



Broadcasting Decision CRTC 2018-267

PDF version

References: 2017-160 and 2017-160-1

Ottawa, 2 August 2018

TELUS Communications Inc.

Various locations in Alberta and British Columbia

Public record for these applications: 2016-0945-5 and 2016-0937-2

Public hearing in the National Capital Region

16 October 2017

TELUS – Licence renewal for various terrestrial broadcasting distribution undertakings

*The Commission **renews** the regional licences for terrestrial broadcasting distribution undertakings serving various locations in Alberta and British Columbia, as set out in this decision, from 1 September 2018 to 31 August 2023.*

These short-term renewals will allow the Commission to review at an earlier date the licensee's operation of its undertakings, including its community programming.

*The Commission **denies** the licensee's requests to convert its regional licences into service-area specific licences.*

Applications

1. TELUS Communications Inc.¹ (TELUS) currently holds regional licences to operate terrestrial broadcasting distribution undertakings (BDUs) serving the following locations in Alberta and British Columbia:
 - Calgary, Edmonton (including St. Albert, Sherwood Park, Spruce Grove and Stony Plain), Fort McMurray, Grande Prairie and Red Deer, Alberta;
 - Kelowna, Nanaimo, Penticton, Prince George, Terrace, Vancouver (including Lower Mainland, Fraser Valley and Whistler), Vernon and Victoria, British Columbia.

¹ On 17 January 2018 (see Broadcasting Decision 2018-20), the Commission approved the applications filed by TELUS Communications Inc. for authority to acquire the assets of TELUS Communications Company (TELUS Communications Inc., and 1219723 Alberta ULC in partnership with TELUS Communications Inc. in TELE-MOBILE Company, partners in a general partnership carrying on business as TELUS Communications Company).

2. TELUS filed applications in which it requested authorization to surrender those regional licences in order to be granted service area-specific licences to serve each of the following redefined locations across those provinces:

Redefined locations	Application number
Calgary and Edmonton, Alberta	2016-0945-5
Burnaby, Kelowna, Surrey, Vancouver and Victoria, British Columbia	2016-0937-2

3. In the event the Commission were to deny that request, TELUS requested that the Commission renew its regional licences, which expire 31 August 2018.²
4. The Commission received interventions commenting on the applications, to which TELUS replied.

Commission's analysis and decisions

5. The Commission's determinations relating to issues common to the terrestrial BDUs renewed in this decision are set out in Broadcasting Decision 2018-263 (the Introductory Decision), also issued today, which should be read in conjunction with this decision.
6. 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, these determinations are reflected in the conditions of licence for TELUS's BDUs, set out in the appendices to this decision.
7. In regard to accessibility, the Commission has determined that certain of the BDU licensees listed in the Introductory Decision will be required, by condition of licence, to close caption original licensee-produced programming by 31 August 2025. For BDUs that are subject to shorter licence terms, such as TELUS, the Commission intends to impose this condition of licence at the time of its next licence renewal so that it takes effect on 1 September 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, as well as 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

² The Commission renewed these BDU licences from 1 December 2016 to 30 November 2017 in Broadcasting Decision 2016-458. 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.

requirements, expectations and encouragements relating to accessibility for those BDUs with a common set of accessibility-related conditions of licence and expectations, including an expectation.

8. Having examined the public record for these applications, the Commission considers that the outstanding issues for TELUS's BDUs that it must address in this decision relate to the following:
 - community programming;
 - the licensee's request to surrender the current regional licences serving the above-noted locations in Alberta and British Columbia and to be granted service area-specific licences to serve the redefined locations across those provinces; and
 - contributions to Canadian programming.

Community programming

9. In Broadcasting Regulatory Policy 2010-622, the Commission established the following objectives for community television, which emphasize community reflection and citizen access:
 - to ensure the creation and exhibition of more locally-produced, locally-reflective community programming; and
 - to foster a greater diversity of voices and alternative choices by facilitating new entrants at the local level.
10. The Commission also noted that community television should engender a high level of citizen participation and community involvement in community programming and provide coverage of local events.
11. When this policy was reviewed in Broadcasting Regulatory Policy 2016-224 (the Community Television Policy), the Commission reiterated its dual objectives.
12. In this way the Community Television Policy must further the objectives of the broadcasting policy for Canada set out by Parliament in the *Broadcasting Act* (the Act), particularly insofar as those objectives emphasize that a community element is a key component of the broadcasting system and that this system should include local and regional programming, including community programs.³
13. In light of the information gathered throughout the renewal proceeding for these BDUs, the Commission has identified the following issues for TELUS in regard to community programming:

³ See, for instance, sections 3(1)(b), 3(1)(i)(iii) and 3(1)(i)(iv) of the Act.

- whether the STORYHIVE model for TELUS’s community programming meets the objectives of the Community Television Policy;
- the licensee’s requirements to offer local programming and access programming; and
- requests for new conditions of licence relating to the licensee’s community programming.

The STORYHIVE model for TELUS’s community programming and the objectives of the Community Television Policy

14. TELUS provides community programming, that is, access and local programming, through its on-demand service. TELUS has adopted a model, known as STORYHIVE, through which it sources and funds almost the entirety of the community programming it broadcasts. This model differs significantly from those used by other BDUs. TELUS stated that STORYHIVE is part of its strategy to partner with local independent producers and incubate new creative talent. In this regard, TELUS provides grants to these creators to produce programming and has very little involvement in the actual production of the content. TELUS also indicated that it does not have training or production facilities and instead relies on partnerships and collaborations that promote the use of existing facilities, such as the Vancouver Public Library and the National Screen Institute.
15. Program proposals are solicited by STORYHIVE through its website. Once applications are received, they are then subject to an online voting system in order to measure interest towards the different proposals. The proposals receiving the most votes then make it to a jury’s shortlist, from which the winning proposals are selected.⁴
16. TELUS indicated that once proposals are selected, it generally supports emerging creators with grants of up to \$10,000, although these grants can occasionally run as high as \$100,000 for what is referred to as “mid-level” creators, proposing mostly multi-episode projects.
17. TELUS confirmed that it does not prohibit potential access requesters from approaching it outside of the STORYHIVE process, although it noted that it does not encourage this practice, given the additional administrative burden it entails and the fact that community television is such a small aspect of its operations.
18. The Commission recognizes that the STORYHIVE concept involves several innovative approaches to community programming. For instance, the concept of a voting system has the potential to facilitate the involvement and foster the interest of community members in the selection of programming that will be funded and

⁴ The composition of the jury varies from one STORYHIVE edition to another and includes people across TELUS’s various businesses, stakeholders, industry experts from outside of TELUS, and in some cases STORYHIVE alumni.

produced in their area. However, the Commission notes that TELUS indicated at the hearing that its voting system is open to everyone worldwide, meaning there is no mechanism in place to ensure that voting on a project is limited to members of a specific community. This model also encourages the use of existing facilities, equipment and resources, which reduces indirect expenses.

19. Additionally, STORYHIVE promotes the expertise of members of the creative community or prior grant recipients, creating opportunities for them to participate in productions in different capacities, and allows individuals whose projects are selected to have full creative control over their productions without requiring the involvement of TELUS staff.
20. However, while this model has a laudable aim, the Commission finds that it raises a number of serious concerns. Specifically, the Commission considers that certain elements of the model do not, in practice, allow for a significant amount or a wide variety of locally produced and reflective programming to be produced by a range of individuals within a community. Nor does it, in general, foster a greater diversity of voices through citizen access in the way that was envisioned by the Commission in Broadcasting Regulatory Policy 2010-622 and more recently in the Community Television Policy. These concerns are elaborated upon below.

Opportunities limited to a narrow portion of the community

21. The Canadian Association of Community Television Users and Stations (CACTUS) submitted that the STORYHIVE model favours emerging filmmakers and independent producers rather than the unfiltered voices of the general public. It argued that the application process for a \$100,000 STORYHIVE grant requires an applicant to have at least two production credits to its name and be incorporated as a for-profit company. For smaller grants, CACTUS noted that according to the STORYHIVE website, production contracts can be drawn up with for-profit companies or sole proprietorships. It added that the questions on the application form assume a sophisticated understanding of how television programming is made.
22. In reply, TELUS insisted that STORYHIVE represents a genuinely grassroots approach to access programming. The licensee indicated that participants choose what they want to pitch and, if successful, are given the financial means to produce their proposal. It added that the voting system allows communities to view a variety of proposals and then decide on the content they most want to watch. In TELUS's view, through public voting and the oversight of a jury, communities are being served with exceptional content that goes beyond what is seen on traditional community channels.
23. Further, at the hearing, TELUS stressed the fact that independent producers in western Canada do not have access to the same amount of funding as those in eastern Canada. It added that many independent producers that submit project proposals are people who are positioned between the grassroots individual and the professional broadcaster and that this in-between group needs to have a voice.

24. Information provided by TELUS for three of its service areas⁵ indicates that almost all individuals who were granted access during the 2015-2016 broadcast year were either members of the creative community or independent producers who had production experience or who had access to the broadcasting system. It is also evident through the application process for smaller grants (for example, \$10,000), which involves among other things a multimedia application for an applicant's concept, that an applicant requires a pre-existing understanding of television production. While TELUS noted that it also allows producers to present ideas to its community programming staff separately, it stated that it does not encourage this practice. In this regard, the evidence on the record does not demonstrate that this has actually resulted in any significant amount of programming.
25. In the Commission's view, access opportunities should be equally available to a variety of citizens to express themselves at the local level, regardless of their experience or expertise related to production. The requirements of the application and selection processes used by TELUS for STORYHIVE grant recipients is one factor that serves to limit the access opportunities to a narrow range of individuals within the creative community, to the detriment of fulsome community reflection and citizen access. For example, in addition to completing a creator profile and writing a detailed overview of their project, applicants must produce multimedia content, such as a video pitch, an image or graphic intended to promote the project on social media and box art, as well as assemble a team. While TELUS may help inexperienced applicants go through this process, it is clear that this model is not primarily targeted at the typical community member who lacks any production experience. Any individual seeking an access opportunity would be justified in finding this process daunting.
26. The Commission also has concerns regarding TELUS's larger funding grants of up to \$100,000. TELUS explained that these grants are generally given to what it referred to as "mid-level" creators, which it insisted were still "fairly emerging" creators. TELUS did not deny that such applicants need to have at least two production credits to their name. It also indicated that "career acceleration" is one of the criteria used by its jury to assess which proposals should be financed. The Commission considers that these criteria are generally indicative of a focus on established artists rather than the broader community and are generally inconsistent with the objectives of community programming.
27. Finally, the Commission considers that TELUS's community operations, with a community programming staff of 11 employees, all based in Vancouver, may be a deterrent for members of most of the communities that are served by TELUS and who

⁵ The areas in question are Lethbridge and Medicine Hat, Alberta, and Vernon, British Columbia. While the Lethbridge and Medicine Hat systems have been operated as exempt systems since 21 March 2017, both were licensed systems during most of the previous licence term, including the 2015-2016 broadcast year. In 2017, TELUS was able to demonstrate that each of these systems serves less than 20,000 subscribers and that they meet the discrete operation test by distributing unique priority (local and/or regional) signals, which qualified them for exemption.

would like to obtain access to the licensee's community programming offering without going through STORYHIVE.

28. Consequently, the Commission finds that TELUS's current community programming model, as exemplified in part by these practices, has resulted in access opportunities being offered only to a narrow range of potential access requesters. This represents a barrier to offering community programming and access possibilities, and does not favour true citizen access and community reflection.

Limitations on certain types of programming

29. CACTUS expressed the view that none of the programming funded and produced through STORYHIVE should qualify as community programming under the defining characteristics of such programming set out in the Community Television Policy. It stated that STORYHIVE programming features very few productions by seniors, children, and not-for-profit or public service organizations and that a majority of the content produced consists of short dramatic films for which the topics are not specific to a given service area. CACTUS also criticized the STORYHIVE production guidelines, which it submitted prohibit political and issue-driven documentaries.
30. TELUS responded to CACTUS's statements regarding a lack of productions by the above-mentioned groups, arguing that it supports under-represented groups through numerous initiatives. The licensee provided a list of these initiatives and explained that it sometimes launches STORYHIVE editions (for example, a STORYHIVE female directors edition) to ensure proper representation of such groups. TELUS also submitted that if it was to control or limit the topics for access productions, they would no longer qualify as access programming.
31. TELUS referred to the STORYHIVE website, which provides guidelines as to the types of projects that would be eligible and ineligible for funding. Eligible projects include scripted comedy and drama, documentaries, animation, music videos and dance, whereas ineligible projects, across all editions of STORYHIVE, include experimental concepts, reality TV, docusoaps and political and/or issue-driven documentaries. What is not mentioned within the STORYHIVE guidelines is the type of public affairs, information and educational programming that is characteristic of most community channels. At the hearing, TELUS admitted that its community programming does not feature much coverage of local sporting events, current news events, municipal council meetings and other more traditional community programming as it would require that the production timeline be shorter than what the STORYHIVE model allows.
32. While the on-demand platform might not be ideal for certain types of programming (such as live sports programming), the Community Television Policy explicitly highlights the important role that the coverage of municipal and provincial politics, local professional and amateur sports and local cultural events play in reflecting communities that BDUs are licensed to serve, regardless of the platform through which community television is provided by those BDUs.

33. In the Commission's view, the production timeline resulting from the STORYHIVE model should not be permitted to become an obstacle to the production of certain types of locally reflective programming. Further, the Commission finds that STORYHIVE's current limitations, as exemplified in part by guidelines and production timelines on eligible programming formats, constitute a barrier to the fulfillment of community television's role in facilitating community access to the broadcasting system through locally-produced and locally-reflective community programming.

Requirements to offer local and access programming

34. The Commission requested that TELUS submit a breakdown of the community programming expenditures and first-run programming produced during the 2015-2016 broadcast year for three sample service areas. TELUS provided information regarding the original programming produced in Vernon and in Lethbridge and Medicine Hat during that broadcast year.
35. Based on the information submitted by TELUS, very little original programming was produced for the community programming service in each of these three communities during that broadcast year, and its cost per hour was significantly higher than that of all other major BDUs. TELUS claimed that its high cost per hour was partly tied to the quality of its community programming. However, the Commission considers that it is possible to reconcile the need to produce high-quality programming with the need to permit members of a community served by a BDU to have meaningful access to the broadcasting system. The Commission finds that in practice the STORYHIVE model has resulted in the distribution of only a very limited number of community programming productions, which constitutes a barrier to a meaningful level of citizen participation and community involvement in the licensee's community programming.
36. Moreover, of the limited number of programs that were produced, very few would qualify as local or access programming given that several of the individuals who requested access resided outside of the relevant service area. Further, the overall nature of the programming as a source of local reflection does not meet the objectives of the Community Television Policy given that very few of the programs originated with people or focused on events in each specific local community. In addition, as noted earlier, most of the individuals requesting access appear to be experienced members of the creative community. In the Commission's view, this demonstrates that TELUS's community programming does not meet the dual objectives of citizen access and community reflection.

Conclusion

37. In light of all the above, the Commission finds that TELUS has not met the policy objectives set out in Broadcasting Regulatory Policy 2010-622 and the Community Television Policy in the way that it funds and produces local and access programming. As a result, this has detracted from the attainment of certain key objectives of the broadcasting policy, as set out in the Act. In this regard, the Commission considers that TELUS should implement measures to open up

STORYHIVE to citizen-based programming formats and ideas as a means of ensuring that all voices across the community can be heard on an equitable basis. In the Commission's view, by adapting this model, TELUS could be in a position to meet the objectives of the Community Television Policy going forward.

38. Therefore, pursuant to section 11(2) of the *Broadcasting Distribution Regulations* (the Regulations), the Commission **directs** TELUS to provide a report within the first three months of its new licence term on the appropriate measures it intends to take to ensure improved citizen access and community reflection, including coverage of local events, through its community programming.
39. In order to ensure that the appropriate measures are put into place and maintained, the Commission will closely monitor TELUS's community programming service over the course of the new licence term for, among other things, its funding and production of local and access programming.

Request for new conditions of licence relating to community programming

40. In its application, TELUS requested that it be granted the following condition of licence for each of its BDUs, so as to provide them with more flexibility to offer their community programming on other platforms:

The licensee may distribute programming that qualifies as local expression on a platform other than its video-on-demand platform.

41. TELUS explained that such platforms would include the Internet, virtual reality platforms and 360-degree perspective projects. It submitted that the condition of licence would allow individuals requesting access to its community programming to be at the forefront of innovation should they wish to experiment with emerging technologies. The licensee added that, at present, its on-demand service cannot deliver a 360-degree or virtual reality experience.
42. The licensee argued that as all of its community programming is made available to everyone over the Internet, the availability of such innovative programming would extend beyond its subscribership. Finally, TELUS stated that if its request is denied, it would have to require its community programming producers who wished to experiment with this emerging technology to create a whole separate type of linear program to suit the traditional on-demand platform.
43. TELUS also requested that it be granted a condition of licence that would allow it to operate zone-based⁶ community programming services. The licensee's proposals

⁶ 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 be beneficial by, among other things, allowing BDUs to

under the regional licensing regime includes five zones: Northern Alberta, Southern Alberta, Okanagan, Vancouver Island and Northern British Columbia. CACTUS generally opposed TELUS's requests that would either result in reduced requirements to produce access programming or in the production of less locally reflective programming, including the above request. According to CACTUS, TELUS has the financial resources to pay for area-specific services.

44. In the Commission's view, the requested conditions of licence would provide TELUS with greater flexibility in regard to its community programming. Although the Commission does not oppose the requests in principle, it has already detailed its serious concerns over TELUS's community programming and the funds allocated to that programming.
45. Further, for both of the requested conditions of licence, the Commission finds that TELUS has not provided sufficient information detailing how funding would be allocated under these proposals. In regard to the licensee's request to allocate funding to community programming on different platforms, the Commission notes that TELUS did not specify the percentage of its contribution that would be dedicated to such programming or how much of its programming would be produced solely for platforms other than its on-demand platform.
46. Similarly, in regard to its zone-based proposal, TELUS did not provide a detailed rationale for grouping certain communities together, and did not describe how those communities share attributes that would make them communities of interest.
47. In light of the above, the Commission considers that it would not be appropriate to grant TELUS further flexibility at this time in regard to allocating its community programming expenditures to other platforms or to community zones. Consequently, the Commission **denies** TELUS's requests for new conditions of licence relating to its community programming.

Request for service area-specific licences

48. In response to the Commission's call for applications to renew its regional licences for BDUs in the provinces of Alberta and British Columbia, TELUS requested that the Commission authorize the surrender of these licences and issue new licences for seven specific service areas. The licensee submitted that there are no longer benefits stemming from the regional licensing regime, and that maintaining regional licences is putting it at a regulatory disadvantage vis-à-vis its main competitor, Shaw.
49. TELUS submitted that as a regional licensee, it is subject to asymmetrical rules regarding the possibility of operating on an exempt basis. It noted that licensees holding licences for individual service areas are authorized to request exemption from the licensing requirement in an area when the number of subscribers drops to fewer than 20,000, while licensees holding regional licences must also meet the criteria for a

inform subscribers of activities and events in a community of interest and providing greater economies of scale.

“carve out” (i.e., removing certain service areas from a regional licence so that BDUs can operate as exempt undertakings in those areas). TELUS added that new entrants to the broadcasting distribution sector can now enter into any market without the need for a licence until they reach 20,000 subscribers.

50. TELUS stated that moving to service area-specific licences would enable it to exempt certain smaller undertakings that do not currently meet the criteria for a carve-out and then reorganize the remaining licence areas to “better culturally and geographically serve smaller outskirt communities.”
51. TELUS indicated that should its request be approved, its service areas would be redefined in metropolitan areas to mirror Shaw’s service areas. It noted that this would allow it to operate on an exempt basis in the same areas as Shaw and, consistent with the regulatory regime for exempt BDUs, to devote all of its required contributions to Canadian programming to community programming in smaller areas.

Intervention and reply

52. As noted above, CACTUS opposed any requests that would ultimately result in reduced requirements to produce access programming. It expressed particular concern that once exempt, TELUS’s BDUs would be required to devote only 30% of their programming to access programming, compared to 50% for licensed services.
53. Despite CACTUS’s concerns, TELUS, in its reply, asserted that none of the other interveners opposed its proposal to surrender its regional licences in favour of seven service-area specific licences for areas that could not otherwise operate on an exempt basis. The licensee also noted that none of the interveners expressed concern over the redefinition of the metropolitan service areas to mirror Shaw’s service areas.

Commission’s analysis and decision

54. The Commission has generally been licensing multiple-system operators (MSOs) on a regional basis since the early 2000s. This approach has been adopted for Internet-Protocol Television (IPTV) BDUs, but also for some legacy cable operators, including Rogers Communications Canada Inc. and Cogeco Connexion Inc., who have converted their service-area specific licences to regional licences.
55. In Broadcasting Order 2009-544, the Commission set out the criteria that a BDU must meet in order to carve out a service area from a regional licence. Specifically, the undertaking being carved out must:
 - (a) have separate head-end facilities; or
 - (b) distribute one or more unique priority (local and/or regional) television stations as part of its basic service in that area that are not offered as part of the basic service in other service areas in which the BDU operates under the same regional licence; or

- (c) offer substantial community programming to its subscribers that is specific to that service area.
56. In regard to (c), the Commission determined that the provision of community programming specific to a particular service area would be sufficient to meet this criterion. However, it specifically stated that for a video-on-demand-based model, the BDU must demonstrate in its application that it spends 5% or more of the gross broadcasting revenues derived from the service area on community programming specific to that area.
57. In Broadcasting Order 2009-544, the Commission stated that the criteria used to determine a “discrete operation” for the purpose of a carve-out should not provide an incentive for BDUs to make inefficient or undesirable changes to their operations solely for the purpose of becoming exempt. This was to prevent regional licensees from carving out existing territories principally to avoid obligations associated with licensing.
58. Since 2008, TELUS has been authorized by condition of licence to devote all of its required annual contribution to Canadian programming to community programming in areas where it serves less than 20,000 subscribers (see Broadcasting Decision 2008-136). This is an equivalent obligation to that which exempt BDUs must meet with respect to contributions to community programming. As such, TELUS has an advantage similar to that of exempt BDUs in that it is able to devote its entire Canadian programming contribution to community programming in smaller areas. In addition, the Commission considers that this authorization provides TELUS with a regulatory framework that would permit it to meet the carve-out criteria without converting its regional licences to service-area specific licences.
59. In addition, issuing service area-specific licences to TELUS would be inconsistent with the Commission’s general approach regarding the treatment of large MSOs. Further, the Commission adopted the regional licensing approach because it is more efficient and allows for the issuance of fewer licences, reducing the administrative burden on both licensees and the Commission of having to submit and process multiple applications. Finally, to the extent that TELUS’s request would represent a change in policy regarding the treatment of larger operators of multiple systems, this licence renewal proceeding is not the venue in which to consider such a change.
60. In light of the above, the Commission **denies** TELUS’s requests to convert its regional licences into service-area specific licences.

Contributions to Canadian programming

61. In regard to TELUS’s Canadian programming requirements, the Commission has addressed the following issues:
- a request by TELUS relating to the level of its mandatory Canadian programming contribution to local expression; and

- previous non-compliance relating to contributions to Canadian programming.

Level of mandatory Canadian programming contribution to local expression

62. TELUS stated that should the Commission deny its request to surrender its regional licences in favour of service-area specific licences, it would request to maintain its current authorization to devote the total of its mandatory Canadian programming contribution to local expression in service areas where its BDUs serve less than 20,000 subscribers. The licensee submitted that this would provide a measure of parity with distributors who are not regionally licensed and have been able to meet the exemption criteria in small communities.
63. Further, TELUS requested that the current condition of licence be amended to reflect the new contribution scheme set out in the Regulations, as announced in Broadcasting Regulatory Policy 2017-278. Specifically, to take into account the requirement set out in the Regulations for licensed BDUs to now contribute 0.3% of their revenues to the Independent Local News Fund, TELUS requested that its mandatory Canadian programming contribution to local expression be reduced from 5% to 4.7%.
64. No interveners opposed TELUS's request. Further, other IPTV operators have already been granted a condition of licence setting out the revised contribution. In addition, the Commission considers that the initial rationale for approving the condition of licence is still valid. In light of the above and in order to ensure consistency with the amended regulatory framework, the Commission **approves** TELUS's request to maintain the authorization to devote the total of its mandatory Canadian programming contribution to local expression in service areas where a BDU serves less than 20,000 subscribers, with the level of the contribution to be set at 4.7% of gross revenues derived from broadcasting activities in the licensed area in the previous broadcast year. A **condition of licence** to that effect is set out in Appendix 1 to this decision.
65. Even with the reduction to the level of TELUS's mandatory Canadian programming contribution to local expression, the Commission is confident that the licensee will be able to address issues relating to its community programming. Further, TELUS will continue to operate in a regulatory environment allowing it to apply for carve-outs where it offers substantial community programming to its subscribers in a specific service area.

Previously identified non-compliance relating to contributions to Canadian programming

66. The Commission performed compliance audits regarding BDU contribution requirements. Following the completion of the audit for TELUS, the Commission found the licensee 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 2007-2008 through 2012-2013 broadcast years. Specifically:
- the licensee used the incorrect prior year revenue base to calculate Canadian programming contributions, resulting in a shortfall of \$22,017,214;

- the licensee had a shortfall of \$1,015,850 regarding the accrual of contributions towards local expression;
- the licensee used an incorrect revenue base to calculate the contribution derived from on-demand associated revenues, resulting in a shortfall of \$1,288,415; and
- the licensee carried forward under-contributions to local expression, resulting in a shortfall of \$33,168.

67. The related shortfalls totalled \$22,354,647, representing almost the totality of TELUS's annual Canadian programming requirement. This included \$22,057,320 for Canadian programming and \$297,327 for the Local Programming Improvement Fund⁷ (LPIF) fee that TELUS charged to customers but did not include in the gross revenues derived from broadcasting activities used to calculate its Canadian programming contribution requirements for the broadcast years in question.

68. In a letter dated 30 July 2014, the Commission informed TELUS of the above-noted non-compliance. TELUS indicated that it had revised its methodology to reflect the Commission's non-compliance determination. Further, TELUS paid the full shortfall amount over the course of two years, as directed in the Commission letter, with the final payment having been made in August 2016.

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

Conclusion

70. As a result of its review of the information on the record of TELUS's renewal applications and particularly in light of the serious nature of the issues relating to community programming and their impact on TELUS's ability to contribute to and meet key policy objectives, the Commission considers that a short-term renewal of TELUS's regional licences is necessary. Accordingly, 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 2023. These short-term renewals will allow the Commission to review at an earlier date the licensee's operations in light of the relevant regulatory and policy framework. In particular, it will permit a timely review of TELUS's community programming offering and thereby verify whether it favours the attainment of the objectives of the Community Television Policy and the broadcasting policy for Canada. The terms and **conditions of licence** are set out in the appendices to this decision.

⁷ This fund 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.

Employment equity

71. Because this 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
- *Various terrestrial broadcasting distribution undertakings, video-on-demand service and pay-per-view service – Corporate reorganization*, Broadcasting Decision CRTC 2018-20, 17 January 2018
- *Amendments to the Broadcasting Distribution Regulations and the Television Broadcasting Regulations, 1987 regarding local and community television, and financial support, logging requirements and Canadian exhibition requirements for over-the-air television stations*, Broadcasting Regulatory Policy CRTC 2017-278, 4 August 2017
- *Various terrestrial broadcasting distribution undertakings – Administrative renewals*, Broadcasting Decision CRTC 2017-159, 18 May 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
- *Terrestrial broadcasting distribution undertakings serving various communities in the Atlantic Provinces – Licence amendment*, Broadcasting Decision CRTC 2014-320, 12 June 2014
- *Terrestrial broadcasting distribution undertakings serving various communities in the Atlantic Provinces – Licence renewal and amendments*, Broadcasting Decision CRTC 2013-156, 27 March 2013
- *Community television policy*, Broadcasting Regulatory Policy CRTC 2010-622, 26 August 2010

- *Exemption order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers, Broadcasting Order CRTC 2009-544, 31 August 2009*
- *Licence amendments related to the funding and provision of an outlet for local expression, Broadcasting Decision CRTC 2008-136, 30 June 2008*

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

Appendix 1 to Broadcasting Decision CRTC 2018-267

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 2023.

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. As an exception to the requirements set out in sections 34(2) and 34(3) of the *Broadcasting Distribution Regulations*:
 - If the licensee has 20,000 or more subscribers in the licensed service area of a broadcasting distribution undertaking on 31 August of the previous broadcast year and distributes programming that qualifies as local expression on a related on-demand service, the licensee shall make, in each broadcast year, a contribution to Canadian programming of no less than the greater of:
 - 4.7% of its gross revenues derived from broadcasting activities in the licensed area in the previous broadcast year, less any contribution to local expression made by the licensee in the licensed area in the current broadcast year; and
 - 3.2% of its gross revenues derived from broadcasting activities in the licensed area in the previous broadcast year.

For the purposes of this condition, a “contribution to local expression” shall be deemed to include a contribution to community programming for distribution by the licensee on an on-demand service.

- If the licensee has fewer than 20,000 subscribers in the licensed area of a broadcasting distribution undertaking on 31 August of the previous broadcast year and distributes programming that qualifies as local expression on a related on-demand service, the licensee shall make, in each broadcast year, a contribution of not less than 4.7 % of its gross revenues derived from

broadcasting activities in the licensed area in the previous broadcast year to Canadian programming, less any contribution to local expression made by the licensee in the licensed area in the current broadcast year.

For the purposes of this condition, a “contribution to local expression” shall be deemed to include a contribution to community programming for distribution by the licensee on an on-demand service.

- If the licensee has 20,000 or more subscribers in the licensed area of a broadcasting distribution undertaking on 31 August of the previous broadcast year and does not distribute programming that qualifies as local expression on a related on-demand service and if a community programming undertaking is licensed in the licensed area, the licensee shall make, in each broadcast year, a contribution of not less than:
 - 3.2% of its gross revenues derived from broadcasting activities in the licensed area in the previous broadcast year to Canadian programming, and
 - 1.5% of its gross revenues derived from broadcasting activities in the licensed area in the previous broadcast year to the community programming undertaking.
 - If the licensee has fewer than 20,000 subscribers in the licensed area of a broadcasting distribution undertaking on 31 August of the previous broadcast year and does not distribute programming that qualifies as local expression on a related on-demand service, and if a community programming undertaking is licensed in the licensed area, the licensee shall make, in each broadcast year, a contribution of not less than 4.7 % of its gross revenues derived from broadcasting activities in the licensed area in the previous broadcast year to the community programming undertaking.
 - If the licensee does not distribute programming that qualifies as local expression and if no community programming undertaking is licensed in the licensed area, the licensee shall make, in each broadcast year, a contribution of not less than 4.7% of its gross revenues derived from broadcasting activities in the licensed area in the previous broadcast year to Canadian programming.
5. 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.
6. The licensee shall provide audio description for all key elements of information programs, including news programming, as part of its community programming (that is, the voice-over of key textual, graphic design and still image elements, such as phone numbers, stock information or weather maps that are posted on the screen).
 7. The licensee shall provide the necessary training to hosts and access producers associated with its community programming concerning the provision of audio description.
 8. 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.
 9. The licensee shall promote information on all of its disability-specific services and products, in the accessible manner(s) of its choice.
 10. 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.
 11. The licensee shall make the information on its website accessible to the point of providing 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.
 12. 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.
 13. The licensee shall make accessible any customer service functions that are available solely over its website.
 14. The licensee shall make its general call centres accessible to the point of providing 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 advertising, sponsorship messages and promos inserted into local availabilities are closed captioned.

Appendix 2 to Broadcasting Decision CRTC 2018-267

TELUS Communications Inc.

Application 2016-0945-5, received 31 August 2016

Additional condition of licence for the terrestrial broadcasting distribution undertakings serving the following locations in Alberta: Calgary, Edmonton (including St. Albert, Sherwood Park, Spruce Grove and Stony Plain), Fort McMurray, Grande Prairie and Red Deer

1. If it elects to offer community programming in a market with population of one million or more, the licensee shall form a citizen advisory committee for that market that is representative of the communities it serves in that market, including volunteers.

Appendix 3 to Broadcasting Decision CRTC 2018-267

TELUS Communications Inc.

Application 2016-0937-2, received 31 August 2016

Additional condition of licence for the regional terrestrial broadcasting distribution undertakings serving the following locations in British Columbia: Kelowna, Nanaimo, Penticton, Prince George, Terrace, Vancouver (including Lower Mainland, Fraser Valley and Whistler), Vernon and Victoria

1. If it elects to offer community programming in a market with a population of one million or more, the licensee shall form a citizen advisory committee for that market that is representative of the communities it serves in that market, including volunteers.
2. Subject to the paragraph below, the licensee is authorized to distribute, at its option, and as part of the basic service in Kelowna and Vernon, CKVU-DT (CityTV) Vancouver, CIVI-DT (CTV Two) Victoria, CHNM-DT (OMNI) Vancouver and CHNU-DT (Joytv) Fraser Valley.

The licensee shall distribute only the covered-over signals of the stations listed in the above paragraph in the following circumstances:

- there is a local station that originates local content operating in the licensed area;
- that station identifies itself to the Commission, with a notification to the licensee, requesting permission to avail itself of the covering-over provision; and
- the Commission confirms in writing to the licensee and the local station that the local station is entitled to avail itself of the covering-over provision.