



Broadcasting Decision CRTC 2015-32

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Ottawa, 4 February 2015

Videotron Ltd. and 9227-2590 Québec inc., partners in a general partnership carrying on business as Videotron G.P.
Montréal, Montréal West and Terrebonne, Quebec

Application 2013-1216-5

English-language community channel in Montréal

*The Commission **approves in part** the application by Quebecor Media Inc., on behalf of Videotron Ltd. and 9227-2590 Québec inc., partners in a general partnership carrying on business as Videotron G.P. (Videotron), to amend the broadcasting licences for Videotron's broadcasting distribution undertakings serving Montréal, Montréal West and Terrebonne. Specifically, Videotron is seeking to launch a separate English-language community channel to be known as MYtv in its service areas. Given that the introduction of English-language community programming would allow the Anglophone community and various other cultural communities of Montréal to benefit from a new outlet for local expression, the Commission authorizes Videotron to launch MYtv.*

However, Videotron also asked to be authorized to reallocate up to 2% of its gross annual revenues from its broadcasting activities to the new English-language channel in addition to what it is currently authorized to allocate to its French-language community channel MATv. Given that Videotron is operating MATv in non-compliance with regulatory requirements relating to access programming and local programming (as noted in Broadcasting Decision 2015-31) and that an additional 2% contribution to MYtv would deprive the Canada Media Fund and other funds of significant funding, the Commission denies this part of the application.

Application

1. Quebecor Media Inc. filed an application on behalf of Videotron Ltd. and 9227-2590 Québec inc., partners in a general partnership carrying on business as Videotron G.P. (Videotron), to launch a separate English-language community channel to be known as MYtv in the service areas of Videotron's broadcasting distribution undertakings (BDUs) serving Montréal, Montréal West and Terrebonne. Further, Videotron requested to be authorized to reallocate up to 2% of its gross annual revenues derived from its broadcasting activities to the new English-language channel in addition to the 2% that it is currently authorized to allocate to its French-language community channel known as MATv. To do so, Videotron requested that it be granted the following condition of licence:

As an exception to section 34(5) of the *Broadcasting Distribution Regulations* (the Regulations):

If the licensee distributes its own community programming, the licensee shall make, in each broadcast year, a contribution to Canadian programming that is equal to 5% of its gross revenues derived from broadcast activities in the broadcast year, less any allowable contribution to local expression made by the licensee in that broadcast year to its French- and English-language community channels, provided that the deduction for such contributions not exceed 2% of its gross revenues derived from broadcast activities for each of these community channels. For the purpose of this condition of licence, “allowable contribution to local expression” shall have the same meaning as that set out in section 34(6) of the Regulations.

2. In support of its application, Videotron stated that the new community channel would allow it to reach over 600,000 Montrealers whose principal language is English. In addition to creating many jobs, the new channel would invest \$2.8 million in the development of program content and new talent (hosts, reporters, researchers and journalists) from the community, as well as \$1 million in independent productions that would seek to represent the multicultural diversity of the greater Montréal area. Videotron also committed to forming a working group made up of participants from Montréal’s English-speaking community, such as the English-language Arts Network (ELAN), the aim of which would be to work together to create programming.
3. With respect to the programming of the new channel, the licensee stated that it intended to devote at least 50% of the broadcast hours to community access television programming¹ upon launching and to provide 21 hours of original programming per week. The licensee also indicated that the channel would be available in standard and high definition formats on both its linear and video-on-demand services.

Regulatory background

4. The Commission has examined the application in light of the *Broadcasting Act* (the Act), the *Official Languages Act* (OLA) and applicable regulations and policies, particularly as they relate to community television programming.
5. Under section 5(1) of the Act, the Commission’s mandate is to regulate and supervise all aspects of the Canadian broadcasting system. The Canadian broadcasting policy provisions relating to community programming set out in section 3(1) of the Act include the following:

¹ The *Broadcasting Distribution Regulations* define “community access television programming” as “programming produced by an individual, group or community television corporation residing within the licensed area of a cable distribution undertaking.”

- English- and French-language broadcasting, while sharing common aspects, operate under different conditions and may have different requirements – section 3(1)(c);
 - the Canadian broadcasting system should, through its programming and the employment opportunities arising out of its operations, serve the needs and interests and reflect the circumstances and aspirations of Canadian men, women and children, including equal rights, the linguistic duality and multicultural and multiracial nature of Canadian society and the special place of aboriginal peoples within that society – section 3(1)(d)(iii);
 - each element of the Canadian broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming – section 3(1)(e); and
 - a range of broadcasting services in English and in French shall be extended to all Canadians as resources become available – section 3(1)(k).
6. Further, as a federal institution, the Commission has the duty under section 41 of the OLA to ensure that positive measures are taken to enhance the vitality of the English and French linguistic minority communities in Canada, support and assist their development and foster the full recognition and use of both English and French in Canadian society.
7. Regarding community television programming, section 34(5) of the *Broadcasting Distribution Regulatory* (the Regulations) states the following:
- Except as otherwise provided under a condition of its licence, if a licensee distributes its own community programming on the community channel in the licensed area, the licensee shall make, for each broadcast year, a contribution to Canadian programming that is equal to 5% of its gross revenues derived from broadcasting activities in the broadcast year less any allowable contribution to local expression made by the licensee in that broadcast year.
8. The Commission notes that under section 34(6) of the Regulations, the “allowable contribution to local expression” currently represents an amount between 1.5% and 2%² of gross annual revenues derived from broadcasting activities.
9. In Broadcasting Regulatory Policy 2010-622 (the Community Television Policy), the Commission noted that licensees choosing to distribute two community channels (one in each language) in a given market may apply for a condition of licence authorizing them, as an exception to the Regulations, to allocate up to 2% of their required contribution to Canadian programming to each of the community channels as an “allowable contribution to local expression.” Such an authorization represents an

² As noted in Broadcasting Regulatory Policy 2012-392, the Commission expects that over time this amount be scaled back to 1.5% for each community channel.

exception, particularly with respect to a second community channel within a service area. The burden of proof therefore rests with the licensees seeking such an exception.

10. In this case, Videotron currently benefits from a 2% credit for its French-language community channel and is requesting an additional 2% credit for MYtv.

Interventions and reply

11. The Commission received several interventions regarding the application from the media industry, various arts and community organizations and individuals. The public record for this application can be found on the Commission's website at www.crtc.gc.ca or by using the application number provided above.
12. All interveners supported the introduction of an English-language community channel in Montréal. The Commissioner of Official Languages noted that the addition of English-language content reflecting the realities of Montréal's Anglophone community could fill the current gap in this market and enhance the vitality of the community by meeting its needs, in accordance with the OLA.
13. However, many interveners only conditionally supported the application. According to the Association québécoise de la production médiatique, the Société des auteurs de radio, télévision et cinéma, the Association des réalisateurs et réalisatrices du Québec and the Union des artistes, Videotron's contribution to the English-language channel should be limited to 1.5% of its gross revenues derived from broadcasting activities because of the synergies with MATv. These interveners also noted that the loss of funding to the Canada Media Fund (CMF) and other independent production funds would be significant.
14. Other interveners supported the application provided that additional requirements be imposed on Videotron. For example, ELAN and the Quebec Community Groups Network suggested that a condition of licence be imposed on Videotron requiring it to establish partnerships with local official language minority community (OLMC) organizations or producers of social activism programs with concrete experience.
15. Other interveners opposed the application, submitting that Videotron was not meeting the regulatory requirements for its French-language community channel and that it should not be authorized to operate a second community channel until it did so. Specifically, these interveners questioned whether MATv was offering the required level of access programming and meeting the objective that community channels reflect the official languages, ethnic and Aboriginal make-up of the community. Videotron did not reply to the claims of non-compliance regarding MATv in the context of this proceeding.
16. Videotron indicated that the parties should not be concerned about the funds that would not go to the CMF and the production of national programming as they would be reinvested in the development of content and new talent within Montréal's Anglophone community to produce relevant local and access programming,

consistent with the objectives of the Act. Videotron added that the creation of MYtv would have significant economic spinoffs in Montréal, particularly in terms of job creation, and that it intended to offer programming reflective of the realities of the Montréal community and meeting its particular information and entertainment needs.

17. In response to the submission by certain interveners that the contributions that would be used to finance the new community channel must be limited, Videotron replied that it would be unreasonable to expect it to offer quality programming and the number of hours of local and access programming required if the funding of the new community channel was less than that allocated to its French-language counterpart.

Commission's analysis and decisions

18. After examining the public record for this proceeding in light of applicable regulations and policies, the Commission considers that it must determine whether it is appropriate to grant Videotron an exception to the Regulations to reallocate up to an additional 2% of its gross annual revenues from broadcasting activities to a separate English-language community channel in Montréal as an “allowable contribution to local expression.”
19. The Commission is concerned by Videotron's non-compliance with respect to the operation of its French-language community channel MAtv. In Broadcasting Decision 2015-31, the Commission concluded that Videotron is in non-compliance with the requirements of the Regulations and does not meet the objectives of the Community Television Policy as it relates to the operation of MAtv. Specifically, MAtv does not provide enough hours of local and access programming and does not appropriately reflect the OLMC or the ethnic and Aboriginal make-up of the community that it must serve. As noted in that decision, the Commission requires that Videotron take concrete steps to provide programming more reflective of the community in the Montréal area and the ethnic and Aboriginal make-up of its residents.
20. The Commission is also concerned about the contributions that Videotron wishes to allocate to the English-language community channel. Specifically, based on the information provided by Videotron, 2% of gross annual revenues derived from its broadcasting activities represents a significant amount, which, for confidentiality reasons, cannot be made public. However, for purposes of comparison, the Commission notes that the total 4% contribution that Videotron would allocate to its two community channels would be 28 times greater than that allocated by Rogers Cable Communications Inc. to operate its two community channels in Moncton.³
21. Further, according to the CMF's 2013-2014 annual report, each dollar spent by the fund generated \$3.33 of production activity. Thus, by way of example, approval of Videotron's application for additional funding would result in a loss of production activity equal to more than four times the amount spent to produce one season of the detective TV series *I9-2*. The Commission is therefore worried that approval of the

³ See Broadcasting Decision 2004-170.

application as filed would lead to the reallocation of a considerable sum of money at the expense of Canadian programming of more general interest – this sum would otherwise be directed to the CMF (at least 80%) and other certified independent funds (up to 20%) for the production of Canadian programs.

22. In light of the above, the Commission considers that the 2% contribution to local expression currently allocated by Videotron to MATv represents a more than adequate amount of money to serve all of the diverse elements and members of the Montréal community. In this respect, the majority of BDUs in Canada comply with their regulatory obligations and the Community Television Policy with far less money at their disposal.
23. However, the Commission notes that Videotron proposed to offer this new channel to foster access and participation by the Anglophone minority and as such better represent the multicultural diversity of the greater Montréal region. The Commission therefore considers that authorizing this new channel would support the broadcasting policy set out in the above-noted sections of the Act and the Community Television Policy, as well as meet the objectives of the OLA.
24. Moreover, since Montréal is home to Canada's largest OLMC, the introduction of English-language community programming would allow the Anglophone community and various other cultural communities of Montréal to benefit from a new outlet for local expression.
25. In light of the above, the Commission considers that it is in the interest of the broadcasting system to authorize Videotron to launch an English-language community channel in Montréal. However, given that Videotron has been operating MATv in non-compliance with regulatory requirements relating to access programming and local programming, that allowing an additional contribution of 2% to local expression for MYtv would deprive the CMF and other funds of significant funding and that Videotron did not meet the burden of proof, the Commission considers that it would not be appropriate to grant Videotron an exception to the Regulations. Moreover, nothing prevents Videotron from contributing on its own to the funding of MYtv.
26. With the 2% allowable contribution to local expression already allocated for MATv, Videotron may either launch an English-language community channel by means of a separate feed or use the existing channel MATv to serve the entire Montréal community. The Commission considers that the two community channels could benefit from many synergies since approximately 30% of MATv funding is not directly related to programming (for example, technical equipment, electricity).

Conclusion

27. In light of all of the above, the Commission **approves in part** the application by Quebecor Media Inc. on behalf of Videotron Ltd. and 9227-2590 Québec inc., partners in a general partnership carrying on business as Videotron G.P., to amend the

broadcasting licences for Videotron's BDUs serving Montréal, Montréal West and Terrebonne. Specifically, the Commission authorizes Videotron, by condition of licence, to launch a separate English-language community channel without allowing it to reallocate an additional contribution to the new channel.

28. Accordingly, Videotron must comply with the following **condition of licence**:

As an exception to section 34(5) of the *Broadcasting Distribution Regulations* (the Regulations), if the licensee distributes its own community programming, it shall make a contribution to Canadian programming in each broadcast year that is equal to 5% of its gross revenues derived from broadcast activities in the broadcast year, less any allowable contribution to local expression made by the licensee in that broadcast year to its French- and English-language community channels, provided that the deduction for such contributions not exceed 2% of its gross revenues derived from broadcast activities for these community channels combined. For the purpose of this condition of licence, "allowable contribution to local expression" shall have the same meaning as that set out in section 34(6) of the Regulations.

29. The Commission reminds Videotron that it must operate its community channels in accordance with its regulatory obligations relating to local and access programming and the Community Television Policy. Further, its community channels must reflect the Greater Montréal community, which includes the official languages, ethnic and Aboriginal communities.

30. The Commission will address the licensee's compliance with its conditions of licence, the requirements of the Regulations and the objectives of the Community Television Policy at the renewal of its licences scheduled for August 2015.

Secretary General

Related documents

- *Complaint by Independent Community TV against Videotron G.P. and its Community channel MATV*, Broadcasting Decision CRTC 2015-31, 4 February 2015
- *Amendments to the Broadcasting Distribution Regulations – Provisions relating to local expression*, Broadcasting Regulatory Policy CRTC 2012-392, 19 July 2012
- *Community television policy*, Broadcasting Regulatory Policy CRTC 2010-622, 26 August 2010
- *Contributions to French- and English-language community channels*, Broadcasting Decision CRTC 2004-170, 10 May 2004

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