



Broadcasting Decision CRTC 2008-342

Ottawa, 5 December 2008

Access Communications Co-operative Limited Saskatchewan

Application 2008-0602-8, received 23 April 2008
Public Hearing in the National Capital Region
24 September 2008

Video-on-demand service

*The Commission **approves** an application for a broadcasting licence to operate a regional video-on-demand service largely composed of feature films.*

Introduction

1. The Commission received an application by Access Communications Co-operative Limited (Access) for a broadcasting licence to operate a regional video-on-demand (VOD) programming undertaking to serve Saskatchewan. The Commission did not receive any interventions in connection with this application.

Proposed service

2. Access indicated that the new VOD service would consist primarily of feature films but might also include other types of programming such as comedy, documentaries, animation, music, sports and adult programming. Access confirmed that it would make its VOD program offering available to customers in both official languages. While the programming would be predominantly in the English language, the applicant made a commitment to offer approximately 5% of all programming in French.
3. Access stated that it would also provide closed captioning of its VOD programming to serve the needs of viewers who are deaf or hard of hearing. The applicant indicated that it would ensure that 100% of all English- and French-language titles in its inventory are closed captioned beginning in the sixth year of the licence term. Access also indicated that a minimum of 50% of all such titles would be closed captioned beginning in the first year of the licence term. Finally, Access stated that it would provide persons with visual impairments with access to its VOD programming through audio description and would seek to acquire titles with video description (also known as described video).
4. In order to provide community programming produced by its community channel on the VOD service, Access requested to be allowed to devote up to a maximum of 10% of the programming offered by the VOD service to programming produced by itself or by a related person.

5. Access also requested authorization to distribute and to charge a fee for programming containing commercial messages where those messages are already included in a program previously aired by a Canadian television programming undertaking, including community programming provided by Access. To that end, the applicant proposed 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 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 subsections 27(1)(g), (h), and (i) of the *Broadcasting Distribution Regulations*.
6. The applicant stated that it would accept a condition of licence requiring it to allocate all revenues generated by the subscriber fee for the distribution of its community programming exclusively to the production of community programming.

Commission's analysis

7. VOD services are regulated pursuant to the *Pay Television Regulations, 1990*, which, among other things, prohibit a licensee from distributing programming, other than filler programming, that is produced either by the licensee or by a person related to the licensee or that contains any commercial messages. Nevertheless, in keeping with its 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 Access to distribute programming that is produced by the licensee or a related person provided that such programming not exceed 10% of the total programming made available in each broadcast year.
8. The Commission is also of the view that it is appropriate to allow Access to distribute community programming, including the commercial, sponsorship or credit messages as originally broadcast on its community channel, provided that the community programming is offered in accordance with section 27 of the *Broadcasting Distribution Regulations*. This authorization is consistent with the approval of similar applications with respect to the VOD services Shaw on Demand (Broadcasting Decision 2007-273), Rogers on Demand (Broadcasting Decision 2007-391) and Illico sur demande (Broadcasting Decision 2008-121).

9. The Commission is further satisfied that allowing the proposed VOD service 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. The Commission notes that the applicant stated that it would accept a condition of licence requiring it to allocate all revenues generated by the subscriber fee for the distribution of its community programming exclusively to the production of community programming. A **condition of licence** to that effect is set out in the appendix to this decision.
10. However, notwithstanding the applicant's commitments with respect to closed captioning and consistent with the framework set out in Broadcasting Public Notice 2007-54, the Commission is of the view that the service should provide captioning for 100% of its programs beginning in its first year of operation. A **condition of licence** to that effect is set out in the appendix to this decision.

Conclusion

11. The Commission is satisfied that the application is otherwise in conformity with the licensing framework for VOD services set out in Public Notice 2000-172. Accordingly, the Commission **approves** the application by Access Communications Co-operative Limited for a broadcasting licence to operate a regional video-on-demand programming undertaking to serve Saskatchewan. The terms and **conditions of licence** are set out in the appendix to this decision.
12. As announced in Broadcasting Public Notice 2008-101, the Commission is currently reviewing its regulatory framework for VOD services. The Commission notes that once the new regulatory framework for VOD services is announced, it expects the licensee to submit an application for a licence amendment to reconcile its terms and conditions of licence with the new regulatory framework.
13. Currently, the Commission expects VOD licensees to provide audio description and video description of programming as well as customer service to respond to the needs of visually impaired customers. As announced in Broadcasting Notice of Public Hearing and Telecom Public Notice 2008-8, the Commission is presently examining the issues related to the accessibility of telecommunications and broadcasting services to persons with disabilities. The Commission notes that as a result of this proceeding, it could impose additional obligations on some or all broadcasting undertakings.
14. Because this licensee is subject to the *Employment Equity Act* and files reports concerning employment equity with the department of Human Resources and Social Development Canada, its employment equity practices are not examined by the Commission.

Secretary General

Related documents

- *Call for comments on a proposed regulatory framework for video-on-demand undertakings*, Broadcasting Public Notice CRTC 2008-101, 30 October 2008
- *Unresolved issues related to the accessibility of telecommunications and broadcasting services to persons with disabilities*, Broadcasting Notice of Public Hearing CRTC 2008-8/Telecom Public Notice CRTC 2008-8, 10 June 2008
- *Illico sur demande – Licence amendment*, Broadcasting Decision CRTC 2008-121, 6 June 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
- *A new policy with respect to closed captioning*, Broadcasting Public Notice CRTC 2007-54, 17 May 2007
- *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 2008-342

Terms, conditions of licence and expectations

Terms

Issuance of the broadcasting licence to operate a regional video-on-demand programming undertaking to serve Saskatchewan

The licence will expire 31 August 2015.

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 5 December 2010. 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 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 is authorized to distribute programming, other than filler programming, that is produced by the licensee or by a person related to the licensee provided that such programming does 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 must identify each program by programming category and by country of origin and indicate the period of time that each program was on the server and available to subscribers.
4. Except as authorized by the Commission, the broadcasting undertaking licensed herein shall be operated in fact by the licensee itself.
5. 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 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.
6. 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.”
7. 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 and 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; or
 - b) 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*.
8. 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.
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 feature 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 broadcasting distribution undertaking unless the agreement incorporates a prohibition against linkage of its service with any non-Canadian discretionary service.
12. The licensee shall caption 100% of its programs over the broadcast day, consistent with the approach set out in *A new policy with respect to closed captioning*, Broadcasting Public Notice CRTC 2007-54, 17 May 2007.
13. The licensee shall adhere to the Canadian Association of Broadcasters' *Equitable Portrayal Code*, 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.
14. 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.
15. 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 approximately 5% of all 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.

Adult programming

The Commission expects the licensee to adhere to its internal policy on adult programming. The Commission further expects that any future changes made by the licensee to its internal policy on adult programming will be submitted for Commission approval prior to their implementation.

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.