



Broadcasting Decision CRTC 2008-121

Ottawa, 6 June 2008

Videotron Ltd.

Province of Quebec

*Application 2007-1599-8, received 13 November 2007
Broadcasting Public Notice CRTC 2007-141
18 December 2007*

Illico sur demande – Licence amendment

*The Commission **approves** the application by Videotron Ltd. to amend the conditions of licence of the video-on-demand programming undertaking known as Illico sur demande (Illico). Specifically:*

- *The Commission **approves** the request to replace Illico's condition of licence no. 1 with a condition of licence requiring it to comply with 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 **approves** the request to amend the licence in order to authorize the licensee to charge a fee to subscribers for programming broadcast by Illico, including community programming provided by Videotron Ltd.'s community channel known as Canal Vox that contains commercial messages where those messages are already included in a program previously broadcast by a Canadian programming service. The licensee must allocate all revenues generated by a subscriber fee for community programming distributed by Illico exclusively to the production of community programming.*
- *The Commission **approves** the request to amend the licence in order to authorize 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 Canal Vox when this programming is offered as part of the programming of Illico.*
- *The Commission **approves** the request to amend the licence in order to authorize 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 Illico in each broadcast year.*

Introduction

1. On 13 November 2007, Le Groupe Archambault inc. (Groupe Archambault) filed an application to amend the broadcasting licence for its video-on-demand (VOD) programming undertaking known as Illico sur demande (Illico). Groupe Archambault requested amendments to its current condition of licence that requires it to adhere to the *Pay Television Regulations, 1990* (the 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 granted to the licensee and would 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. Groupe Archambault also requested that the Commission replace the condition of licence that authorizes the distribution of programming containing commercial messages only 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 containing commercial messages already included in a program previously broadcast by a Canadian programming service and to charge subscribers a fee for that programming at the licensee's discretion.
3. Furthermore, Groupe Archambault requested that the Commission authorize it, by condition of licence, to retain the commercial, sponsorship and credit messages, as described in section 27 of the *Broadcasting Distribution Regulations* (the BDU Regulations), that appear within the community programming offered on its community channel known as Canal Vox when this programming is offered as part of Illico.
4. In response to requests for clarification, Groupe Archambault indicated that it would be prepared to accept a condition of licence requiring it to distribute a maximum of 10% of programming, other than filler programming, produced by the licensee or by a person related to the licensee during a broadcast year. Groupe Archambault also confirmed that it would be prepared to accept a condition of licence requiring it to allocate all revenues generated by a subscriber fee for community programming distributed by the licensee exclusively to the production of community programming. The licensee also indicated that in order to comply with the community media policy and the Pay Regulations, it would accept the imposition of the following condition of licence:

The message is included in the licensee's community programming in accordance with sections 27(1)(g), (h) and (i) of the *Broadcasting Distribution Regulations*.
5. Groupe Archambault submitted that the Commission's approval of the proposed licence amendments would allow it to increase the number of original Canadian programs offered to the public without affecting broadcasters.

6. On 25 March 2008, in Broadcasting Decision 2008-67, the Commission approved an application by Videotron Ltd. (Videotron) to acquire from Groupe Archambault the assets of Illico sur demande and to obtain a broadcasting licence to continue the operation of the undertaking under the same terms and conditions as those set out in the licence. This transaction was completed on 1 May 2008. Consequently, the licensee of the VOD broadcasting programming undertaking known as Illico sur demande is Videotron.
7. The Commission received and considered interventions concerning this application. These interventions and the replies by Groupe Archambault can be consulted on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Commission's analysis and determinations

8. The Commission has 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, are consistent with the terms of written agreements with the licensees of those Canadian programming services, and are offered on an on-demand basis. In evaluating those applications, the Commission determined that approval would not represent a significant departure from the existing regulatory framework for licensing VOD undertakings.
9. In light of the concerns raised by the interveners, the Commission finds that the relevant issues arising from this application are the following:
 - Should the Commission authorize the licensee to charge subscribers a fee for community programming?
 - Should the Commission authorize the licensee to retain commercial, credit and sponsorship messages in the community programming offered on Illico?
 - Should the Commission authorize the licensee to distribute programming produced by the licensee or by a related person?

Request to charge subscribers a fee for community programming

10. The Fédération des télévisions communautaires autonomes du Québec (the Fédération) raised several concerns in its intervention. According to the Fédération, the distribution of community programming by a VOD service for a fee to users of the VOD service conflicts with the principle of access at the lowest possible price. The intervener added that the community programming distributed by VOD could not comply with the principle requiring adherence to the service area for which the programming was initially produced. The Fédération was concerned that VOD distribution of community programming could lead fairly quickly to the end of the community channel as an outlet for local expression.

11. The Fédération was also concerned about the distribution of community programming produced by independent community television services to Illico subscribers. Specifically, the Fédération wanted confirmation that the revenues generated by subscriber fees for the distribution of community programming would be shared equally among the producers of community programming originating from Videotron and the producers of programming produced by independent community television services.
12. In its reply, Groupe Archambault indicated that Quebecor Media Inc. (QMI) and its VOD subsidiary do not intend to change the mission of community television in Quebec or to shirk their community programming obligations. Groupe Archambault indicated that Illico will consider the possibility of the public's agreeing to pay to watch a program and will then agree to broadcast Canadian programs that could be of interest to its audience, regardless of the program's origin.
13. Furthermore, Groupe Archambault reassured the Fédération that QMI and its subsidiaries intend to comply with the regulatory obligations and with the objectives of the strategic framework for community media. Groupe Archambault added that in the event that a community program generated revenues for Illico, it would return the revenues arising from that program to the person holding rights to it, deducting from these revenues the costs relating directly to the broadcasting of the program.
14. The Commission is of the view that the Fédération's argument that authorizing VOD services to offer community programming could signal the eventual end of community channels is pessimistic. In light of the mandate and the importance of community television, the Commission is of the view that the distribution of community programming by VOD services would not only offer their producers a second broadcasting window but also assist in promoting these programs and their producers.
15. At the same time, the Commission is satisfied that allowing VOD services to charge a subscriber fee for a community program or 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. This authorization is consistent with the approval of similar applications by the VOD services Shaw on Demand (see Broadcasting Decision 2007-273) and Rogers on Demand (see Broadcasting Decision 2007-391). The Commission is also persuaded that in this case, Illico's intentions with respect to community stations are those set out in the application and identified in the applicant's reply.

16. The Commission notes that Groupe Archambault 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, the Commission notes that Videotron, a BDU related to Groupe Archambault, regularly allocates at least 2% of its gross revenues to local expression. In the particular case of the Illico service, the Commission finds that it is appropriate to permit the licensee to charge a subscriber fee for the community programming offered on Illico as long as the revenues generated by that subscriber fee are allocated exclusively to the production of community programming.

Request to retain commercial, credit and sponsorship messages in community programming available on Illico

17. The Commission determines that it is appropriate to allow the licensee to offer community programming that includes the commercial, credit or sponsorship messages as originally broadcast on Canal Vox and that is offered as part of Illico's inventory, provided that the community programming is offered in accordance with section 27 of the BDU Regulations.

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

18. The Fédération expressed concern regarding the offer of programming produced by Canal Vox staff for broadcast by Groupe Archambault. In its reply, Groupe Archambault stated that the intention of QMI and its VOD subsidiary is neither to make community programming a lucrative undertaking nor to promote programming originating with its own subsidiaries.
19. The Commission notes that other VOD services are authorized to distribute limited amounts of programming produced by the licensee or a related person. In this case, Groupe Archambault is proposing to distribute a limited amount of such programming. Moreover, the Commission notes that Groupe Archambault is subject to regulatory requirements regarding undue preference. Accordingly, the Commission determines that it is appropriate to allow the licensee to distribute a limited amount of programming that has been produced by itself or by a person related to it, up to a maximum of 10% of the total programming Illico offers in each broadcast year.

Other matters

20. The Commission received an intervention by Bell Canada (Bell) raising certain concerns specific to the Quebec market. Bell noted that Videotron holds a dominant position in the Quebec market and that it is very difficult for it to acquire content produced by and belonging to Illico because Videotron holds exclusive distribution rights to most popular high-quality productions.
21. Bell asked the Commission to clarify the existing undue preference provision of the Pay Regulations or to impose on Illico a condition of licence prohibiting it from giving itself or one of its subsidiaries exclusive or preferential rights to content produced by Illico.

22. In response, Groupe Archambault indicated that Bell should make its concerns known to the parties holding the program rights in question and that if it were not satisfied with their replies, Bell should file a complaint with the Commission. Groupe Archambault also submitted that, in its opinion, Bell's intervention was not appropriate in this proceeding.
23. The Commission notes that these matters and other matters raised by the interveners were considered during the review of the regulatory framework for discretionary programming services announced in Broadcasting Notice of Public Hearing 2007-10 and during the review of the strategic framework for community media announced in Broadcasting Public Notice 2008-4. A decision following the hearing that began 8 April 2008 will be rendered at a later date.

Conclusion

24. In light of all of the above, the Commission **approves** the application by Videotron Ltd. to amend the broadcasting licence of Illico. Specifically,
 - The Commission **approves** the request to replace Illico's condition of licence no. 1 with a condition of licence requiring it to comply with 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). A **condition of licence** to this effect is set out in the appendix to this decision.
 - The Commission **approves** the request for authorization to charge a fee to subscribers for programming broadcast by Illico, including community programming, that contains commercial messages already included in a program previously broadcast by a Canadian programming service. The licensee shall allocate all revenues generated by a subscriber fee for community programming distributed by Illico exclusively to the production of community programming. A **condition of licence** to this effect is set out in the appendix to this decision.
 - The Commission **approves** the request to retain, by **condition of licence**, commercial, sponsorship and credit messages, as described in section 27 of the *Broadcasting Distribution Regulations*, that appear within the community programming offered on Canal Vox when this programming is offered as part of the programming offered on Illico.
 - The Commission **approves** the request to amend the licence to authorize 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 Illico in each broadcast year. A **condition of licence** to this effect is set out in the appendix to this decision.

Secretary General

Related documents

- *Illico sur demande – Acquisition of assets*, Broadcasting Decision CRTC 2008-67, 25 March 2008
- *Diversity of voices – Regulatory policy*, Broadcasting Public Notice CRTC 2008-4, 15 January 2008
- *Rogers on Demand – Licence amendments*, Broadcasting Decision CRTC 2007-391, 24 October 2007
- *Shaw on Demand – Licence amendments*, Broadcasting 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
- *Illico sur demande – Licence amendments*, Broadcasting Decision CRTC 2005-498, 18 October 2005
- *Théâtre Archambault @ la maison – video-on-demand service*, Broadcasting Decision CRTC 2002-203, 23 July 2002

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 2008-121

Conditions of licence for the regional, video-on-demand programming undertaking known as Illico sur demande

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 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. Such programming shall not exceed, in each broadcast year, 10% of the total programming made available to subscribers.
3. 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. The list shall identify each program by programming category, by country of origin and by language of broadcast, and indicate the period of time that each program was on the server and available to subscribers.
4. The licensee shall ensure that at all times:
 - (a) at least 5% of the English-language feature films and at least 8% of the French-language feature films in its inventory are Canadian;
 - (b) its feature film inventory includes all new Canadian feature films that are suitable for video-on-demand exhibition and that meet the approved *Pay Television Standards and Practices Code*;
 - (c) at least 20% of all programming in the inventory, other than feature films, is Canadian; and
 - (d) at least 50% of the programs are in French.
5. The licensee shall contribute 5% of its gross annual revenues to a Canadian program production fund administered independently of its undertaking. For the purpose of this condition:
 - (a) “gross annual revenues,” when the service is not a “related service,” shall be the total amount received from the broadcasting distribution undertaking distributing the video-on-demand service;

- (b) “gross annual revenues,” when the video-on-demand service is a “related service,” shall be 50% of the total revenues received from customers for the video-on-demand services provided by the broadcasting distribution undertaking;
 - (c) 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.
6. The licensee shall not distribute 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;
 - (c) the message is included in the licensee’s community programming in accordance with sections 27(1)(g), (h), and (i) of the *Broadcasting Distribution Regulations*.
 7. Where the licensee charges subscriber fees for community programming broadcast by Illico, the licensee shall allocate all revenues generated by a subscriber fee for the distribution of the community programming exclusively to the production of community programming.
 8. The licensee shall ensure that at least 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 films 100% of the revenues earned from the exhibition of these films.
 10. 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.
 11. The licensee shall close caption at least 90% of all programs it airs during the broadcast day until the end of the licence term.
 12. The licensee shall adhere to the guidelines set out in the Canadian Association of Broadcasters’ *Equitable Portrayal Code*, 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 remains a member in good standing of the Canadian Broadcast Standards Council.

13. The licensee shall adhere to the *Pay Television Programming Standards and Practices Code*, as amended from time to time and approved by the Commission.
14. The licensee shall adhere to the guidelines set out in *Pay television and pay-per-view programming code regarding violence*, as amended from time to time and approved by the Commission.