



Broadcasting Decision CRTC 2007-63

Ottawa, 15 February 2007

Bragg Communications Incorporated

Nova Scotia, Prince Edward Island and New Brunswick

Application 2006-0961-2

Public Hearing in the National Capital Region

18 December 2006

Video-on-demand service

*In this decision, the Commission **approves** an application by Bragg Communications Incorporated for a broadcasting licence to operate a regional video-on-demand service largely composed of feature films but that may also include programming from all program categories set out in item 6 of Schedule I of the Pay Television Regulations, 1990.*

The application

1. The Commission received an application by Bragg Communications Incorporated (Bragg) for a broadcasting licence to operate a regional video-on-demand (VOD) programming undertaking to serve the provinces of Nova Scotia, Prince Edward Island and New Brunswick.
2. The proposed VOD service would consist primarily of feature films but may also include programming from all program categories set out in item 6 of Schedule I of the *Pay Television Regulations, 1990* (the Pay Television Regulations). The applicant indicated that the programming would be predominantly in the English language.
3. Video-on-demand services are subject to the Pay Television Regulations, which include a provision prohibiting the distribution of programming produced by the licensee or a related person, other than filler programming, except as otherwise provided in a condition of licence. The applicant requested a condition of licence that would permit it to distribute such programming provided that it is limited to no more than 10% of the programming offered by the VOD service.
4. The applicant also requested that the following condition be added to its 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.

Intervention

- 5. The Commission received a general comment that did not specifically address Bragg's application.

Commission's analysis and determinations

- 6. Based on its examination of this application, the Commission is satisfied that this application is in conformity with the licensing framework for VOD services as set out in *Licensing of New Video-on-demand Programming Undertakings – Introduction to Decisions CRTC 97-283 to 97-287*, Public Notice CRTC 1997-83, 2 July 1997 and *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 (Public Notice 2000-172).
- 7. Accordingly, the Commission **approves** the application by Bragg Communications Incorporated for a broadcasting licence to operate a regional VOD programming undertaking to serve the provinces of Nova Scotia, Prince Edward Island and New Brunswick.
- 8. The licence will expire 31 August 2013. The undertaking will be subject to the **conditions of licence** that are generally applicable to all VOD undertakings, including those relating to Canadian content and expenditures on Canadian programming, with the exception of sections 3(2)(d), 3(2)(e), 3(2)(f), and 4 of the Pay Television Regulations, as well as to the **conditions** set out in the appendix to this decision.

Distribution of programming produced by the licensee or person related to the licensee

- 9. As mentioned above, Bragg requested a condition of licence that would allow it to distribute programming, other than filler programming, produced by the licensee or a related person. In keeping with the Commission's general approach to give VOD licensees the flexibility to experiment with the types of programming they offer, the Commission considers that it is appropriate to permit Bragg to distribute programming that is produced by the licensee or a related person, up to a maximum of 10% of the total hours of the programming broadcast in each broadcast year. A **condition of licence** to this effect is set out in the appendix to this decision.

Commercial messages

10. The Commission has recently approved a number of applications for amendments to the broadcasting licences of 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 be 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.”
11. In light of the above, the Commission **approves** the addition of a condition of licence authorizing Bragg 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. A **condition of licence** to this effect is set out in the appendix to this decision.

Closed captioning

12. The Commission is committed to improving service to viewers who are deaf or hard of hearing and has consistently encouraged broadcasters to increase the amount of closed captioned programming that they provide. It is the Commission’s current practice to require licensees of VOD services to provide closed captioning for a minimum of 90% of all titles offered, by no later than the beginning of the sixth year of the licence term.
13. Bragg committed to close caption 90% of all programming by the beginning of the sixth year of the licence term. A **condition of licence** to this effect is set out in the appendix to this decision. Bragg also indicated that a minimum of 25% of all English-language titles in its inventory would be closed captioned beginning in the first year of operation. That amount would increase to 55% in the fourth year and to 65% in the fifth year of operation.

French-language programming

14. In Public Notice 2000-172, the Commission underscored the importance it places on subscribers being able to select programming in the official language of their choice. Accordingly, as part of its licensing framework for VOD services, the Commission stated that it would expect, to the maximum extent possible, that each VOD service would make its program offering available to customers in both official languages. The Commission notes that the applicant did not commit to offer any programming in the French language. Nevertheless, the Commission reiterates its expectation that Bragg make its program offering available, to the maximum extent possible, in both official languages.

Programming packages

15. In accordance with its policy set out in Public Notice 2000-172, the Commission expects the applicant to limit to one week the total period during which the programming in programming packages may be viewed.

Adult programming

16. In *Industry code of programming standards and practices governing pay, pay-per-view and video-on-demand services*, Broadcasting Public Notice CRTC 2003-10, 6 March 2003 (Public Notice 2003-10; Industry code of programming standards), the Commission approved and announced a new code in order to more effectively address the broadcast of adult programming on pay, pay-per-view and VOD services.
17. The Commission notes that Bragg included a copy of its internal policy on adult programming as part of its licence application, as contemplated in Public Notice 2003-10.
18. The Commission expects the applicant to adhere to its internal policy on adult programming. Further, the Commission is imposing a **condition of licence**, as set out in the appendix to this decision, requiring the applicant to abide by the Industry code of programming standards.

Cultural diversity

19. The Commission expects the applicant 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 applicant 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

20. The Commission is committed to improving the accessibility of television programming for persons with visual impairments through the provision of audio description and video description (also known as described video). Bragg indicated that it would investigate the possibility of providing audio description and video description of titles and would offer it when possible, though it did not commit to a minimum percentage of described titles over the licence term. The Commission expects Bragg to provide audio description of all programming that provides textual or graphic information, including programming broadcast on the barker channel. The Commission also expects Bragg 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.

Issuance of the licence

21. 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 15 February 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.

Employment equity

22. 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

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 2007-63

Conditions of licence

1. The licensee shall adhere to the *Pay Television Regulations, 1990*, 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 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.
3. 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, that is produced by the licensee or by a person related to the licensee, but such programming shall not exceed 10% of the total hours of its programming broadcast in each broadcast year.
4. 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.
5. Except as authorized by the Commission, the broadcasting undertaking licensed herein shall be operated in fact by the licensee itself.
6. 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 video-on-demand exhibition and meet the approved *Industry code of programming standards and practices governing pay, pay-per-view and video-on-demand services*, Broadcasting Public Notice CRTC 2003-10, 6 March 2003; and
 - c) not less than 20% of all programming other than feature films in the inventory available to subscribers is Canadian.
7. 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.”
8. The licensee shall ensure that not less than 25% of the titles promoted each month on its barker channel are Canadian titles.
9. The licensee shall remit to the rights holders of all Canadian feature films 100% of revenues earned from the exhibition of these films.
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 caption at least 90% of the programming in its inventory, beginning no later than 1 September 2011.

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. The application of the foregoing condition of licence will be suspended as long as 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.