



## Broadcasting Decision CRTC 2007-391

Ottawa, 24 October 2007

**Rogers Cable Communications Inc.**  
Across Canada

*Application 2007-0428-0, received 15 March 2007  
Broadcasting Public Notice CRTC 2007-63  
12 June 2007*

### **Rogers on Demand – Licence amendments**

*The Commission **approves in part** an application by Rogers Cable Communications Inc. (Rogers) for amendments to the conditions of licence for the national, video-on-demand programming undertaking known as Rogers on Demand (ROD). Specifically:*

- *The Commission **denies** the request for an amendment that would have authorized the licensee to distribute programming that contains new or altered commercial messages and to charge a fee for that programming, at the licensee's discretion. The Commission, however, authorizes the licensee to charge a fee to subscribers for programming distributed by ROD, including community programming provided by Rogers' community channel known as Rogers Television, containing commercial messages where those messages are already included in a program previously broadcast by a Canadian programming undertaking. The licensee must allocate all revenues generated by a subscriber fee for community programming distributed by ROD exclusively to the production of community programming.*
- *The Commission **approves** the request for a licence amendment that authorizes the licensee to retain commercial, sponsorship and credit messages, as described in section 27 of the Broadcasting Distribution Regulations, that appear within the community programming offered on Rogers Television when this programming is offered as part of ROD. However, the Commission **denies** the request to enhance the commercial, sponsorship and credit messages that appear within the community programming offered on the licensee's community channel when this programming is offered as part of ROD.*
- *The Commission **approves** the request for an amendment that authorizes the distribution of programming produced by the licensee or by a related person up to a maximum of 10% of the total programming made available on ROD in each broadcast year.*

## Introduction

1. Rogers Cable Communications Inc. (Rogers) filed an application to amend the broadcasting licence for its national, video-on-demand (VOD) programming undertaking known as Rogers on Demand (ROD). Rogers requested amendments to its current condition of licence requiring it to adhere to the *Pay Television Regulations, 1990* (Pay Regulations), with the exception of section 3(2)(d) (commercial messages) and section 4 (logs and records). The proposed amendments would modify the exemptions from the Pay Regulations that have already been accorded to the licensee, and exempt the licensee from the requirement to adhere to sections 3(2)(e) and 3(2)(f) of the Pay Regulations, which prohibit the licensee from distributing programming, other than filler programming, produced by itself or by a person related to the licensee.
2. Specifically, Rogers requested that the Commission:
  - replace the current condition of licence that authorizes the distribution of programming containing commercial messages where those messages are already included in a program previously broadcast by a Canadian programming service and that program is subsequently offered on an on-demand basis at no charge to the subscriber with a new condition of licence that would allow the licensee to distribute programming that contains new or altered commercial messages and to charge a fee for that programming, at the licensee's discretion.
  - authorize the licensee, by condition of licence, to retain and enhance the commercial, sponsorship and credit messages, as described in section 27 of the *Broadcasting Distribution Regulations* (the Distribution Regulations), that appear within the community programming offered on its community channel known as Rogers Television when this programming is offered as part of ROD.
  - authorize the licensee, by condition of licence, to distribute programming produced by itself or by a related person up to a maximum of 10% of the total programming made available on ROD.
3. Rogers submitted that the proposed licence amendments would increase the diversity of programming available to ROD's subscribers and help Canadian broadcasters realize higher advertising revenues from the VOD platform through targeted advertising.
4. The Commission received and considered interventions this application. These interventions and Rogers' reply are available on the Commission's web site at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Public Proceedings."

## **Commission's analysis and determinations**

5. The Commission recently approved applications for amendments to the broadcasting licences of certain VOD and pay-per-view programming undertakings to permit them to offer programming that includes commercial messages. These commercial messages are restricted to those contained in programs previously broadcast by other Canadian programming services, under the terms of written agreements with the licensees of those Canadian programming services, and offered on an on-demand basis at no charge to subscribers. In evaluating those applications, the Commission determined approval would not represent a significant departure from the existing regulatory framework for licensing VOD undertakings.
6. Given its previous decisions on this issue and taking into consideration the positions of the parties to the present proceeding, the Commission finds that the relevant issues arising from this application are the following:
  - Would approval of the proposed licence amendments represent a significant departure from the existing regulatory framework for licensing VOD undertakings?
  - Would it be more appropriate for the Commission to consider these requests in the context of the review of the regulatory frameworks for broadcasting distribution undertakings (BDUs) and discretionary programming services announced in Broadcasting Notice of Public Hearing 2007-10?

### **Request to insert new or altered commercial messages in programs and charge a subscriber fee for those programs**

7. In Rogers' view, its VOD platform presently offers limited value to advertisers because of the time and location sensitivity of the advertising that is currently allowed to be included in programming offered on ROD. Rogers wants to use the technology within its distribution network to increase the value of this advertising and consequently enable broadcasters to generate more revenues. Rogers maintained that the proposed subscriber fee would be allocated to funding development and deployment of the technology needed to insert and maintain advertising in the programming offered on ROD.
8. Some interveners expressed concerns that Rogers' application did not clearly indicate:
  - which party would sell the new or altered advertising to be inserted into the programming and whether the revenues generated from that advertising would be shared between the Canadian broadcasters providing the programs and Rogers.
  - whether the proposed subscriber fee would be negotiated with the Canadian broadcasters providing the programs.

- whether the insertion or alteration of the advertising contained in the programs supplied by Canadian broadcasters to Rogers would be done without prior written agreement between the two parties.
9. In response, Rogers confirmed that the Canadian broadcasters providing the programming would oversee the sale of advertisements. Rogers indicated that the terms of the allocation of revenues, whether they were generated by advertising or by the proposed subscriber fee, would be determined in a negotiated agreement between itself and Canadian broadcasters. Rogers pointed out that such agreements would be subject to the Commission's regulations and imposed on ROD by condition of licence.
  10. The Commission, however, is persuaded by the concerns raised by some interveners that Rogers did not provide evidence of ROD's financial need or demonstrate that the VOD platform is in a degree of financial jeopardy that would warrant approval of such a request. Moreover, the Commission considers that it does not have sufficient financial data to make a determination on whether allowing ROD to insert new or altered commercial messages in any program obtained by a Canadian programming service would represent a significant departure from the existing regulatory framework for licensing VOD undertakings. Accordingly, the Commission finds that it would be more appropriate to consider this issue in the broader context of the upcoming review of the regulatory framework for discretionary programming services.
  11. At the same time, the Commission is satisfied that allowing VOD services to charge a subscriber fee for a program that contains commercial messages that were already included in a previous broadcast by a Canadian programming service is appropriate in light of the fully discretionary nature of VOD services and is consistent with the recent approval of a similar request for the VOD service known as Shaw on Demand (see Broadcasting Decision 2007-273).

**Request to retain and enhance commercial, sponsorship and credit messages in community programming available on ROD**

12. The Commission determines that it is appropriate to allow Rogers to offer community programming including the commercial, sponsorship or credit messages as originally broadcast on Rogers Television as part of ROD's inventory provided that the community programming is offered in accordance with section 27 of the Distribution Regulations. The Commission however is not prepared to authorize Rogers to enhance commercial, sponsorship or credit messages offered during community programming distributed by ROD. In the Commission's view, such an authorisation would constitute a significant departure from the existing regulatory licensing framework for VOD services. The Commission may be prepared to consider this issue as part of the review of the regulatory framework for discretionary programming services.

13. The Commission notes that Rogers is required to allocate 5% of its gross annual revenues derived from the broadcasting activities of its cable BDUs to Canadian programming. With respect to those cable BDUs on which it distributes community channels, Rogers is permitted to allocate up to 2% of those revenues to its community channel. In the particular case of Rogers' VOD service, the Commission finds that it is appropriate to permit the licensee to charge a subscriber fee for the community programming offered on ROD as long as the monies generated by that subscriber fee are allocated exclusively to the production of community programming.

**Request to distribute programming produced by the licensee or a related person**

14. Rogers submitted that it wants to offer programs on ROD created by other services operated by Rogers Broadcasting Limited, such as: OMNI.1, OMNI.2, Sportsnet, the Biography Channel, G4TechTV and Rogers Television.
15. Generally, the interveners did not oppose Rogers' request for authority to devote up to 10% of all programming made available on ROD to programming produced by Rogers or by a related person. Some interveners, however, expressed concern that approval of this request might result in opportunities that would confer undue preference on Rogers. These interveners suggested that, in order to mitigate the risk of undue preference, the Commission impose a condition of licence on Rogers limiting the distribution of such programming to no more than 10% of the total programming made available on ROD in each broadcast year.
16. The Commission notes that other VOD services are authorized to distribute limited amounts of programming produced by the licensee or related persons. Rogers is also proposing to distribute a limited amount of such programming. Moreover, Rogers is subject to regulatory requirements regarding undue preference. Accordingly, the Commission determines that it is appropriate to allow Rogers to distribute a limited amount of programming that has been produced by itself or by persons related to it.

**Conclusion**

17. In light of all of the above, the Commission **approves in part** the application by Rogers Cable Communications Inc. to amend the broadcasting licence for ROD. Specifically:
  - The Commission replaces ROD's current condition of licence number 1 with a **condition of licence** requiring the licensee to adhere to the *Pay Television Regulations, 1990*, as amended from time to time, with the exception of sections 3(2)(d) (commercial messages), 3(2)(e) (programming produced by the licensee), 3(2)(f) (programming produced by a person related to the licensee) and 4 (logs and records).

- The Commission **denies** the request for authority to distribute programming that contains new or altered commercial messages and to charge a fee for that programming. The Commission, however, authorizes the licensee, by **condition of licence**, to charge a fee to subscribers for programming distributed by ROD, including community programming provided by Rogers Television, containing commercial messages where those messages are already included in a program previously broadcast by a Canadian programming undertaking. The licensee must, by **condition of licence**, allocate all revenues generated by a subscriber fee for the distribution of community programming on ROD exclusively to the production of community programming.
- The Commission **approves** the request for a **condition of licence**, authorizing the licensee to retain commercial, sponsorship and credit messages, as described in section 27 of the *Broadcasting Distribution Regulations*, that appear within the community programming offered on Rogers Television when this programming is offered as part of ROD. However, the Commission **denies** the request to enhance the commercial, sponsorship and credit messages that appear within the community programming offered on Rogers Television when this programming is offered as part of ROD.
- The Commission **approves**, by **condition of licence**, the request to allow the distribution of programming produced by the licensee or by a person related to the licensee up to a maximum of 10% of the total programming made available on ROD.

18. ROD's **conditions of licence** are set out in the appendix to this decision.

Secretary General

#### **Related documents**

- *Shaw on Demand – Licence amendments*, Decision CRTC 2007-273, 2 August 2007
- *Review of the regulatory frameworks for broadcasting distribution undertakings and discretionary programming services*, Broadcasting Notice of Public Hearing CRTC 2007-10, 5 July 2007
- *Administrative licence renewals*, Broadcasting Decision CRTC 2006-319, 28 July 2006

- *Roger on Demand – Licence amendments*, Broadcasting Decision CRTC 2005-497, 18 October 2005
- *New video-on-demand services*, Decisions CRTC 2000-733 to CRTC 2000-736, 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 2007-391

### Conditions of licence for the national, video-on-demand programming undertaking known as Rogers on Demand

1. The licensee to adhere to the *Pay Television Regulations, 1990*, as amended from time to time, with the exception of sections 3(2)(d) (commercial messages), 3(2)(e) (programming produced by the licensee), 3(2)(f) (programming produced by a person related to the licensee) and 4 (logs and records).
2. 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.
3. Except as authorized by the Commission, the broadcasting undertaking licensed herein shall be operated in fact by the licensee itself.
4. 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 VOD 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.
5. The licensee shall not include as part of its video-on-demand offering any program containing a commercial message except where:
  - a) the commercial 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 message is included in the licensee's community programming in accordance with subsections 27(1)(g), (h), and (i) of the *Broadcasting Distribution Regulations*.

6. The licensee shall allocate all revenues generated by a subscriber fee for the distribution of the licensee's community programming exclusively to the production of community programming.
7. 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 programming made available on its video-on-demand service.
8. 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;
  - 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".
9. The licensee shall ensure that not less than 25% of the titles promoted each month on its barker channel are Canadian titles.
  10. The licensee shall remit to the rights holders of all Canadian films 100% of revenues earned from the exhibition of these films.
  11. 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.
  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