



Broadcasting Decision CRTC 2018-265

PDF version

References: 2017-160 and 2017-160-1

Ottawa, 2 August 2018

Rogers Communications Canada Inc.

Various locations in Ontario, New Brunswick, and Newfoundland and Labrador

Public record for these applications: 2016-0950-5 and 2016-0949-7

Public hearing in the National Capital Region

16 October 2017

Rogers – Licence renewal for various terrestrial broadcasting distribution undertakings

*The Commission **renews** the regional licences for terrestrial broadcasting distribution undertakings serving various locations in Ontario, New Brunswick, and Newfoundland and Labrador, as set out in this decision, from 1 September 2018 to 31 August 2025.*

Applications

1. Rogers Communications Canada Inc. (Rogers) filed applications to renew the regional licences for its terrestrial broadcasting distribution undertakings (BDUs) serving the following locations in Ontario, New Brunswick, and Newfoundland and Labrador, which expire 31 August 2018:¹

Locations	Application number
Barrie, Hamilton, Kitchener, London, Newmarket, Oshawa, Ottawa and Toronto, and surrounding areas, Ontario	2016-0949-7
Allardville, Clair, Fredericton, Moncton, Rogersville and Saint John, and surrounding areas, New Brunswick Deer Lake and St. John's, and surrounding areas, Newfoundland and Labrador	2016-0950-5

2. The Commission received supporting interventions as well as comments regarding the applications, to which Rogers replied.

¹ In Broadcasting Decision 2016-458, the Commission renewed these BDU licences from 1 December 2016 to 30 November 2017. The Commission administratively renewed the licences from 1 December 2017 to 31 May 2018 in Broadcasting Decision 2017-159, and from 1 June 2018 to 31 August 2018 in Broadcasting Decision 2018-182.

Commission's analysis and decisions

3. The Commission's determinations relating to issues common to all terrestrial BDUs renewed in this proceeding are set out in Broadcasting Decision 2018-263 (the Introductory Decision), also issued today, which should be read in conjunction with this decision.
4. The Introductory Decision addresses, among other things, issues relating to community programming; a proposal to impose conditions of licence relating to best practices for the small basic service and flexible packaging options; the pricing of standalone services; a national set-top box audience measurement system; accessibility; and the insertion of unpaid Canadian public service announcements within the local availabilities of non-Canadian services. Where applicable, the determinations are reflected in the conditions of licence for Rogers' BDUs, set out in the appendices this decision.
5. In regard to the implementation of a national set-top box audience measurement system, the Commission finds it appropriate to impose on Rogers, as a vertically integrated entity, specific conditions of licence in this regard, as explained in detail in the Introductory Decision. Rogers will therefore be required to provide set-top box data to that system by no later than 30 September 2019. If no such system is established by that date, Rogers will be required to provide such data to Canadian programming services upon request.
6. In regard to accessibility, the Commission determines that certain of the BDU licensees listed in the Introductory Decision, including Rogers, will be required, by condition of licence, to close caption original licensee-produced programming by 31 August 2025. They will also be required to include in the annual returns for their BDUs certain information relating to the availability and penetration of accessible set-top boxes and remote controls, and accessibility-related queries. In addition, these BDUs will be expected to close caption any advertising, sponsorship messages and promos inserted in local availabilities. Finally, for the purpose of standardization, the Commission has replaced the current requirements, expectations and encouragements relating to accessibility for those BDUs with a common set of accessibility-related conditions of licence and expectations.
7. Having examined the public record for these applications, the Commission considers that the outstanding issues for Rogers' BDUs that it must address in this decision relate to the following:
 - programming broadcast on the community channel;
 - maintaining and adding conditions of licence relating to the operation of zone-based community channels in New Brunswick and in Newfoundland and Labrador;

- maintaining the authorization to fund English- and French-language community channels in Ottawa, Ontario and in Moncton, New Brunswick, as an exception to the *Broadcasting Distribution Regulations* (the Regulations);
- the distribution of additional affiliates of CBS and PBS in high definition on the basic service in various locations in the Atlantic provinces and Ontario; and
- minor modifications to various conditions of licence to reflect recent amendments to the wording of the Regulations.

Programming broadcast on the community channel

8. In the Introductory Decision, the Commission has set out the following determinations regarding types of programs that generally qualify or do not qualify as access or local programming broadcast on the community channel:
 - Elected officials: There is nothing preventing an elected official who resides within a BDU's service area from requesting access to the community channel. Further, as long as a particular program conforms to all related provisions in the Regulations and Broadcasting Regulatory Policy 2016-224 (the Community Television Policy), the Commission will not consider the fact that a program involves an elected official to disqualify it from consideration as community programming.
 - Magazine-style programs: As long as the segments within a magazine-style program meet the criteria for access programming and/or local programming, those segments can be counted as such by BDUs.
 - Canadian Hockey League games: As of 1 September 2018, BDUs will no longer be permitted to count such games as access programming. They will, however, be permitted to count them as local programming where the specific program meets the necessary criteria.
 - Media professionals: Consistent with the Community Television Policy and the manner in which the expression "media professional" is interpreted by the Commission in that policy, going forward, programs originating with media professionals will not be considered access programming.
9. The Commission also reminded BDUs that they should schedule access programming in a reasonable manner throughout the broadcast day, including during the peak viewing period.
10. In addition, the Commission found it appropriate to impose a condition of licence requiring certain licensees, including Rogers, to ensure that the number of hours of programming reported in the annual return for their community channels include only the number of hours of original programming broadcast.

11. In light of the information gathered throughout the BDU renewal proceeding, including as part of a community channel monitoring exercise, the Commission has identified the following issues regarding Rogers' practices relating to community programming:

- the broadcast of access and local programming on the community channels;
- whether Rogers is taking adequate measures to seek citizen participation in its community channels; and
- prior non-compliance relating to contributions to Canadian programming.

Broadcast of access and local programming on the community channels

12. The community channels operated by Rogers have different requirements depending on how they are operated. The requirements for licensed undertakings are set out in the Regulations; the requirements for undertakings that operate pursuant to the exemption order for BDUs with fewer than 20,000 subscribers are set out in that exemption order (Broadcasting Regulatory Policy 2017-319 and Broadcasting Order 2017-320); and the requirements for undertakings that operate under a zone-based approach² are set out in the conditions of licence for those undertakings. In this regard, the minimum thresholds regarding the broadcast of local programming and access programming are, respectively, 60% and 50% of all programming broadcast per broadcast week for licensed undertakings, and 60% and 30% for exempt undertakings. For Rogers' Atlantic-based BDUs, which operate under a zone-based approach, the minimum thresholds per broadcast week for the communities that make up a given zone are 40% local programming and 20% access programming. For these BDUs, there is also an overall requirement for each zone that 60% of the local programming and 30% of the access programming broadcast originates within the province.

13. As requested by the Commission, Rogers submitted programming logs covering three weeks of programming (17 to 23 January 2016; 8 to 14 May 2016; and 14 to 20 August 2016) for its community channels operated by nine licensed and eight exempt systems.³ For three of those licensed systems and two of those exempt systems,⁴

² The zone-based approach recognizes individual communities that make up a specific community of interest (for example, a municipality, a regional county municipality, or a county). Zones may be comprised of both licensed and exempt BDUs, which are generally permitted to count local and access programming produced by one undertaking in the zone as local and access programming for all undertakings included within the zone. The Commission has generally approved the use of this approach where community channels serving very small licensed areas face significant difficulties in meeting local and access programming requirements. This approach can benefit BDUs by, among other things, allowing them to inform subscribers of activities and events in a community of interest and providing greater economies of scale.

³ Licensed systems in Ajax-Pickering, Kitchener-Waterloo, Newmarket (Aurora), Richmond Hill and Barrie, Ontario; Fredericton, Moncton and Saint John, New Brunswick; and St. John's, Newfoundland and Labrador; exempt systems in Edmundston, Miramichi and Bathurst, New Brunswick; and Bolton (Orangeville), Borden (Alliston), Collingwood, Orillia and Woodstock, Ontario

Rogers also submitted audio-visual recordings and related logs for the week of 18 to 24 September 2016 as requested.

14. In its intervention, the Canadian Association of Community Television Users and Stations (CACTUS) raised a number of issues regarding how Rogers categorized certain community programs, including Ontario Hockey League (OHL) games and bingo. Rogers submitted, however, that CACTUS had made claims relating to the operation of the licensee's community channel that were either inaccurate or misleading. It argued that of the 13 programs singled out by CACTUS, only one was mislabelled, and that this did not have an impact on its compliance. In the Commission's view, with the exception of the issues dealt with below and in the Introductory Decision, Rogers provided sufficient rationale for its categorization of these programs, confirming, for example, that the access producer in question was a community member and that community groups running bingos, which are categorized as local programming, do not pay Rogers for access to its community channels.
15. CACTUS also argued that programs such as "The Bulletin Board" should be considered a Rogers format, the original idea for which emanates from the BDU, not from community members. Accordingly, in CACTUS's view, these should not be counted as access programming. The Commission notes, however, that as set out in the Introductory Decision and as noted above, segments within a magazine-style program can be counted as access programming, as long as they meet the criteria for access programming.
16. CACTUS and the Community Media Advocacy Centre also questioned Rogers' categorization of certain OHL games broadcast on its community channels as access programming. In its reply, Rogers noted that the OHL requested access and that each team from the league has editorial control of the OHL programming aired on Rogers' community channels. As such, it considered that the in-market games had been correctly designated as access programming.
17. As set out in the Introductory Decision, as of 1 September 2018, BDUs will generally no longer be permitted to count Canadian Hockey Leagues games (which include OHL games as well as Western Hockey League and Quebec Major Junior Hockey league games) as access programming. They will, however, be permitted to count them as local programming where the specific program meets the necessary criteria.
18. Based on the above, the Commission finds that the logs submitted by Rogers regarding the percentage of access and local programming exhibited on certain of its community channels more accurately reflect the licensee's performance than do CACTUS's submissions. Consequently, the Commission does not agree with CACTUS that Rogers should be considered in widespread or systemic non-compliance with its regulatory requirements relating to community television.

⁴ Licensed systems in Barrie, Moncton and St. John's; exempt systems in Bathurst and Woodstock

Nonetheless, the Commission's monitoring exercise has identified one narrow compliance issue, set out in greater detail below.

19. Based on the logs submitted by Rogers, the calculations performed by the Commission did not align with those provided by Rogers. The licensee's community channel serving Ajax-Pickering, Ontario, a secondary location under the service area of its licensed BDU serving Oshawa, Ontario, also appeared to be in non-compliance with its access programming requirements. Specifically, for the week of 17 to 23 January 2016, only 45% of the programming broadcast in Ajax-Pickering was access programming.
20. When questioned on this, Rogers explained that its calculations did not list all airings of a program, which resulted in understating the number of hours broadcast for each type of programming. It therefore resubmitted the logs with the necessary revisions. The percentage of access programming for Ajax-Pickering was then adjusted to 46% - slightly higher, though ultimately still below the required 50% threshold set out in section 31(2)(a) of the Regulations. For all other periods, Rogers met or was well above the minimum threshold requirements for the broadcast of both access programming and local programming.
21. In light of the above, the Commission finds Rogers in non-compliance with the requirement relating to the broadcast of access programming in Ajax-Pickering for the week of 17 to 23 January 2016. However, given that the level of access programming broadcast falls only slightly below the minimum requirement for one week in Ajax-Pickering, and given that Rogers has met the minimum thresholds for the broadcast of both access programming and local programming for all other sample weeks, the Commission does not consider it necessary or appropriate to impose measures in regard to the non-compliance other than additional monitoring of this community channel over the next licence term. Accordingly, the Commission will monitor Rogers' community channel in Ajax-Pickering more closely over the next licence term to ensure that the licensee is in compliance with requirements relating to the broadcast of access programming and local programming.

Citizen participation

22. CACTUS submitted that Rogers exhibited very little programming that was produced by community members and unassisted by the licensee. It argued that this was a result of Rogers not taking adequate measures to seek citizen participation in the community channel but instead "cherry picking" experienced radio hosts, fitness club owners, chefs and sports clubs to make access programming assisted by the licensee.
23. In its application, Rogers provided evidence of the efforts it has made to encourage greater public participation in its community channels. The licensee noted that when the community television policy set out in the appendix to Broadcasting Regulatory Policy 2010-622-1 came into effect in 2010, it improved its efforts to achieve the higher access targets and to meet all other requirements by reaching out to communities in multiple ways and on multiple platforms. As an example, Rogers

noted that for Toronto and surrounding areas, it implemented several measures to better reflect the various communities within the licensed service area, including commitments to increase the multicultural programming block by 50% and to cover different neighbourhoods so as to increase the amount of stories and guests from Etobicoke, North York and Scarborough. The licensee also noted its commitment to enhance its community channels' focus on minor sports and launching a targeted publicity and advertising campaign to further promote the benefits of participating in community television.

24. Based on the record of this proceeding, including the fact that there were no complaints by community members to the effect that they were refused access to any of Rogers' community channels, the Commission finds that Rogers has made significant efforts to encourage public participation in its community channels and has provided the communities served with the opportunity to access their respective community channels. In regard to CACTUS's claim, there is no specific exhibition requirement for programming produced by community members and unassisted by the licensee. In fact, the definition of access programming in the Community Television Policy specifically includes programming that is produced by members of the community, either assisted or unassisted by the licensee.

Prior non-compliance relating to contributions to Canadian programming

25. The Commission performed a compliance audit regarding BDU contribution requirements during the current licence term. Following the completion of the audit for Rogers, the Commission found Rogers Communications Partnership⁵ (RCP) in non-compliance with the requirements set out in sections 34 and 35 of the Regulations in effect prior to 1 September 2017, for the 2009-2010 through 2012-2013 broadcast years. Specifically, the Local Programming Improvement Fund (LPIF)⁶ fee that Rogers charged to customers was not included in the gross revenues derived from broadcasting activities used to calculate its Canadian programming contribution requirements for those broadcast years. This resulted in contribution shortfalls of \$4,244,961 for Canadian programming (of which 80% was to be directed to the Canada Media Fund and 20% to an independent production fund) and \$1,194,747 for the LPIF. In a [letter](#) dated 30 July 2014, the Commission informed RCP of this non-compliance. Rogers paid the full amount in August 2014 as directed in the Commission letter.

⁵ In Broadcasting Decision 2015-564, the Commission approved the acquisition by Rogers Cable and Data Centres Inc. of the assets of various BDUs as well as of the national video-on-demand service Rogers On Demand and of the national and terrestrial direct-to-home pay-per-view programming undertakings known as Sportsnet from Rogers Communications Partnership. On 1 January 2016, Rogers Cable and Data Centres Inc. changed its name to Rogers Communications Canada Inc.

⁶ The LPIF was created as a means of providing support to television stations for incremental expenditures on local programming, with the amount varying over the course of its existence from 0.5% to 1.5% of the gross revenues of a BDU derived from broadcasting activities in the previous broadcast year.

26. Given that the LPIF was discontinued in September 2014, and given that Rogers rectified the above-noted Canadian programming contribution shortfalls in a timely manner, the Commission does not find it necessary to impose any further measures in regard to the above-noted non-compliance.

The operation of zone-based community channels in New Brunswick, and Newfoundland and Labrador

27. In Broadcasting Decisions 2006-459, 2006-460 and 2006-461, the Commission approved applications by Rogers Cable Communications Inc.⁷ (RCCI) for regional licences to operate BDUs serving various locations in New Brunswick and in Newfoundland and Labrador. In those decisions, the Commission approved a proposal by RCCI to implement a zone-based approach to community programming in its licensed areas in Atlantic Canada. The authorization to implement the zone-based approach as well as a list of the eight zones to be considered “licensed areas” for the purpose of community channel requirements are set out in the appendices to the above-noted decisions.

28. As set out in those decisions, of the programming distributed on the community channel in each zone in each broadcast week, Rogers was required to devote at least 40% to the distribution of local community television programming and 20% to the distribution of community access television programming that, in both cases, originates from the same zone (i.e. from any service area within the same zone).

29. In addition, of the programming distributed on the community channel in each service area within a zone, in each broadcast week, Rogers was required to devote 60% to the distribution of local community television programming and 30% to community access television programming. For the purpose of these requirements, programming produced elsewhere in the same province qualified as local and/or access programming.

30. In regard to the above, the Commission has addressed the following issues:

- Rogers’ request to maintain the above zoned-based approach for its BDUs serving Atlantic Canada; and
- Rogers’ request to add a condition of licence relating to spending on community access television programming for community channels in New Brunswick.

⁷ In Broadcasting Decision 2010-793, the Commission approved an application by Rogers Communications Inc. and Fido Solutions Inc., partners in a general partnership carrying on business as Rogers Communications Partnership (RCP), for authority to acquire, as part of a corporate reorganization, the terrestrial BDUs previously held by Rogers Cable Communications Inc. As noted above, RCP was then acquired by Rogers Cable and Data Centres Inc., which changed its name to Rogers Communications Canada Inc., the current licensee of the terrestrial BDUs renewed in this decision.

Maintaining the zone-based approach for BDUs serving Atlantic Canada

31. Rogers requested that conditions of licence relating to a zone-based approach set out in the appendix to Broadcasting Decision 2006-459 be maintained for the next licence term, but with minor amendments to reflect recent changes to the wording of the Regulations and changes to the composition of the various zones as a result of Broadcasting Decision 2014-204.⁸
32. In its intervention and at the hearing, CACTUS submitted that Rogers should not receive a special condition of licence that does not apply to other BDUs.
33. At the hearing, Rogers stated that when it acquired cable systems in New Brunswick, there were over 100 licences, and that it was impossible to create a community channel for each one of those licences. It noted that a zone-based model was developed in 2006 to offer community programming in markets in both New Brunswick and in Newfoundland and Labrador. Rogers further stated that by aggregating funding from all areas within a zone, it had been able to provide relevant local and access community programming that serves a community of interest, thereby meeting, and in some cases exceeding, its regulatory obligations. The licensee submitted that the conditions of licence in question are still relevant and necessary for it to adequately serve the communities of interest that make up the zones.
34. When it initially approved Rogers' request for these conditions of licence, the Commission was convinced that the smaller communities in New Brunswick and in Newfoundland and Labrador would be better served through Rogers' proposed zone-based approach than through the operation of distinct community channels pursuant to the requirements set out in the Regulations or in the existing BDU exemption order. Based on the above, the Commission considers that Rogers has supported its request to renew these conditions of licence, whereas CACTUS has not justified its request that the conditions not be renewed. Contrary to CACTUS's argument, the Commission considers that Rogers' unique circumstances do make it appropriate that these licensee-specific conditions of licence continue to apply. Further, based on the evidence provided by Rogers, it appears that it is in compliance with its regulatory obligations relating to the exhibition of access and local programming on its community channels in New Brunswick and in Newfoundland and Labrador.
35. In light of the above, the Commission **approves** Rogers' request to maintain its condition of licence to offer zone-based community channels, as well as various other related conditions of licence, including those relating to the minimum percentages of programming to be devoted to local and access programming within a zone and within a same province. The Commission also **approves** Rogers' requests for minor amendments to reflect recent changes to the wording of the Regulations and changes to the composition of the various zones as a result of Broadcasting

⁸ In that decision, the Commission approved an application by RCP to amalgamate 43 of the 44 BDU licences in New Brunswick and in Newfoundland and Labrador into 7 BDU licences.

Decision 2014-204. **Conditions of licence** in regard to the above are set out in Appendix 2 to this decision.

Adding a condition of licence relating to spending on community access television programming for community channels in New Brunswick and in Newfoundland and Labrador

36. As set out in section 32(2) of the Regulations, “[e]xcept as otherwise provided under a condition of its licence, a licensee shall direct at least 50% of its direct programming expenses in a broadcast year to community access programming.”
37. In addition to maintaining the current conditions of licence relating to the zone-based approach, Rogers requested an exception to the above-noted requirement such that it be required to direct a minimum of 20% of its programming-related expenses during each broadcast year to community access television programming. In this regard, it noted that its zone-based community channels in New Brunswick and in Newfoundland and Labrador are subject to a condition of licence whereby at least 20% of the programming broadcast each broadcast week must be access programming originating from the service areas within the zone (see Broadcasting Decision 2006-459).
38. The Commission acknowledges that a reduction in Rogers’ minimum required expenditures on access programming would be consistent with the minimum amount of access programming that must originate from within a given zone. However, Rogers’ proposed condition of licence did not refer to “direct” programming expenses, as specified in section 32(2) of the Regulations. For consistency, the Commission finds it appropriate to amend the proposed condition of licence so that it refers to “direct programming expenses.”
39. In light of the above, the Commission **approves** Rogers’ request, with the above-noted amendment to the proposed wording. Accordingly, the level of direct programming expenses to be directed in each broadcast year to community access programming for Rogers’ zone-based community channels in New Brunswick and in Newfoundland and Labrador will be reduced from 50% to 20%. A **condition of licence** to that effect is set out in Appendix 2 to this decision.

Maintaining the authorization to fund English- and French-language community channels in Ottawa and in Moncton

40. In Broadcasting Decision 2004-170, the Commission approved applications by RCCI to add conditions to the licences for its BDUs serving Moncton and Ottawa to allow those BDUs to allocate up to 4% of their annual gross revenues derived from broadcasting activities to the community channels they operate (i.e., up to 2% to each of the English- and French-language community channels in each market). This was twice the amount allowed at that time pursuant to the Regulations. In Broadcasting Decisions 2006-459 (for Moncton) and 2007-230 (for Ottawa), the Commission maintained these conditions of licence.

41. Rogers requested that these conditions of licence be once again maintained, with minor amendments to reflect recent updates to the Regulations and determinations set out in the Community Television Policy. It submitted that should its request be denied, it is very likely that Ottawa and Moncton would each end up with a single bilingual station, which would make it extremely difficult for it to serve the official language minority communities in those cities. It added that the minority French-language market could end up being underserved as it would be allotted fewer programming hours than the English-language counterpart. Rogers noted that these distinct, long-serving community channels have developed very loyal followings within, and strong ties with those communities.
42. Rogers further stated that operating bilingual stations in Ottawa and Moncton would have a negative impact on its ability to attract access producers and volunteers, and would make scheduling extremely difficult.
43. In their interventions and at the hearing, the Fédération culturelle canadienne-française, the Fédération des communautés francophones et acadiennes du Canada (FCFA) and the Association acadienne des artistes professionnels du Nouveau-Brunswick (263PNB) echoed Rogers' concerns. According to the FCFA and the 263PNB, should Rogers be forced to operate bilingual stations, Francophones would have no say in programming decisions. The FCFA also argued that bilingual stations often see a dilution of the unique character of the francophone community, with on screen content then reflecting the fact that programming decisions are being taken by English-language personnel. In its view, permitting Rogers to maintain separate francophone stations would allow for the maintenance of the diversity of voices to which Francophones and Acadians currently have access.
44. In their interventions, the Directors Guild of Canada (DGC) and the Documentary Organization of Canada (DOC) expressed support for the continued funding by BDUs of the Canadian Media Fund (CMF) and of Certified Independent Production Funds (CIPFs). The DGC also commented on Rogers' proposal to maintain the condition of licence allowing it to double the maximum amount of BDU contributions (i.e., 3% of its broadcasting revenues instead of 1.5%) to the operation of the two community channels in each of Ottawa and Moncton, recommending that the Commission not grant any exceptions to BDU contributions to these funds. In its reply, Rogers argued, however, that authorizing it to continue operating two community channels in these two cities would have a negligible impact on the CMF and CIPFs given that the new contribution regime set out in the Community Television Policy would result in an increase to the overall funding percentage devoted to the CMF and CIPFs. Rogers further noted that DGC had failed to address the significant reduction in service to these communities should it be forced to remove one community channel from its BDUs operating in those cities.

45. In Broadcasting Decision 2015-32, the Commission considered a request by Videotron G.P.⁹ (Videotron) to launch a new English-language community channel to serve the anglophone communities of its Montréal, Montréal West and Terrebonne, Quebec licensed areas and to be authorized to contribute twice the maximum allowable contribution for local expression in order to finance this new channel, along with its existing French-language community channel. The Commission acknowledged that approval of the new channel would be consistent with the broadcasting policy objectives, the Community Television Policy, and the objectives of the *Official Languages Act*. Accordingly, it approved the application in part.
46. However, the Commission expressed concern over the amount of money that Videotron would have been able to redirect to the new community television station, to the detriment of the CMF and other funds. It considered that the amounts that were being directed to the existing French-language community channel were more than adequate to serve all of the diverse elements and members of the Montréal community. Accordingly, the Commission permitted Videotron to either launch an English-language community channel by means of a separate feed or use the existing channel MAtv to serve the entire Montréal community. It did not allow Videotron to reallocate an additional contribution to a new channel.
47. In regard to the case in question, the amounts directed by Rogers in 2016 to each of its English- and French-language community channels in Ottawa and Moncton was significantly less than the amount directed by Videotron to MAtv in 2013 or the amount that Videotron would have directed to its new English-language community channel had its funding request been approved.
48. Pursuant to sections 34 and 35 of the Regulations, BDUs are required to contribute 5% of revenues derived from activities in the previous broadcast year to Canadian programming. Following the issuance of the Community Television Policy in 2016, and pursuant to the revised sections 34 and 35 of the Regulations in effect since 1 September 2017, 0.3% of revenues derived from broadcasting activities in the previous broadcast year must be directed to the Independent Local News Fund. If the BDU elects to provide a community channel to its subscribers, it is allowed to redirect a maximum of 1.5% of revenues derived from broadcasting activities in the previous broadcast year to that community channel.
49. In Broadcasting Decision 2017-308, the Commission approved an application by Rogers to amend the licences for its BDUs serving Moncton and surrounding areas and Ottawa in order to amend their conditions of licence relating to contributions to Canadian programming so as to reflect the above. However, as noted in that decision, Rogers did not propose to reduce the spending level of French- and English-language community programming from 2% to 1.5% of gross revenues derived from broadcasting activities in the previous broadcast year. The Commission noted that it

⁹ Now known as Videotron Ltd. In Broadcasting Decision 2017-453, the Commission approved an application by Videotron Ltd. for authority to acquire the assets of Videotron G.P. (i.e., Videotron Ltd. and 9227-2590 Québec inc., partners in a general partnership carrying on business as Videotron G.P.).

would be more appropriate to examine the maximum amount for deductions for Rogers' community channel contributions in the context of the licence renewal.

50. In its licence renewal applications, Rogers requested amendments to the current conditions of licence in order to reflect the amended contribution regime (i.e., directing 1.5% of gross revenues derived from broadcasting activities in the previous broadcast year to the community channel), which has been in effect since 1 September 2017.
51. The authorization for Rogers to provide separate French- and English-language community channels in Ottawa and Moncton has been in place since 2004. The Commission is of the view that continued authorization of the above is in the public interest. Further, this meets the Commission's policy objective of providing a range of broadcasting services in English and in French and would maintain an element of the broadcasting system that helps to further the objectives of the *Official Languages Act*. In addition, as noted above, the amounts put toward each of Rogers' community channels in Ottawa and Moncton are significantly lower than the amount that Videotron would have directed to its new English-language community channel.
52. In light of the above, the Commission finds it appropriate to continue allowing Rogers to contribute a portion of the annual gross revenues derived from broadcasting activities in the previous broadcast year to each of the English- and French-language community channels in Ottawa and Moncton, as an exception to the Community Television Policy and the Regulations. Accordingly, the Commission **approves** Rogers' request to maintain the conditions of licence, with amendments as requested by the licensee to reflect recent updates to the Regulations and determinations set out in the Community Television Policy. These **conditions of licence** are set out in Appendices 2 and 3 to this decision.

Distribution of additional affiliates of CBS and PBS in high definition on the basic service in various locations in the Atlantic provinces and Ontario

53. Since 1 September 2017, BDU licensees have been authorized, pursuant to section 17(6)(b) of the Regulations, to distribute, as part of the basic service, a set of U.S. 4+1 signals (i.e., a package of the programming services of CBS, NBC, ABC, FOX and PBS) that originates in the same time zone as that in which a licensee's local head-end is located or, if no such package originates in that time zone, in any other time zone. The Regulations also allow licensees to distribute a second set of U.S. 4+1 signals on a discretionary basis. Licensees may distribute the HD version of each of set of U.S. 4+1 signals.
54. In its application, Rogers requested exceptions to the above-noted section of the Regulations for BDUs serving certain locations in New Brunswick and Ontario, as follows:
 - to maintain the condition of licence approved in Broadcasting Decision 2014-204 allowing the licensee to distribute, in HD, an additional

affiliate of the non-commercial network PBS for Allardville (Bathurst Region), Clair (Edmundston Region), the Fredericton Region, the Moncton Region, the Saint John Region, and Rogersville (Miramichi Region) on the basic service;

- to maintain the condition of licence approved in Broadcasting Decision 2014-204 allowing the licensee to distribute, in HD, an additional affiliate of the commercial network CBS for Clair (Edmundston Region) on the basic service;
- to add a condition of licence that would allow the licensee to distribute, in HD, an additional affiliate of the non-commercial network PBS for London on the basic service; and
- to add a condition of licence that would allow the licensee to distribute, in HD, an additional affiliate of the non-commercial network PBS for Ottawa on the basic service.

55. In all cases, Rogers stated that it was not requesting the addition of new programming services, but rather the authorization to continue distributing services that have been available to its customers for many years.

56. Rogers explained that when most major market affiliates started offering their U.S. stations in HD a number of years ago, those distributed by Rogers in the above-noted locations remained available in standard definition (SD) only. The HD versions of different affiliates operating in the same time zone were therefore imported to ensure that its customers were not denied the benefit of HD programming. Rogers noted that it has continued to offer, in SD, the locally relevant affiliate stations, and is now seeking to offer them in HD.

57. Given that there were no interventions opposing Rogers' requests and in order to avoid customer disruption, the Commission **approves** the licensee's requests to maintain the current conditions of licence and to add conditions of licence for the above-noted BDUs serving locations in New Brunswick and Ontario, with minor amendments to reflect recent changes to the Regulations. These **conditions of licence** are set out in Appendices 2 and 3 to this decision.

Minor modifications to various conditions of licence to reflect recent amendments to the wording of the *Broadcasting Distribution Regulations*

58. For various conditions of licence that refer to sections of the Regulations, Rogers requested modifications that would reflect recent amendments to the wording of the Regulations. The Commission has examined the requested modifications and finds that they correctly mirror the wording of the Regulations. Accordingly, the Commission **approves** Rogers's requests in this regard.

Conclusion

59. In light of all the above, the Commission **renews** the regional licences for the terrestrial BDUs set out in paragraph 1 of this decision from 1 September 2018 to 31 August 2025. The terms and **conditions of licence** for each undertaking are set out in the appendices to this decision.

Distribution of CHCO-TV St. Andrews by Rogers' exempt BDU serving Charlotte County, New Brunswick

60. CHCO-TV St. Andrews (formerly CHCT-TV St. Andrews) is a low-power community-based television station operated by the independent broadcaster St. Andrews Community Channel Inc. Rogers operates exempt BDUs that serve the communities that make up Charlotte County (including St. Andrews, St. Stephen and St. George), but is required to distribute CHCO-TV only within the community of St. Andrews. Various interveners, including citizens and mayors of municipalities across Charlotte County, as well as CHCO-TV, requested that Rogers be required to distribute CHCO-TV throughout Charlotte County on the exempt BDU. Intervenors also requested that Rogers be required to redirect the contributions it receives from subscribers residing in Charlotte County communities to that community station. At the hearing, Rogers committed to distributing CHCO-TV throughout Charlotte County on its exempt BDU.

61. The Commission welcomes Rogers' decision to provide CHCO-TV with wider distribution and, in the circumstances, does not consider that any further measures are required.

Employment equity

62. Because the licensee is subject to the *Employment Equity Act* and files reports concerning employment equity with the Department of Employment and Social Development, its employment equity practices are not examined by the Commission.

Secretary General

Related documents

- *Renewal of licences for various terrestrial broadcasting distribution undertakings that will expire in August 2018 – Introductory decision*, Broadcasting Decision CRTC 2018-263, 2 August 2018
- *Various terrestrial broadcasting distribution undertakings – Administrative renewals*, Broadcasting Decision CRTC 2018-182, 24 May 2018
- *Videotron G.P. – Acquisition of assets (corporate reorganization)*, Broadcasting Decision CRTC 2017-453, 18 December 2017

- *Revised exemption order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers*, Broadcasting Regulatory Policy CRTC 2017-319 and Broadcasting Order CRTC 2017-320, 31 August 2017
- *Broadcasting distribution undertakings serving Moncton and surrounding areas, and Ottawa – Licence amendments*, Broadcasting Decision CRTC 2017-308, 25 August 2017
- *Various terrestrial broadcasting distribution undertakings – Administrative renewals*, Broadcasting Decision CRTC 2017-159, 18 May 2017
- *Call for comments on proposed amendments to the Broadcasting Distribution Regulations and the Television Broadcasting Regulations, 1987*, Broadcasting Notice of Consultation CRTC 2017-50, 24 February 2017
- *Licence renewal of broadcasting distribution undertakings – Review of practices relating to the small basic service and flexible packaging options and imposition of various requirements*, Broadcasting Decision CRTC 2016-458, 21 November 2016
- *Policy framework for local and community television*, Broadcasting Regulatory Policy CRTC 2016-224, 15 June 2016
- *Various broadcasting distribution, video-on-demand and pay-per-view undertakings – Acquisition of assets (corporate reorganization)*, Broadcasting Decision CRTC 2015-564, 21 December 2015
- *English-language community channel in Montréal*, Broadcasting Decision CRTC 2015-32, 4 February 2015
- *Terrestrial broadcasting distribution undertakings serving various communities in New Brunswick and in Newfoundland and Labrador – Licence amendments*, Broadcasting Decision CRTC 2014-204, 1 May 2014
- *Class 1 regional licence for cable broadcasting distribution undertakings in Ontario*, Broadcasting Decision CRTC 2007-230, 13 July 2007
- *Class 1 regional licence for broadcasting distribution undertakings in New Brunswick and in Newfoundland and Labrador*, Broadcasting Decision CRTC 2006-459, 31 August 2006
- *Contributions to French- and English-language community channels*, Broadcasting Decision CRTC 2004-170, 10 May 2004

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

Appendix 1 to Broadcasting Decision CRTC 2018-265

Terms, conditions of licence and expectations applicable to all terrestrial broadcasting distribution undertakings renewed in this decision

Terms

The licences will take effect 1 September 2018 and expire 31 August 2025.

Conditions of licence

1. 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.
2. The licensee shall adhere to the Television Service Provider Code, set out in the appendix to *The Television Service Provider Code*, Broadcasting Regulatory Policy CRTC 2016-1, 7 January 2016.
3. The licensee shall be a participant in the Commission for Complaints for Telecom-television Services Inc.
4. In the annual return that the licensee is required to submit to the Commission by 30 November for the broadcast year ending the previous 31 August, the licensee shall include the number of hours of original programming broadcast during each broadcast year on each of its community channels.
5. Where the licensee collects set-top box data regarding programming services it distributes, it shall, by no later than 30 September 2019, provide this data to a national set-top box-based audience measurement system.

For the purposes of this condition of licence, “set-top box data” means viewership data that is obtained by the licensee through a set-top box or by comparable means, but does not include any portion of such data that would allow the recipient of the data to identify a particular subscriber or household.

6. Where the licensee collects set-top box data regarding programming services it distributes, it shall, upon the written request of a Canadian programming service, provide that programming service with the set-top box data regarding that programming service, in the form of either raw data or reports, within 30 days,
 - at no cost; and
 - up to a maximum of two times per broadcast year, unless otherwise agreed to by the parties.

The application of the foregoing condition of licence is suspended until 30 September 2019 and, thereafter, so long as a national set-top box-based audience measurement system is operational.

For the purposes of this condition of licence, “set-top box data” means viewership data that is obtained by the licensee through a set-top box or by comparable means, but does not include any portion of such data that would allow the recipient of the data to identify a particular subscriber or household.

7. In the annual return that the licensee is required to submit to the Commission by 30 November for the broadcast year ending the previous 31 August, the licensee shall include information relating to the following:
 - the availability of accessible set-top boxes and remote controls, and their accessibility features;
 - the penetration of accessible set-top boxes and remote controls with the licensee’s customer base; and
 - the number of accessibility-related queries received by the licensee, and the number successfully resolved.
8. The licensee shall close caption 100% of original licensee-produced English- and French-language programming aired on its community channel by the end of its licence term.
9. The licensee shall provide audio description of all the key elements of information programs, including news programming, that form part of its community channel (that is, the voice-over of key textual, graphic design, and still image elements, such as phone numbers, stuck information or weather maps that are posted on screen).
10. The licensee shall provide the necessary training to hosts and access producers associated with its community channel concerning the provision of audio description.
11. The licensee shall provide one or more simple means of accessing described programming, whether in an open or embedded format, that requires little or no visual acuity.
12. The licensee shall promote information on all of its disability-specific services and products, in the accessible manner(s) of its choice.
13. The licensee shall incorporate an easy-to-find home page link to the sections of its website dealing with the needs of persons with disabilities, if its website includes such sections.
14. The licensee shall make the information on its website accessible to the point of providing a reasonable accommodation for persons with disabilities. Examples of what the Commission considers to be reasonable accommodations are listed in

paragraph 66 of *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009.

15. Where customer service functions on its website are not accessible, the licensee shall ensure that persons with disabilities will not incur a charge or otherwise be disadvantaged if they use an alternate avenue of customer service.
16. The licensee shall make accessible any customer service functions that are available solely over its website.
17. The licensee shall make its general call centres accessible to the point of providing a reasonable accommodation to persons with disabilities by:
 - training customer service representatives in handling enquiries from persons with disabilities and familiarizing them with the service provider's products and services for persons with disabilities; and
 - making its Interactive Voice Response systems accessible.

Expectations

The Commission expects the licensee to ensure that subscribers are able to identify programming with described video in the electronic program guide.

The Commission expects the licensee to make information available in alternative formats to subscribers regarding, among other things, the programming and services offered and the channel line-up.

The Commission expects the licensee to ensure that 100% of original English- and French-language access programming aired on its community channel is closed captioned by the end of its licence term.

The Commission expects the licensee to ensure that advertising, sponsorship messages and promos inserted into local availabilities are closed captioned.

Appendix 2 to Broadcasting Decision CRTC 2018-265

Rogers Communications Canada Inc.

Application 2016-0950-5, received 31 August 2016

Conditions of licence for the terrestrial broadcasting distribution undertakings serving Allardville, Clair, Fredericton, Moncton, Rogersville and Saint John, and surrounding areas, New Brunswick; and Deer Lake and St. John's, and surrounding areas, Newfoundland and Labrador

Conditions of licence applicable to all licensed service areas

1. For the purposes of sections 17(2)(a), 30, 31, 32, 33 and 34 of the *Broadcasting Distribution Regulations*, each of the following eight (8) zones shall be considered licensed areas:
 - Zone 1 (Moncton, New Brunswick): Moncton, Bouctouche, Highway 505/Saint-Edouard-de-Kent, Petitcodiac, Saint-Antoine, Sainte-Anne-de-Kent, Saint-André-de-Shediac, Sainte-Marie-de-Kent;
 - Zone 2 (Saint John, New Brunswick): Saint John, Brown's Flat, Keating's Corner, Morrisdale, Musquash Subdivision, Patterson/Hoyt, Welsford, Willow Grove;
 - Zone 3 (Bathurst, New Brunswick): Allardville, Blue Mountain Settlement, Jacquet River, Salmon Beach;
 - Zone 4 (Fredericton, New Brunswick): Fredericton, Burtt's Corner, Harvey, Ludford Subdivision, McAdam, Nasonworth, Noonan, Tracy/Fredericton Junction;
 - Zone 5 (Edmundston, New Brunswick): Caron Brook, Lac Baker, Saint-Joseph-de-Madawaska, Clair, Davis Mill;
 - Zone 6 (Miramichi, New Brunswick): Centre Acadie, Centre Napan, Rogersville, Big Cove, Cap-Lumière, Richibucto, Richibucto Village, Saint-Ignace;
 - Zone 7 (St. John's, Newfoundland and Labrador): St. John's;
 - Zone 8 (Corner Brook, Newfoundland and Labrador): Deer Lake, Pasadena.
2. As an exception to section 31(1) of the *Broadcasting Distribution Regulations*, the licensee shall devote
 - a) not less than 60% of the programming distributed on the community channel in each licensed area in each broadcast week to the distribution of local community television programming as defined in (i), (ii) and (iii) below; and

- b) not less than 40% of the programming distributed on the community channel in each licensed area in each broadcast week to the distribution of local community television programming as defined in (i) and (ii) below.

For the purpose of section 31(1) of the *Broadcasting Distribution Regulations* and this condition of licence, “local community television programming” means, in relation to a licensed area as defined in condition of licence 1, programming that is reflective of the community served in the licensed area and that is produced

- i. by the licensee in the licensed area, by the members of the community served in the licensed area or by a community television corporation residing in the licensed area;
 - ii. by another licensee in a licensed area within the same municipality as the licensee referred to in paragraph i), by the members of the community served in that licensed area or by a community television corporation residing within that licensed area; or
 - iii. by the licensee in another licensed area within the same province as the licensee referred to in paragraph i), by the members of the community served in that licensed area or by a community television corporation residing within that licensed area.
3. As an exception to section 31(2) of the *Broadcasting Distribution Regulations*, the licensee
- a) shall devote not less than 30% of the programming distributed on the community channel in each licensed area in each broadcast week to community access television programming as defined in (i) and (ii) below;
 - b) shall devote not less than 20% of the programming distributed on the community channel in each licensed area in each broadcast week to community access television programming as defined (i) below;
 - c) shall devote from 30% to 50% of the programming distributed on the community channel in each broadcast week to community access television programming, as defined in (i) and (ii), according to the requests;
 - d) shall, if one or more community television corporations are in operation in a licensed area, make available to them up to 20% of the programming distributed on the community channel in each broadcast week to community access television programming, as defined in (i) and (ii) below; and
 - e) shall, if one or more community television corporations are in operation in a licensed area, make available to each of them, on request, in each broadcast week, not less than four hours of community access television programming, as defined in (i) and (ii) below.

For the purpose of section 31(2) of the *Broadcasting Distribution Regulations* and this condition of licence, “community access television programming” means programming produced

- i) by an individual, group or community television corporation residing within the licensed area of a broadcasting distribution undertaking; or
 - ii) by an individual, group or community television corporation residing within the same province as the licensed area.
4. As an exception to section 32(2) of the *Broadcasting Distribution Regulations*, the licensee shall direct at least 20% of its direct programming expenses in a broadcast year to community access television programming as defined in condition of licence 3 (definition i)).

Conditions of licence applicable to specific licensed service areas

Terrestrial broadcasting distribution undertakings serving Allardville (Bathurst Region), Clair (Edmundston Region), Fredericton Region, Moncton Region, Rogersville (Miramichi Region) and Saint John Region, New Brunswick

5. The licensee is authorized to distribute, as part of the basic service and in high definition, an additional affiliate of the non-commercial network PBS located in the same time zone as that of the first set of U.S. 4+1 signals.

Terrestrial broadcasting distribution undertaking serving Clair (Edmundston Region), New Brunswick

6. The licensee is authorized to distribute, as part of the basic service and in high definition, an additional affiliate of the commercial network CBS located in the same time zone as that of the first set of U.S. 4+1 signals.

Terrestrial broadcasting distribution undertaking serving Fredericton Region, New Brunswick

7. The licensee is authorized to distribute, at its option, CIVM-TV (Télé-Québec) Montréal as part of the basic service.
8. The licensee is relieved from the requirement set out in section 17(1)(c) of the *Broadcasting Distribution Regulations* to distribute the local priority signal of CHNB-DT (Global) Fredericton provided the licensee distributes instead CHNB-DT (Global) Saint John.

Terrestrial broadcasting distribution undertaking serving Moncton and surrounding areas, New Brunswick

9. The licensee shall, as an exception to section 34(2) of the *Broadcasting Distribution Regulations*, make a contribution to Canadian programming, in each broadcast year, of an amount not less than the greater of:

- a) 4.7% of its gross revenues derived from broadcasting activities in the previous broadcast year, less its contributions to its French- and English-language community channels, provided that the deduction for such contributions not exceed 1.5% of its gross revenues derived from broadcasting activities for each of these community channels; or
- b) 1.7% of its gross revenues derived from broadcasting activities in that broadcast year.

10. The licensee is authorized to distribute, at its option, CIVM-TV (Télé-Québec) Montréal, as part of the basic service.

**Terrestrial broadcasting distribution undertaking serving Saint John Region,
New Brunswick**

11. The licensee is authorized to distribute, at its option, CIVM-TV (Télé-Québec) Montréal as part of the basic service.

Appendix 3 to Broadcasting Decision CRTC 2018-265

Rogers Communications Canada Inc.

Application 2016-0949-7, received 31 August 2016

Conditions of licence for the terrestrial broadcasting distribution undertakings serving Barrie, Hamilton, Kitchener, London, Newmarket, Oshawa, Ottawa and Toronto, and surrounding areas, Ontario

Conditions of licence applicable to all licensed service areas

1. The licensee is authorized to distribute WNYO-TV Buffalo, New York on a discretionary basis.

Conditions of licence applicable to specific licensed service areas

Terrestrial broadcasting distribution undertaking serving Kitchener, Ontario

2. The licensee is relieved from the requirement to distribute CFTO-TV Toronto as part of the basic service.

Terrestrial broadcasting distribution undertaking serving London, Ontario

3. The licensee is authorized to distribute, as part of the basic service and in high definition, an additional affiliate of the non-commercial network PBS located in the same time zone as that of the first set of U.S. 4+1 signals.
4. The licensee is authorized to distribute WUAB Cleveland, Ohio as part of the basic service.

Terrestrial broadcasting distribution undertaking serving Newmarket, Ontario

5. The licensee is authorized to distribute WNLO-23 Buffalo, New York, on a digital discretionary basis.

Terrestrial broadcasting distribution undertaking serving Oshawa, Ontario

6. The licensee is relieved from the requirements of section 17 of the *Broadcasting Distribution Regulations* to distribute the priority local service of CHEX-TV Peterborough, so long as it distributes CHEX-TV-2 Oshawa, and may substitute, at its option, CHEX-TV Peterborough for CHEX-TV-2 Oshawa whenever the quality of the Oshawa signal is unsatisfactory.
7. The licensee is authorized to distribute WNLO-23 Buffalo, New York, on a digital discretionary basis.

Terrestrial broadcasting distribution undertaking serving Ottawa, Ontario

8. The licensee shall, as an exception to section 34(2) of the *Broadcasting Distribution Regulations*, make a contribution to Canadian programming, in each broadcast year, of an amount not less than the greater of:
 - a) 4.7% of its gross revenues derived from broadcasting activities in the previous broadcast year, less its contributions to its French- and English-language community channels, provided that the deduction for such contributions not exceed 1.5% of its gross revenues derived from broadcasting activities for each of these community channels; or
 - b) 1.7% of its gross revenues derived from broadcasting activities in that broadcast year.
9. The licensee is relieved from the requirements of section 17 of the *Broadcasting Distribution Regulations* to distribute, on the basic service, the signal of the Smiths Falls transmitter of CKWS-TV Kingston.
10. The licensee is authorized to distribute, as part of the basic service and in high definition, an additional affiliate of the non-commercial network PBS located in the same time zone as that of the first set of U.S. 4+1 signals.

Terrestrial broadcasting distribution undertaking serving Toronto, Ontario

11. If it elects to offer community programming, the licensee shall form a citizen advisory committee that is representative of the communities it serves, including volunteers.
12. The licensee is relieved from the requirements of section 17 of the *Broadcasting Distribution Regulations* with respect to CKCO-TV Kitchener, provided that it is distributed to subscribers in the licensed area.
13. The licensee is authorized to distribute WNLO-23 Buffalo, New York, on a digital discretionary basis.