



## Broadcasting Decision CRTC 2019-229

PDF version

Reference: 2018-430

Ottawa, 28 June 2019

### **AEBC Internet Corp.**

Vancouver and Lower Mainland, British Columbia

*Public record for this application: 2018-0172-0*

### **Terrestrial broadcasting distribution undertaking serving Vancouver and the Lower Mainland – Licence renewal and licence amendments**

*The Commission **renews** the broadcasting licence for the terrestrial broadcasting distribution undertaking (BDU) serving Vancouver and the Lower Mainland, British Columbia, from 1 July 2019 to 31 August 2021. This short-term renewal will allow for an earlier review of the licensee's operations in light of the relevant regulatory and policy framework.*

*Consequently, the Commission **denies** the licensee's request to add this BDU to the regional broadcasting licence for its terrestrial BDUs serving various locations in British Columbia. However, the licensee may file an application requesting an amendment to its regional licence in this regard in the future.*

*In addition, the Commission **approves** various requests relating to certain of the BDU's conditions of licence.*

### **Background**

1. In Broadcasting Decision 2011-450, the Commission approved an application by AEBC Internet Corp. (AEBC) for a broadcasting licence to operate a terrestrial broadcasting distribution undertaking (BDU) to serve Vancouver and the Lower Mainland, British Columbia. The service area-specific broadcasting licence for that undertaking expires 30 June 2019.<sup>1</sup>

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<sup>1</sup> The Commission administratively renewed this broadcasting licence from 1 September 2018 to 31 December 2018 in Broadcasting Decision 2018-182; from 1 January 2019 to 31 March 2019 in Broadcasting Decision 2018-431, and from 1 April 2019 to 30 June 2019 in Broadcasting Decision 2019-83.

2. In Broadcasting Decision 2015-151, the Commission approved an application by AEBC for a regional broadcasting licence to operate terrestrial BDUs to serve various locations in British Columbia.<sup>2</sup> That regional broadcasting licence expires 31 August 2021.

### **Application**

3. On 21 March 2018, AEBC filed a licence renewal application for its terrestrial BDU serving Vancouver and the Lower Mainland (see Broadcasting Notice of Consultation 2018-430). The Commission did not receive any interventions regarding the application.
4. In that application, AEBC requested that the Vancouver and the Lower Mainland BDU be added to the above-noted regional broadcasting licence for BDUs serving various locations in British Columbia. However, the licensee's request would require an amendment to that regional broadcasting licence, which falls outside the scope of the present application. Accordingly, the Commission **denies** the licensee's request in this regard. Instead, the Commission has processed AEBC's application as a licence renewal application for its BDU serving Vancouver and the Lower Mainland, British Columbia.

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

5. Having examined the public record for AEBC's application, the Commission considers that the issues it must address in this decision relate to the following:
  - the mandatory carriage of ICI ARTV (formerly ARTV);
  - the licensee's compliance with requirements relating to contributions to Canadian programming;
  - the licensee's compliance with requirements relating to the filing of annual returns;
  - requests by the licensee for authorization to maintain or delete various conditions of licence;
  - the licensee's adherence to the Wholesale Code and to the Television Service Provider Code, and participation in the Commission for Complaints for Telecom-television Services Inc.; and
  - the licensee's adherence to conditions of licence, requirements and expectations relating to accessibility.

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<sup>2</sup> Greater Victoria, Okanagan Valley, Kamloops, Nanaimo, Prince George, Courtenay, Duncan, Whistler, Powell River and their surrounding areas.

## **Mandatory carriage of ICI ARTV**

6. Pursuant to section 9(1)(h) of the *Broadcasting Act* (the Act), the Commission may “require any licensee who is authorized to carry on a distribution undertaking to carry, on such terms and conditions as the Commission deems appropriate, programming services specified by the Commission.”
7. In Broadcasting Regulatory Policy 2013-372, the Commission approved a request by the Canadian Broadcasting Corporation (CBC) to obtain a distribution order mandating the distribution,<sup>3</sup> on a discretionary basis, of the French-language discretionary service ICI ARTV in anglophone markets. This distribution order is set out in Broadcasting Order 2013-375.<sup>4</sup>
8. As part of its application, AEBC provided a link to its distribution grids, a review of which indicated that AEBC did not offer ICI ARTV on a discretionary basis as required. In reply to a Commission staff letter dated 26 February 2019, the licensee confirmed that it began to do so in November 2018 and that its website had been updated accordingly.
9. Given that ICI ARTV has benefitted from mandatory carriage on a discretionary basis since 1 January 2014, and given that AEBC did not offer the service until November 2018, the Commission finds that the licensee was, until November 2018, in non-compliance with the mandatory distribution order for ICI ARTV set out in Broadcasting Order 2013-375.

## **Compliance with requirements relating to contributions to Canadian programming**

10. Pursuant to section 34(3) of the *Broadcasting Distribution Regulations*<sup>5</sup> (the Regulations), AEBC was required to make, for each broadcast year, a contribution of 5% of its gross annual revenues derived from broadcasting activities in the broadcast year to Canadian programming, such as to an independent production fund or the Canada Media Fund (CMF). A review of the record shows that AEBC has incurred a shortfall in regard to that required contribution in the amount of \$2,928.

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<sup>3</sup> This form of mandatory distribution relates to the “must-offer” status of certain services, i.e., cable or satellite operators must make the service available to subscribers, who can then choose whether to subscribe to it. For the other two forms of mandatory distribution specified in Broadcasting Regulatory Policy 2013-372 – mandatory distribution in certain regions of the country, and national distribution on all basic services of all BDUs –, subscribers cannot opt out of receiving and, if a monthly wholesale rate is set, paying for these channels where BDUs choose to pass on the cost.

<sup>4</sup> As specified in that broadcasting order, the distribution order expired 31 August 2018. In Broadcasting Decision 2018-407, the Commission extended the distribution order for ICI ARTV, as well as the orders for the television programming undertakings CBC News Network and ICI RDI, until 31 August 2020.

<sup>5</sup> This provision of the Regulations was amended as of the 2017-2018 broadcast year. Prior to that amendment, at the time relevant to the non-compliance at issue, section 34(3) of the Regulations applied to BDUs that did not distribute their own community programming on the community channel and operated in a licensed area where no community programming undertakings were licensed, as was the case for AEBC’s BDU.

11. AEBC stated that the shortfall was an unintentional oversight on its part. The licensee submitted that as a relatively new company, it is still learning how to handle Commission reporting and BDU compliance issues, and noted that staff turnover has caused difficulties in this regard. Although AEBC indicated in a letter dated 23 August 2018 that the shortfall would be rectified as soon as possible, the Commission has not received any confirmation that the missing contributions were paid.
12. In light of the above, the Commission finds AEBC in non-compliance with section 34(3) of the Regulations. In the appendix to this decision, the Commission has imposed a **condition of licence** requiring the licensee to rectify the shortfall by making a contribution of \$2,928 to the CMF by no later than **27 September 2019**.

### **Compliance with requirements relating to the filing of annual returns**

13. Pursuant to section 11(1) of the Regulations, on or before 30 November of each year, licensees are required to file an annual return for the broadcast year ending the previous 31 August. According to Commission records, AEBC's annual return for the 2016-2017 broadcast year was filed on 18 April 2018, more than four months after the 30 November 2017 deadline.
14. AEBC submitted that staff turnover, a lack of sophistication and a lack of internal communication regarding the requirement to submit annual returns led to the late filing of the annual return for the 2016-2017 broadcast year.
15. In light of the above, the Commission finds AEBC in non-compliance with section 11(1) of the Regulations for the 2016-2017 broadcast year.

### **Requests to maintain or delete various conditions of licence**

16. AEBC requested authorization to maintain or delete various conditions of licence relating to the distribution of various U.S. signals, and to maintain a condition of licence relating to the distribution of a special programming service consisting of ethnic and multicultural programs.
17. The Commission finds the requests regarding the U.S. signals appropriate. As the distribution of certain of the U.S. signals is now authorized by the Regulations, a condition of licence in this regard is no longer required. Where this is not the case, maintaining the pre-existing condition of licence will permit the licensee to continue distributing the signals as part of the basic service.
18. In regard to the special programming service, the Commission notes that maintaining the condition of licence would be consistent both with the licensee's previous authorization and with authorizations granted to certain other licensees.
19. In light of the above, the Commission **approves** these requests. **Conditions of licence** in regard to the above are set out in the appendix to this decision.

**Adherence to the Wholesale Code and to the Television Service Provider Code, and participation in the Commission for Complaints for Telecom-television Services Inc.**

20. In Broadcasting Notice of Consultation 2016-147, the Commission requested that the licensees of certain terrestrial BDUs submit applications in regard to the proposed imposition of certain conditions of licence relating to the Wholesale Code (set out in the appendix to Broadcasting Regulatory Policy 2015-438), the Television Service Provider (TVSP) Code (set out in the appendix to Broadcasting Regulatory Policy 2016-1) and participation in the Commission for Complaints for Telecom-television Services Inc.<sup>6</sup> (CCTS) (see Broadcasting and Telecom Regulatory Policy 2016-102). Following the issuance of that notice of consultation, AEBC submitted such an application relating to the imposition of those conditions of licence on its BDU serving Vancouver and the Lower Mainland. Conditions of licence to that effect were imposed on AEBC's BDU in Broadcasting Decision 2016-458.
21. In regard to the present application, AEBC did not request that these conditions of licence be either maintained or deleted. However, given that the licensee previously agreed to the imposition of those conditions of licence and that the Commission's publicly stated policy is that all licensed BDUs are to adhere to those conditions of licence on a going-forward basis, and given the Commission's statement set out in the above-noted regulatory policies that, where possible, it would implement such conditions of licence on its own motion, the Commission considers that it would be appropriate to maintain these conditions of licence for AEBC's BDU. Accordingly, **conditions of licence** relating to adherence to the Wholesale Code and to the TVSP Code, and to participation in the CCTS are set out in the appendix to this decision.

**Adherence to conditions of licence, requirements and expectations relating to accessibility**

22. The Commission's current policy regarding accessibility, set out in Broadcasting and Telecom Regulatory Policy 2009-430, includes a framework of conditions of licence, requirements, expectations and encouragements relating to the provision of closed captioning, described video and audio description, as well as requirements, expectations and encouragements relating to customer facing information. In Broadcasting Decision 2018-263, in which the Commission announced the renewal of the broadcasting licences for various BDUs, the Commission noted that BDU licensees that were subject to an encouragement relating to the accessibility of their set-top boxes no longer need that encouragement as it was superseded by the requirement in this regard set out in section 7.3 of the Regulations. That section was added to the Regulations pursuant to the Commission's determination in this regard set out in Broadcasting Regulatory Policy 2015-104.

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<sup>6</sup> Formerly the Commissioner for Complaints for Telecommunications Services Inc.

23. In that same decision, the Commission stated that all of the BDUs for which the licences were being renewed would be subject to the same conditions of licence and expectations relating to accessibility. In regard to the present case, AEBC confirmed that it would adhere to the standard conditions of licence, requirements and expectations relating to accessibility.
24. Although AEBC does not currently operate a community channel, the Commission considers that it would be appropriate to include the standard condition of licence relating to the provision of audio description for original licensee-produced English and French-language community programming in the event that the licensee decides to launch a community channel during the next licence term. In regard to the closed captioning of community programming, in Broadcasting Decision 2018-263, the Commission determined that the licensees of BDUs for which the licences were renewed in that decision should have a common date, specifically, 31 August 2025, on which the requirement to close caption original licensee-produced English- and French-language community programming would come into effect. This ensured that these BDU licensees were provided with a similar opportunity to improve their processes and adapt their business models, so as to ensure that all such programming is closed captioned by a set deadline. In regard to the present case, as noted below, the new licence term for AEBC's BDU serving Vancouver and the Lower Mainland will expire prior to 31 August 2025. Consequently, for that BDU, the Commission intends to impose the standard condition of licence relating to the closed captioning of original licensee-produced programming, and set out the standard expectation relating to the closed captioning of original English- and French-language access programming, in the context of a future licence renewal for the service such that both take effect on 1 September 2025.
25. In light of the above, the Commission has, in the appendix to this decision, set out for AEBC's BDU serving Vancouver and the Lower Mainland the standard **conditions of licence**, requirements and expectations relating to accessibility, with the exception of the above-noted condition of licence and expectation relating to closed captioning.

## **Conclusion**

26. As a result of its review of the information on the record of AEBC's renewal application and particularly in light of the diverse and long-lasting non-compliance and the serious nature of these issues, the Commission finds it appropriate to grant the licensee a short-term renewal for its BDU serving Vancouver and the Lower Mainland, British Columbia.
27. As noted above, AEBC's regional broadcasting licence for its BDUs serving various locations in British Columbia expires 31 August 2021. As such, renewing the broadcasting licence for AEBC's terrestrial BDU serving Vancouver and the Lower Mainland until 31 August 2021 would align the expiry dates for both licences. This would allow the Commission to review the licensee's compliance in the context of a possible amalgamation of the two licences, as requested by the licensee in the present application, within a relatively short timeline. Should AEBC wish to add the

Vancouver and Lower Mainland BDU to the above-noted regional broadcasting licence, it may make such a request in the context of the consideration of the renewal of that regional licence by filing separate applications to amend that licence and to revoke the broadcasting licence for Vancouver and the Lower Mainland.

28. In light of all the above, the Commission **renews** the broadcasting licence for the terrestrial BDU serving Vancouver and the Lower Mainland, British Columbia, from 1 July 2019 to 31 August 2021. This short-term renewal will allow the Commission to review, at an earlier date, the licensee's operations in light of the relevant regulatory and policy framework. The terms and **conditions of licence** for the undertaking are set out in the appendix to this decision.

## Reminders

29. The Commission reminds the licensee that it must comply at all times with the requirements set out in the Act, the Regulations, its conditions of licence, and the Commission's mandatory distribution orders.
30. Further, the Commission reminds the licensee of the importance of filing complete annual returns in a timely manner. In this regard, the Commission is charged with the supervision and regulation of the Canadian broadcasting system. Annual returns are key components for the Commission's ongoing monitoring plan and contribute to an authoritative source of statistics on the Canadian broadcasting industry for all stakeholders. In addition, annual returns allow the Commission to effectively assess, supervise, and regulate the broadcasting industry as a whole. They also allow the Commission to monitor a licensee's performance and compliance with regulatory requirements.

Secretary General

## Related documents

- *Various terrestrial broadcasting distribution undertakings – Administrative renewals*, Broadcasting Decision CRTC 2019-83, 19 March 2019
- *Various terrestrial broadcasting distribution undertakings – Administrative renewals*, Broadcasting Decision CRTC 2018-431, 22 November 2018
- *Notice of applications received*, Broadcasting Notice of Consultation CRTC 2018-430, 22 November 2018
- *Various television and radio programming undertakings – Administrative renewals*, Broadcasting Decision CRTC 2018-407, 29 October 2018
- *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
- *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
- *Call for licence renewal applications*, Broadcasting Notice of Consultation CRTC 2016-147, 21 April 2016
- *Review of the structure and mandate of the Commissioner for Complaints for Telecommunications Services Inc.*, Broadcasting and Telecom Regulatory Policy CRTC 2016-102, 17 March 2016
- *The Television Service Provider Code*, Broadcasting Regulatory Policy CRTC 2016-1, 7 January 2016
- *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015
- *Regional broadcasting licence for terrestrial broadcasting distribution undertakings to serve various locations in British Columbia*, Broadcasting Decision CRTC 2015-151, 16 April 2015
- *Let's Talk TV – Navigating the Road Ahead – Making informed choices about television providers and improving accessibility to television programming*, Broadcasting Regulatory Policy CRTC 2015-104, 26 March 2015
- *Distribution of the programming service of ARTV inc. by licensed terrestrial broadcasting distribution undertakings*, Broadcasting Order CRTC 2013-375, 8 August 2013
- *Applications for mandatory distribution on cable and satellite under section 9(1)(h) of the Broadcasting Act*, Broadcasting Regulatory Policy CRTC 2013-372, 8 August 2013
- *Terrestrial broadcasting distribution undertaking to serve Vancouver and the Lower Mainland*, Broadcasting Decision CRTC 2011-450, 28 July 2011, as corrected by Broadcasting Decision CRTC 2011-450-1, 3 October 2011
- *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009

*This decision is to be appended to the licence.*

## Appendix to Broadcasting Decision CRTC 2019-229

### Terms, conditions of licence, expectations and encouragement for the terrestrial broadcasting distribution undertaking serving Vancouver and the Lower Mainland, British Columbia

#### Terms

The licence will take effect 1 July 2019 and expire 31 August 2021.

#### 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 Telecommunications Services Inc.
4. The licensee is authorized to distribute, at its option, KVOS-TV (IND) Bellingham and KSTW (IND) Tacoma/Seattle, Washington, as part of its basic service.
5. The licensee is authorized to distribute, at its option, a special programming service consisting of ethnic and multicultural programs. The licensee shall not distribute as part of this special programming service any commercial message other than sponsorship credits combining no more than the logo, name, address, telephone number and type of activity or profession of the sponsor. The sponsorship credits may contain sound and/or visual images, whether moving or fixed. The sponsorship credits shall have no purpose other than to acknowledge, in a concise and direct manner, the sponsor's contribution and shall at no time constitute a detailed description or promotional device.
6. The licensee shall make a contribution of \$2,928 to the Canada Media Fund by no later than **27 September 2019**, and provide, by 30 November 2019, in the undertaking's annual return for the 2018-2019 broadcast year, proof that this contribution has been made. This contribution shall be over and above the annual required contribution to an existing Canadian production fund.
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 provide audio description for all key elements of information programs, including news programming on its community programming service (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 hosts 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.

## **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.

## **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.