



Broadcasting Decision CRTC 2018-268

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References: 2017-160 and 2017-160-1

Ottawa, 2 August 2018

Various licensees

Halifax and surrounding areas, Nova Scotia, and Sudbury, Ontario

Public record for these applications: 2016-0938-0 and 2016-0948-9

Public hearing in the National Capital Region

16 October 2017

Eastlink – Licence renewal for various terrestrial broadcasting distribution undertakings

The Commission renews the licences for the terrestrial broadcasting distribution undertakings set out in this decision from 1 September 2018 until 31 August 2025.

Applications

1. The Commission received applications to renew the licences for the following terrestrial broadcasting distribution undertakings (BDUs), which expire 31 August 2018:¹

Licensee	Application number and location
K-Right Communications Limited (Eastlink)	2016-0938-0 Halifax and surrounding areas, Nova Scotia
Persona Communications Inc. (Eastlink)	2016-0948-9 Sudbury, Ontario

2. The Commission received supporting interventions as well as comments regarding the applications.

¹ The Commission renewed these licences from 1 December 2016 to 30 November 2017 in Broadcasting 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.

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, these determinations are reflected below and in the conditions of licence for the BDUs, set out in the appendix to this decision.
5. In regard to accessibility, the Commission has determined that certain of the BDU licensees listed in the Introductory Decision, which includes the licensees renewed in this decision, will be required, by condition of licence, to close caption all 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, 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 requirements, expectations and encouragements relating to accessibility for those BDUs with a common set of accessibility-related conditions and expectations.
6. Having examined the public record for Eastlink's applications, the Commission considers that the outstanding issues relating to its BDUs that it must address in this decision relate to the following:
 - programming broadcast on the community channel;
 - filing of annual returns; and
 - previous non-compliance relating to contributions to Canadian programming.

Programming broadcast on the community channel

7. 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 complies with all related

provisions in the *Broadcasting Distribution Regulations* (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.
8. 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.
9. In addition, the Commission found it appropriate to impose a condition of licence requiring certain licensees, including Eastlink, 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.
10. In regard to Eastlink’s BDUs, the Commission also considers it appropriate to address the following issues relating to the community channel:
- compliance with access and local programming requirements; and
 - Eastlink’s request for authorization to count as local or access programming for Halifax any such programming produced within the Halifax Regional Municipality.

Compliance with access and local programming requirements

11. As requested by the Commission, Eastlink submitted program logs covering three weeks² of programming for its community channels operated by its licensed BDU in Halifax, Nova Scotia and by its exempt BDUs in Charlottetown, Prince Edward

² The logs submitted covered the weeks of 17-23 January, 8-14 May and 14-20 August 2016.

Island, Dartmouth, Nova Scotia and Delta, British Columbia, as well as audiovisual recordings and related logs covering a fourth week for the Halifax system.³

12. In its intervention, the Canadian Association of Community Television Users and Stations (CACTUS) submitted that the information included as part of the logs provided by Eastlink for the broadcast week of 8-14 May 2016 for its community channels in Halifax and Charlottetown demonstrated that Eastlink was operating in non-compliance with the local and access requirements in both Halifax and Charlottetown for that week.
13. For both areas, CACTUS identified a number of programs in the logs for which its own classification differed from that of Eastlink. Based on its revised calculations, CACTUS concluded that Eastlink fell below the exhibition requirements for local programming (60%) and for access programming (50% in Halifax, 30% in Charlottetown).
14. Eastlink denied the allegations put forth by CACTUS, arguing that they are based on erroneous interpretations and unfamiliarity with the Commission's definitions of local and access programming.
15. The Commission notes that CACTUS made a number of unsubstantiated allegations. For example, CACTUS argued that the show *Citizen Soldiers* was produced in New Brunswick, not Halifax, and that *Fishing with Friends* is produced by an Eastlink employee, contrary to what Eastlink indicated. While such factors could impact the qualification of these shows as access or local, the Commission considers that CACTUS failed to demonstrate that this was the case, while Eastlink provided detailed information to support its position. Accordingly, the Commission has accepted Eastlink's classifications of these programs and others.
16. CACTUS also categorized all programming broadcast in Charlottetown but produced outside of Charlottetown as not local and not access. However, as set out in Broadcasting Regulatory Policy 2017-319 and Broadcasting Order 2017-320, exempt BDUs such as Eastlink's BDU in Charlottetown are permitted to offer a zone-based community channel where two or more exempt BDU service areas are combined. Eastlink clearly indicated that the Charlottetown system is part of its zone-based community channel in the Atlantic Provinces, allowing it to consider programming from other service areas to be local and access in Charlottetown.
17. Finally, CACTUS argued that the program *Podium TV* should not be counted as access programming since it constitutes an Eastlink format used in different service areas. However, as established in the Introductory Decision, segments within a magazine-style program such as *Podium TV* can be counted as access as long as they meet the criteria for access programming.

³ The audiovisual recordings and related logs covered the week of 18-24 September 2016.

18. Accordingly, the Commission considers that the logs submitted by Eastlink regarding the percentage of access and local programming exhibited on its community channels in Halifax and Charlottetown more accurately reflected the actual performance of Eastlink's community channels in these areas than CACTUS's revised calculations.
19. Nonetheless, the Commission notes that based on the logs submitted by Eastlink, its community channels were operated in non-compliance with the existing requirements related to local and access programming for certain weeks in the areas of Charlottetown, Delta, Dartmouth and Halifax.
20. Eastlink explained that for the community channels serving Charlottetown and Delta, the level of local programming fell below the 60% requirement due to the unintentional misclassification of one program by its staff. Eastlink therefore acknowledged that it had temporarily operated its community channels in Charlottetown and Delta in non-compliance with the local programming requirement. It assured Commission staff that the issue had been addressed, that this particular channel was now exceeding the 60% requirement and that it had implemented measures to prevent such errors from recurring.
21. As regards the community channel serving Dartmouth, Eastlink acknowledged that it had been operating in non-compliance with the access programming requirement for the sample weeks of 17-23 January 2016 and 8-14 May 2016. Eastlink explained that the Dartmouth BDU was exempted in July 2016. It noted that it was in non-compliance during the above-noted weeks because it was broadcasting a significant amount of access programming originating from its neighbouring Halifax system. Eastlink argued that while this programming did not technically qualify as access programming in Dartmouth, it was highly relevant to Dartmouth viewers as both systems are located in the downtown core of the Halifax Regional Municipality.
22. Finally, Eastlink's logs for the Halifax undertaking indicated that the community channel fell slightly below the requirement for access programming for the week of 17-23 January 2016, during which 49.7% of such programming was reported, and for local programming for the week of 14-20 August 2016, during which 59.3% of such programming was reported.
23. In light of all of the above, the Commission finds that Eastlink has operated its community channels in non-compliance with the requirements related to local and access programming Charlottetown, Delta, Dartmouth and Halifax. As a result, the Commission will monitor the above-noted community channels closely during the next licence term to ensure that they meet the requirements in this regard.

Authorization regarding local and access programming in the Halifax Regional Municipality

24. Eastlink requested to be authorized by condition of licence to count as local or access programming for Halifax any such programming produced within the Halifax Regional Municipality, where Eastlink operates one licensed BDU (in Halifax) and two exempt BDUs (in Dartmouth and Bedford/Sackville).

25. The Commission considers that this approach is very similar to the zone-based approach that it has authorized for other licensees in the past, where zones may comprise both licensed and exempt BDUs that 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.
26. Accordingly, the Commission **approves** Eastlink's request. A **condition of licence** to this effect is set out in the appendix to this decision.

Filing of annual returns

27. The Commission notes that Eastlink filed incomplete annual returns for the 2011-2012 through 2015-2016 broadcast years. Specifically, Eastlink did not provide the required expense breakdown by programming source for any of its community channels.
28. Eastlink stated that its finance staff erroneously believed that Eastlink did not have to track this information and therefore did not reflect it in the annual returns. Since this deficiency was never brought to its attention by the Commission, Eastlink continued to follow this approach for five years without consulting its regulatory department or community channel staff for clarification.
29. After Commission staff brought the matter to Eastlink's attention, Eastlink informed relevant staff members within its finance department that these expenses must be included in the annual return. Eastlink requested that it not be found in non-compliance based on the fact that this was a simple administrative error rather than a purposeful omission and that it had taken steps to prevent the issue from recurring. Eastlink also noted that the fact that the information was not submitted does not mean it did not comply with its regulatory obligations relating to programming expenses directed to community access programming.
30. The Commission considers the filing of incomplete annual returns to be a serious matter. The annual returns allow the Commission not only to monitor the broadcasting sector but also to review a licensee's compliance with the Regulations. In this case, Eastlink's failure to provide complete annual returns did not allow the Commission to fully review the licensee's compliance with section 32(2) of the Regulations relating to expenditures on community access television programming.
31. In light of the above, the Commission finds Eastlink in non-compliance with section 11(1) of the Regulations relating to the filing of annual returns. In the appendix to this decision, the Commission has imposed a **condition of licence** requiring the licensee to submit programming-related expenses in the annual returns for its community channels in the manner set out in Appendix 2 to Broadcasting Regulatory Policy 2016-224.

Previous non-compliance relating to contributions to Canadian programming

32. In a decision letter dated 14 January 2015, the Commission found Eastlink in non-compliance with the contribution requirements set out in sections 34 and 35 of the Regulations for the 2009-2010 through 2012-2013 broadcast years. As directed, Eastlink paid the shortfall amounting to \$390,186 within 90 days of the decision letter.

Conclusion

33. The Commission is satisfied that the non-compliance issues examined in this decision have been resolved, could be resolved relatively easily based on their minor nature, or relate to exempt undertakings. Accordingly, the Commission finds it appropriate to renew the licences in question for a full licence term.

34. In light of all the above, the Commission **renews** the 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 appendix to this decision.

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
- *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
- *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
- *Community television policy*, Broadcasting Regulatory Policy CRTC 2010-622, 26 August 2010

This decision is to be attached to each licence.

Appendix to Broadcasting Decision CRTC 2018-268

Terms, conditions of licence, expectations and encouragement for the 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 applicable to all terrestrial broadcasting distribution undertakings

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. The licensee shall submit expenses for all programming broadcast on the community channel with its annual return. These expenses must be broken down according to the sources of “programming expenses” set out under the heading “Accountability and reporting” in Appendix 2 to *Policy framework for local and community television*, Broadcasting Regulatory Policy CRTC 2016-224, 15 June 2016.
6. 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.

7. The licensee shall close caption 100% of original licensee-produced English- and French-language programming aired on its community channel by the end of the licence term.
8. The licensee shall provide audio description for all the key elements of information programs, including news programming, on its community channel (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).
9. The licensee shall provide the necessary training to host and access producers associated with its community channel concerning the provision of audio description.
10. 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.
11. The licensee shall promote information on all of its disability-specific services and products in the accessible manner(s) of its choice.
12. 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.
13. 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.
14. 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.
15. The licensee shall make accessible any customer service functions that are available solely over its website.
16. 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.

Additional condition of licence for the terrestrial broadcasting distribution undertaking serving Halifax and surrounding areas, Nova Scotia

17. For the purposes of section 31 of the *Broadcasting Distribution Regulations*, the licensee is authorized to adopt the following definitions regarding the programming broadcast by the undertaking:

- “local community television programming” means programming that is reflective of the community served by the licensee and that is produced by the licensee in its licensed area, another broadcasting distribution undertaking operating within the Halifax Regional Municipality or an individual, group or community television corporation residing within the Halifax Regional Municipality.
- “community access television programming” means programming that is produced by an individual, group or community television corporation residing within the Halifax Regional Municipality.

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.

Encouragement

In accordance with *Implementation of an employment equity policy*, Public Notice CRTC 1992-59, 1 September 1992, the Commission encourages the licensee to consider employment equity issues in its hiring practices and in all other aspects of its management of human resources.