- and French-language programming aired during the broadcast year, beginning no later than 1 September 2013.

### **Employment equity**

10. Because this licensee is subject to the *Employment Equity Act* and files reports concerning employment equity with the Department of Human Resources and Skills Development, its employment equity practices are not examined by the Commission.

Secretary General

### **Related documents**

- *Licence amendment for Canal Indigo*, Broadcasting Decision CRTC 2004-162, 23 April 2004
- *Introductory statement to Decisions CRTC 2000-733 to 2000-738: Licensing of new video-on-demand and pay-per-view services*, Public Notice CRTC 2000-172, 14 December 2000

*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 2007-307

## Terms, conditions of licence and expectations

### Terms

**Issuance of the broadcasting licence to operate a regional terrestrial pay-per-view programming undertaking to serve Toronto, Hamilton/Niagara, Oshawa, Kitchener, London, Windsor, Ottawa and their surrounding areas, Ontario; and Montréal, Gatineau, Sherbrooke, Québec and their surrounding areas, Quebec**

The licence will take effect 1 September 2007 and will expire 31 August 2014.

Furthermore, the licence for this undertaking will be issued once the applicant has informed the Commission in writing that it is prepared to commence operations. The undertaking must be operational at the earliest possible date and, in any event, no later than 24 months from the date of this Decision, unless a request for an extension of time is approved by the Commission before 16 August 2009. In order to ensure that such a request is processed in a timely manner, it should be submitted at least 60 days before that date.

### Conditions of licence

1. The licensee shall provide a regional terrestrial pay-per-view (PPV) television programming service consisting primarily of live and pre-recorded sporting events, programs covering those sporting events, and entertainment programs such as live concerts, galas and other special performances. The licensee shall draw its programming exclusively from the categories 6(a) (Professional sports), 6(b) (Amateur sports), 7(c) (Specials, mini-series and made-for-TV feature films), 12 (Interstitials) and 15 (Filler programming), as set out in item 6 of Schedule I to the *Pay Television Regulations, 1990*, as amended from time to time.
2. 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 that is produced by the licensee or by a person related to the licensee, but such programming shall not exceed, in each broadcast year, 50% of the total hours of Canadian programming broadcast in that broadcast year.
3. The licensee is exempted from the requirements set out in sections 4(1), 4(2) and 4(3) of the *Pay Television Regulations, 1990* with respect to the retention of program logs and records.

4. The licensee shall maintain for a period of one year and submit to the Commission upon request a detailed list of programs broadcast on each channel. The list must identify each program broadcast; its key figure; its programming category; if the program is an event; the language of the program; if it is Canadian or non-Canadian; if closed captioning and/or video description is available; if it is produced by the licensee; and the times and dates of broadcast.
5. In markets where a bilingual service is offered, the licensee shall maintain the channels in a ratio of French to English of 1:3, with a minimum of 5 French-language signals in addition to the French-language barker channel.
6. With respect to English-language programming, the licensee shall, through its agreements with the licensees of terrestrial broadcasting distribution undertakings, ensure that these licensees meet the following requirements for each broadcast year:
  - a. a minimum of 4 English-language Canadian-based events must be made available to the licensees' PPV subscribers; and
  - b. a minimum of 20% of all program titles other than feature films must be Canadian.
7. With respect to French-language programming, the licensee shall, through its agreements with the licensees of terrestrial broadcasting distribution undertakings, ensure that these licensees meet the following requirements for each broadcast year:
  - a. a minimum of 6 French-language events in each of years one and two of operation, 8 in each of years three and four, 10 in each of years five and six, and 12 in year seven must be made available to the licensees' PPV subscribers; and
  - b. a minimum of 20% of all program titles other than feature films must be Canadian.
8. The licensee shall contribute a minimum of 5% of the gross annual revenues to an existing Canadian program production fund administered independently of its undertaking. Contributions to the fund shall take the form of monthly instalments paid within 45 days of month's end and representing a minimum of 5% of that month's gross revenues.
9. The licensee shall remit to the rights holders of two Canadian-based events, in each broadcast year, 100% of the gross revenues earned by the licensee from the exhibition of these events.

10. The licensee shall not enter into an affiliation agreement with the licensee of a broadcasting distribution undertaking unless the agreement incorporates a prohibition against linkage of its service with any non-Canadian discretionary service.
11. The licensee shall provide closed captioning for not less than 90% of all English-language and French-language programming aired during the broadcast year, beginning no later than 1 September 2013.
12. The licensee shall adhere to the guidelines on gender portrayal set out in the Canadian Association of Broadcasters' *Sex-role portrayal code for television and radio programming*, 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.
13. 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.
14. 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.

## **Expectations**

### **Program offering in both official languages**

The Commission expects the licensee to make its program offering available to customers in both official languages. The Commission expects the licensee to adhere to its commitment to offer 10% of its programming in the French language.

### **Programming packages**

The Commission expects the licensee to limit to one week the total period during which the programming in programming packages may be viewed.

### **Cultural diversity**

The Commission expects the licensee to endeavour, through its programming and employment opportunities, to reflect the presence in Canada of ethnocultural minorities, Aboriginal peoples, and persons with disabilities. The Commission further expects the licensee to ensure that the on-screen portrayal of such groups is accurate, fair and non-stereotypical.

**Service to persons who are blind or whose vision is impaired**

The Commission expects the licensee to provide an audio description of all programming that provides textual or graphic information, including programming broadcast on the barker channel. The Commission also expects the licensee to acquire and make available described versions of programming, where possible, and to ensure that its customer service responds to the needs of visually impaired customers.