



## Broadcasting Decision CRTC 2014-455

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Ottawa, 3 September 2014

### **Videotron Ltd. and 9227-2590 Quebec Inc., partners in a general partnership carrying on business as Videotron G.P.**

Montréal, Montréal West and Terrebonne, Quebec

*Application 2014-0020-0*

### **Various broadcasting distribution undertakings – Licence amendments**

*The Commission **approves** the application by Quebecor Media Inc., on behalf of Videotron Ltd. and 9227-2590 Quebec Inc., partners in a general partnership carrying on business as Videotron G.P., to be relieved from the requirement to distribute the station ICI (International Channel/Canal International) in analog format in Montréal, Montréal West and Terrebonne. Accordingly, the Commission **imposes** a condition of licence to that effect.*

*Viewers will continue to have access to the ethnic programming broadcast by ICI over the air and in digital format.*

#### **Background**

1. On 20 December 2012, the Commission approved an application by 4517466 Canada Inc. (4517466 Canada) to operate ICI (International Channel/Canal International) (ICI), an ethnic station in Montréal.<sup>1</sup> Videotron G.P. (Videotron) began distributing ICI in digital format on 11 December 2013.
2. Under the *Broadcasting Distribution Regulations* (the Regulations), Videotron is also required to distribute ICI in analog format, unless it is relieved from the requirement by a condition of licence. For that reason, Videotron filed the application set out below.

#### **Application**

3. Videotron filed an application to be relieved from the requirement to distribute ICI in analog format in Montréal, Montréal West and Terrebonne. In its application, Videotron indicated that it had entered into an agreement with 4517466 Canada to distribute its service in digital format only. However, Videotron indicated that on the

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<sup>1</sup> See Broadcasting Decision 2012-696.

launch day, 4517466 Canada asked to distribute the service in analog format in the Montréal region.

4. After having analyzed the Commission's regulatory framework regarding the distribution of this service, Videotron acknowledged that unless a condition of licence is imposed relieving it from its requirement under the Regulations, it is obligated to distribute ICI in analog format.
5. Videotron requested that the Commission amend its broadcasting licence to add a condition of licence relieving it from its requirement to distribute ICI in analog format in Montréal, Montréal West and Terrebonne.
6. Videotron submitted that since 2006, the Commission has been fostering digital distribution. Specifically, Videotron maintained that in Broadcasting Public Notice 2006-23, the Commission encouraged the transition to digital distribution. Furthermore, in Broadcasting Public Notice 2008-100, the Commission eliminated access rights in analog format for Category A services.
7. Videotron stated that the launch of a new local station that imposes on broadcasting distribution undertakings (BDUs) the obligation to distribute it in analog format is not provided for under the Regulations.
8. Videotron made several arguments. According to Videotron, the analog programming grids are at maximum capacity. Moreover, the addition of ICI in analog format would cause the removal of a channel currently being distributed in this format under a contractual agreement. Videotron noted that it cannot randomly and individually remove services under such an agreement. It also noted that over 93% of its subscribers in Montréal already receive ICI in digital format, in either standard or high definition, in advantageous positions.
9. As well, Videotron is continually removing its analog service. It added that the percentage of its remaining analog subscribers in Montréal is less than 7%. Finally, changes to programming grids have significant impacts on the level of subscribers, as well as on financial and technical levels.
10. The Commission received some interventions opposing this application, including one by 4517466 Canada, and a reply from the applicant. The Commission notes, in particular, the concerns raised by 4517466 Canada regarding the serious prejudice and competitive disadvantage that could result from the approval of the application. In addition, 4517466 Canada questioned the percentage of analog subscribers submitted by Videotron. It submitted that the percentage is closer to 17%. In its response, Videotron specified that this percentage is incorrect because it takes reported customers into account, including hotels and hospitals. The percentage submitted by Videotron is based solely on residential customers.
11. The public record for this application can be found on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) or by using the application number provided above.

## Commission's analysis and decision

12. For a number of years, the Commission has been fostering a transition to digital. For example, in Public Notice 2000-6, the Commission indicated that the deployment of digital distribution technology would gain momentum and that during the transitional period, digital distribution would gain strength in the marketplace in view of the advantages it offers.
13. In addition, in Public Notice 2001-62, the Commission proposed a policy to oversee the transition from analog to digital over-the-air television broadcasting. In Broadcasting Public Notice 2006-23, the Commission developed a digital migration framework to account for the fact that the broadcasting system is now in transition where digital transition will eventually replace analog distribution.
14. The Commission developed regulatory frameworks for BDUs and discretionary programming services in Broadcasting Public Notice 2008-100. In the notice, the Commission updated, among other things, its approach to requirements for distributing analog services. Following this regulatory policy, amendments that took effect on 1 September 2011 were made to the Regulations to guarantee that the distribution of digital services took priority over their analog distribution, while allowing analog distribution to continue. Specifically, sections 40, 41 and 42 of the amended Regulations allow for analog distribution, and sections 43 and 44 indicate that undertakings may cease this type of distribution.
15. Further, in recent years, the Commission has required only digital distribution of certain services under section 9(1)(h) of the *Broadcasting Act*. In light of the above, the Commission concludes that Videotron's application is in line with the Commission's objective to encourage the transition to a fully digital environment.
16. Moreover, the Commission notes that Videotron indicated that it is continually removing its analog offering and that the elimination of its analog technology is imminent. Though it is impossible to determine the date on which Videotron will cease to provide analog service in Montréal or the exact number of ethnic people subscribing to Videotron's analog service in Montréal, Montréal West and Terrebonne, and which of the percentages submitted by Videotron and 4517466 Canada better represents the current situation, it is likely that the decline will continue.
17. Although it has received interventions opposing the application, and those interventions state that some members of ethnic communities in Montréal have informally reported that Videotron is not allowing them to access ICI in analog format, the Commission notes that it has not received interventions from individuals during the current proceeding, other than from individuals associated with ICI.<sup>2</sup>

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<sup>2</sup> The two interventions in question came from the head of the ICI publicity department and a producer whose television magazine program is broadcast on ICI.

Furthermore, the Commission notes that it has not received any complaints regarding the analog distribution of ICI from Videotron subscribers since its launch in 2013.

18. The Commission notes the concerns raised by 4517466 Canada, specifically those regarding the financial impact that the approval of Videotron's application could have on its station. However, as noted in Broadcasting Decision 2012-696, ICI currently benefits from certain advantages, including the following:

- tangible benefits resulting from the sale of CJNT to Rogers amounting to \$1,067,046 over a period of five years;
- technical services (hosting and origination services) controlled by 2209005 Ontario Inc. (2209005) for five years, free of charge;
- up to 200 hours per year of ethnic and third-language programming originating from OMNI for a period of five years at no cost; and
- a loan from 2209005 totalling one million dollars.

19. In that decision, the Commission also indicated that “while ICI's proposed business model remains unproven, the Commission is of the view that the commitments made by Rogers and 2209005 should significantly offset the costs associated with the launch of the station and should contribute to help sustain its operations, particularly within its first five years. Following this period, the Commission expects ICI to be financially independent and to no longer require regulatory relief or any further financial assistance from other broadcasters in order to remain viable.”

20. In light of all of the above, the Commission **approves** the application by Quebecor Media Inc., on behalf of Videotron Ltd. and 9227-2590 Quebec Inc., partners in a general partnership carrying on business as Videotron G.P., to be relieved from the requirement to distribute the station ICI in analog format in Montréal, Montréal West and Terrebonne. Accordingly, Videotron's broadcasting licences for Montréal, Montréal West and Terrebonne will be subject to the following **condition of licence**:

The licensee is relieved from its requirement to distribute the programming service ICI International Channel/Canal International) in analog format.

Secretary General

### **Related documents**

- *CJNT-DT Montréal – Acquisition of assets*, Broadcasting Decision CRTC 2012-697, 20 December 2012
- *Ethnic television station in Montréal*, Broadcasting Decision CRTC 2012-696, 20 December 2012

- *Call for comments on amendments to the Broadcasting Distribution Regulations*, Broadcasting Notice of Consultation CRTC 2010-931, 10 December 2010
- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services – Regulatory policy*, Broadcasting Public Notice CRTC 2008-100, 30 October 2008
- *Digital migration framework*, Broadcasting Public Notice CRTC 2006-23, 27 February 2006

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