



# Broadcasting Regulatory Policy CRTC 2016-436

PDF version

Reference: 2016-195

Ottawa, 2 November 2016

## Standard requirements for television stations, discretionary services, and on-demand services

*The Commission issues standard conditions of licence, expectations and encouragements for television stations, discretionary services (formerly pay television and specialty services), and on-demand services (formerly pay-per-view and video-on-demand services). These broad licensing categories, which consolidate virtually all types of television programming services, as well as the requirements set out in the appendices to this regulatory policy will be implemented at licence renewal.*

### Introduction

1. In March 2015, the Commission issued Broadcasting Regulatory Policies 2015-86, 2015-96 and 2015-104, setting out policy determinations from its review of the television system initiated by the Let's Talk TV proceeding (the Let's Talk TV policies). In Broadcasting Regulatory Policy 2015-86, the Commission stated its intention to streamline the licensing approach for television programming services by consolidating virtually all such services into the following three broad licensing categories:
  - television stations<sup>1</sup> (including over-the-air [OTA] television stations and provincial educational television services);
  - discretionary services (all pay television and specialty services); and
  - on-demand services (i.e., pay-per-view [PPV] and video-on-demand [VOD] services).
2. These new licensing categories will be introduced through the licence renewal process and will come into effect for each service at the beginning of its next licence term.

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<sup>1</sup> In Broadcasting Regulatory Policy 2015-86, these were referred to as “basic television services.”

## **Call for comments on proposed standard requirements for various television services**

3. In Broadcasting Notice of Consultation 2016-195, the Commission invited comments on proposed standard conditions of licence, expectations and encouragements for services captured by each of the above-noted licensing categories.<sup>2</sup> These requirements would implement certain of the policy determinations set out in the Let's Talk TV policies, including those relating to the elimination of the genre exclusivity policy,<sup>3</sup> the unbundling of multiplexed services<sup>4</sup> and restrictions on future multiplexed services, the implementation of the Wholesale Code,<sup>5</sup> and improvements to the accessibility of programming.<sup>6</sup> The Commission stated, however, that it would be open to considering ways to further streamline the standard requirements, and welcomed comments to that effect.
4. The Commission also took the opportunity to consolidate provisions that were similar but not identical in nature, to update the wording of current standard requirements, and to remove obsolete provisions.

### **Interventions**

5. The Commission received interventions from BCE Inc. (BCE), Blue Ant Media Inc. (Blue Ant), Bragg Communications Inc., carrying on business as Eastlink (Eastlink), the Canadian Broadcasting Corporation (CBC), the Canadian Cable Systems Alliance, the Canadian Media Producers Association (CMPA), Cogeco Communications inc. (Cogeco), the Conseil provincial du secteur des communications du Syndicat canadien de la fonction publique (CPSC-SCFP), Corus Entertainment Inc. (Corus), DHX Television Ltd. (DHX), The Forum for Research and Policy in Communications (FRPC), Groupe V Média inc. (Groupe V), the

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<sup>2</sup> The current requirements for various types of television programming services are set out in the following regulatory policies: conventional television stations, the appendix to Broadcasting Regulatory Policy 2011-442; specialty Category A services, Appendix 1 to Broadcasting Regulatory Policy 2011-443; pay television Category A services, Appendix 2 to Broadcasting Regulatory Policy 2011-443; Category B specialty services, Appendix 1 to Broadcasting Regulatory Policy 2010-786-1; Category B pay services, Appendix 2 to Broadcasting Regulatory Policy 2010-786-1; Canadian discretionary services operating as national news services, the appendix to Broadcasting Regulatory Policy 2015-436; Canadian specialty services operating in the genre of mainstream sports, Appendix 1 to Broadcasting Regulatory Policy 2009-562-2; PPV services, the appendix to Broadcasting Regulatory Policy 2013-561; and VOD services, Appendix 2 to Broadcasting Regulatory Policy 2015-355.

<sup>3</sup> The genre exclusivity policy limited programming services to offering certain types of programming (that is, a “nature of service”) and in some cases precluded other services from offering that programming.

<sup>4</sup> Multiplexed services are services in which programming is spread across multiple “channels” offered together.

<sup>5</sup> Set out in the appendix to Broadcasting Regulatory Policy 2015-438, the Wholesale Code governs certain aspects of the commercial arrangements between broadcasting distribution undertakings, programming undertakings, and exempt digital media undertakings.

<sup>6</sup> This relates to the provision of closed captioning, audio description and described video.

Independent Broadcast Group (IBG), MTS Inc., On Screen Manitoba, Pelmorex Communications Inc. (Pelmorex), the Public Interest Advocacy Centre (PIAC), Quebecor Media Inc. (Quebecor), Rogers Communications Inc. (Rogers), Saskatchewan Telecommunications (SaskTel), Shaw Communications Inc. (Shaw), TELUS Communications Inc. (TELUS), and various individuals.

6. DHX, licensee of the independent Category A pay television service Family Channel, supported a Commission proposal set out in the notice to eliminate the restriction currently imposed on advertising on pay television services. Noting that this was to be implemented through the proposed *Discretionary Services Regulations*,<sup>7</sup> DHX requested that the restriction be lifted sooner given the length of time that it would take to implement those new regulations. The Commission announced a second intervention phase, to allow for comments pertaining uniquely to DHX's request. In that phase, the Commission received interventions from Allarco Entertainment Inc., BCE, the CMPA, Cogeco, the FRPC and SaskTel.
7. The public record of this proceeding can be found on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca).

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

### **Television stations**

8. Having examined the public record for this proceeding in light of applicable regulations and policies, the Commission considers that the key issue it must address in regard to the standard requirements for television stations relates to the provision of local programming.
9. In Broadcasting Notice of Consultation 2015-421, the Commission launched a proceeding to review the policy framework for local and community television programming. For this reason, it omitted requirements relating to local programming from those proposed in Broadcasting Notice of Consultation 2016-195, but noted that any requirements flowing from the review of local and community television would be included in the final version of the standard requirements.
10. Currently, commercial English-language stations are required to broadcast at least seven hours of local programming per week in non-metropolitan markets and at least 14 hours per week in metropolitan markets. The local programming requirements for commercial French-language stations are assessed on a case-by-case basis, using a benchmark minimum of five hours of local programming per week. These requirements are enforced for English-language television stations by way of standard

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<sup>7</sup> In Broadcasting Notice of Consultation 2016-385, the Commission called for comments on a proposal to merge the *Specialty Services Regulations, 1990* and the *Pay Television Regulations, 1990* into one set of regulations to be known as the *Discretionary Services Regulations*, which it expects will come into force on 1 September 2017.

conditions of licence, and for French-language television stations by way of individual conditions of licence for each individual station.

11. In Broadcasting Regulatory Policy 2016-224, which sets out the revised framework for local and community television programming, the Commission considered that it would be appropriate to maintain this approach. Accordingly, **conditions of licence** to that effect have been re-introduced into the standard requirements for television stations, and are set out in Appendix 1 to this regulatory policy. However, the definition of “local programming” has been amended to reflect the clarification regarding local relevance as set out in Broadcasting Regulatory Policy 2016-224. The Commission will continue to assess the local programming conditions of licence for French-language television stations on a case-by-case basis and evaluate them as part of the licence renewal process.
12. As stated in Broadcasting Regulatory Policy 2016-224, the new expenditure and exhibition requirements for locally reflective news programming will also be imposed on a case-by-case basis at licence renewal.

### **Discretionary services**

13. Having examined the public record for this proceeding in light of applicable regulations and policies, the Commission considers that the key issues it must address in regard to the standard requirements for discretionary services are the following:
  - whether the proposed condition of licence setting out the limits on the broadcast of advertising material should be retained;
  - whether the Commission should permit advertising on pay television services effective immediately, and before the proposed *Discretionary Services Regulations* come into force; and
  - whether the proposed condition of licence relating to the broadcast of Canadian music videos should be retained.

### **Limits on the broadcast of advertising material**

14. Specialty Category A and B services are subject to conditions of licence restricting the amount of advertising material that they may broadcast to 12 minutes per clock hour, and restricting the advertising material that may be broadcast to national paid advertising.<sup>8</sup>

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<sup>8</sup> For specialty Category A services, see conditions of licence 8.a) and d) set out in Appendix 1 to Broadcasting Regulatory Policy 2011-443. For specialty Category B services, see conditions of licence 7.a) and d) set out in Appendix 1 to Broadcasting Regulatory Policy 2010-786-1.

### ***Intervention***

15. Corus submitted that the 12-minute limit for discretionary services should be eliminated since it creates an unnecessary administrative burden. It further submitted that limiting paid advertising material to national paid advertising is no longer warranted. In Corus's view, there is no available evidence to suggest that the elimination of these restrictions would have a negative impact on discretionary services, or that these services would not be able to continue fulfilling their regulatory obligations.

### ***Commission's decision***

16. In Broadcasting Notice of Consultation 2016-195, the Commission did not propose to remove the 12-minute per clock hour advertising limit, or to expand the types of advertising that discretionary services may broadcast. As a result, other parties have not had an opportunity to comment on Corus's proposal.
17. In light of the lack of a fulsome record on this issue, the Commission considers that it would be inappropriate to eliminate the 12-minute advertising limit at this time. Accordingly, the current condition of licence will be retained for the time being as part of the standard conditions of licence for discretionary services.
18. As announced in Broadcasting Notice of Consultation 2016-225, the Commission intends to hold a public hearing later this month to consider the renewal of the broadcasting licences of the large broadcasting groups (the group-based licence renewal hearing). As part of their applications to be heard during that hearing, certain applicants requested that the Commission eliminate various advertising restrictions for discretionary services. The Commission intends to explore issues relating to advertising with these applicants at that time. It will be up to each applicant to make a case for any exception to the relevant standard conditions of licence in its particular situation.
19. The Commission has, however, amended the definition of "paid national advertising" as it applies to the standard condition of licence relating to advertising, by specifying that it relates to an advertisement "that is broadcast in a break within a program or between programs." This amendment will serve to maintain the *status quo* for the application of the condition of licence in light of a change to the definition of "commercial message" as set out in the proposed *Discretionary Services Regulations* (see Broadcasting Notice of Consultation 2016-385).

### **Broadcast of advertising on pay television services**

20. Pursuant to section 3(2)(d) of the *Pay Television Regulations, 1990* (the Pay Television Regulations), licensees of pay television services are not permitted to distribute programming that contains any commercial message. In Broadcasting Notice of Consultation 2016-195, the Commission stated its intention to allow all discretionary services, including pay television services, to broadcast advertising, as a

means of creating cohesion between the current Pay Television Regulations and the current *Specialty Services Regulations, 1990* (the Specialty Services Regulations).

21. As noted above, DHX has requested the immediate elimination of the advertising restriction for pay television services. It submitted that the current advertising restriction on pay television services has created a competitive distortion in the marketplace. Noting that various youth- and family-oriented specialty services that launched following the elimination of genre protection (see Broadcasting Regulatory Policy 2015-86) are permitted to broadcast advertising, DHX argued that the resulting competitive imbalance has had a negative impact on its service Family Channel. In its view, approval of its request would place Family Channel and other programming services on a more level playing field with Canadian specialty services.

***Second-phase interventions (initiated by DHX's request)***

22. Various interveners supported DHX's request. BCE submitted that with the elimination of genre protection, pay services are at a competitive disadvantage. In BCE's view, since the regulatory process associated with the implementation of new standard conditions of licence can be lengthy, DHX's request should be approved.
23. The CMPA submitted that Family Channel should be put in a comparable position with specialty services with which it is in direct competition. Cogeco added that pay television services that broadcast advertising should be required to adhere to the requirements regarding the loudness of commercial messages.
24. The FRPC, on the other hand, considered that DHX provided insufficient rationale and evidence in support of its request, and stated that DHX should plead its case at its upcoming licence renewal. The FRPC submitted that the Commission does not have the authority to stop enforcing its regulations should it decide that non-enforcement is expedient, or that its regulations are inconvenient. It also expressed concern over the impact that approval of DHX's request to broadcast advertising could have on young viewers.
25. SaskTel expressed the view that DHX's request should be denied. It argued that as a general principle, all stakeholder impacts, business and customer implications, and regulatory consequences of a proposed change in licence conditions need to be thoroughly assessed in the context of a public consultation. SaskTel suggested that the Commission should first complete the examination of its proposal to merge the Specialty Services Regulations and the Pay Television Regulations so that it is fully informed of the subject matter of DHX's request.

***Commission's decision***

26. The Commission has clearly indicated its intention to streamline the licensing categories such that the distinctions between pay and specialty services will no longer exist, and so that they will be subject to a single regulatory regime. It has also indicated its intention to no longer restrict advertising on pay television services.

27. Given the length of time required to complete the regulation-making process along with the Canadian broadcasting system's evolving environment, it would be in the interest of the broadcasting system as a whole to realize these intentions sooner than 1 September 2017. Allowing pay television services to benefit from opportunities to secure advertising revenue prior to the coming into force of the *Discretionary Services Regulations* would provide them with competitive parity with specialty services sooner than is otherwise feasible.
28. As noted above, as a result of the elimination of genre protection, the Commission no longer enforces conditions of licence relating to nature of service, with certain exceptions.<sup>9</sup> As a result, any specialty service can now compete directly with any pay television service.
29. Approval of DHX's request could provide currently licensed pay television services with more effective tools to compete against potential entrants who offer competitive programming, and could help mitigate potential revenue losses. The Commission notes, however, that removing the advertising restriction on pay television services will not necessarily lead these services to avail themselves of the opportunity to broadcast advertising. Some may elect to remain "commercial free" as a marketing strategy, or adopt a phased approach towards a new business model.
30. Finally, an increase in revenues through the broadcast of advertising could have a positive effect on the amount of money being contributed to the broadcasting system through the Canadian programming expenditure (CPE) requirements for DHX (or for any other independent broadcaster).
31. In regard to Cogeco's concerns relating to the applicability of the loudness provision, the Commission considers that the removal of the restriction should not be an unfettered ability to advertise. Given that this step represents a streamlining initiative, pay television services that avail themselves of the ability to advertise prior to the coming into force of the *Discretionary Services Regulations* should be subject to the same regulatory restrictions as specialty services.
32. In regard to the FRPC's suggestion that DHX's request be considered at the upcoming licence renewal for Family Channel, the Commission notes that the broadcasting licence for the service is up for renewal in 2018, after the new *Discretionary Services Regulations* are expected to come into force. In regard to the intervener's concerns over the negative impact that allowing pay television services to broadcast advertising could have on young viewers, various safeguards, such as the requirement for all discretionary services to adhere to the Canadian Association of Broadcasters' *Broadcast Code for Advertising to Children*, will help to reduce any such negative impact.

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<sup>9</sup> For example, services other than mainstream sports services are generally subject to a condition of licence limiting the amount of live professional sports programming they may broadcast.

33. In light of all of the above, the Commission **approves** DHX's request. Accordingly, licensees of pay television services shall be permitted to broadcast advertising immediately, provided that they adhere to all other current requirements regarding the broadcast of advertising material by specialty services. These requirements include those set out in conditions of licence relating to the 12-minute per clock hour advertising limit and types of advertising,<sup>10</sup> the *Broadcast Code for Advertising to Children*,<sup>11</sup> and the provision of closed captioning for advertising.<sup>12</sup> They also include those set out in the Specialty Services Regulations relating to the broadcast of commercial messages advertising alcoholic beverages (section 4), political broadcasts (section 6), logging requirements (section 7(1)(c)(iii)), and the loudness of commercial messages (section 13). Section 3(2)(d) of the current Pay Television Regulations will continue to apply to pay television services; however, going forward, it will be interpreted subject to the terms set out above. A failure by a pay television service to adhere to any of the regulatory requirements set out above could result in the undertaking being found in non-compliance with section 3(2)(d) of the Pay Television Regulations.

#### **Broadcast of Canadian music videos**

34. The standard condition of licence relating to the broadcast of music videos by specialty Category B music video services<sup>13</sup> requires licensees of such services in their first year of operation to devote not less than 20% of the total number of music videos broadcast during each broadcast week to Canadian music videos. This level increases to 25% for services in their second year of operation, and 30% for services in their third or subsequent years of operation. These levels are a sub-requirement of the minimum Canadian content levels that will be set out in the *Discretionary Services Regulations*.

35. In Broadcasting Notice of Consultation 2016-195, the Commission proposed that the above requirements apply to all discretionary services by condition of licence, as a means of recognizing the competition introduced between various such services following the elimination of genre protection.

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<sup>10</sup> For specialty Category A services, see condition of licence 8 set out in Appendix 1 to Broadcasting Regulatory Policy 2011-443. For specialty Category B services, see condition of licence 7 set out in Appendix 1 to Broadcasting Regulatory Policy 2010-786-1.

<sup>11</sup> For specialty Category A services, see condition of licence 2 set out in Appendix 1 to Broadcasting Regulatory Policy 2011-443. For specialty Category B services, see condition of licence 2 set out in Appendix 1 to Broadcasting Regulatory Policy 2010-786-1.

<sup>12</sup> For specialty Category A services, see condition of licence 5 set out in Appendix 1 to Broadcasting Regulatory Policy 2011-443. For specialty Category B services, see condition of licence 5 set out in Appendix 1 to Broadcasting Regulatory Policy 2010-786-1.

<sup>13</sup> See condition of licence 14 in Appendix 1 to Broadcasting Regulatory Policy 2010-786-1.

### ***Intervention***

36. Corus opposed the proposed amendment, arguing that it introduces an additional requirement for Canadian content that is not currently imposed on other services. It argued that the proposal does not appear to contemplate the variety of ways in which different services may use music video clip content in their schedules and may dissuade services from including such content.
37. Corus submitted that if the Commission's intent is to create an exception to the 35% Canadian content requirement for those discretionary services that predominantly broadcast music video clips, the exception should be incorporated into the *Discretionary Services Regulations*. It also proposed that the requirement be based on the broadcast year, rather than the broadcast week as proposed by the Commission. In Corus's view, basing the requirement on the broadcast week increases the complexity of reporting and monitoring, and limits the flexibility currently afforded to licensees in terms of their ability to schedule such content.
38. Corus further submitted that the step-up Canadian content requirements should be eliminated to avoid the launch of a new service that would compete with an existing service offering music video clips, but that would also broadcast less Canadian content.

### ***Commission's decision***

39. With the elimination of genre protection, services are no longer tied to a specific genre. In keeping with this policy, the Commission has approved requests by licensees of specialty services to delete nature of service conditions of licence.
40. While the condition of licence relating to the broadcast of Canadian music videos has served to help consumers discover Canadian music and artists, other mechanisms continue to support the Canadian music industry. For example, certified independent production funds generally support the creation, production, distribution and promotion of new artistic and cultural works. One such fund currently supports the production of music videos and the creation of Canadian programming that promotes musical talent. Other, similar funds, with the same objectives, could be created in the future.
41. Additionally, many radio stations are required to contribute to funds such as FACTOR, MUSICACTION, and the Radio Starmaker Fund or Fonds Radiostar, the mandates of which entail the support, promotion, training and development of Canadian musical talent. Moreover, overall Canadian content requirements for television and radio stations will continue to support the creation of Canadian music, while many Canadian music videos are readily available on online video services.
42. For these reasons, the broadcast of Canadian music videos by discretionary services is less important today for encouraging and discovering Canadian music production than it was when the requirements relating to the broadcast of Canadian music videos were first imposed.

43. In light of the above, deleting this standard condition of licence for discretionary services would be consistent with the Commission's broader, more flexible approach regarding the broadcast of various genres of programming set out in Broadcasting Regulatory Policy 2015-86, and with the fact that it no longer enforces nature of service conditions of licence. Accordingly, this condition of licence has not been included as part of the standard requirements for discretionary services.

**Accessibility – Provision of described video by television stations and discretionary services**

44. In Appendices 1 and 2 to Broadcasting Notice of Consultation 2016-195, in accordance with Broadcasting Regulatory Policy 2015-104, the Commission proposed the following condition of licence relating to the provision of described video by television stations and discretionary services:

- a) The licensee of a [television station/discretionary service] that was subject to described video requirements prior to its last licence renewal or that belongs to a vertically integrated entity shall, by 1 September 2019, provide described video for all programming that is broadcast during primetime (i.e., from 7 p.m. to 11 p.m.), and that is drawn from program categories 2(b) Long-form documentary, 7 Drama and comedy, 9 Variety, 11(a) General entertainment and human interest and 11(b) Reality television, and/or is programming targeting preschool children (0-5 years of age) and children (6-12 years of age).
- b) For [an undertaking/a service] not captured by a) above, the licensee shall provide four hours of programming with described video per broadcast week by the beginning of the fourth year of the first licence term in which this condition applies.

The minimum four hours of described video programming broadcast each broadcast week may be drawn from program categories 2(b) Long-form documentary, 7 Drama and comedy, 9 Variety, 11(a) General entertainment and human interest and 11(b) Reality television, and/or may be programming targeting preschool children (0-5 years of age) and children (6-12 years of age).

The program categories for [television stations/discretionary services] are set out in Item 6 of Schedule 1 to the [*Television Broadcasting Regulations, 1987/Discretionary Services Regulations*], as amended from time to time.

**Interventions**

45. Blue Ant, Groupe V, the IBG and Pelmorex proposed that the definition of “vertically integrated entity” be amended so as not to include smaller, independent programming services that own production companies, given the financial burden that increased described video requirements would place on such services.

46. Corus and Quebecor expressed concern over the amount of described video to be provided. Corus proposed that the base amount of described video to be provided be reduced to four hours per week during primetime (instead of four hours each day during primetime, for a total of 28 hours). It cited issues relating to the production of described video for live programming, the absence of described video in delivered programming, and the substantial costs involved in producing or acquiring described video.
47. Finally, Rogers requested that the standard requirement to provide described video apply only to English- and French-language services, given the significant financial and administrative challenges such requirements would present to third-language services.

***Commission's decision***

48. In the definition proposed by the Commission, “vertically integrated entity” refers to an entity that owns or controls both programming and distribution undertakings, or both programming undertakings and production companies. However, the Commission’s intention in regard to the provision of described video is for the larger vertically integrated entities to be subject to the requirement to provide described video on all primetime programming over their services’ next licence terms. Smaller entities that were not subject to described video requirements prior to their last licence renewals would be subject to the more limited requirement of four hours of described video during each broadcast week. The Commission would nevertheless expect these smaller entities to ramp up to the higher levels for their subsequent licence terms, at which time appropriate, revised levels could be discussed.
49. To avoid an unintended impact on programming undertakings, the Commission has amended the relevant standard conditions of licence such that all entities are now required, by standard condition of licence, to provide the initial levels of described video (i.e., four hours per broadcast week). However, in Broadcasting Regulatory Policy 2015-104, the Commission determined that broadcasters who were already subject to described video requirements will, by 1 September 2019, be required to provide described video for programming broadcast between 7 p.m. and 11 p.m. (primetime), seven days a week. In order to implement this policy, requirements relating to the provision of described video for undertakings for which the Commission considers that more substantial levels are appropriate will be discussed with those undertakings at licence renewal and imposed on a case-by-case basis.
50. In regard to Rogers’ concern, the Commission also considers it appropriate to amend the conditions of licence such that the described video requirements apply only to English- and French-language programming.

## On-demand services

51. Licensees of PPV and VOD services are currently required, by condition of licence, to adhere to the Pay Television Regulations, with certain exceptions.<sup>14</sup> As noted in Broadcasting Notice of Consultation 2016-195, with the merging of the Pay Television Regulations and the Specialty Services Regulations, licensees of on-demand services will be required to adhere to the *Discretionary Services Regulations* by condition of licence, with certain exceptions to be identified, as well as the conditions of licence set out in Appendix 3 to this regulatory policy. As part of the streamlining initiative, requirements relating to advertising, undue preference and reverse onus, and loudness of commercial messages will be imposed through the regulations rather than by condition of licence.
52. In Broadcasting Notice of Consultation 2016-385, which sets out the proposed new *Discretionary Services Regulations*, the Commission considered that it would be appropriate to except on-demand services from the requirements relating to Canadian programming set out in section 2 of those regulations as the requirements were only intended to apply to discretionary services. In addition, in regard to the requirements relating to logs and records under section 8 of the proposed *Discretionary Services Regulations*, the reporting approach taken for discretionary services is not appropriate for on-demand services. Consequently, on-demand services will continue to be excepted from the application of the requirements to be set out in sections 2 and 8 of the *Discretionary Services Regulations*. In their place, the Commission will continue to apply conditions of licence relating to the exhibition of Canadian programming and the submission of program lists. As part of the process initiated by Broadcasting Notice of Consultation 2016-385, the Commission invited comments on the appropriateness of the application of those regulations and exceptions.
53. Having examined the public record for this proceeding in light of applicable regulations and policies, the Commission considers that the key issues it must address in regard to the standard requirements for on-demand services are the following:
- whether licensees of on-demand services should be required to contribute 5% of gross annual revenues to an existing Canadian independent production fund;
  - whether the condition of licence relating to the remittance of 100% of revenue for Canadian feature films to the rights holders should be retained;
  - whether advertising should be permitted on on-demand services; and
  - the inclusion of provisions relating to on-demand community services.

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<sup>14</sup> For both PPV and VOD services, sections 3(2)(d), 3(2)(e) and 3(2)(f) relating to the distribution of programming containing commercial messages and filler programming and section 4 relating to logs and records. For VOD services, also section 6.1 relating to undue preference or disadvantage.

### **Contributions to Canadian independent production funds**

54. Each VOD and PPV service is currently required to contribute 5% of its gross annual revenues to an existing Canadian independent production fund.<sup>15</sup> However, the calculation of gross annual revenues and the payment schedule for contributions are different for each type of service.
55. If a VOD service is a related service (i.e., one in which the broadcasting distribution undertaking distributing (BDU) the VOD service or any of its shareholders owns, directly or indirectly, 10% or more of the equity of the service), “gross annual revenues” equals 50% of the total VOD associated revenues received from customers of the BDU distributing the service. If the VOD service is not a related service, “gross annual revenues” equals the total amount received from the BDU(s) distributing the service.
56. For PPV services, there is no distinction between “related” and “non-related.” However, contributions must take the form of monthly installments, to be remitted within 45 days of month’s end, and must represent at least 5% of that month’s gross revenues.
57. In Broadcasting Notice of Consultation 2016-195, the Commission indicated its intention to maintain the requirement for on-demand services to contribute 5% of gross annual revenues to independent production funds, but proposed to amend the definition of “gross annual revenues” to correspond to “total revenues that are earned directly or indirectly for the distribution of any on-demand programming, including but not limited to gross revenues from subscriptions, commercial messages and grants.” It also proposed to continue authorizing licensees of on-demand services to calculate and pay their contributions as they currently do, but to delete the provisions setting out how contributions must be calculated and paid.

### ***Interventions***

58. Parties were divided on their views as to whether all on-demand services should contribute 5% of gross annual revenues to an independent production fund. The CMPA and On Screen Manitoba supported the proposal set out in Broadcasting Notice of Consultation 2016-195. Rogers and Shaw, on the other hand, submitted that the Commission should reconsider the proposal and delete the requirement altogether. In Rogers’ view, eliminating the requirement for licensees of on-demand services to make such contributions would place those services on a more equitable competitive footing.

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<sup>15</sup> For VOD services, see condition of licence 5 set out in Appendix 2 to Broadcasting Regulatory Policy 2015-355. For PPV services, see condition of licence 8 set out in the appendix to Broadcasting Regulatory Policy 2013-561.

59. Rogers, Shaw, Cogeco and Eastlink argued that the proposed definition of “gross annual revenues” would result in a double counting of related VOD and PPV service revenues. Cogeco submitted that it would also accentuate the regulatory disparity between BDU-operated VOD services and exempt VOD services (including hybrid VOD services), which are not subject to the requirement to make financial contributions for the support of Canadian programming. Cogeco noted that revenues earned by BDU-affiliated VOD services are already accounted for in the “gross revenues derived from broadcasting activities” on which the licensees of BDUs calculate their contributions to Canadian programming.
60. Quebecor supported the harmonization and simplification of conditions of licence for PPV and VOD services. However, it considered that the Commission’s proposal would result in “double taxation.”
61. In addition, Shaw and Rogers submitted that the Commission’s financial summaries provide ample evidence that the proposal to change the definition of “gross annual revenues” for contributions by on-demand services is neither fair nor sustainable in light of the declining profitability of these services.
62. Shaw further submitted that if the Commission retains the contribution requirement, it should allow VOD services to continue calculating their contributions in the same manner as they currently do. Shaw also submitted that the current definition of “gross annual revenues” should be extended to PPV services, along with the distinction between a “related service” and a service that is not related to the BDU.
63. Further, Shaw requested that the Commission clarify its intention regarding how licensees of on-demand services calculate and make their contributions. It submitted that by proposing to replace the current definition of “gross annual revenues” with a new definition that does not expressly limit the contribution requirement for an on-demand service to 50% of the total VOD-associated revenues received from BDU customers, the Commission had rendered the condition unclear.
64. TELUS expressed the view that licensees of on-demand services require greater flexibility for allocating their contributions to the production of Canadian programming. It proposed that the current contribution requirement be replaced by one similar to that for other linear programming services. In its view, this would fall in line with the Commission’s “desire to harmonize regulatory requirements for all discretionary services, whether provided on a linear scheduled basis or on-demand.”

#### ***Commission’s decision***

65. When licences for VOD services were first authorized, the Commission determined that setting these services’ gross annual revenues at 50% of total retail revenues in order to calculate contribution payments was appropriate when a VOD service is related to the BDU on which it is distributed. As explained in Public Notice 2000-172, this was an acknowledgement that when a VOD service offers programming to a customer through a distributor, a portion of the price paid by the customer goes to the distributor. Therefore, while the Commission recognized that a

portion of the total retail revenues earned from VOD service customers was retained by the BDU, the challenge was to identify and standardize the VOD service's share for the purposes of calculating contributions. There is no evidence from the present proceeding that the factors that led to this conclusion have changed and, therefore, that this standard approach should be changed. Further, there was general consensus among programming services that the proposed redefinition was not appropriate.

66. Furthermore, requiring BDU-related VOD services to make greater contributions to Canadian programming would put them at a disadvantage compared to similar, exempt services. In addition to declining revenues for VOD services, the broadcasting environment has in recent years seen the launch of various unlicensed Internet-based VOD services and hybrid VOD services, which are not required to financially support Canadian independent productions.
67. Given the increasing pressure that exempt VOD services are putting on licensed on-demand services, the Commission finds that deeming a BDU-related VOD service's gross annual revenues to be 50% of total revenues remains a reasonable approach. The Commission further considers that extending the application of this definition to BDU-related PPV services would be appropriate.
68. In regard to the calculation of contributions, contributions by PPV services currently must take the form of monthly installments, to be remitted within 45 days of month's end. The Commission considers that with the streamlining of contributions by PPV and VOD services, the requirement to remit contributions on a monthly basis should be removed. Instead, licensees of on-demand services should be permitted to make their contributions on an annual basis, as is currently the case for VOD services.
69. Accordingly, the Commission has retained the 5% contribution requirement, for all on-demand services, along with the definition of "gross annual revenues" currently used for VOD services for the purpose of calculating contributions by all on-demand services to independent production funds. A **condition of licence** to that effect is set out in Appendix 3 to this regulatory policy.

#### **Remittance of revenues for Canadian feature films to rights holders**

70. Licensees of VOD services are currently required to remit to the rights holders of all Canadian feature films 100% of revenues earned from the exhibition of these films.<sup>16</sup> Licensees of PPV services are subject to a similar condition of licence;<sup>17</sup> however, for French-language Canadian feature films, they must direct a minimum of 60% of the amount to programming providers.
71. Further, licensees are permitted to exclude the amount remitted to Canadian feature film rights holders from their gross annual revenues for the purpose of calculating contributions to a production fund, as required by condition of licence. Any revenues

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<sup>16</sup> See condition of licence 6 set out in Appendix 2 to Broadcasting Regulatory Policy 2015-355.

<sup>17</sup> See condition of licence 9 set out in the appendix to Broadcasting Regulatory Policy 2013-561.

retained by the licensee of a VOD or PPV service that are the subject of a negotiated revenue-sharing agreement between the licensee and the rights holders of the Canadian feature film are included as gross broadcasting revenues for the purposes of calculating the required contribution to a production fund.

72. In Broadcasting Notice of Consultation 2016-195, the Commission proposed to delete the above requirements, given that licensees of VOD and PPV services are able to negotiate revenue-sharing agreements with the rights holders, distributors and providers of Canadian feature films, and given other conditions of licence that support the distribution of Canadian feature films on an on-demand basis.

### ***Interventions***

73. SaskTel supported the Commission's proposal. The CMPA and On Screen Manitoba also supported the proposal, based on the inclusion of amounts remitted to Canadian feature film rights holders as revenue for the purpose of calculating required contributions to Canadian programming.
74. Quebecor supported replacing the requirement to remit 100% of the revenues to the rights holders with a negotiated agreement, but disagreed with the Commission's proposal to no longer exclude the amounts remitted to Canadian feature film rights holders as revenues for the purpose of calculating required contributions to Canadian programming.
75. Shaw, Cogeco and Rogers opposed the proposal. In regard to VOD services, Shaw submitted that should the Commission continue requiring licensees to make financial contributions to the production of Canadian programming, the conditions of licence in question should be retained to ensure that a licensee can continue excluding from its gross annual revenues the amounts it remits to Canadian feature film rights holders. Otherwise, this would result in a "double-counting" of their contribution for the purposes of calculating the amount paid to an independent production fund. Rogers and Cogeco echoed this concern, noting that this "double taxation" would further disadvantage on-demand services vis-à-vis online competitors.

### ***Commission's decision***

76. In Broadcasting Regulatory Policy 2015-86, the Commission determined that it no longer needs to intervene in the relationship between producers and broadcasters by requiring adherence to terms of trade agreements. It noted that such agreements had been in effect for a sufficient period of time, particularly in the English-language market, to provide broadcasters and producers with the opportunity to evaluate the ways in which those agreements have succeeded or failed. As such, broadcasters and producers now have the experience and clarity they need to negotiate future agreements among themselves.
77. In Broadcasting Regulatory Policies 2010-190 and 2013-561, the Commission determined that allowing licensees of PPV and VOD services to exclude the remitted amounts from their gross annual revenues for the purpose of calculating contributions

to a production fund would allow those licensees to offset the losses associated with the exhibition of Canadian films, and ensure that there was not a disincentive to offering or promoting Canadian films. Conditions of licence to this effect were therefore added to the standard conditions of licence. Under the Commission's current proposal, licensees of on-demand services would no longer be able to exclude the portion of revenues remitted to rights holders from the gross annual revenues used to calculate the contribution to Canadian programming.

78. In regard to arguments that licensees would now be required to make contributions on top of these remitted revenues, the Commission, based on its review of its annual report data submitted by licensees of PPV and VOD services on contributions to Canadian programming, finds that adding the remitted revenues to these services' gross annual revenues would result in a modest additional contribution.
79. Further, the deletion of this condition of licence may benefit producers given that revenue sharing agreements could encourage producers and licensees to better monetize content. In addition, the requirements to include all Canadian feature films that have been released in the past 12 months in the on-demand offering, and to promote Canadian feature films on the barker channel, will also ensure the availability of Canadian feature films and ultimately guarantee a certain level of revenue to the rights holders.
80. In light of the above, the Commission confirms that the conditions of licence requiring licensees of VOD and PPV services to remit to the rights holders of Canadian feature films 100% of the revenues earned from the exhibition of those films are no longer included in the standard conditions of licence for on-demand services. As well, licensees of VOD and PPV services will not be permitted to exclude the amount remitted to these rights holders from their gross annual revenues for the purpose of calculating contributions to a Canadian independent production fund.
81. The Commission will continue to require licensees of on-demand services to report on remittances to Canadian feature film rights holders via their annual reporting requirements.

#### **Broadcast of advertising**

82. Licensees of VOD and PPV services are prohibited from including as part of their offerings any program containing a commercial message, with certain exceptions.<sup>18</sup> These exceptions include when the commercial message is inserted by the licensee in a program that is obtained from a Canadian programming undertaking that either is a

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<sup>18</sup> For VOD services, see condition of licence 8 set out in Appendix 2 to Broadcasting Regulatory Policy 2015-355. For PPV services, see condition of licence 11 set out in the appendix to Broadcasting Regulatory Policy 2013-561.

related<sup>19</sup> Canadian programming undertaking or has acquired the right to broadcast the program on its linear Canadian programming service(s), or when the commercial message was already included in a program previously broadcast in Canada by a non-Canadian programming service authorized for distribution in Canada. If the commercial message is included in a program by virtue of any of the above exceptions, the program's inclusion as part of the PPV or VOD offering must be the subject of a written agreement entered into with the programming undertaking that owns the rights to the program.

83. In Broadcasting Notice of Consultation 2016-195, the Commission invited comments on whether on-demand services should continue to be prohibited by condition of licence from broadcasting commercial messages unless certain conditions are met. It also invited comments on the specific restrictions that should be retained, with detailed rationale, including financial evidence.

### ***Interventions***

84. The CBC, the CMPA, Corus, DHX, Eastlink, the IBG, On Screen Manitoba, Quebecor, Rogers, SaskTel and Shaw generally supported allowing advertising on on-demand services, but with certain restrictions in some cases.
85. Rogers, Corus, Quebecor, the CBC, DHX and the IBG addressed the need for written agreements between programming services that own the rights to programs and the licensees of on-demand services. The CBC submitted that the requirement to have a written agreement will become even more important in the future as viewership and opportunities for ad insertion on on-demand services increase.
86. Rogers expressed the view that the ability to effectively monetize on-demand programming will enable licensees to adjust their business models to better meet the outcomes envisioned by the Commission in regard to the Let's Talk TV process (see Broadcasting Regulatory Policy 2015-86). The IBG submitted that in addition to maintaining the requirement that VOD services enter into an agreement with the Canadian broadcaster over the insertion of advertising into VOD content, the requirement that such services not insert advertising in content obtained from non-Canadian services authorized for distribution in Canada should be maintained.
87. TELUS considered that some licensees may wish for their on-demand services to remain free from advertising, and that such product differentiation is a good thing for innovation, competition and consumer choice. It submitted that the Commission should ensure its proposal does not lead to a *de facto* obligation for services to sell advertising, and that the Commission has the ability to address concerns relating to the behaviour of vertically integrated companies in regard to the provision of their content to unaffiliated on-demand services.

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<sup>19</sup> "Related Canadian programming undertaking" means a Canadian programming undertaking of which the licensee and/or an affiliate controls more than 10% of the total shares issued and outstanding.

88. Other interveners opposed the proposal. BCE submitted that since on-demand services are not subject to significant Canadian content exhibition requirements and do not make significant contributions to the production of Canadian programming, they are not like discretionary services and should not enjoy the same advertising benefits. It noted that the current advertising limitations for on-demand services were specifically put in place to protect the revenues generated by other programming services.
89. PIAC stated that the Commission should be wary of eliminating all prohibitions on advertising on VOD services, and should ensure that the necessary safeguards, including those addressing privacy concerns, are in place to protect consumers and viewers. It further stated that PPV services should continue to be prohibited from broadcasting commercial messages as consumers already pay a significant premium on top of their monthly television subscription fees in order to access PPV programs.
90. The CPSC-SCFP submitted that permitting on-demand services to broadcast advertising could have a negative impact on PPV and VOD services given that low-cost foreign services such as Netflix offer similar products without advertising. It further submitted that removing the prohibition on advertising could have a negative impact on conventional television stations by forcing them to share advertising revenues with PPV and VOD services. The CPSC-SCFP added that this change could nullify the benefits accorded to conventional television stations through the Commission's decision, set out in Broadcasting Regulatory Policy 2016-224, to provide additional funding to local news produced by independent television stations.
91. The IBG stated that it is not possible to quantify the size or importance of future opportunities in advertising, such as inserting advertising into archived on-demand content.

#### ***Commission's decision***

92. Although various parties considered that eliminating restrictions over the broadcast of commercial messages could have a negative impact on conventional television stations and on-demand services, the Commission considers that there is insufficient evidence, financial or otherwise, to support removing all restrictions regarding the broadcast of commercial messages on on-demand services.
93. In light of the above, the Commission has retained the conditions of licence regarding the broadcast of commercial messages on on-demand services. The Commission intends to explore advertising with applicants and interveners in greater detail as part of the upcoming group-based licence renewal process.

#### **Provision relating to on-demand community services**

94. As noted above, given that the Commission launched a proceeding to review the policy framework for local and community television programming, requirements relating to local and community programming were omitted from Broadcasting Notice of Consultation 2016-195.

95. Currently, licensees of VOD services must adhere to conditions of licence relating to local expression, set out in Appendix 2 to Broadcasting Regulatory Policy 2015-355. In Broadcasting Regulatory Policy 2016-224, the Commission set out its revised policy framework for local and community television. The changes to that policy do not require any changes to the above-noted conditions of licence at the present time. Accordingly, the current conditions of licence have been re-inserted into the standard requirements for on-demand services, set out in Appendix 3 to this regulatory policy.

## **Other issues**

### **Adherence by licensees of television stations to the Wholesale Code**

96. In Appendix 1 to Broadcasting Notice of Consultation 2016-195, the Commission proposed a condition of licence requiring licensees of television stations to adhere to the Wholesale Code (see Broadcasting Regulatory Policy 2015-438), which governs certain aspects of the commercial arrangements between BDUs, programming undertakings, and exempt digital media undertakings. As noted by certain interveners, there are no contractual relationships between television stations and BDUs that can or should be governed by the Wholesale Code. Accordingly, the Commission has deleted the condition of licence relating to the Wholesale Code for television stations.

### **Distribution of standard definition and high definition versions of an on-demand service**

97. In Appendix 3 to Broadcasting Notice of Consultation 2016-195, the Commission proposed a condition of licence authorizing licensees of on-demand services to make available for distribution both a standard definition (SD) and a high definition (HD) version of the service. However, as noted by certain interveners, on-demand services do not operate under parallel SD and HD versions. Accordingly, the Commission has deleted that condition of licence for on-demand services.

### **Requirement to adhere to quality standards for closed captioning**

98. In the appendices to Broadcasting Notice of Consultation 2016-195, the Commission proposed conditions of licence for television stations, discretionary services and on-demand services to adhere to quality standards for French- and English-language closed captioning (see Broadcasting Regulatory Policies 2011-741-1 and 2012-362, respectively). Certain interveners noted that amendments to those quality standards may occur in the future, and that the conditions of licence in question should reflect that possibility.

99. Commission decisions and regulatory policies that are referenced in conditions of licence should remain static. The Commission acknowledges, however, that the English-language closed captioning quality standards relating to the accuracy rate for live programming are in flux. In Broadcasting Regulatory Policy 2016-435, also issued today, the Commission determined that quality standard #3, which relates to the accuracy rate for live programming, is neither sufficiently effective nor achievable. It also set out the steps that are intended to lead to the adoption of a new standard by 31 August 2019, including a public proceeding.

100. The Commission acknowledges that concerns also exist for French-language closed captioning. It considers that the ongoing public proceeding to renew the broadcasting licences held by the large ownership groups would be an appropriate forum to discuss issues relating to French-language closed captioning standards with those licensees. The Commission will also consider whether any further actions are necessary.
101. In order to ensure that the conditions of licence take into account any changes flowing from these processes, the Commission has added the words “as amended from time to time” to the relevant conditions of licence for television stations, discretionary services and on-demand services.

#### **Provision of closed captioning on non-linear online platforms**

102. In Appendices 1 and 2 to Broadcasting Notice of Consultation 2016-195, in accordance with Broadcasting Regulatory Policy 2015-104, the Commission proposed a condition of licence requiring licensees of television stations and discretionary services, respectively, to file reports relating to the provision of closed captioning on non-linear online platforms, in a format deemed acceptable by the Commission, by no later than 30 November of each year for the broadcast year ending the previous 31 August, consistent with other reporting requirements.<sup>20</sup> Further, in the appendices to that notice, the Commission proposed an expectation for television stations, discretionary services and on-demand services to ensure that when programming with closed captioning on traditional platforms is made available on non-linear platforms, the closed captioning is included.<sup>21</sup>
103. Rogers and Corus submitted that the proposed condition of licence should apply only to online platforms operated by the licensee, as this would eliminate an unreasonable administrative burden on licensees. They further submitted, as did Quebecor, that the same amendment should be made to the proposed expectation.
104. Rogers further submitted that the proposed condition of licence should only apply to the licensee’s own programming. Should the Commission wish to monitor the provision of closed captioning on all non-linear platforms, including those operated by non-Canadians, Rogers stated that a reporting requirement should be imposed in the Digital Media Exemption Order (see Broadcasting Order 2012-409).
105. The Commission acknowledges that licensees are not able to control whether third parties adhere to closed captioning requirements. It therefore considers that the conditions of licence and expectations relating to the provision of closed captioning on non-linear online platforms apply only in regard to such platforms operated by the licensee. In the appendices to this regulatory policy, the Commission has amended the relevant conditions of licence and expectations accordingly.

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<sup>20</sup> See condition of licence 11 set out in Appendix 1, and condition of licence 16 set out in Appendix 2 to Broadcasting Notice of Consultation 2016-195.

<sup>21</sup> See expectation 2 set out in Appendix 1, expectation 2 set out in Appendix 2, and expectation 4 set out in Appendix 3 to Broadcasting Notice of Consultation 2016-195.

## Miscellaneous items

106. The Commission has also made several other, minor amendments in order to clarify certain matters (relating to, among other things, multiplexed channels and the promotion of Canadian films), to correct various errors, and to ensure consistency between the French- and English-language versions of the standard requirements.
107. Further, the Commission has denied certain other requests for minor amendments. Several of these requests related to expectations or encouragements to which the Commission did not consider amendments to be necessary; to matters that the Commission did not consider to be administratively burdensome; and to proposals relating to policy determinations that the Commission had already made and, as such, were outside the scope of the present proceeding. Finally, the Commission finds that other proposals would be more appropriately addressed in the context of individual licence renewals.

## Conclusion

108. In the appendices to this regulatory policy, the Commission sets out the standard requirements for the different licensing categories for television services. The standard conditions of licence, expectations and encouragements for television stations are set out in Appendix 1; for discretionary services, in Appendix 2; and for on-demand services, in Appendix 3.
109. The Commission notes that the *Discretionary Services Regulations* have not yet been finalized, and that determinations resulting from the proceeding initiated by Broadcasting Notice of Consultation 2016-385 may affect the wording or substance of the standard requirements set out in the appendices to this regulatory policy. As a result, it may be necessary to issue revised standard requirements once that proceeding concludes. Similarly, amendments to the *Broadcasting Distribution Regulations* will be required as a result of Broadcasting Regulatory Policy 2016-224. Consequently, further changes to the standard requirements may also be required for consistency.

Secretary General

## Related documents

- *English-language closed captioning quality standard related to the accuracy rate for live programming*, Broadcasting Regulatory Policy CRTC 2016-435, 2 November 2016
- *Call for comments on Discretionary Services Regulations*, Broadcasting Notice of Consultation CRTC 2016-385, 26 September 2016
- *Notice of hearing – Renewal of television licences held by large English- and French-language ownership groups*, Broadcasting Notice of Consultation CRTC 2016-225, 15 June 2016

- *Policy framework for local and community television*, Broadcasting Regulatory Policy CRTC 2016-224, 15 June 2016
- *Call for comments on standard requirements for television stations, discretionary services, and on-demand services*, Broadcasting Notice of Consultation CRTC 2016-195, 20 May 2016
- *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015
- *Revised standard conditions of licence for Canadian discretionary services operating as national new services*, Broadcasting Regulatory Policy CRTC 2015-436, 23 September 2015
- *Notice of hearing – A review of the policy framework for local and community television programming*, Broadcasting Notice of Consultation CRTC 2015-421, 14 September 2015, as amended by Broadcasting Notices of Consultation CRTC 2015-421-1, 20 October 2015, 2015-421-2, 17 December 2015, 2015-421-3, 12 January 2016, and 2015-421-4, 3 February 2016
- *Revised exemption order for certain classes of video-on-demand (VOD) undertakings and updated standard conditions of licence for licensed VOD undertakings*, Broadcasting Regulatory Policy CRTC 2015-355 and Broadcasting Order CRTC 2015-356, 6 August 2015
- *Let's Talk TV: Navigating the Road Ahead – Making informed choices about television providers and improving accessibility to television programming*, Broadcasting Regulatory Policy CRTC 2015-104, 26 March 2015
- *Let's Talk TV: A World of Choice – A roadmap to maximize choice for TV viewers and to foster a healthy, dynamic TV market*, Broadcasting Regulatory Policy CRTC 2015-96, 19 March 2015
- *Let's Talk TV: The way forward – Creating compelling and diverse Canadian programming*, Broadcasting Regulatory Policy CRTC 2015-86, 12 March 2015
- *Revised regulatory framework for pay-per-view services*, Broadcasting Regulatory Policy CRTC 2013-561, 23 October 2013
- *Amendments to the Exemption order for new media broadcasting undertakings (now known as the Exemption order for digital media broadcasting undertakings)*, Broadcasting Order CRTC 2012-409, 26 July 2012
- *Quality standards for English-language closed captioning*, Broadcasting Regulatory Policy CRTC 2012-362, 5 July 2012

- *Conditions of licence for competitive Canadian specialty services operating in the genres of mainstream sports and national news – Definition of “broadcast day” for mainstream sports services*, Broadcasting Regulatory Policy CRTC 2009-562-2, 25 May 2012
- *Quality standards for French-language closed captioning – Enforcement, monitoring and the future mandate of the French-language Closed Captioning Working Group*, Broadcasting Regulatory Policy CRTC 2011-741-1, 21 February 2012
- *Standard conditions of licence, expectation and encouragements for specialty and pay television Category A services*, Broadcasting Regulatory Policy CRTC 2011-443, 27 July 2011
- *Standard conditions of licence, expectations and encouragements for conventional television stations*, Broadcasting Regulatory Policy CRTC 2011-442, 27 July 2011
- *Standard conditions of licence, expectations and encouragements for Category B pay and specialty services – Corrected Appendices 1 and 2*, Broadcasting Regulatory Policy CRTC 2010-786-1, 18 July 2011
- *Regulatory framework for video-on-demand undertakings*, Broadcasting Regulatory Policy CRTC 2010-190, 29 March 2010

# Appendix 1 to Broadcasting Regulatory Policy CRTC 2016-436

## Standard conditions of licence, expectations and encouragements for television stations

### General

The following terms, conditions of licence, expectations and encouragements are applicable to all television stations, except where an authorization that represents a change from or addition to these terms and conditions is included in any decision pertaining to a particular licence.

Television stations are also subject to the *Television Broadcasting Regulations, 1987*, as amended from time to time.

### Conditions of licence

#### Operation and Control

1. Except as authorized by the Commission, the programming undertaking shall be operated in fact by the licensee itself. The broadcasting licence cannot be transferred or assigned.
2. The licensee shall not affiliate with or disaffiliate from any network operator without the prior written approval of the Commission.
3. The licensee shall operate the station on the basis of the contours and particulars approved by the Commission.
4. In order to ensure that the licensee complies at all times with the *Direction to the CRTC (Ineligibility of non-Canadians)*, the licensee shall file, within 30 days of its execution, for the Commission's review, a copy of any programming supply agreement and/or licence or trademark agreement it has entered into with a non-Canadian party. In addition, the Commission may request any additional document(s) that could affect control of the programming or management of the service.

#### Local programming

5. If the licensee operates an English-language television station in a metropolitan market, it shall broadcast on that station no less than 14 hours of local programming in each broadcast week.
6. If the licensee operates an English-language television station in a non-metropolitan market, it shall broadcast on that station no less than 7 hours of local programming in each broadcast week.

### **Adherence to various codes**

7. The licensee shall adhere to the *Broadcast Code for Advertising to Children*, as amended from time to time and approved by the Commission.
8. The licensee shall adhere to the *Equitable Portrayal Code*, the *Violence Code* and the *Journalistic Independence 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 broadcaster associate in good standing of the Canadian Broadcast Standards Council.

### **Accessibility**

9. The licensee shall caption 100% of the English- and French-language programs broadcast 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.
10. Consistent with *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009, the licensee shall:
  - a) ensure that advertising, sponsorship messages and promos in the English and French languages are closed captioned; and
  - b) implement a monitoring system to ensure that, for any signal that is closed captioned, the correct signal is captioned, the captioning is included in its broadcast signal, and this captioning reaches the distributor of that signal, in its original form.
11. In regard to the quality of closed captioning:
  - a) for French-language services, the licensee shall adhere to the requirements set out in the appendix to *Quality standards for French-language closed captioning – Enforcement, monitoring and the future mandate of the French-language Closed Captioning Working Group*, Broadcasting Regulatory Policy CRTC 2011-741-1, 21 February 2012, as amended from time to time; and
  - b) for English-language services, the licensee shall adhere to the requirements set out in the appendix to *English-language closed captioning quality standard related to the accuracy rate for live programming*, Broadcasting Regulatory Policy CRTC 2016-435, 2 November 2016, as amended from time to time.
12. In accordance with *Let's Talk TV: Navigating the Road Ahead – Making informed choices about television providers and improving accessibility to television programming*, Broadcasting Regulatory Policy CRTC 2015-104, 26 March 2015, the licensee shall file a report relating to the provision of closed captioning when distributed on non-linear online platforms operated by the licensee, in a format

deemed acceptable by the Commission, by no later than 30 November of each year for the broadcast year ending the previous 31 August, consistent with other reporting requirements.

13. The licensee shall provide audio description for all the key elements of Canadian information programs, including news programming.
14. In accordance with *Let's Talk TV: Navigating the Road Ahead – Making informed choices about television providers and improving accessibility to television programming*, Broadcasting Regulatory Policy CRTC 2015-104, 26 March 2015:
  - a) if the licensee broadcasts four hours or more per broadcast week of English- or French-language programming drawn from any of the program categories listed below, it shall, by the beginning of the fourth year of the first licence term during which this condition of licence applies, provide a minimum of four hours of described video per broadcast week for that programming;
  - b) if the licensee broadcasts less than four hours per broadcast week of English- or French-language programming drawn from any of the program categories listed below, it shall, by the beginning of the fourth year of the first licence term during which this condition of licence applies, provide described video for all of that programming.

These requirements apply to programming drawn from the following program categories set out in Item 6 of Schedule 1 to the *Television Broadcasting Regulations, 1987*, as amended from time to time: 2(b) Long-form documentary, 7 Drama and comedy, 9 Variety, 11(a) General entertainment and human interest and 11(b) Reality television, and/or to programming targeting preschool children (0-5 years of age) and children (6-12 years of age).

## **Expectations**

### **Accessibility**

1. If closed captioning is available, the Commission expects the licensee to provide viewers with a closed-captioned version of all programming broadcast during the overnight period.
2. The Commission expects the licensee to ensure that when programming with closed captioning on traditional platforms is made available on non-linear online platforms operated by the licensee, the closed captioning is included.
3. The Commission expects the licensee to acquire and make available described versions of programming such that all content that was offered with described video at some point in the broadcasting system is offered with described video when it is rebroadcast.

4. The Commission expects the licensee to:
  - a) display a standard described video logo and broadcast an audio announcement indicating the presence of described video before the broadcast of each described program; and
  - b) make information available regarding the described programs that it will broadcast.

**On-screen portrayal of ethnocultural minorities, Indigenous peoples, and persons with disabilities**

5. The Commission expects the licensee to endeavour, through its programming and employment opportunities, to reflect the presence in Canada of ethnocultural minorities, Indigenous 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.

**Employment equity**

6. In accordance with *Implementation of an employment equity policy*, Public Notice CRTC 1992-59, 1 September 1992 (Public Notice 1992-59), licensees with 100 or more employees are subject to the *Employment Equity Act*. If the licensee has from 25 to 99 employees, the Commission expects the licensee to have in place an employment equity plan that addresses the equitable representation of the four designated groups (women, Indigenous peoples, persons with disabilities and visible minorities), as set out in Public Notice 1992-59 and in *Amendments to the Commission's Employment Equity Policy*, Public Notice CRTC 1997-34, 2 April 1997.
7. In regard to the implementation of the licensee's employment equity plan, the Commission further expects the licensee to:
  - a) ensure that the details of the licensee's employment equity policies are communicated to managers and staff;
  - b) assign a senior level person to be responsible for tracking progress and monitoring results; and
  - c) dedicate financial resources to the promotion of employment equity in the workplace.

**Encouragements**

1. The Commission encourages the licensee to repeat the standard described video logo and audio announcement indicating the presence of described video following each commercial break.

2. If the licensee has fewer than 25 employees, the Commission encourages the licensee to consider employment equity issues in its hiring practices and in all other aspects of its management of human resources.

## **Definitions**

For the purposes of these conditions of licence, expectations and encouragements:

“Audio description” refers to announcers reading aloud the key textual and graphic information that is displayed on the screen during information programs.

“Broadcast day” and “broadcast year” shall have the same meanings as those set out in the *Television Broadcasting Regulations, 1987*, as amended from time to time.

“Broadcast week” shall have the same meaning as that set out in the *Radio Regulations, 1986*, as amended from time to time.

“Described video” (also referred to as videodescription or described narrative) consists of a narrated description of a program’s main visual elements, such as settings, costumes and body language.

“Local programming” means programming produced by either local stations with local personnel or locally-based independent producers, that is of interest to the community or market served (i.e., locally relevant).

“Metropolitan market” means a television market in which the population with a knowledge of the official language of the station (i.e., English or French), as defined by Statistics Canada, is one million or more.

“Original form” means, at a minimum, that the captioning provided by the licensee reaches the distributor unaltered, whether it is passed through in analog or in digital, including in high definition.

“Overnight period” means the total time devoted to broadcasting between midnight and six o’clock in the morning during each day.

## **Appendix 2 to Broadcasting Regulatory Policy CRTC 2016-436**

### **Standard conditions of licence, expectations and encouragements for discretionary services**

#### **General**

The following terms, conditions of licence, expectations and encouragements are applicable to all discretionary services, including those operating as specialty services or as pay television services, except where an authorization that represents a change from or addition to these terms and conditions is included in any decision pertaining to a particular licence.

Discretionary services are also subject to the *Discretionary Services Regulations*, as amended from time to time.

#### **Conditions of licence**

##### **Operation and Control**

1. Except as authorized by the Commission, the programming undertaking shall be operated in fact by the licensee itself. The broadcasting licence cannot be transferred or assigned.
2. In order to ensure that the licensee complies at all times with the *Direction to the CRTC (Ineligibility of non-Canadians)*, the licensee shall file, within 30 days of its execution, for the Commission's review, a copy of the programming supply agreement and/or licence or trademark agreement it has entered into with a non-Canadian party. In addition, the Commission may request any additional document(s) that could affect control of the programming or management of the service.

##### **Adherence to various codes**

3. The licensee shall adhere to the *Broadcast Code for Advertising to Children*, as amended from time to time and approved by the Commission.
4. The licensee shall adhere to the *Equitable Portrayal Code* and the *Violence 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 broadcaster associate in good standing of the Canadian Broadcast Standards Council.
5. The licensee shall adhere to the Wholesale Code, set out in the appendix to *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015, in its dealings with any licensed or exempt broadcasting undertaking.

**General programming**

6. The licensee shall file with the Commission the name of the service and a brief description of the programming offered by the service, and update this information with the Commission prior to making any changes.
7. The licensee may draw programming from all of the program categories set out in Item 6 of Schedule 1 to the *Discretionary Services Regulations*, as amended from time to time.
8. The licensee shall not devote more than 10% of the programming broadcast during the broadcast month to live professional sports programming, which falls under program category 6(a) Professional sports.

**Multiplexing**

9. The licensee shall not offer multiplexed channels, unless authorized to do so by condition of licence. If authorized to do so by condition of licence originally imposed prior to **2 November 2016**, the licensee is prohibited from offering more multiplexed channels than permitted under that condition of licence.
10. If the licensee is authorized by condition of licence to offer multiplexed channels, for each multiplexed channel offered, it shall adhere to the conditions set out herein and as specified in its individual conditions of licence.

**Accessibility**

11. The licensee shall caption 100% of the English- and French-language programs broadcast 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.
12. Consistent with *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009:
  - a) for a service operating in its first licence term, the licensee shall ensure that advertising, sponsorship messages and promos in the English and French languages are closed captioned by no later than the fourth year of the licence term;
  - b) for a service operating in its second or subsequent licence term, the licensee shall ensure that advertising, sponsorship messages and promos in the English and French languages are closed captioned.
13. Consistent with *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009, the licensee shall implement a monitoring system to ensure that, for any signal that is closed captioned, the correct signal is captioned, the captioning is included in its broadcast signal, and this captioning reaches the distributor of that signal, in its original form.

14. In regard to the quality of closed captioning:
- a) for French-language services, the licensee shall adhere to the requirements set out in the appendix to *Quality standards for French-language closed captioning – Enforcement, monitoring and the future mandate of the French-language Closed Captioning Working Group*, Broadcasting Regulatory Policy CRTC 2011-741-1, 21 February 2012, as amended from time to time; and
  - b) for English-language services, the licensee shall adhere to the requirements set out in the appendix to *English-language closed captioning quality standard related to the accuracy rate for live programming*, Broadcasting Regulatory Policy CRTC 2016-435, 2 November 2016, as amended from time to time.
15. In accordance with *Let's Talk TV: Navigating the Road Ahead – Making informed choices about television providers and improving accessibility to television programming*, Broadcasting Regulatory Policy CRTC 2015-104, 26 March 2015, the licensee shall file a report relating to the provision of closed captioning when distributed on non-linear online platforms operated by the licensee, in a format deemed acceptable by the Commission, by no later than 30 November of each year for the broadcast year ending the previous 31 August, consistent with other reporting requirements.
16. The licensee shall provide audio description for all the key elements of Canadian information programs, including news programming.
17. In accordance with *Let's Talk TV: Navigating the Road Ahead – Making informed choices about television providers and improving accessibility to television programming*, Broadcasting Regulatory Policy CRTC 2015-104, 26 March 2015:
- a) if the licensee broadcasts four hours or more per broadcast week of English- or French-language programming drawn from any of the program categories listed below, it shall, by the beginning of the fourth year of the first licence term during which this condition of licence applies, provide a minimum of four hours of described video per broadcast week for that programming.
  - b) if the licensee broadcasts less than four hours per broadcast week of English- or French-language programming drawn from any of the program categories listed below, it shall, by the beginning of the fourth year of the first licence term during which this condition of licence applies, provide described video for all of that programming

These requirements apply to programming drawn from the following program categories set out in Item 6 of Schedule 1 to the *Discretionary Services Regulations*, as amended from time to time: 2(b) Long-form documentary, 7 Drama and comedy, 9 Variety and 11(a) General entertainment and human interest and 11(b) Reality television, and/or to programming targeting preschool children (0-5 years of age) and children (6-12 years of age).

## **Advertising**

18. In regard to the broadcast of advertising material:

- a) Except as otherwise provided in subparagraphs b) and c), the licensee shall not broadcast more than 12 minutes of advertising material during each clock hour.
- b) Where a program occupies time in two or more consecutive clock hours, the licensee may exceed the maximum number of minutes of advertising material allowed in those clock hours if the average number of minutes of advertising material in the clock hours occupied by the program does not exceed the maximum number of minutes that would otherwise be allowed per clock hour.
- c) In addition to the 12 minutes of advertising material referred to in subparagraph a), the licensee may broadcast partisan political advertising during an election period.
- d) The licensee shall not broadcast any paid advertising material other than paid national advertising.

## **Programming in high definition**

19. The licensee is authorized to make available for distribution both a standard definition and a high definition version of its service, provided that not less than 95% of the video and audio components of the high definition and standard definition versions of the service are the same, exclusive of commercial messages and of any part of the service carried on a subsidiary signal. Further, all of the programming making up the 5% allowance shall be provided in high definition.

## **Programming policies**

20. If the licensee broadcasts religious programming as defined in *Religious Broadcasting Policy*, Public Notice CRTC 1993-78, 3 June 1993, it shall adhere to the guidelines set out in sections III.B.2.a) and IV of that public notice with respect to the provision of balance and ethics in religious programming.
21. If the licensee broadcasts adult programming, it shall adhere to section D.3 of the *Industry code of programming standards and practices governing pay, pay-per-view and video-on-demand services*, Broadcasting Public Notice CRTC 2003-10, 6 March 2003.

## **Expectations**

### **Accessibility**

1. If closed captioning is available, the Commission expects the licensee to provide viewers with a closed-captioned version of all programming broadcast during the overnight period.

2. The Commission expects the licensee to ensure that when programming with closed captioning on traditional platforms is made available on non-linear online platforms operated by the licensee, the closed captioning is included.
3. The Commission expects the licensee to:
  - a) display a standard described video logo and broadcast an audio announcement indicating the presence of described video before the broadcast of each described program; and
  - b) make information available regarding the described programs that it will broadcast.

**On-screen portrayal of ethnocultural minorities, Indigenous peoples, and persons with disabilities**

4. The Commission expects the licensee to endeavour, through its programming and employment opportunities, to reflect the presence in Canada of ethnocultural minorities, Indigenous 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.

**Employment equity**

5. In accordance with *Implementation of an employment equity policy*, Public Notice CRTC 1992-59, 1 September 1992 (Public Notice 1992-59), licensees with 100 or more employees are subject to the *Employment Equity Act*. If the licensee has from 25 to 99 employees, the Commission expects the licensee to have in place an employment equity plan that addresses the equitable representation of the four designated groups (women, Indigenous peoples, persons with disabilities and visible minorities), as set out in Public Notice 1992-59 and in *Amendments to the Commission's Employment Equity Policy*, Public Notice CRTC 1997-34, 2 April 1997.
6. In regard to the implementation of the licensee's employment equity plan, the Commission further expects the licensee to:
  - a) ensure that the details of the licensee's employment equity policies are communicated to managers and staff;
  - b) assign a senior level person to be responsible for tracking progress and monitoring results; and
  - c) dedicate financial resources to the promotion of employment equity in the workplace.

### **Broadcast of adult programming**

7. If the licensee operates an adult programming service, the Commission expects the licensee to provide the Commission with a copy of its internal policy on adult programming as required by the Commission in *Industry code of programming standards and practices governing pay, pay-per-view and video-on-demand services*, Broadcasting Public Notice CRTC 2003-10, 6 March 2003. The Commission further expects the licensee to submit any future changes that it makes to its internal policy on adult programming for Commission approval prior to their implementation.
8. The Commission expects the licensee to adhere to its internal policy on adult programming, as amended from time to time and approved by the Commission.

### **Encouragements**

1. The Commission encourages the licensee to repeat the standard described video logo and audio announcement indicating the presence of described video following each commercial break.
2. If the licensee has fewer than 25 employees, the Commission encourages the licensee to consider employment equity issues in its hiring practices and in all other aspects of its management of human resources.

### **Definitions**

For the purposes of these conditions of licence, expectations and encouragements:

“Audio description” refers to announcers reading aloud the key textual and graphic information that is displayed on the screen during information programs.

“Broadcast day,” “broadcast year,” “broadcast month” and “clock hour” shall have the same meanings as those set out in the *Television Broadcasting Regulations, 1987*, as amended from time to time.

“Broadcast week” shall have the same meaning as that set out in the *Radio Regulations, 1986*, as amended from time to time.

“Described video” (also referred to as videodescription or described narrative) consists of a narrated description of a program’s main visual elements, such as settings, costumes and body language.

“Multiplexed channel” refers to a channel that is part of a group of channels offered together for a single programming service across which programs from that service are spread.

“Original form” means, at a minimum, that the captioning provided by the licensee reaches the distributor unaltered, whether it is passed through in analog or in digital, including in high definition.

“Overnight period” means the total time devoted to broadcasting between midnight and six o’clock in the morning during each day.

“Paid national advertising” means advertising material as defined under the *Discretionary Services Regulations*, as amended from time to time, that is broadcast in a break within a program or between programs, and that is purchased at a national rate and receives national distribution on the service.

## **Appendix 3 to Broadcasting Regulatory Policy CRTC 2016-436**

### **Standard conditions of licence, expectations and encouragements for on-demand services**

#### **General**

The following terms, conditions of licence, expectations and encouragements are applicable to all on-demand services, except where an authorization that represents a change from or addition to these terms and conditions is included in any decision pertaining to a particular licence.

#### **Conditions of licence**

##### **Adherence to regulations**

1. The licensee shall adhere to the *Discretionary Services Regulations*, as amended from time to time, with the exception of sections 2 and 8.

##### **Operation and Control**

2. Except as authorized by the Commission, the programming undertaking shall be operated in fact by the licensee itself. The broadcasting licence cannot be transferred or assigned.
3. In order to ensure that the licensee complies at all times with the *Direction to the CRTC (Ineligibility of non-Canadians)*, the licensee shall file, within 30 days of its execution, for the Commission's review, a copy of the programming supply agreement and/or licence or trademark agreement it has entered into with a non-Canadian party. In addition, the Commission may request any additional document(s) that could affect control of the programming or management of the service.

##### **Adherence to various codes**

4. The licensee shall adhere to the *Broadcast Code for Advertising to Children*, as amended from time to time and approved by the Commission.
5. The licensee shall adhere to the *Equitable Portrayal Code*, 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*, 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 broadcaster associate in good standing of the Canadian Broadcast Standards Council.
6. The licensee shall adhere to the Wholesale Code, set out in the appendix to *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015, in its dealings with any licensed or exempt broadcasting undertaking.

**Exhibition and promotion of Canadian content**

7. If feature films are offered, the licensee shall ensure that not less than 5% of the English-language feature films and not less than 8% of French-language feature films available to subscribers in each broadcast year are Canadian.
8. If feature films are offered, the licensee shall ensure that the feature film offering includes all Canadian feature films released in the past 12 months.
9. The licensee shall ensure that not less than 20% of all programming other than feature films available to subscribers in each broadcast year are Canadian.
10. If feature films are offered, the licensee shall ensure that Canadian feature films are promoted to the same extent as non-Canadian feature films.
11. If a bilingual service is offered and a barker channel is provided, the licensee shall ensure that subscribers have access to a barker channel in the official language of their choice.
12. If a barker channel is provided, the licensee shall ensure that at least 25% of the titles promoted each month on its barker channel are Canadian titles.

**Contribution to Canadian programming**

13. The licensee shall contribute 5% of the service's gross annual revenues to an existing Canadian independent production fund administered independently of its undertaking.

For the purposes of this condition:

- a) if the on-demand service is a "related service," "gross annual revenues" shall be 50% of the total on-demand associated revenues received from customers of the broadcasting distribution undertaking(s) distributing the on-demand service;
- b) if the on-demand service is not a "related service," "gross annual revenues" shall be the total amount received from the broadcasting distribution undertaking(s) distributing the on-demand service.

A "related service" means one in which the broadcasting distribution undertaking distributing the on-demand service or any of its shareholders owns, directly or indirectly, 10% or more of the equity of the on-demand service.

## Advertising

14. The licensee shall not include as part of its on-demand offering any program containing a commercial message except under the following circumstances:
- a) The commercial message
    - i) is inserted by the licensee in a program that is obtained from a Canadian programming undertaking that is not a related programming undertaking;
    - ii) is inserted by the licensee in a program that is obtained from a related licensed Canadian programming undertaking that has acquired the right to broadcast the program on its linear Canadian programming service(s);
    - iii) was already included in a program previously broadcast in Canada by a non-Canadian programming service authorized for distribution in Canada; or
    - iv) is included in the licensee's community programming in accordance with sections 30(1)(g), 30(1)(h) and 30(1)(i) of the *Broadcasting Distribution Regulations* (where applicable).
  - b) If the commercial message is included in a program by virtue of paragraphs 14(a)(i), 14(a)(ii) or 14(a)(iv) above, the program's inclusion as part of the on-demand offering must be the subject of a written agreement entered into with the programming undertaking that owns the rights to the program.
  - c) The commercial message complies with the *Broadcast Code for Advertising to Children*, as amended from time to time and approved by the Commission.
  - d) The commercial message complies with the technical requirements set out in *ATSC Recommended Practice A/85: Techniques for Establishing and Maintaining Audio Loudness for Digital Television*, published by the Advanced Television Systems Committee Inc., as amended from time to time.

For the purposes of this condition of licence, "related Canadian programming undertaking" means a Canadian programming undertaking of which the licensee and/or an affiliate control more than 10% of the total shares issued and outstanding.

15. The licensee may broadcast a commercial message directly or indirectly advertising an alcoholic beverage only if:
- a) the sponsor is not prohibited from advertising the alcoholic beverage by the laws of the province in which the commercial message is broadcast;

- b) the commercial message is not designed to promote the general consumption of alcoholic beverages; and
- c) the commercial message complies with the *Code for Broadcast Advertising of Alcoholic Beverages* published by the Commission on 1 August 1996.

Paragraph (b) does not prohibit industry, public service or brand preference advertising.

#### **Programming rights**

- 16. The licensee shall not acquire exclusive rights for any of the programming offered on its programming service.
- 17. The licensee is prohibited from offering a non-Canadian subscription on-demand package that is directly competitive with a Canadian linear discretionary service, unless the package is exclusively comprised of live events that do not include any wrap-around programming.

#### **Local expression**

- 18. In regard to local expression:
  - a) Except as otherwise provided in subsections (b) and (c) or under a condition of its licence, if a licensee elects to offer an outlet for local expression, the licensee shall offer the programming at no charge to its subscribers and shall not offer any programming service other than the following:
    - i) community programming;
    - ii) a maximum of two minutes during a 60-minute interval of announcements promoting broadcasting services that the licensee is authorized to provide;
    - iii) a public service announcement;
    - iv) an information program funded by and produced for a federal, provincial or municipal government or agency or a public service organization;
    - v) the question period of the legislature of the province in which the licensed area is located;
    - vi) an announcement providing information about the programming that is to be offered as local expression;
    - vii) a commercial message that mentions or displays the name of a person who sponsored a community event or the goods, services or

activities sold or promoted by the person, if the mention or display is in the course and incidental to the production of community programming relating to the event;

- viii) an oral or written acknowledgement, which may include a moving visual presentation of no more than 15 seconds per message, contained in community programming that mentions no more than the name of a person, a description of the goods, services or activities that are being sold or promoted by the person and their address and telephone number, if the person provided direct financial assistance for the community programming in which the acknowledgement is contained;
  - ix) an oral or a written acknowledgement contained in community programming that mentions no more than the name of a person, the goods or services provided by the person and their address and telephone number, if the person provided the goods or services free of charge to the licensee for use in connection with the production of the community programming in which the acknowledgement is contained;
  - x) a still image programming service as described in *Exemption order respecting still image programming service undertakings*, Public Notice CRTC 1993-51, 30 April 1993, if the service is produced by the licensee or by members of the community served by the licensee and does not contain commercial messages, other than commercial messages that are contained within the programming service of a licensed radio station; and
  - xi) the programming of a community programming undertaking.
- b) At least 75% of the time for promotional announcements included in programming offered as local expression under subparagraph (a)(ii) shall be made available for the promotion of the outlet for local expression and for the promotion, by Canadian programming undertakings other than related programming undertakings, of their respective services.
  - c) A maximum of 25% of the time for promotional announcements included in programming offered as local expression under subparagraph (a)(ii) may be made available for the promotion of the services of related programming undertakings, discretionary services, packages of programming services, FM services and additional outlets and for the distribution of information on customer services and channel realignments.
  - d) Whenever a licensee is not offering community programming on the outlet for local expression or is offering as part of its inventory community programming that has no audio component, the licensee may offer as part of

its inventory the programming service of a local radio station, other than an educational radio programming service whose operation is the responsibility of an educational authority.

- e) If a licensee provides time on the outlet for local expression during an election period for the distribution of programming of a partisan political character, the licensee shall allocate that time on an equitable basis among all accredited political parties and rival candidates.

19. The licensee shall

- a) devote to community programming not less than 60% of the programming offered as local expression;
- b) devote at least 50% of the programming offered as local expression to community access television programming;
- c) devote a further percentage up to a total of 50% of the programming offered as local expression to community access television programming, according to requests;
- d) if one or more community television corporations are in operation in a licensed area, make available to them up to 20% of the programming offered as local expression for community access television programming; and
- e) if one or more community television corporations are in operation in a licensed area, make available to each of them, on request, not less than four hours of community access television programming.

The time allocated to the distribution of alphanumeric message services is excluded from the calculation of the programming requirement under this condition.

20. The licensee shall

- a) keep a program log or a machine-readable record of programs offered as local expression in the licensed area and retain it for a period of one year after the latest date on which the program is offered;
- b) enter into the program log or machine-readable record of programs the following information for each program:
  - i) the title of the program;
  - ii) the duration of time the program was offered, including the announcements and commercial messages referred to in conditions of licence 18(a)(ii) and (vii);

- iii) a brief description of the program, including a statement as to whether it is local community programming;
  - iv) the name of the distribution undertaking for which the program was produced and the name of the producer;
  - v) a statement as to whether the program constitutes community access television programming and identifying the party that has been provided with access; and
  - vi) the time of commencement of the announcements and commercial messages referred to in conditions of licence 18(a)(ii) and (vii), the duration and in the case of each commercial message, the name of the person selling or promoting goods, services or activities;
- c) retain a clear and intelligible audiovisual recording of each program offered as local expression in the licensed area for a period of
- i) four weeks after the latest date on which the program is offered; or
  - ii) eight weeks after the latest date on which the program is offered if the Commission receives a complaint from a person regarding the program or, for any other reason, decides to investigate and so notifies the licensee before the end of the period referred to in paragraph (c)(i).

### **Accessibility**

21. The licensee shall caption 100% of the English- and French-language programs in its inventory, consistent with the approach set out in *A new policy with respect to closed captioning*, Broadcasting Public Notice CRTC 2007-54, 17 May 2007, with the exception of community access television programming.
22. Consistent with *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009, the licensee shall implement a monitoring system to ensure that, for any signal that is closed captioned, the correct signal is captioned, the captioning is included in its broadcast signal, and this captioning reaches the distributor of that signal, in its original form.
23. In regard to the quality of closed captioning:
- a) for French-language services, the licensee shall adhere to the requirements set out in the appendix to *Quality standards for French-language closed captioning – Enforcement, monitoring and the future mandate of the French-language Closed Captioning Working Group*, Broadcasting Regulatory Policy CRTC 2011-741-1, 21 February 2012, as amended from time to time; and

- b) for English-language services, the licensee shall adhere to the requirements set out in the appendix to *English-language closed captioning quality standard related to the accuracy rate for live programming*, Broadcasting Regulatory Policy CRTC 2016-435, 2 November 2016, as amended from time to time.

#### **Program lists**

24. The licensee shall maintain for a period of one year and submit to the Commission upon request a detailed list of the programming available on the service. The list must identify each program by program category, language, country of origin, whether captioning and/or video description is available, and whether it is produced by the licensee. The list must also indicate the period of time during which each program was on the server and available to subscribers as well as, if applicable, whether the program is an event, and the time and dates of broadcast.

#### **Aggregate statistical data**

25. As part of its annual return to be submitted to the Commission on 30 November of each year, the licensee shall file aggregate statistical data for the broadcast year ending the previous 31 August relating to the following:
- video server capacity or number of channels – current;
  - video server capacity or number of channels – projected for the end of the next broadcast year;
  - total number of titles offered;
  - total number of Canadian titles offered;
  - breakdown of titles in both official languages;
  - total number of feature films offered;
  - total number of Canadian feature films offered;
  - total number of orders for Canadian programs;
  - total number of orders for non-Canadian programs;
  - total number of orders for Canadian feature films; and
  - total number of orders for non-Canadian feature films.

## **Expectations**

### **Programming offering in both official languages**

1. The Commission expects the licensee to make its programming offering available to the maximum extent possible in both official languages.

### **Accessibility**

2. If closed captioning is available, the Commission expects the licensee to provide viewers with a closed captioned version of all advertising, sponsorship messages and promos offered in its programming.
3. The Commission expects the licensee to ensure that 100% of original community access television programming is closed captioned.
4. The Commission expects the licensee to ensure that when programming with closed captioning on traditional platforms is made available on non-linear online platforms operated by the licensee, the closed captioning is included.
5. The Commission 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 persons with a visual impairment, as set out in *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009.
6. The Commission expects the licensee to:
  - a) display a standard described video logo and broadcast an audio announcement indicating the presence of described video before the broadcast of each described program; and
  - b) make information available regarding the described programs that it will broadcast.
7. 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.

### **Broadcast of adult programming**

8. If the licensee broadcasts adult programming, the Commission expects the licensee to provide its proposed internal policy on adult programming at least one month prior to the implementation of the service, as required by the Commission in *Industry code of programming standards and practices governing pay, pay-per-view and video-on-demand services*, Broadcasting Public Notice CRTC 2003-10, 6 March 2003. 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.

9. Where applicable, the Commission expects the licensee to adhere to its internal policy on adult programming once reviewed and approved by the Commission.

**On-screen portrayal of ethnocultural minorities, Indigenous peoples, and persons with disabilities**

10. The Commission expects the licensee to endeavour through its programming and employment opportunities to reflect the presence in Canada of ethnocultural minorities, Indigenous 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.

**Employment equity**

11. In accordance with *Implementation of an employment equity policy*, Public Notice CRTC 1992-59, 1 September 1992 (Public Notice 1992-59), licensees with 100 or more employees are subject to the *Employment Equity Act*. If the licensee has from 25 to 99 employees, the Commission expects the licensee to have in place an employment equity plan that addresses the equitable representation of the four designated groups (women, Indigenous peoples, persons with disabilities and visible minorities), as set out in Public Notice 1992-59 and in *Amendments to the Commission's Employment Equity Policy*, Public Notice CRTC 1997-34, 2 April 1997.
12. In regard to the implementation of the licensee's employment equity plan, the Commission further expects the licensee to:
  - a) ensure that the details of the licensee's employment equity policies are communicated to managers and staff;
  - b) assign a senior level person to be responsible for tracking progress and monitoring results; and
  - c) dedicate financial resources to the promotion of employment equity in the workplace.

**Encouragements**

1. The Commission encourages the licensee to share aggregate information on viewing of on-demand programs with broadcasters if such information is available.
2. If the licensee has fewer than 25 employees, the Commission encourages the licensee to consider employment equity issues in its hiring practices and in all other aspects of its management of human resources.

**Definitions**

For the purposes of these conditions of licence and expectations:

“Audio description” refers to announcers reading aloud the key textual and graphic information that is displayed on the screen during information programs.

“Broadcast year” shall have the same meaning as that set out in the *Television Broadcasting Regulations, 1987*, as amended from time to time.

“Commercial message” has the same meaning as that set out in the *Discretionary Services Regulations*.

“Community access television programming” and “community programming” have the same meanings as those set out in the *Broadcasting Distribution Regulations*, as amended from time to time.

“Described video” (also referred to as videodescription or described narrative) consists of a narrated description of a program’s main visual elements, such as settings, costumes and body language.

“Linear discretionary service” refers to a discretionary service that presents programming in a scheduled manner.

“Original form” means, at a minimum, that the captioning provided by the licensee reaches the distributor unaltered, whether it is passed through in analog or in digital, including in high definition.

“Wrap-around programming” means any other programming that is offered together with the live event itself (for example, pre-or post-commentaries of the event).