



Broadcasting Decision CRTC 2018-481

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Reference: Part 1 licence renewal application posted on 27 November 2017

Ottawa, 18 December 2018

Access Communications Co-operative Limited
Regina, Saskatchewan

Public record for this application: 2017-0850-5

On-demand service – Licence renewal

*The Commission **renews** the broadcasting licence for the licensee’s English-language, general interest on-demand service serving Regina, Saskatchewan, from 1 January 2019 to 31 August 2023.*

Application

1. Access Communications Co-operative Limited (Access) filed an application to renew the broadcasting licence for its English-language, general interest video-on-demand¹ (VOD) service serving Regina, Saskatchewan, which expires 31 December 2018.² This service broadcasts programming consisting largely of English-language feature films, as well as community shows, television shows and concerts, in English and in other languages.
2. Access confirmed that it would adhere to the standard requirements for on-demand services set out in the appendix to Broadcasting Regulatory Policy 2017-138, with certain exceptions, which are addressed below.
3. The Commission received comments regarding this application from the Shaw Rocket Fund and the Canadian Media Producers Association (CMPA). The licensee did not reply to the interventions.

¹ In Broadcasting Regulatory Policy 2015-86, the Commission considered that it would be appropriate to consolidate virtually all television programming services into three broad licensing categories. As part of this consolidation, and based on the way in which services are distributed to Canadians by broadcasting distribution undertakings, the former licensing categories “video-on-demand service” and “pay-per-view service” were regrouped under the licensing category “on-demand service.”

² The Commission administratively renewed the broadcasting licence for this service from 1 September 2015 to 31 August 2016 in Broadcasting Decision 2015-44; from 1 September 2016 to 31 August 2018 in Broadcasting Decision 2016-7; and from 1 September 2018 to 31 December 2018 in Broadcasting Decision 2018-317.

Issues

4. After examining the record for this application in light of applicable regulations and policies, the Commission considers that the issues it must address relate to the following:
 - a shortfall in the service's required contributions to Canadian programming;
 - a request to amend the service's condition of licence relating to the provision of closed captioning;
 - a request to maintain the service's conditions of licence relating to licensee-produced programming and affiliation agreements;
 - a request to delete the service's condition of licence relating to the allocation of community programming revenues to the production of community programming; and
 - a request to delete the service's expectation relating to the funding of community programming.

Shortfall in contributions to Canadian programming

5. Access is required by condition of licence to contribute 5% of the gross annual revenues of its VOD service to an existing Canadian independent production fund administered independently of its undertaking.³ Based on the Commission's analysis of the annual returns for the service, Access has incurred a shortfall of \$66,441 in regard to those required contributions over the course of the current licence term.
6. In a letter dated 17 August 2017, the Commission requested that Access provide proof of payments made to Canadian independent production funds for the 2010-2011 through 2015-2016 broadcast years. In its reply dated 31 August 2017, Access indicated that it has been allocating the required payments to its related broadcasting distribution undertaking's (BDU's) community channel. It added that a misunderstanding as to how its 5% contribution could be allocated led it to believe that it was permitted to allocate its contributions to Canadian programming in this manner. The licensee submitted that this did not have an impact on the ability of the Canada Media Fund (CMF) to support the production of Canadian programming, and noted that going forward, it would direct the necessary funds to the CMF or to another independent production fund as required by its condition of licence.
7. In a letter dated 10 October 2017, the Commission questioned Access on the possibility of requiring the licensee to pay the shortfall to the CMF or to an independent production fund to rectify the situation. In its reply letter dated

³ Condition of licence 6 set out in the appendix to Broadcasting Decision 2008-342

16 October 2017, Access indicated that the imposition of a condition of licence to that effect would impose financial hardship at this time, given the declining revenues of its on-demand service and the increased financial pressure on its cable system. It stated, however, that it would adhere to such a condition of licence should the Commission deem re-payment necessary.

8. In its intervention, the CMPA submitted that this instance of non-compliance constitutes a serious breach of the licensee's obligations and requested that the Commission take steps to ensure the service's future compliance over the next licence term with the service's condition of licence relating to contributions to an existing Canadian independent production fund.
9. In light of the information provided on the record of this proceeding, the Commission finds Access in non-compliance with its condition of licence relating to annual contributions to an existing Canadian independent production fund. The Commission also finds it appropriate to require the licensee to rectify the \$66,441 shortfall by making a contribution in that amount to the CMF or to another certified independent production fund by no later than 31 August 2019, and to provide, by 30 November 2019 in the annual return for the service for the 2018-2019 broadcast year, proof that the contribution has been made. A **condition of licence** to that effect is set out in the appendix to this decision. This contribution shall be over-and-above the annual required contribution to an existing Canadian independent production fund.
10. The Commission reminds Access that pursuant to Broadcasting Regulatory Policy 2017-138, the licensee must make its required payments on an annual basis to an appropriate Canadian independent production fund over the next licence term, and that the fulfillment of those payments will be monitored. The Commission further reminds the licensee that it must clearly indicate in its annual return the manner in which it has made the required payments.

Closed captioning

11. When it approved the application for a licence to operate the present service in Broadcasting Decision 2008-342, the Commission required Access, by condition of licence, to close caption 100% of the service's programs broadcast over the broadcast day, consistent with the approach set out in Broadcasting Public Notice 2007-54.
12. In the present application, Access requested an amendment to the standard condition of licence relating to closed captioning set out in the appendix to Broadcasting Regulatory Policy 2017-138, such that it be required to close caption community programming broadcast on the service only by the end of the new licence term. The licensee argued that it is not financially viable to close caption 100% of the community programming offered on its VOD service at this time. It added that the requested amendment is necessary for harmonizing the requirements relating to the closed captioning of community programming across its VOD service and its BDU.

13. The Commission notes that under the standard conditions of licence set out in the appendix to Broadcasting Regulatory Policy 2017-138, Access is only required to close caption community programming that is not community access television programming. The licensee did not provide information regarding the quantity of programming that would be affected by the requested amendment, information that would enable the Commission to assess the reasonableness of the request. Further, to the extent that Access's arguments for the exception are based on the financial viability of close captioning community programming, the Commission finds that Access did not provide sufficient evidence to support its request for the exception. Consequently, the Commission **denies** the licensee's request. Access's on-demand service will therefore be subject to the closed captioning requirement for on-demand services set out in the appendix to Broadcasting Regulatory Policy 2017-138.

Request to maintain conditions of licence relating to licensee-produced programming and affiliation agreements

14. Access's on-demand service is subject to the following conditions of licence set out in the appendix to Broadcasting Decision 2008-342:

2. The licensee is authorized to distribute programming, other than filler programming, that is produced by the licensee or by a person related to the licensee provided that such programming does not exceed, in each broadcast year, 10% of the total programming made available to subscribers.

11. The licensee shall not enter into an affiliation agreement with the licensee of a broadcasting distribution undertaking unless the agreement incorporates a prohibition against linkage of its service with any non-Canadian discretionary service.

15. The licensee requested that these conditions of licence be maintained for its on-demand service. However, it did not provide information or rationale to justify its request.

16. When it issued the standard conditions of licence for on-demand services in the appendix to Broadcasting Regulatory Policy 2017-138, the Commission did not include a prohibition relating to the broadcast of licensee-produced programming or any restrictions relating to affiliation agreements between the licensees of on-demand services and BDUs. In light of this, the Commission does not consider that maintaining the above conditions of licence for Access's on-demand service is necessary.

17. Accordingly, the Commission **denies** Access's requests to maintain the above-noted conditions of licence for its on-demand service.

Allocation of community programming revenues to the production of community programming

18. In Broadcasting Decision 2008-342, the Commission considered that allowing Access's proposed service to charge a subscriber fee for a community program or a program that contains commercial messages that were already included in a previous broadcast by a Canadian programming service was appropriate in light of the fully discretionary nature of such services. Accordingly, and given that Access had agreed to adhere to a condition of licence requiring it to allocate all revenues generated by the subscriber fee for the distribution of its community programming exclusively to the production of community programming, the Commission imposed the following condition of licence on Access's VOD service:

The licensee shall allocate all revenues generated by a subscriber fee for the distribution of the licensee's community programming exclusively to the production of community programming.

19. In the present application, Access requested that the above condition of licence be deleted since it does not charge a subscriber fee to access the community programming offered on its on-demand service.

20. The standard requirements for on-demand services set out in the appendix to Broadcasting Regulatory Policy 2017-138 do not include a requirement relating to the above. Further, in Broadcasting Regulatory Policy 2016-224, the Commission encouraged all BDUs, including on-demand services, to make their community programming available on all platforms, including online, to all Canadians. Accordingly, the Commission finds the above condition of licence is not relevant for Access's on-demand service, and **approves** the licensee's request to delete that condition of licence.

Expectation relating to the viewing period for programming in programming packages

21. As set out in the appendix to Broadcasting Decision 2008-342, the Commission expects Access to limit to one week the total period during which the programming in programming packages may be viewed. The licensee requested that this expectation be deleted, to allow it to ensure that the largest amount of programming is available to customers whenever they want to view it.

22. The standard expectations applicable to on-demand services, set out in the appendix to Broadcasting Regulatory Policy 2017-138, do not include the above-noted expectation. Accordingly, the Commission **approves** the licensee's request in this regard.

Conclusion

23. In light of all of the above, the Commission **renews** the broadcasting licence for Access Communications Co-operative Limited's English-language on-demand

service serving Regina, Saskatchewan, from 1 January 2019 to 31 August 2023. The terms and **conditions of licence** are set out in the appendix to this decision.

Secretary General

Related documents

- *Various television stations and services – Administrative renewals*, Broadcasting Decision CRTC 2018-317, 24 August 2018
- *Standard requirements for on-demand services*, Broadcasting Regulatory Policy CRTC 2017-138, 10 May 2017
- *Policy framework for local and community television*, Broadcasting Regulatory Policy CRTC 2016-224, 15 June 2016
- *Administrative renewals*, Broadcasting Decision CRTC 2016-7, 12 January 2016
- *Let's Talk TV: The way forward – Creating compelling and diverse Canadian programming*, Broadcasting Regulatory Policy CRTC 2015-86, 12 March 2015
- *Administrative renewals*, Broadcasting Decision CRTC 2015-44, 15 February 2015
- *Video-on-demand service*, Broadcasting Decision CRTC 2008-342, 5 December 2008
- *A new policy with respect to closed captioning*, Broadcasting Public Notice CRTC 2007-54, 17 May 2007

This decision is to be appended to the licence.

Appendix to Broadcasting Decision CRTC 2018-481

Terms, conditions of licence, expectations and encouragements for the English-language, general interest on-demand service serving Regina, Saskatchewan

Terms

The licence will take effect 1 January 2019 and expire 31 August 2023.

Conditions of licence

1. The licensee shall adhere to the standard conditions of licence for on-demand services set out in the appendix to *Standard requirements for on-demand services*, Broadcasting Regulatory Policy CRTC 2017-138, 10 May 2017, as well as to the conditions of licence set out in the broadcasting licence for the undertaking.
2. The licensee shall make a contribution of \$66,441 to the Canada Media Fund or to another certified independent production fund by no later than 31 August 2019, and provide, by 30 November 2019 in the service's annual return for the 2018-2019 broadcast year, proof that the contribution has been made. This contribution shall be over-and-above the annual required contribution to an existing Canadian production fund.

Expectations

The standard expectations applicable to this licensee are set out in the appendix to *Standard requirements for on-demand services*, Broadcasting Regulatory Policy CRTC 2017-138, 10 May 2017.

Encouragements

The standard encouragements applicable to this licensee are set out in the appendix to *Standard requirements for on-demand services*, Broadcasting Regulatory Policy CRTC 2017-138, 10 May 2017.