



## Broadcasting Decision CRTC 2017-144

PDF version

References: 2016-225, 2016-225-1, 2016-225-2, 2016-225-3 and 2016-225-4

Ottawa, 15 May 2017

**Bell Media Inc.**

Across Canada

*Application 2016-0020-6*

*Public hearing in Laval, Quebec*

*22 to 24 November 2016*

### **Bell Media Inc. – Licence renewals for French-language television services**

*The Commission renews the broadcasting licences for the television services that will form Bell's French-language Group for the next licence term, from 1 September 2017 to 31 August 2022.*

*In addition, the Commission renews the broadcasting licence for RDS, which will not be part of the group, from 1 September 2017 to 31 August 2022.*

#### **Application**

1. Bell Media Inc. (Bell), on behalf of the licensees listed in Appendix 1 to this decision, filed an application to renew the broadcasting licences for the discretionary services set out in that same appendix, as well as the broadcasting licence for the discretionary service RDS. Bell requested that the licences for its French-language television services set out in Appendix 1 to this decision be renewed under the group-based approach and that the licence for RDS not be included in Bell's French-language Group.
2. The Commission received several interventions in regard to the application. The public record for this proceeding can be found on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) or by using the application number provided above.

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

3. The Commission's determinations relating to the relevance of applying the group-based licensing approach to the Bell services and the implementation of this approach, as well as the determinations relating to issues common to all of the French-language ownership groups, are set out in Broadcasting Decision 2017-143 (the Introductory Decision), also issued today, which should be read in conjunction with this decision.

4. In the Introductory Decision, the Commission set out its determinations on various issues, including setting minimum requirements for Canadian programming expenditures (CPE) and expenditures on programs of national interest (PNI). These determinations are reflected below and in the conditions of licence for Bell's services.
5. After examining the record for this application in light of the Introductory Decision as well as applicable regulations and policies, the Commission considers that the issues it must address in this decision are the following:
  - the composition of Bell's French-language Group;
  - CPE;
  - PNI expenditures;
  - independent production expenditures;
  - reflection of regions and official language minority communities (OLMC);
  - RDS;
  - the deletion of various requirements; and
  - other requests by Bell.

### **Composition of Bell's French-language Group**

6. In its application, Bell proposed to establish a group comprised of its French-language services (Bell's French-language Group) from two separate designated groups formed during those services' last licence renewals, namely Astral, established in Broadcasting Decision 2012-241, and Bell, established in Broadcasting Decision 2011-444. Bell's application relates to the services Canal D, Canal Vie, Cinépop, Investigation, RDS Info, Super Écran, Vrak and Z.
7. In regard to RDS, Broadcasting Regulatory Policy 2010-167 states that Category C mainstream sports services should be excluded from groups. Consequently, Bell proposed to exclude RDS from the Bell Group.
8. Several interveners supported all of Bell's requests relating to its French-language services, including the composition of its group. The Association des réalisateurs et des réalisatrices du Québec (ARRQ), the Union des artistes (UDA) and the Société des auteurs de radio, télévision et cinéma (SARTEC) (collectively, ARRQ-UDA-SARTEC) objected to adding RDS Info, a service whose programming focuses on broadcasting professional sports-related information bulletins, to Bell's French-language Group, a service due to the service's lack of affinity with the group's other services.
9. RDS Info is currently a Category A service and will become a discretionary service under the new *Discretionary Services Regulations*. It must abide by the standard condition of licence for discretionary services limiting it to a maximum of 10% of

live professional sports. In Broadcasting Regulatory Policy 2010-167, the Commission did not state that it would exclude discretionary services offering sports news programs. The inclusion of RDS Info is therefore in line with that policy.

10. In light of the above, and in accordance with the determinations set out in the Introductory Decision, the Commission determines that Bell's French-language Group will consist of the following services:

- Canal D
- Canal Vie
- Cinépop
- Investigation
- RDS Info
- Super Écran
- Vrak
- Z

11. Bell requested that the Commission revoke, on 31 August 2017, the broadcasting licence for the discretionary service Investigation, which expires on 31 August 2018, and issue a new licence that will take effect on 1 September 2017. As such, the licence term for this service would be consistent with that of the other services in Bell's French-language Group.
12. Given the inclusion of the service Investigation in the group, the broadcasting licence will be revoked on 31 August 2017. A new broadcasting licence will be issued to Investigation and will take effect on 1 September 2017.

#### **Canadian programming expenditures**

13. Bell proposed a CPE requirement of 32% of the previous broadcast year's gross revenues for all of its services. This percentage is the same as that imposed on the Astral Group's services. This request is also in line with the average CPE requirements imposed on discretionary services in the French-language market. Bell stated that the 32% requirement could be imposed on all of the groups' discretionary services, which would ensure regulatory parity following the elimination of genre protection.
14. L'Association québécoise de la production médiatique (AQPM) proposed a CPE threshold of 34% of the group's revenues for the previous year, while ARREQ-UDA-SARTEC proposed a threshold of 35% to be imposed on each of the group's services individually. The Documentary Organization of Canada (DOC) submitted that the Commission should not accept any requests to reduce CPE requirements.

15. AQPM argued that the Commission's proposed approach in Broadcasting Regulatory Policy 2015-86 was the most appropriate and that the Commission should take into account, in the French-language market, each group's size, financial position and specific composition to determine CPE requirements. According to AQPM, Bell's request to base CPE requirements on an industry average does not adhere to the parameters set out in that policy. However, should the Commission decide to adopt Bell's suggested approach, AQPM recommended a threshold of 44% for all services in the French-language market.

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

16. In Broadcasting Regulatory Policy 2015-86, the Commission indicated that it would impose on new designated groups CPE levels based on historical expenditure levels.
17. Between 2013 and 2015, services in Bell's French-language Group spent on average 34.4% of the previous year's CPE revenues. In the documents filed in support of its renewal application, Bell indicated that it anticipated CPE of 37.4% for the next licence term.
18. Given the importance of the services that compose the group, the Commission finds that imposing a CPE requirement of 35% on all of Bell's French-language Group's services would ensure that the group makes the best possible use of Canadian resources—creative or otherwise—to create and present its programming, without, however, harming the services' profitability.
19. For these reasons, the Commission sets the minimum CPE threshold for the services in Bell's French-language Group at 35% of the previous broadcast year's gross revenues. A **condition of licence** to this effect is set out in Appendix 2 to this decision.
20. In accordance with the determinations set out in the Introductory Decision, the services will be able to share CPE among themselves and benefit from credits if Bell makes expenditures for programming produced by Indigenous producers or producers from OLMCs.

#### **Expenditures on programs of national interest**

21. PNI expenditure requirements are currently set at 18% for the services Canal D, Canal Vie, Cinépop, Super Écran, Vrak and Z, and 5% for RDS Info. No requirement has been set for Investigation. Bell proposed a PNI requirement of 5% of the previous broadcast year's gross revenues. To justify its request, Bell argued that certain services from the Astral Group have been transferred to another group or sold, namely TMN, TMN Encore, MusiquePlus, Max and Séries+. Bell argued that a level of 18% does not reflect the new composition of its French-language group, and that the PNI requirement should be reduced to put its services' new programming strategy in place.

22. According to the spending projections filed as part of its application, Bell forecast a slight increase in its PNI expenditures for the next licence term. Consequently, the Commission is not convinced that the requested reduction in the PNI expenditure requirement is required to put Bell's new programming strategy in place.
23. Moreover, in Broadcasting Decisions 2013-310 (the Bell-Astral transaction) and 2015-243, the Commission required that Bell devote to additional French-language PNI projects a total of approximately \$73.4 million over a seven-year period, i.e. approximately \$10.5 million per year until the end of the 2019-2020 broadcast year. These amounts must be paid in addition to the PNI requirements set out in the conditions of licence.
24. The expenditure requirements relating to tangible benefits must therefore be taken into account when determining the PNI expenditure requirements for the Bell's French-language Group. In fact, a significant reduction of the basic PNI expenditure requirement as proposed by Bell would effectively cancel commitments made during the transaction and eliminate a part of the tangible benefits that Canadians, as creators and citizens, can expect from the transaction, and as determined by the Commission.
25. In light of the above, and in accordance with the determinations set out in the Introductory Decision, the Commission sets the minimum PNI expenditure requirement for Bell's French-language Group at 18% of the previous broadcast year's gross revenues. A **condition of licence** to this effect is set out in Appendix 2 to this decision.

#### **Independent production expenditures**

26. With regards to independent production, Bell proposed to keep its current requirements, namely devoting at least 75% of its PNI expenditure requirements to programs produced by independent producers. In accordance with the determinations set out in the Introductory Decision, the Commission imposes on Bell's French-language Group a **condition of licence** to this effect.

#### **Reflection of regions and official language minority communities**

27. At the last licence renewal for French-language services, the Commission had issued an expectation regarding the reflection of regions and OLMCs. In accordance with the determinations set out in the Introductory Decision, the Commission issues the following expectation to all discretionary services owned by Bell, including RDS:

The Commission expects the licensee to ensure that the programs broadcast by the discretionary services adequately reflect all regions of Quebec, including those outside Montréal, as well as all regions of Canada. The Commission also expects the licensee to provide producers working in these regions with an opportunity to produce programs intended for these services.

## RDS

28. As part of its application to renew RDS's licence, Bell requested to change some of the requirements for this service.
29. The licensee requested that it no longer be subject to the standard condition of licence set out in Appendix 1 to Broadcasting Regulatory Policy 2009-562-2, which requires that 60% of the evening broadcast period be devoted to Canadian programming. Bell requested that the Commission replace this provision with an overall requirement of 50% for the entire broadcast day. Bell indicated that this change could apply to all mainstream sports services.
30. Bell argued that easing the requirements set out in the standard conditions of licence would not affect the nature of RDS, but would allow an increase in the variety and diversity of sports programming, because the current requirements only result in a higher number of re-runs, which is detrimental to content variety.
31. Such a request would require an exception to the standard conditions of licence for mainstream sports services. In Broadcasting Regulatory Policy 2015-86, the Commission did not announce that it would lower the broadcasting requirements for mainstream sports services as it had done for the other discretionary services.
32. The Commission considers that Bell did not provide sufficient rationale to justify an exception to the standard requirements for mainstream sports services to obtain a reduction in Canadian content. Therefore, the Commission **denies** Bell's request to delete this requirement.
33. In addition, Bell also requested that condition of licence 4 of the standard conditions for mainstream sports services be eased with respect to the broadcast of advertising material. Specifically, Bell requested that the maximum of 12 minutes of advertising allowed for each clock hour be spread over the entire broadcast day.
34. According to Bell, granting additional flexibility to mainstream sports services would improve the experience of Canadian television viewers. Moreover, with this additional flexibility, sports services would not feel pressured to force the inclusion of advertising into live-event coverage, especially where broadcast time and advertising slots are affected by the flow of the game. Bell added that this flexibility would have no impact on other Canadian services.
35. In Broadcasting Regulatory Policy 2015-436, the Commission allowed national news services to average the amount of advertising material offered in each clock hour over the broadcast day. Bell requested the same flexibility.
36. The Commission considers that such flexibility is also appropriate for mainstream sports services, which depend on sports leagues for the scheduling of advertising material. Therefore, the Commission **approves** Bell's request for an exception to the standard condition of licence with respect to advertising material.

37. Finally, Bell requested the deletion of the requirement imposed on RDS to pay tangible benefits in respect of any deficit in tangible benefits for services that were divested as a result of the Bell-Astral transaction, since this requirement was replaced by the tangible benefits imposed in Broadcasting Decision 2015-243. The Commission **approves** Bell's request in that regard.

#### **Deletion of various requirements**

38. Bell requested the deletion of various conditions of licence for certain services. Given that the proposed changes are consistent with Commission policies, the Commission **approves** the following requests:
- for Super Écran, to delete the condition of licence relating to the broadcast of film or video in which it has participated otherwise than through funding or distribution;
  - for RDS Info, to delete the condition of licence requiring that at least 25% of all Canadian programs broadcast by the licensee, other than news, sports and current affairs programming (categories 1, 2(a), 6(a) and 6(b)), be produced by independent production companies; and
  - for Vrak, to delete the condition of licence relating to the broadcast of at least 104 hours of original first-run French-language Canadian programming.

#### **Other requests by Bell**

39. Bell also requested that the conditions of licence regarding the broadcast of Canadian programming be replaced by a requirement that Cinépop and Super Écran each devote at least 30% of the broadcast day to Canadian programming, instead of the standard requirement of 35% set out in Broadcasting Regulatory Policy 2015-86.
40. The discretionary service Cinépop is currently subject to a condition of licence that requires the service to devote at least 20% of the broadcast day and at least 20% of the evening broadcast period to Canadian programming. For its part, Super Écran is subject to a condition of licence that requires the service to devote at least 30% of the period between 6 p.m. and 11 p.m. (Eastern Time) and 25% of the remainder of the broadcast day to Canadian programming.
41. Bell explained that unlike most of the former Category A services, the new 35% Canadian content standard requirement would constitute an increase in the requirements for these services. Bell argued that an increase in the requirement for the broadcast of Canadian content would only result in the broadcast of a higher number of re-runs, which offers no value for the service and runs counter to the objectives set out in Broadcasting Regulatory Policy 2015-86.

42. In exchange for maintaining reduced requirements with regard to the broadcast of Canadian content, Bell proposed that these services be subject to a condition of licence related to the nature of the service that would stipulate that services must focus on first-run drama and comedy series, documentaries, films, sports and events.
43. ARREQ-UDA-SARTEC agreed with this request, provided that the Commission require that Cinépop and Super Écran essentially devote themselves to broadcasting drama and comedy programs.
44. Broadcasting Regulatory Policy 2015-86 had the objective of standardizing the requirements for discretionary services. However, Bell's request to keep a condition of licence relating to the nature of the service for these services does not meet that objective. The Commission considers that Bell did not sufficiently demonstrate how its request for an exception to the standard conditions would better enable it to meet the policy's objectives. Consequently, the Commission **denies** Bell's request to amend the above-mentioned requirements for the services Cinépop and Super Écran. They will therefore be subject to a Canadian content broadcast requirement of 35% of the broadcast day.
45. Super Écran and Cinépop were eligible to claim a time credit of 150% when the services broadcast a new Canadian production during prime time hours. The Commission considers that maintaining this credit would also run counter to the objectives set out in Broadcasting Regulatory Policy 2015-86 of standardizing the requirements for discretionary services, in the absence of genre protection. Consequently, the Commission removes this credit from the services' conditions of licence.

## **Conclusion**

46. In light of all of the above, the Commission **renews** the broadcasting licences for the French-language discretionary services that will form the Bell's French-language Group and that are listed in Appendix 1 to this decision. The licensees shall adhere to the applicable **conditions of licence** set out in Appendix 2 to this decision. The licences will take effect on 1 September 2017 and will expire on 31 August 2022.
47. The Commission also **renews** the broadcasting licence for the discretionary service RDS. The licensee shall adhere to the applicable **conditions of licence** set out in Appendix 3 to this decision. The licence will take effect on 1 September 2017 and will expire on 31 August 2022.
48. Finally, the Commission **revokes** the broadcasting licence for the service Investigation, effective 31 August 2017. A new broadcasting licence will be issued to the service Investigation and will take effect on 1 September 2017 and will expire on 31 August 2022.

## **Reminders**

49. The Commission reminds the licensees that they must pay any remaining tangible and intangible benefits required by the Commission in prior decisions.
50. The Commission further reminds the licensees that they must submit any annual reports required by the Commission in prior decisions by no later than 30 November following the end of the previous broadcast year.

Secretary General

## **Related documents**

- *Renewal of television licences for large French-language television ownership groups – Introductory decision*, Broadcasting Decision CRTC 2017-143, 15 May 2017
- *Standard requirements for television stations, discretionary services, and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016
- *Applications related to tangible benefits*, Broadcasting Decision CRTC 2015-243, 9 June 2015
- *Let's Talk TV - The way forward - Creating compelling and diverse Canadian programming*, Broadcasting Regulatory Policy CRTC 2015-86, 12 March 2015
- *Astral broadcasting undertakings – Change of effective control*, Broadcasting Decision CRTC 2013-310, 27 June 2013
- *Astral Media inc. – Group-based licence renewals*, Broadcasting Decision CRTC 2012-241, 26 April 2012
- *Bell Media Inc. – Group-based licence renewals*, Broadcasting Decision CRTC 2011-444, 27 July 2011
- *A group-based approach to the licensing of private television services*, Broadcasting Regulatory Policy CRTC 2010-167, 22 March 2010
- *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

*This decision and the appropriate appendices are to be appended to each licence.*

## **Appendix 1 to Broadcasting Decision CRTC 2017-144**

### **Discretionary services that are included in Bell's French-language Group and that have been renewed in this decision or for which a new broadcasting licence has been issued**

Name of service	Licensee
Canal D	Bell Media Inc.
Canal Vie	Bell Media Inc.
Cinépop	Bell Media Inc.
Investigation	Bell Media Inc.
RDS Info	Le Réseau des sports (RDS) inc.
Super Écran	Bell Media Inc.
Vrak (formerly Vrak.TV)	Bell Media Inc.
Z (formerly Ztélé)	Bell Media Inc.

## **Appendix 2 to Broadcasting Decision CRTC 2017-144**

### **Terms, conditions of licence, expectations and encouragements applicable to the discretionary services that form part of the Bell's French-language Group**

#### **Terms**

The licences will take effect 1 September 2017 and expire 31 August 2022.

#### **Conditions of licence, expectations and encouragements applicable to all discretionary services that form part of the Bell's French-language Group**

1. With the exception of the services identified for conditions of licence 25 and 26 below, the licensee shall adhere to the standard conditions of licence, expectations and encouragements for discretionary services set out in Appendix 1 to the *Standard requirements for television stations, discretionary services and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016, with the exception of condition 17, which is replaced by the following:

The licensee shall, by 1 September 2019, provide described video for all English-and French-language programming that is broadcast during prime time (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).

2. In each broadcast year, the licensee shall devote no less than 35% of the broadcast day to the exhibition of Canadian programs.

#### **Canadian programming expenditures**

3. In accordance with *A group-based approach to the licensing of private television services*, Broadcasting Regulatory Policy CRTC 2010-167, 22 March 2010, the licensee shall in each broadcast year devote to the acquisition of or investment in Canadian programming a minimum of 35% of the previous year's gross revenues of the undertaking.
4. The licensee may count expenditures made for the acquisition of or investment in Canadian programming by one or more undertakings from Bell's French-language Group in the same broadcast year towards fulfilling the requirement set out in condition 3 as long as these expenditures are not used by those undertakings towards fulfilling their own Canadian programming expenditure requirement.

5. Subject to condition 6, the licensee may claim, in addition to its expenditures on Canadian programming:
  - (a) 50% credit against its Canadian programming expenditure requirements for expenditures made on Canadian programming produced by an Indigenous producer and claimed as Canadian programming expenditures during that broadcast year;
  - (b) a 25% credit against its Canadian programming expenditure requirements for expenditures made on Canadian programming produced by an official language minority community producer and claimed as Canadian programming expenditures during that broadcast year. The licensee may claim the credit if:
    - (i) the programming is produced in the province of Quebec and the original language of production is English; or
    - (ii) the programming is produced outside the province of Quebec and the original language of production is French.
6. The licensee may claim the credits calculated in accordance with condition 5 until the expenditures made on Canadian programming produced by Indigenous producers and by official language minority community producers, including credits, reach a combined maximum of 10% of the Canadian programming expenditure requirement for Bell's French-language Group.

#### **Programs of national interest**

7. The licensee shall in each broadcast year devote to the acquisition of or investment in programs of national interest at least 18% of the previous year's gross revenues of the undertaking.
8. The licensee may count expenditures made for the acquisition of or investment in programs of national interest by one or more undertakings from Bell's French-language Group in the same broadcast year towards fulfilling the requirement set out in condition 7 as long as these expenditures are not used by those undertakings towards fulfilling their own programs of national interest expenditure requirement.
9. At least 75% of the expenditures in condition 7 must be made to an independent production company.
10. The licensee shall, by 30 November of each year, provide for the previous broadcast year a report in a form acceptable to the Commission that contains information on the programs that were broadcast by all undertakings from Bell's French-language Group in regard to:
  - programs of national interest;

- the use of Indigenous and official language minority community producers, specifying notably for each: the number of producers they meet with each year; the projects commissioned, including projects in development, in production and completed; the budgets and the total Canadian programming expenditures devoted to such projects; and any other information the Commission requires to this effect; and
- access that women have to key leadership positions, by providing information regarding the employment of women in key creative leadership positions in the productions broadcast, as well as any other information the Commission requires to this effect.

### **Over- and under-expenditures**

11. Subject to condition 12, the licensee shall, for each broadcast year, make sufficient expenditures such that the undertakings that form Bell's French-language Group collectively devote:
  - (a) 35% of the previous year's gross revenues of the undertakings from Bell's French-language Group to the acquisition of or investment in Canadian programming; and
  - (b) 18% of the previous year's gross revenues of the undertakings from Bell's French-language Group to the acquisition of or investment in programs of national interest.
12. In each broadcast year of the licence term, excluding the final year,
  - (a) the licensee, in concert with the other undertakings that form Bell's French-language Group, may expend an amount on Canadian programming and/or on programs of national interest that is up to 5% less than the minimum required expenditure for that year calculated in accordance with conditions 11(a) and 11(b), respectively; in such case, the licensee shall ensure that the undertakings that form Bell's French-language Group expend in the next broadcast year of the licence term, in addition to the minimum required expenditure for that year, the full amount of the previous year's under-expenditure;
  - (b) where the licensee, in concert with the other undertakings that form Bell's French-language Group, expends an amount for that year on Canadian programming or programs of national interest that is greater than the minimum required expenditure calculated in accordance with conditions 11(a) and 11(b) respectively, the licensee, or another undertaking from Bell's French-language Group, may deduct that amount from the total minimum required expenditure in one or more of the remaining years of the licence term.

- (c) Notwithstanding conditions 12(a) and 12(b), during the licence term, the licensee shall ensure that the undertakings that form Bell's French-language Group expend on Canadian programming and programs of national interest, at a minimum, the total of the minimum required expenditures calculated in accordance with conditions 11(a) and 11(b).

#### **Licensee's obligations with respect to Bell's French-language Group**

13. In the two years following the end of the previous licence term, the licensee shall report and respond to any Commission enquiries relating to the expenditures on Canadian programming, including programs of national interest, made the licensee and by the Bell's French-language Group for that term.
14. The licensee is responsible for any failure to comply with the requirements relating to expenditures on Canadian programming, including programs of national interest, that occurred during the previous licence term.
15. In regard to the operation of the undertakings that form Bell's French-language Group:
  - (a) Subject to condition 15(b), the licensee shall remain part of Bell's French-language Group for the duration of the licence term.
  - (b) Should the licensee wish to operate the discretionary service outside Bell's French-language Group, the licensee shall apply to the Commission for the service to be removed from Bell's French-language Group no later than 120 days prior to operating the service outside the Bell's French-language Group.
  - (c) The licensee shall ensure that the list of undertakings that form Bell's French-language Group is accurate at all times.

#### **Competitive safeguards**

16. The licensee shall not include or enforce any provision in or in connection with an affiliation agreement that is designed to prevent or create incentives that would effectively prevent another programming undertaking or broadcasting distribution undertaking from launching or distributing another licensed programming service.
17. The licensee shall provide a minimum of 90 days' written notice of the impending launch of a new programming service to all broadcasting distribution undertakings. Such notice shall be accompanied by an offer that sets out the general terms of carriage of the programming service to be launched.
18. The licensee shall not:
  - a) require an unreasonable rate (e.g., not based on fair market value);

- b) require a party with which it is contracting to accept terms or conditions for the distribution of programming on a traditional or ancillary platform that are commercially unreasonable;
- c) require an excessive activation fee or minimum subscription guarantee;
- d) impose, on an independent party, a most favoured nation (MFN) clause or any other condition that imposes obligations on that independent party by virtue of a vertically integrated entity or an affiliate thereof entering into an agreement with any vertically integrated entity or any affiliate thereof, including its own.

The application of the foregoing condition of licence is suspended so long as the Wholesale Code, set out in the appendix to *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015, is in effect.

19. When negotiating a wholesale rate for a programming service based on fair market value, the licensee shall take into consideration the following factors:

- a) historical rates;
- b) penetration levels and volume discounts;
- c) the packaging of the service;
- d) rates paid by unaffiliated broadcasting distributors for a programming service;
- e) rates paid for programming services of similar value to consumers;
- f) the number of subscribers that subscribe to a package in part or in whole due to the inclusion of the programming service in that package;
- g) the retail rate charged for the service on a stand-alone basis;
- h) the retail rate for any packages in which the service is included.

The application of the foregoing condition of licence is suspended so long as the Wholesale Code, set out in the appendix to *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015, is in effect.

20. If the licensee has not renewed an affiliation agreement that it signed with a licensed or exempted Canadian television programming undertaking or a broadcasting distribution undertaking within 120 days preceding the expiry of the agreement and if the other party has confirmed its intention to renew the agreement, the licensee shall submit the matter to the Commission for dispute resolution pursuant to sections 12 to 15 of the *Broadcasting Distribution Regulations*.

The application of the foregoing condition of licence is suspended so long as the Wholesale Code, set out in the appendix to *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015, is in effect.

21. The licensee shall not:

- a) require minimum penetration or revenue levels that force distribution of a service on the basic tier or in a package that is inconsistent with the service's theme or price point;
- b) refuse to make programming services available on a stand-alone basis (i.e., requiring the acquisition of a program or service in order to obtain another program or service);
- c) impose terms that prevent an unrelated distributor from providing a differentiated offer to consumers.

The application of the foregoing condition of licence is suspended so long as the Wholesale Code, set out in the appendix to *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015, is in effect.

22. The licensee shall not refuse to make available or condition the availability of or carriage terms for any of its licensed programming services to any broadcasting distribution undertaking (BDU) on whether that BDU agrees to carry any other separately licensed programming service, provided that this condition does not prevent or limit the right or ability of the licensee to offer BDUs multiservice or other discounts, promotions, rebates or similar programs.

The application of the foregoing condition of licence is suspended so long as the Wholesale Code, set out in the appendix to *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015, is in effect.

23. The licensee shall negotiate with broadcasting distribution undertakings (BDUs) for non-linear multiplatform rights to the content broadcast on the licensee's programming service at the same time as linear rights for its programming service and provide those rights to BDUs on a timely basis and on commercially reasonable terms.

For certainty, nothing in this condition of licence shall prevent or otherwise restrict the licensee from requesting compensation in exchange for making such non-linear rights available to BDUs.

The application of the foregoing condition of licence is suspended so long as the Wholesale Code, set out in the appendix to *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015, is in effect.

24. The licensee shall file with the Commission all affiliation agreements to which it is a party with a television programming undertaking or broadcasting distribution undertaking within five days following the execution of the agreement by the parties.

The application of the foregoing condition of licence is suspended so long as the Wholesale Code, set out in the appendix to *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015, is in effect.

### **Additional condition of licence for Super Écran**

25. The service is authorized to offer the number of multiplexed channels it operated as of 2 November 2016. With respect to each multiplexed channel, the licensee shall adhere to the Canadian programming requirements set out in its conditions of licence. The licensee may not offer new multiplex channels.

### **Additional condition of licence for Vrak**

26. As an exception to condition of licence 18 of the standard conditions of licence for discretionary services set out in Appendix 2 to the *Standard requirements for television stations, discretionary services, and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016, with respect to the broadcast of advertising material:

- a) Except as provided in paragraphs 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 paragraph a), the licensee may broadcast partisan political advertising during an election period.
- d) The licensee shall not distribute any paid advertising material other than national paid advertising.
- e) The licensee shall not distribute any advertisement during a program whose audience mainly consists of children 0 to 5 years of age.

### **Expectation**

The Commission expects the licensee to ensure that the programs broadcast by the services provide an appropriate reflection of all of Quebec, including regions outside of Montréal, and all regions of Canada. The Commission further expects the licensee to provide producers located in these regions with the opportunity to produce programs for these services.

### **Definitions**

“Bell’s French-language Group” means the group of undertakings included in Appendix 1 to *Bell Media Inc. – Licence renewals for French-language television services*, Broadcasting Regulatory Policy CRTC 2017-144, 15 May 2017.

“Broadcast day”

- For Canal D, Canal Vie, Investigation and Z as an exception to the definition of “broadcast day” set out in Appendix 2 to the *Standard requirements for television stations, discretionary services and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016, “broadcast day” refers to the 24-hour period beginning each day at 4 a.m. Eastern time.
- For Cinépop, as an exception to the definition of “broadcast day” set out in Appendix 2 to the *Standard requirements for television stations, discretionary services and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016, “broadcast day” refers to the 24-hour period beginning each day at 6 a.m. Eastern time.
- For Super Écran, as an exception to the definition of “broadcast day” set out in Appendix 2 to the *Standard requirements for television stations, discretionary services and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016, “broadcast day” refers to the 24-hour period beginning each day at 7 a.m. Eastern time.

“Independent production company” means a Canadian company (i.e., a company carrying on business in Canada, with a Canadian business address, owned and controlled by Canadians) whose business is the production of film, videotape or live programs for distribution and in which the licensee and any company related to the licensee owns or controls, directly or indirectly, in aggregate, less than 30% of the equity.

“Indigenous producer” means an individual who self-identifies as Indigenous, which includes First Nations, Métis or Inuit, and is a Canadian citizen or resides in Canada, or an independent production company in which at least 51% of the controlling interest is held by one or more individuals who self-identify as Indigenous and are Canadian citizens or reside in Canada. In regard to the definition of “independent production company,” “Canadian” includes a person who self-identifies as Indigenous and resides in Canada, whereas “Canadian company” includes a production company in which at least 51% of the controlling interest is held by one or more individuals who self-identify as Indigenous and reside in Canada.

“Official language minority community producer” means a company that meets the definition of “independent production company” and that:

- a) if operating in the province of Quebec, produces original English-language programming, or
- b) if operating outside of the province of Quebec, produces original French-language programming.

“Programs of national interest” means Canadian programs drawn from categories 2(b) Long-form documentary, 7 Drama and Comedy and all related subcategories,

8(a) Music and dance other than music video programs or clips, 8(b) Music video clips,  
8(c) Music video programs and 9 Variety.

## **Appendix 3 to Broadcasting Decision CRTC 2017-144**

### **Terms, conditions of licence, expectations and encouragement for the mainstream sports service RDS**

#### **Terms**

The licences will take effect 1 September 2017 and expire 31 August 2022.

#### **Conditions of licence, expectations and encouragement**

1. The licensee shall adhere to the conditions expectations and encouragement set out in Appendix 1 to *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, with the exception of conditions of licence 4 and 7.
2. The licensee:
  - (a) subject to paragraph b), shall not distribute a daily average of more than 12 minutes of advertising material during each clock hour;
  - (b) may broadcast partisan political advertising during an election period, in addition to the 12 minutes of advertising material referred to in paragraph a);
  - (c) shall only distribute national paid advertising.
3. 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;
  - (b) in regard to the quality of closed captioning, the licensee shall adhere to the requirements set out in the appendix to the *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, 21 February 2012; and
  - (c) 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. “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.

4. In order to ensure that the licensee complies at all times with the Order in Council entitled *Direction to the CRTC (Ineligibility of Non-Canadians)*, the licensee shall submit beforehand, for the Commission's consideration, a copy of any commercial or trademark agreement it has concluded with a non-Canadian party, within 30 days following the signature of such agreement. The Commission may also request any additional document that may have an impact on the control or management of the service.
5. In the two years following the end of the previous licence term, the licensee shall report and respond to any Commission enquiries relating to the expenditures on Canadian programming made the licensee for that term.
6. The licensee is responsible for any failure to comply with the requirements relating to expenditures on Canadian programming that occurred during the previous licence term.

### **Competitive safeguards**

7. 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.
8. The licensee shall not include or enforce any provision in or in connection with an affiliation agreement that is designed to prevent, or is designed to create incentives that would effectively prevent another programming undertaking or broadcasting distribution undertaking from launching or distributing another licensed programming service.
9. The licensee shall provide a minimum of 90 days' written notice of the impending launch of a new programming service to all broadcasting distribution undertakings. Such notice shall be accompanied by an offer that sets out the general terms of carriage of the programming service to be launched.
10. The licensee shall not:
  - (a) require an unreasonable rate (e.g., not based on fair market value);
  - (b) require a party with which it is contracting to accept terms or conditions for the distribution of programming on a traditional or ancillary platform that are commercially unreasonable;
  - (c) require an excessive activation fee or minimum subscription guarantee;
  - (d) impose, on an independent party, a most favoured nation (MFN) clause or any other condition that imposes obligations on that independent party by virtue of a vertically integrated entity or an affiliate thereof entering into an agreement with any vertically integrated entity or any affiliate thereof, including its own.

The application of the foregoing condition of licence is suspended so long as the Wholesale Code, set out in the appendix to *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015, is in effect.

11. When negotiating a wholesale rate for a programming service based on fair market value, the licensee shall take into consideration the following factors:
  - (a) historical rates;
  - (b) penetration levels and volume discounts;
  - (c) the packaging of the service;
  - (d) rates paid by unaffiliated broadcasting distributors for a programming service;
  - (e) rates paid for programming services of similar value to consumers;
  - (f) the number of subscribers that subscribe to a package in part or in whole due to the inclusion of the programming service in that package;
  - (g) the retail rate charged for the service on a stand-alone basis;
  - (h) the retail rate for any packages in which the service is included.

The application of the foregoing condition of licence is suspended so long as the Wholesale Code, set out in the appendix to *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015, is in effect.

12. If the licensee has not renewed an affiliation agreement that it signed with a licensed or exempted Canadian television programming undertaking or a broadcasting distribution undertaking within 120 days preceding the expiry of the agreement and if the other party has confirmed its intention to renew the agreement, the licensee shall submit the matter to the Commission for dispute resolution pursuant to sections 12 to 15 of the *Broadcasting Distribution Regulations*.

The application of the foregoing condition of licence is suspended so long as the Wholesale Code, set out in the appendix to *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015, is in effect.

13. The licensee shall not:
  - (a) require minimum penetration or revenue levels that force distribution of a service on the basic tier or in a package that is inconsistent with the service's theme or price point;
  - (b) refuse to make programming services available on a stand-alone basis (i.e., requiring the acquisition of a program or service in order to obtain another program or service);

- (c) impose terms that prevent an unrelated distributor from providing a differentiated offer to consumers.

The application of the foregoing condition of licence is suspended so long as the Wholesale Code, set out in the appendix to *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015, is in effect.

14. The licensee shall not refuse to make available or condition the availability of or carriage terms for any of its licensed programming services to any broadcasting distribution undertaking (BDU) on whether that BDU agrees to carry any other separately licensed programming service, provided that this condition does not prevent or limit the right or ability of the licensee to offer BDUs multiservice or other discounts, promotions, rebates or similar programs.

The application of the foregoing condition of licence is suspended so long as the Wholesale Code, set out in the appendix to *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015, is in effect.

15. The licensee shall negotiate with broadcasting distribution undertakings (BDUs) for non-linear multiplatform rights to the content broadcast on the licensee's programming service at the same time as linear rights for its programming service and provide those rights to BDUs on a timely basis and on commercially reasonable terms.

For certainty, nothing in this condition of licence shall prevent or otherwise restrict the licensee from requesting compensation in exchange for making such non-linear rights available to BDUs.

The application of the foregoing condition of licence is suspended so long as the Wholesale Code, set out in the appendix to *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015, is in effect.

16. The licensee shall file with the Commission all affiliation agreements to which it is a party with a television programming undertaking or broadcasting distribution undertaking within five days following the execution of the agreement by the parties.

The application of the foregoing condition of licence is suspended so long as the Wholesale Code, set out in the appendix to *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015, is in effect.

### **Expectation**

The Commission expects the licensee to ensure that the programs broadcast by the service adequately reflect all regions of Quebec, including those outside Montréal, as well as all regions of Canada. The Commission also expects the licensee to provide producers working in these regions with an opportunity to produce programs intended for the service.