



Broadcasting Decision CRTC 2014-449

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Route reference: 2014-151

Ottawa, 29 August 2014

Various licensees

Various locations across Canada

The application numbers are set out in the decision.

Video-on-demand undertakings – Licence renewal

1. The Commission **renews** the broadcasting licences for the video-on-demand (VOD) undertakings set out below from 1 September 2014¹ until the licence expiry date specified for each undertaking.

Licensee	Service area	Application number	Licence expiry date
Bragg Communications Incorporated (Bragg)	Across Canada	2013-1786-8	31 August 2020
Câblevision du Nord de Québec inc. (CNQ)	Province of Quebec	2013-1788-4	31 August 2020
Videotron Ltd. and 9227-2590 Québec inc., partners in a general partnership carrying on business as Videotron G.P. (Videotron)	Provinces of Quebec and Ontario	2014-0044-9	31 August 2016
Wightman Telecom Ltd. (Wightman)	Western Ontario	2014-0080-4	31 August 2020

2. The Commission notes that Videotron requested a shorter licence term (from 1 September 2014 to 31 August 2016) so that the renewed broadcasting licence would have the same expiry date as that of the broadcasting licences for the services of the other large private English-language ownership groups, including Bell Media Inc., Shaw Media Inc. and Corus Entertainment Inc.
3. The licensees shall adhere to the **conditions of licence** set out in Appendix 6 to Broadcasting Regulatory Policy 2014-444.

¹ The original licence expiry date for Bragg's and CNQ's VOD undertakings was 31 August 2013. The broadcasting licences were administratively renewed until 31 August 2014 as a result of Broadcasting Decisions 2014-80 and 2013-457.

4. The Commission received an intervention by the Canadian Energy Efficiency Alliance (CEEA) offering general comments on the applications by Bragg, Videotron and Wightman. Specifically, the CEEA asked the licensees to respond to a series of questions regarding the energy efficiency of set-top boxes. Bragg, the only party to reply to the intervention, submitted that the CEEA's request fell well outside the scope of this proceeding. The Commission has examined the intervention and considers that the CEEA's request does fall outside the scope of this proceeding.

Non-compliances

5. In Broadcasting Notice of Consultation 2014-151, the Commission noted apparent non-compliances on the part of Bragg and CNQ.

Bragg

6. In its application, Bragg stated that it may be in non-compliance with the requirement to distribute programming, other than filler programming, that is produced by the licensee or by a person related to the licensee, not to exceed 10% of the total hours of its programming broadcast in each broadcast year (see condition of licence 3 in the appendix to Broadcasting Decision 2007-63). The licensee stated that it added community programming to its VOD service, bringing the percentage of related programming to 13% of the total hours broadcast in the 2012-2013 broadcast year. The Commission notes, however, that it has encouraged broadcasting distribution undertakings (BDUs) to make the programming on their community channels available on their VOD services (see the Commission's community television policy set out in Broadcasting Regulatory Policy 2010-622). Further, in its VOD licensing framework (see Broadcasting Regulatory Policy 2010-190), it removed the prohibition on the distribution of programming produced by a licensee or by a related person.
7. Bragg further stated that it may be in non-compliance with the requirement to close caption 90% of the programming in its inventory, beginning no later than 1 September 2011 (see condition of licence 11 in the appendix to Broadcasting Decision 2007-63). Specifically, the licensee has not been providing closed captioning for its community channel programming, which constitutes 13% of its total programming. Bragg stated in its application that it would be in compliance with this requirement as of the date of the licence renewal for its VOD undertaking. As set out in the community television policy, the Commission intends to impose conditions of licence requiring licensees to caption at a minimum 100% of original licensee-produced community programming and access programming by the end of their next licence term. Therefore, although Bragg is in non-compliance with its condition of licence relating to closed captioning, it is in line with the Commission's overall policy regarding the closed captioning of community programming. The Commission nevertheless reminds the licensee that it will be required, as set out by standard condition of licence set out in Broadcasting Regulatory Policy 2014-444, to close caption 100% of original licensee-produced community programming by the end of the next licence term.

8. The licensee also stated that it may be in non-compliance with the requirement to remit to rights holders of all Canadian feature films 100% of revenues earned from the exhibition of these films (see condition of licence 9 in the appendix to Broadcasting Decision 2007-63). It further stated, however, that the amounts remitted to rights holders of Canadian feature films has generally been less than the total revenues earned from the exhibition of such films given that rights holders have generally requested less than the full amount. The Commission notes that in the VOD licensing framework, it allowed licensees of VOD undertakings to reach a revenue-sharing agreement with rights holders. The Commission is therefore satisfied with the licensee's explanation in this regard.
9. Finally, Bragg stated that it may be in non-compliance with the requirement to adhere to the *Pay television and pay-per-view programming code regarding violence* and the *Industry code of programming standards and practices governing pay, pay-per-view and video-on-demand services* (the codes) (see conditions of licence 13 and 14 in the appendix to Broadcasting Decision 2007-63). The licensee committed to reach out to suppliers and actively work with them to address the programming's compliance with the codes and expressed confidence that this issue will be resolved in the near future. The Commission notes Bragg's commitments in this regard and is satisfied with the licensee's explanation.
10. In light of the above, the Commission considers it appropriate to renew the broadcasting licence for Bragg's VOD undertaking for a full term.

CNQ

11. As set out in section 11(1) of the *Broadcasting Distribution Regulations* (the Regulations), licensees of VOD undertakings are required, on or before 30 November of each year, to submit to the Commission a statement of accounts, on the annual return broadcasting form, for the previous broadcast year. The Commission notes that CNQ's annual returns for the 2011-2012 and 2012-2013 broadcast years were both filed one week after the 30 November deadline. It considers, however, that this non-compliance does not warrant regulatory action. Accordingly, the Commission finds it appropriate to renew the broadcasting licence for CNQ's VOD undertaking for a full term. The Commission reminds the licensee that during the next licence term, it must comply with the requirement to submit complete annual returns by the deadline set out in the Regulations.
12. In its application, CNQ stated that for administrative reasons, it was not able to keep a detailed log of the programming available on its servers as required by the following condition of licence set out in the appendix to Broadcasting Decision 2006-635:
 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.

13. Consequently, CNQ was in non-compliance with this condition of licence. However, the licensee indicated that it rectified this situation in August 2013 and that it has implemented a rigorous process that will help it ensure that all required information is made available to the Commission in the future.
14. During the next licence term, CNQ will be required to adhere to the standard conditions of licence for VOD services set out in Appendix 6 to Broadcasting Regulatory Policy 2014-444. The above-noted condition of licence will therefore be replaced by condition of licence 22 set out in that regulatory policy, which sets out the information that licensees must file as part of their annual returns each year in regard to the service's inventory and other related matters. The licensee shall therefore be required to adhere to condition of licence 22 set out in Broadcasting Regulatory Policy 2014-444.

Employment equity

15. Because Bragg and Videotron are subject to the *Employment Equity Act* and file reports concerning employment equity with the Department of Employment and Social Development, their employment equity practices are not examined by the Commission.
16. In accordance with Public Notice 1992-59, the Commission encourages CNQ and Wightman to consider employment equity issues in their hiring practices and in all other aspects of their management of human resources.

Secretary General

Related documents

- *Amendments to various regulations, the standard conditions of licence for video-on-demand undertakings and certain exemption orders – Provisions requiring the mandatory distribution of emergency alert messages*, Broadcasting Regulatory Policy CRTC 2014-444, 29 August 2014
- *Notice of applications received*, Broadcasting Notice of Consultation CRTC 2014-151, 28 March 2014
- *Administrative renewals*, Broadcasting Decision CRTC 2014-80, 25 February 2014
- *Administrative renewals*, Broadcasting Decision CRTC 2013-457, 29 August 2013
- *Community television policy*, Broadcasting Regulatory Policy CRTC 2010-622, 26 August 2010
- *Regulatory framework for video-on-demand undertakings*, Broadcasting Regulatory Policy CRTC 2010-190, 29 March 2010

- *Video-on-demand service*, Broadcasting Decision CRTC 2007-63, 15 February 2007
- *Video-on-demand service*, Broadcasting Decision CRTC 2006-635, 23 November 2006
- *Implementation of an employment equity policy*, Public Notice CRTC 1992-59, 1 September 1992

**This decision is to be appended to each licence.*