



## Broadcasting Decision CRTC 2011-663

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Ottawa, 24 October 2011

**Bell Aliant Regional Communications Inc. (the general partner), as well as limited partner with 6583458 Canada Inc. (the limited partners), carrying on business as Bell Aliant Regional Communications, Limited Partnership**

Various municipalities in the Atlantic provinces

*Application 2011-0026-3, received 7 January 2011*

### **Regional terrestrial broadcasting distribution undertaking – Licence amendment**

*The Commission **approves** an application by Bell Aliant Regional Communications Inc. (the general partner), as well as limited partner with 6583458 Canada Inc. (the limited partners), carrying on business as Bell Aliant Regional Communications, Limited Partnership to amend the broadcasting licence for its regional terrestrial broadcasting distribution undertaking in order to distribute community programming on a video-on-demand platform.*

#### **The application**

1. The Commission received an application by Bell Aliant Regional Communications Inc., the general partner, as well as limited partner with 6583458 Canada Inc. (the limited partners), carrying on business as Bell Aliant Regional Communications, Limited Partnership (collectively, Bell Aliant) to amend the broadcasting licence for its regional terrestrial broadcasting distribution undertaking (BDU) in order to be able to distribute community programming over a video-on-demand (VOD) platform.
2. The licensee proposed to add the following condition of licence relating to the distribution of a community channel:

The licensee is authorized to provide an outlet for community expression using, in whole or in part, a video on-demand service.

3. The licensee also proposed to add the following condition of licence with respect to the required contributions to local expression:

The licensee shall be subject to the following conditions of licence as an exception to the requirements set out in section 29 of the *Broadcasting Distribution Regulations*:

If the licensee has 20,000 or more subscribers in the licensed area of a broadcasting distribution undertaking (BDU) on 31 August of the previous broadcast year and distributes programming that qualifies as local expression

on a video-on-demand or pay-per-view service, the licensee shall make, in each broadcast year, a contribution to Canadian programming of not less than the greater of:

- (a) 5% of its gross revenues derived from broadcasting activities in the licensed area in the year less any contribution to local expression made by the licensee in the licensed area in that year; and
- (b) 3% of its gross revenues derived from broadcasting activities in the licensed area in the broadcast year.

If the licensee has 20,000 or more subscribers in the licensed area of a BDU on 31 August of the previous broadcast year and does not distribute programming that qualifies as local expression on a video-on-demand or pay-per-view service, and if a community programming undertaking is licensed in the licensed area, the licensee shall make, in each broadcast year, a contribution of not less than:

- (a) 3% of its gross revenues derived from broadcasting activities in the licensed area in the broadcast year to Canadian programming; and
- (b) 2% of its gross revenues derived from broadcasting activities in the licensed area in the broadcast year to the community programming undertaking.

If a licensee does not distribute programming that qualifies as local expression on a video-on-demand or pay-per-view service, and if no community programming undertaking is licensed in the licensed area, the licensee shall make, in each broadcast year, a contribution of not less than 5% of its gross revenues derived from broadcasting activities in the licensed area in the year to Canadian programming.

4. In its application, Bell Aliant indicated that because it currently does not have its own VOD licence, it proposed to implement this new community channel service initially using Bell ExpressVu's VOD service.
5. In Broadcasting Decision 2011-662, also published today, the Commission approved an application by Bell ExpressVu Inc. (the general partner) and Bell Canada (the limited partner), carrying on business as Bell ExpressVu Limited Partnership (Bell ExpressVu) to allow Bell ExpressVu to distribute programming produced by the licensee itself or by a person related to the licensee. In the same decision, the Commission denied a request to add a condition of licence that would have allowed a third party to be fully responsible for the management of the community programming and the adherence to the applicable regulations related to the community programming to be offered on Bell ExpressVu's VOD service.
6. The Commission received interventions from Cogeco Cable Inc. (Cogeco), Rogers Communications Partnership (Rogers), the Canadian Association for Community

Television Users and Stations (CACTUS), the Canadian Communication Systems Alliance (CCSA), and the Fédération des télévisions communautaires autonomes du Québec (FTCAQ). The public record for this proceeding is available on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Public Proceedings."

### **Commission's analysis and decisions**

7. After examining the public record for this application in light of applicable regulations and policies, the Commission considers that the issues it must address are the following:
  - the use of a VOD platform to distribute community programming;
  - required contributions to local expression; and
  - the applicant's proposal to use Bell ExpressVu's VOD service to host community television content.

#### **Use of a video-on-demand platform to distribute community programming**

8. CACTUS and FTCAQ submitted that offering a community channel via a VOD service alone is not sufficient to meet the objectives of the community television policy as set out in Broadcasting Regulatory Policy 2010-622. CACTUS argued that simply making content available on VOD does not constitute community television, it does not stimulate community debate on important topics nor does it facilitate media training for Canadians. Bell Canada, on behalf of Bell Aliant, replied that the Bell Aliant application is in compliance with the Commission's policies on community television.
9. The Commission considers that with the exception of Bell Aliant's proposal to use a third-party VOD service to host its community television content, the service would be similar to three other services<sup>1</sup> that have already been approved by the Commission. Further, in Broadcasting Regulatory Policy 2010-622, the Commission encouraged the use of VOD services to distribute community programming.
10. In its intervention, Rogers submitted that VOD-based community channels should be required to submit to the same terms and conditions as linear services. In particular, Rogers argued that the Commission should ensure that the local and access programming and spending requirements are met by VOD-based community channels in relation to each individual serving area for a given year.
11. With respect to requiring Bell Aliant's community channel to be subject to the same programming and spending requirements as linear community channels, the Commission notes that it is in the process of implementing the reporting requirements set out in Broadcasting Regulatory Policies 2010-622 and 2010-622-1. Therein, the Commission set out the responsibilities regarding programming and spending, as well as the reporting

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<sup>1</sup> See Broadcasting Decisions 2008-136, 2007-86 and 2006-490.

requirements for linear and VOD-based community channels. The Commission notes that Bell Aliant committed to comply with all these requirements.

#### **Required contributions to local expression**

12. In Broadcasting Regulatory Policy 2011-455, the Commission announced that it had made certain amendments to the *Broadcasting Distribution Regulations* (the Regulations). In its application, Bell Aliant proposed to abide by a condition of licence as an exception to the requirements set out in section 29 of the Regulations. This section has now become section 34 of the amended Regulations.
13. Under section 34(4)(a) of the Regulations, if a licensed BDU distributes its own community channel, it must make a contribution to Canadian programming that is equal to 5% of its gross annual revenues derived from broadcasting, less any contribution to local expression made by the licensee in that broadcast year. In its application, Bell Aliant requested that it be allowed to redirect up to 2% of its gross annual revenues derived from the broadcasting activities to its proposed VOD outlet for local expression. Bell Aliant proposed the addition of a condition of licence in that regard.
14. The Commission notes that it approved similar conditions for other BDUs that distribute community programming on their VOD services. The Commission therefore considers it appropriate to add a condition of licence allowing Bell Aliant to redirect up to 2% of its gross annual revenues derived from the broadcasting activities to its proposed VOD outlet for local expression as an exception to section 34 of the Regulations. A **condition of licence** to this effect is set out in the appendix to this decision.

#### **Applicant's proposal to use Bell ExpressVu's video-on-demand service to host community television content**

15. In its application, Bell Aliant proposed to provide its community channel using the Bell ExpressVu VOD platform. In its intervention, Cogeco expressed a concern regarding which party would be accountable for the Bell Aliant community channel content hosted on a third-party VOD service. CCSA submitted that should Bell Aliant wish to offer a VOD-based community channel it should apply for its own VOD licence.
16. The Commission notes that it recently approved Bell Aliant's application to provide its own VOD service (Broadcasting Decision 2011-534). Accordingly, the Commission considers that the latter would be the most appropriate service on which to distribute Bell Aliant's community programming. Therefore, the Commission considers that Bell Aliant's initial proposal to use Bell ExpressVu's VOD service to host its community television content is no longer necessary.

#### **Conclusion**

17. In light of the above, the Commission **approves** the application by Bell Aliant Regional Communications Inc. (the general partner), as well as limited partner with 6583458 Canada Inc. (the limited partners), carrying on business as Bell Aliant Regional Communications, Limited Partnership to amend the broadcasting licence for its regional

terrestrial BDU in order to distribute community programming over a VOD platform. Accordingly, the licence will be subject to the **conditions of licence** set out in the appendix to this decision.

Secretary General

**Related documents**

- *Video-on-demand service – Licence amendment*, Broadcasting Decision CRTC 2011-662, 24 October 2011
- *Video-on-demand service*, Broadcasting Decision CRTC 2011-534, 26 August 2011
- *Amendments to the Broadcasting Distribution Regulations and other Commission Regulations*, Broadcasting Regulatory Policy CRTC 2011-455, 29 July 2011
- *Community television policy – Correction*, Broadcasting Regulatory Policy CRTC 2010-622-1, 13 September 2010
- *Community television policy*, Broadcasting Regulatory Policy CRTC 2010-622, 26 August 2010
- *Licence amendments related to the provision of an outlet for local expression by video-on-demand*, Broadcasting Decision CRTC 2008-135, 30 June 2008
- *Licence amendments related to the funding and provision of an outlet for local expression*, Broadcasting Decision CRTC 2007-86, 16 March 2007
- *Licence amendments related to the funding and provision of an outlet for local expression*, Broadcasting Decision CRTC 2006-490, 8 September 2006

*\*This decision is to be appended to the licence.*

## Appendix to Broadcasting Decision CRTC 2011-663

### **Amendments to the broadcasting licence issued to Bell Aliant Regional Communications Inc. (the general partner), as well as limited partner with 6583458 Canada Inc. (the limited partners), carrying on business as Bell Aliant Regional Communications, Limited Partnership to carry on a terrestrial broadcasting distribution undertaking serving various municipalities in the Atlantic provinces**

1. The licence is subject to the conditions set out in *Cable broadcasting distribution undertakings*, Broadcasting Decision CRTC 2006-184, 5 May 2006, as modified by *Licence amendment to Class 1 regional licence for its cable broadcasting distribution undertaking in Newfoundland and Labrador only*, Broadcasting Decision CRTC 2006-689, 21 December 2006, and *Regional broadcasting licence for the Class 1 terrestrial broadcasting distribution undertaking serving various municipalities in the Atlantic provinces – Licence amendment*, Broadcasting Decision CRTC 2011-294, 4 May 2011.
2. The licensee may provide an outlet for community expression using its video-on-demand service.
3. As an exception to the requirements set out in section 34 of the *Broadcasting Distribution Regulations*:
  - a) If the licensee does not distribute its own community programming, or does not produce community programming to be made available on its video-on-demand (VOD) undertaking, and if a community programming undertaking is licensed in the licensed area, the licensee shall make, in each broadcast year, a contribution of 3% of its gross revenues derived from broadcasting activities in the broadcast year to Canadian programming and a contribution of 2% of its gross revenues derived from broadcasting activities to the community programming undertaking.
  - b) If the licensee does not distribute its own community programming, or does not produce community programming to be made available on its VOD undertaking, and if no community programming undertaking is licensed in the licensed area, the licensee shall make, in each broadcast year, a contribution of 5% of its gross revenues derived from broadcasting activities in the broadcast year to Canadian programming.
  - c) If the licensee distributes its own community programming, or produces community programming made available on its VOD undertaking, the licensee shall make, in each broadcast year, a contribution to Canadian programming that is equal to the greater of:
    - i. 5% of its gross revenues derived from broadcasting activities in the broadcast year, less any contribution to local expression made by the licensee in that broadcast year; and

- ii. 3% of its gross revenues derived from broadcasting activities in the broadcast year.