



Broadcasting Decision CRTC 2019-230

PDF version

Reference: 2018-430

Ottawa, 28 June 2019

TELUS Communications Inc.

Baie-Comeau, Montmagny, Mont-Tremblant, Sainte-Marie, Saint-Georges and Sept-Îles, and their surrounding areas, Quebec

Public record for this application: 2017-0866-1

Terrestrial broadcasting distribution undertakings serving various locations in Quebec – Licence renewal and amendments

*The Commission **renews** the regional broadcasting licence for terrestrial broadcasting distribution undertakings (BDUs) serving various locations in Quebec, as set out in this decision, from 1 July 2019 to 31 August 2024. This short-term renewal will allow for an earlier review of the licensee's operation of its undertakings in light of the relevant regulatory and policy framework, including that relating to community programming.*

*Consequently, the Commission **denies** the licensee's request to surrender its regional broadcasting licence so that it may operate the above-noted BDUs as exempt undertakings.*

*In addition, the Commission **approves**, among other things, the licensee's request regarding the addition of a condition of licence relating to its mandatory Canadian programming contribution to local expression.*

Background

1. TELUS Communications Inc. (TELUS) currently holds a regional broadcasting licence to operate terrestrial broadcasting distribution undertakings (BDUs) serving Baie-Comeau, Montmagny, Mont-Tremblant, Sainte-Marie, Saint-Georges and Sept-Îles, and their surrounding areas, Quebec.¹ That regional licence expires 30 June 2019.²
2. TELUS also currently holds regional broadcasting licences to operate terrestrial BDUs serving various locations in British Columbia and Alberta. In Broadcasting Decision 2018-267, the Commission renewed those regional licences until 31 August 2023.

¹ Prior to the filing of the present application, this BDU included service areas for Rimouski and Gaspé, Quebec. These service areas have since been carved out and are now served by exempt undertakings.

² 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.

3. In that decision, the Commission denied a request by TELUS for authorization to surrender its regional licences in British Columbia and Alberta in favour of service area-specific licences. In that case, TELUS had requested that should its applications be denied, it be allowed to maintain the 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. Noting that other Internet-Protocol Television (IPTV) operators had already been granted a condition of licence setting out the revised contribution scheme,³ that the initial rationale for approving the condition of licence was still valid and that maintaining the condition of licence would ensure consistency with the amended regulatory framework relating to contributions to local expression set out in the *Broadcasting Distribution Regulations* (the Regulations) and announced in Broadcasting Regulatory Policy 2017-278, the Commission approved TELUS's request.

Application

4. On 31 March 2017, TELUS filed an application in which it requested that the Commission allow the regional broadcasting licence for the above-noted BDUs serving various locations in Quebec to expire to allow those undertakings to operate pursuant to the exemption order for terrestrial BDUs serving fewer than 20,000 subscribers.⁴ In this regard, TELUS stated that each undertaking currently operating under the regional licence serves fewer than 20,000 subscribers.
5. Should the Commission deny that request, TELUS requested that the Commission renew the regional broadcasting licence. In such a case, the licensee also requested that the above-noted authorization granted to its British Columbia and Alberta BDUs in Broadcasting Decision 2018-267 allowing it to devote the total of its mandatory contribution to Canadian programming to local expression be granted to its Quebec BDUs.
6. The Commission did not receive any interventions regarding this application.

Request to revoke the regional broadcasting licence for the Quebec BDUs and to operate those BDUs as exempt undertakings

7. TELUS submitted that BDUs no longer benefit from the regional licensing regime and that maintaining its regional broadcasting licence is putting it at a regulatory disadvantage vis-à-vis any competitor that is not licensed under that regime.
8. TELUS argued 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 seek 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 the Commission has established for a “carve

³ According to this contribution scheme, licensed BDUs are required to devote to Canadian programming 4.7%, rather than the previously mandated 5%, of gross revenues derived from broadcasting activities in the licensed area in the previous broadcast year, to take into account the new requirement set out in the Regulations for licensed BDUs to now contribute 0.3% of their revenues to the Independent Local News Fund.

⁴ Broadcasting Order 2017-320, set out in the appendix to Broadcasting Regulatory Policy 2017-319

out” (i.e., removing certain service areas from a regional licence so that BDUs can operate as exempt undertakings in those areas).⁵ TELUS added that new entrants to the broadcasting distribution sector can now enter any market without the need for a licence until they reach 20,000 subscribers. Finally, TELUS submitted that approval of its request to operate its Quebec BDUs as exempt undertakings would enable it to build on the success of its community programming service known as maCommunauté.

9. When it renewed TELUS’s regional licences for its BDUs serving various locations in British Columbia and Alberta, the Commission denied a request by the licensee to convert those regional licences into a series of service area-specific licences. The Commission found that issuing service area-specific licences would be inconsistent with its general approach regarding the treatment of large multi-system operators (MSOs). It also noted that it had adopted the regional licensing approach as that approach is more efficient and allows for the issuance of fewer licences, thereby reducing the administrative burden on both licensees and the Commission. Finally, the Commission stated that to the extent that TELUS’s request would represent a change in policy regarding the treatment of larger MSOs, the licence renewal proceeding for TELUS’s British Columbia and Alberta BDUs was not the venue in which to consider such a change.
10. These same considerations are valid in the present case. Further, given that TELUS has not provided any evidence that its Quebec BDUs meet the carve-out criteria, the Commission finds that it would not be appropriate to revoke the licensee’s regional broadcasting licence and allow those BDUs to operate as exempt undertakings. Consequently, the Commission **denies** TELUS’s request in this regard.
11. As noted above, TELUS requested that should the Commission deny the request to operate those Quebec BDUs as exempt undertakings, it be granted authorization to devote, for those BDUs, the total of its mandatory Canadian programming contribution to local expression. In the licensee’s view, such authorization would provide, in regard to local expression, a measure of parity with BDUs that operate pursuant to the exemption order.
12. In the Commission’s view, the rationale that led to its approval of TELUS’s requests to maintain the above-noted authorization for its British Columbia and Alberta BDUs applies for the licensee’s Quebec BDUs. In particular, such a condition of licence would grant TELUS an advantage similar to that of exempt BDUs in that for its Quebec BDUs, it will be able to devote the total of its mandatory contribution to Canadian programming to community programming in smaller service areas. Accordingly, the Commission **approves** TELUS’s request for authorization to devote the total of its mandatory Canadian programming contribution to local expression in service areas in Quebec where its BDUs serve fewer 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. For the sake of consistency, a **condition of licence** equivalent to that imposed by the Commission on TELUS’s British Columbia and Alberta BDUs in Broadcasting Decision 2018-267 is set out in the appendix to this decision.

⁵ These criteria are set out in Broadcasting Order 2009-544.

Issues to be addressed as part of the renewal of TELUS's Quebec regional broadcasting licence

13. Having examined the public record for this application, in particular, the licensee's request to renew the regional broadcasting licence for its Quebec BDUs, the Commission considers that the issues it must address in this decision relate to the following:

- community programming;
- previously identified non-compliance relating to contributions to Canadian programming; and
- the licensee's adherence to conditions of licence, requirements and expectations relating to accessibility.

Community programming

14. In Broadcasting Regulatory Policy 2010-622, the Commission stated that the objectives of its community television policy were 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, both of which emphasize community reflection and citizen access. The Commission further stated that community television should, among other things, engender a high level of citizen participation and community involvement in community programming and provide coverage of local events.

15. In Broadcasting Regulatory Policy 2016-224 (the Community Television Policy), where it reviewed its community television policy, the Commission reiterated the above objectives. As such, 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 programming.

16. In light of the information gathered during the licence renewal proceeding for TELUS's Quebec BDUs, the Commission considers that the issues it must address in regard to community programming relate to the following:

- the provision of community programming on the licensee's on-demand service and on its linear community channel;
- the licensee's request for relief from the exhibition requirements applicable to the linear community channel;
- access programming; and
- programs produced in more than one service area.

Provision of community programming on the licensee's on-demand service and on its linear community channel

17. Section 31(1) of the Regulations sets out that except as otherwise provided under a condition of its licence, a licensee shall devote at least 60% of the programming distributed on the community channel in a licensed area in each broadcast week to the distribution of local community television programming. Section 31(2)(a) of the Regulations sets out that except as otherwise provided under a condition of its licence, a licensee shall devote at least 50% of the programming distributed on the community channel in each broadcast week to community access television programming (access programming), which is defined in the Regulations as programming produced by an individual, group or community television corporation residing within the licensed area of a cable distribution undertaking. As noted in the Community Television Policy in regard to access programming, although creative control must be in the hands of community members, BDUs may assist with training and support community members in the production and distribution of such programming.
18. TELUS stated that it provides community programming to its subscribers through two separate outlets, both of which are branded as “maCommunauté”:
- in each of its licensed areas in Quebec, it provides locally relevant community programming via its on-demand service, which it considers to be its main outlet for local expression; and
 - across all of its licensed service areas in Quebec, it provides the same linear community channel that consists of community programming produced across all of its service areas in the province, as well as time-sensitive programming that may be watched “live” by its subscribers, such as city council meetings.⁶
19. In recent years, to encourage innovative proposals for outlets for local expression, the Commission has approved applications by licensees of BDUs to provide community programming on their related on-demand undertakings, subject to conditions of licence. These conditions of licence for their on-demand services grant the on-demand services the authorization to exhibit community programming and set out the requirements for this type of programming. TELUS noted that it was first authorized to offer its community programming on its on-demand platform in Broadcasting Decision 2008-135 by way of a condition of licence imposed on that on-demand service. The standard wording of the current condition of licence in this regard for on-demand services (including that operated by TELUS) is now set out in Broadcasting Regulatory Policy 2017-138 and includes requirements that parallel those applicable to linear community channels.
20. The Commission notes, however, that TELUS's situation is uncommon, as licensees do not generally offer community programming on a linear channel as well as on an on-demand

⁶ This programming is only available on the linear community channel.

basis. In TELUS's case, it does not currently have any conditions of licence imposed on its Quebec-based BDU licence with respect to the provision of community programming.⁷

21. TELUS stated that over the years, it has come to consider its on-demand service as its primary distribution vehicle for community programming, which enables its staff to use the same methodology to assess compliance for all three of its regional licences (i.e., in British Columbia, Alberta and Quebec).
22. Further, TELUS conceded that in many communities, its linear community channel will necessarily distribute less than the required 60% of local community television programming. It added, however, that community programming expenditures remain local to each service area and that each community has its own local programming space on the on-demand service. As such, the licensee submitted that the Commission's assessment of its compliance with regulatory requirements (such as exhibition requirements) should be based on its on-demand community programming.
23. The Commission considers that TELUS's offering of dual community programming outlets to its subscribers is in keeping with the view expressed in the Community Television Policy that BDUs should make their community programming available to Canadians on as many platforms as possible. However, BDUs are subject to the Regulations unless they have a condition of licence granting them an exception to the requirements set out in the Regulations. In this regard, in Broadcasting Regulatory Policy 2011-59-1, the Commission noted that BDUs would still require separate conditions of licence if they intend to distribute community programming on an on-demand platform. Given that TELUS does not have any such condition of licence with respect to its linear community channel, that channel is subject to the requirements set out in the Regulations. Consequently, TELUS's linear community channel is the outlet for which the Commission has assessed the licensee's compliance with the exhibition requirements set out in section 31 of the Regulations, on an individual basis for each licensed service area.
24. In regard to the above, the Commission notes that it would be impossible for TELUS to meet the applicable exhibition requirements that have been in effect since the 2014-2015 broadcast year in more than one licensed area at a time (i.e., 60% local community programming broadcast and 50% access programming each broadcast week⁸) given that the same linear community channel, and therefore the same programming, is offered in all of TELUS's service areas in Quebec.

⁷ Licensees seeking to provide on-demand community programming will also generally obtain conditions applied to their BDU licences, which allow them to count funding to on-demand community programming towards their contributions to local expression and Canadian programming. TELUS does not have such a condition currently applied to its Quebec-based BDU licences. However, as set out above, TELUS will have such a condition going forward.

⁸ The exhibition requirement in relation to access programming varied from 40% in the 2012-2013 broadcast year (when TELUS launched its community programming services) to 45% in the 2013-2014 broadcast year, and to 50% in the 2014-2015 broadcast year. Since access programming has to be local in the licensed area where it is designated as such, the same conclusion can be made for each broadcast year regardless of whether the access programming requirement was slightly below 50%.

25. Consequently, the Commission finds TELUS, in regard to its linear community channel for its Quebec BDUs, in non-compliance with the exhibition requirements set out in sections 31(1) and 31(2)(a) of the Regulations relating to the distribution of local community television programming and access programming, respectively.

Request for relief from the exhibition requirements applicable to the complementary linear community channel

26. TELUS requested that should the Commission find it appropriate to renew its regional broadcasting licence, the BDUs operating under that regional licence be granted a condition of licence that would relieve its linear community channel from the exhibition requirements set out in sections 31(1) and 31(2) of the Regulations.

27. TELUS confirmed that, on a going forward basis, it wishes to have its compliance with exhibition requirements assessed based on the programming offered on its on-demand community programming services, but also seeks to be able to continue to offer a single linear community channel to all its subscribers in Quebec that would provide community programming from multiple communities on a linear basis. In this regard, TELUS argued that the communities it serves share many close ties despite being geographically distant. In its view, it would be unfortunate for customers to lose their access to a linear community channel that provides relevant programming to many residents of Northern Quebec. The licensee added that the linear community channel would act as a complement to the primary on-demand community programming services provided in each community.

28. The Commission generally tries to avoid depriving customers of a service to which they are accustomed to receiving, so as to minimize customer disruption. Given that TELUS has been offering a linear community channel to its subscribers since its entry into the BDU market, the Commission agrees with the licensee that its customers should be able to continue receiving some of their community programming in this format, alongside other relevant programming from neighbouring communities.

29. The Commission considers that TELUS should be authorized to operate its on-demand community service as its main community programming outlet going forward, and notes that this would be consistent with both the condition of licence authorizing the exhibition of community programming on its on-demand service and the condition of licence authorizing its distribution undertakings to allocate contributions to Canadian programming to community programming distributed on its on-demand service.

30. Accordingly, the Commission authorizes the distribution of TELUS's linear community channel on a complementary basis and sets out certain requirements relating to the operation of that channel. For example, based on the information provided by TELUS on the record of the proceeding, the licensee allocated significant amounts of funding to the live broadcast of municipal council meetings solely on its linear community channel, in many licensed areas and during several broadcast years. Municipal council meetings constitute relevant local community programming in many areas but are currently offered only on TELUS's linear community programming outlet. Given that the licensee will, during the next licence term, be allowed, by condition of licence, to consider its on-demand community programming service as its main outlet for local expression, such programming should be available to its

subscribers via that service for any related expenditures and resulting programming hours to be credited towards meeting its regulatory requirements.

31. In particular, the channel should be limited to broadcasting only programming that also appears on TELUS's on-demand community platform, with the exception of live local events such as municipal council meetings. In turn, any expenditures allocated to such live events could be credited as expenditures on TELUS's on-demand community programming service, provided that this programming later appears on that platform.
32. In light of the above, the Commission **approves** TELUS's request to maintain a complementary linear community channel for the broadcast of community programming that is separate from its principal on-demand community programming service. A **condition of licence** to that effect is set out in the appendix to this decision.

Access programming

33. In the sections below, the Commission addresses issues relating to expenditures on access programming as well as the production companies or producers used by the licensee to produce such programming.

Expenditures on access programming

34. Section 32(2) of the Regulations sets out that except as otherwise provided under a condition of its licence, a licensee shall direct at least 50% of its direct programming expenses in a broadcast year to access programming. Based on the information provided by the licensee, TELUS under-spent on access programming on 14 occasions throughout the current licence term, for the following areas and broadcast years:
 - Rimouski: 2012-2013, 2014-2015 and 2015-2016 broadcast years;
 - Gaspé: 2014-2015 and 2016-2017 broadcast years;
 - Baie-Comeau: 2014-2015 and 2015-2016 broadcast years;
 - Sept-Îles: 2015-2016 and 2016-2017 broadcast years;
 - Saint-Georges: 2014-2015 and 2015-2016 broadcast years; and
 - Montmagny: 2014-2015, 2015-2016 and 2016-2017 broadcast years.
35. In regard to expenditures on access programming and programming-related costs associated with access programming productions, TELUS stated that as a licensed operator, it can only allocate a portion of its contribution to community programming, whereas an exempt BDU would benefit from being able to devote its full contribution to the community channel. The licensee added that programming-related costs associated with access-related productions should include costs relating to closed captioning. TELUS provided a detailed listing of program expenditures and a breakdown between licensee-produced and access programming.

36. The Commission does not agree with TELUS's statement that closed captioning costs relating to access programs should be included in the access programming expenses. Section 32(1) of the Regulations that were in effect during the above-noted broadcast years defined "programming-related expense" and set out the types of expenses that fell under that definition, which did not include closed captioning expenses. In fact, technical, administration and general expenses were specifically excluded from the definition of programming-related expenses. In addition, for most of those broadcast years, authorization to claim closed captioning expenses towards meeting the allowable contribution to local expression was set out in a separate section of the Regulations (specifically, section 34(7)) and was therefore independent of the requirement relating to expenses on access programming set out in section 32(2) of the Regulations. Consequently, the Commission considers that any amounts spent by TELUS on the closed captioning of access programming should not be counted towards meeting the percentage of programming-related expenses that the licensee was required to spend on access programming.
37. In light of the above, the Commission finds TELUS in non-compliance with section 32(2) of the Regulations relating to expenditures on access programming, for the communities and broadcast years noted above.

Producers of access programming

38. As noted above, "access programming" is programming produced by an individual, group or community television corporation residing within the licensed area of a cable distribution undertaking. TELUS indicated that, as a licensee that does not operate its own studios, it employs independent producers, sourced locally where possible, to work with it on local programs that are qualified as "produced by the BDU." It added that the independent producers it hires to create locally reflective programming are expected to have a good degree of experience. The licensee admitted, however, that producers of access programming can have varying levels of experience.
39. TELUS also stated that it is aware of the concerns⁹ that had been expressed by the Commission in Broadcasting Decision 2015-31 relating to the use of professionals on Videotron's MAtv and considers that its situation is clearly different. In its view, the access requesters in that case were well-known television professionals and celebrities in Quebec media. TELUS noted that the producers it employs or to whom it grants access have not done or are not actively doing business with commercial television services. It added that while a few access requesters may have produced programming that was purchased or used in commercial television in the past, they cannot be said to have current access to the broadcasting system.
40. In regard to producers and production companies that are associated with numerous productions in the same area, and sometimes across multiple service areas and/or broadcast years, TELUS acknowledged the recurrence of certain producers/production companies, but

⁹ One of the main concerns with regard to access programming was that Videotron appeared to be more interested in working with the next generation of artists to support the development of its programs than in actually allowing community members to discover and participate in a new medium without compromising the quality of the product.

confirmed that it had never turned down any access requests. It indicated that none of the projects that were granted financing and that were submitted by more experienced producers deprived less experienced producers of access opportunities.

41. TELUS provided lists of access programming funding recipients. In regard to an apparent lack of access programming in a certain area in Quebec, TELUS reiterated that it can be very difficult to procure access programming in less populated areas, especially in the case of geographically large areas such as the Montmagny region. It noted that this region borders the city of Quebec, which provides its own production opportunities. The licensee further argued that the lack of access programming may also be a result of being the smaller and newer entrant in the area.
42. In the Commission's view, TELUS's community programming is generally reflective of the Quebec communities where it is produced and of local events in those areas. In addition, the Commission agrees with TELUS that its access programming producers do not feature well-known celebrities from Quebec media. Further, TELUS's assertion that it has not refused any access request could indicate that it does not receive many access requests, which could partly explain the recurrence of many access requesters/production companies.
43. However, in regard to the key policy objective of citizen access, the Commission's review of the community programming summaries that TELUS filed for the 2014-2015 through 2016-2017 broadcast years shows that the licensee produced very few access programs and, in one instance, none. Further, during those broadcast years, very few individuals/production companies participated in access productions on the licensee's community programming service. In several cases, production companies who were granted access were also hired, often numerous times, to produce TELUS's own "BDU productions," thereby limiting the number of individuals within each community that were directly involved in the production of community programs funded by the licensee.
44. As set out in the Community Television Policy, licensees must actively promote citizen access to community programming. As such, the recurrence of many of the same access requesters may instead be the result of a lack of awareness from the general public in regard to access opportunities. Further, during the broadcast years in question, TELUS allocated a very limited portion of its overall programming expenditures to community outreach. In this regard, the licensee has stated its intention to increase community outreach expenditures on a going forward basis.
45. Moreover, the majority of access requesters for TELUS's Quebec BDUs are production companies or members of the creative sector who have a previously acquired level of production experience. While the Commission notes that the access requesters involved with TELUS do not appear to have the same level of experience as the independent producers who were granted access in regard to TELUS's British Columbia and Alberta BDUs, the Commission is of the view that access requesters of this type still do not generally represent the public at large.
46. The Commission therefore finds that TELUS should improve the number of access opportunities it provides in certain communities and ensure that a wider variety of

individuals and groups have access to the production of community programming as a means to ensure that the licensee's service meets the policy objective of citizen access set out in the Community Television Policy in the future. Therefore, where appropriate, the Commission encourages TELUS to improve its community outreach to involve a wider variety of access requesters within those communities.

47. Finally, the Commission wishes to draw attention to TELUS's designation of the program "Cégeps en spectacle," which offers coverage of an annual performing arts competition for students from different schools across the province of Quebec, as access programming. The Commission recognizes that this program, which provides visibility to local emerging artists, is relevant to the many communities where it is offered, and that coverage of this competition would likely not be featured on conventional television. However, given the information provided by TELUS on the record of this proceeding, the Commission disagrees with the licensee that this program meets the definition of access programming. In this regard, the Commission notes that the Réseau intercollégial des activités socioculturelles du Québec, the access producer listed by TELUS in the various locations where the program is offered, is based in the city of Québec, which is not one of the licensee's service areas. Providing access to an organization based outside the licensee's service areas is not consistent with the definition of access programming, which, as noted above, specifies that such programming should be produced by an individual, group or community television corporation residing within the licenced area of a cable distribution undertaking.
48. Further, although TELUS stated that the original ideas behind the on-screen performances originated from members of the communities that it serves, the licensee has not provided evidence that the original idea behind the program (i.e., making a program on this competition) came from a member of each of the individual communities where it is listed as an access program. Consequently, the Commission considers that TELUS has not provided the necessary evidence to demonstrate that "Cégeps en spectacle" qualifies as access programming.

Programs produced in more than one service area

49. TELUS indicated that where an idea for a program can benefit more than one community but neither of those communities could financially support the creation of that program on its own, certain productions are duplicated on the grids of more than one licensed area. The licensee noted that this is not a common practice, but added that such "cross-local" programs are produced with a budget allocation from each community that is commensurate with the reflection of that community within these programs. In this regard, TELUS confirmed that it has not "double-counted" the expenditures and the programming hours related to these productions but, rather, has split them proportionally among multiple service areas.
50. The Commission notes that TELUS's approach to "cross-local" productions is very similar to the zone-based approach to community programming, whereby smaller BDUs who face funding challenges in the production of locally relevant programming can apply for a condition of licence that would allow them to pool financial resources across designated service areas or zones, create programming reflective of these combined communities and count that programming as local programming. However, given that TELUS does not have a

condition of licence authorizing the use of a zone-based approach, where it does produce cross-local programs, it does not count the full program as a local production in each area and allots funding proportionately.

51. Similarly, in Broadcasting Decision 2018-263, the Commission allowed BDUs to count only specific segments of magazine-style programs as local and/or access programming so long as those segments met the appropriate criteria. However, TELUS's cross-local programs differ from magazine-style programs in that segments within these programs that are local programming and/or access programming in a specific area are not as clearly defined, which could result in complex challenges in terms of reporting for the BDU, as well as in terms of monitoring for the Commission.
52. The Commission recognizes the funding challenges for community programming faced by TELUS's BDUs in many of its licensed areas across Quebec and considers that the licensee's "cross-local approach" provides additional funding flexibility regarding the percentage of Canadian programming contribution that it can devote to local expression. This, in turn, can improve each individual service area's ability to financially support the creation of programs. However, should TELUS, on a going forward basis, produce cross-local programs from which portions are designated as local and/or access programming in separate service areas, those portions should be composed of clearly defined segments, similarly to magazine-style programs, to ensure accuracy in reporting and monitoring.

Previously identified non-compliance relating to contributions to Canadian programming

53. Following the completion of an audit regarding Canadian programming contribution requirements for TELUS's BDUs in British Columbia, Alberta and Quebec, the Commission found the licensee in non-compliance with the requirements set out in sections 34 (contributions to Canadian programming) and 35 (contributions to the Local Programming Improvement Fund¹⁰ (LPIF) in place at that time) of the Regulations in effect prior to 1 September 2017, for the 2007-2008 through 2012-2013 broadcast years. Specifically, the licensee incurred a shortfall of \$22,354,647 in regard to various required contributions, broken down as follows:

- the licensee used the incorrect prior year revenue base to calculate Canadian programming contributions, resulting in a shortfall of \$20,017,214;
- 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

¹⁰ 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. The fund was discontinued as of 1 September 2014.

- the licensee carried forward under-contributions to local expression, resulting in a shortfall of \$33,168.
54. The \$22,354,647 shortfall represents almost the totality of TELUS's annual Canadian programming requirement (i.e., \$22,057,320 for Canadian programming and \$297,327 for the 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).
55. After being informed by the Commission of the above-noted non-compliance, TELUS indicated that it had revised its methodology to reflect the Commission's non-compliance finding. In addition, TELUS paid the full shortfall amount over the course of two years, as directed in the Commission letter, with the final payment being made in August 2016.
56. Given that the LPIF was discontinued in September 2014 and that TELUS paid the above-noted Canadian programming contribution shortfall amounts in a timely manner, the Commission does not find it necessary to impose any further specific measures to address the above-noted non-compliance.

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

57. 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.
58. 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, TELUS confirmed that it would adhere to the standard conditions of licence, requirements and expectations relating to accessibility.
59. 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 TELUS's

Quebec BDUs will expire prior to 31 August 2025. Consequently, for those BDUs, 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 as part of a future licence renewal for the services such that both take effect on 1 September 2025.

60. In light of the above, the Commission has set out, in the appendix to this decision, the standard **conditions of licence**, requirements and expectations relating to accessibility for TELUS's Quebec BDUs, with the exception of the above-noted condition of licence and expectation relating to closed captioning.

Conclusion

61. Given the serious nature of various issues relating to community programming on TELUS's Quebec BDUs, including the licensee's non-compliance relating to the provision of such programming, and their impact on the licensee's ability to contribute towards achieving the key policy objective of citizen access, the Commission finds that it would be appropriate to renew the regional broadcasting licence for TELUS's Quebec BDUs for a short-term period. Accordingly, the Commission **renews** the regional broadcasting licence for TELUS's terrestrial BDUs serving Baie-Comeau, Montmagny, Mont-Tremblant, Sainte-Marie, Saint-Georges and Sept-Îles, and their surrounding areas, Quebec, from 1 July 2019 to 31 August 2024. This short-term renewal will allow for an earlier review of the licensee's operation of its undertakings in light of the relevant regulatory and policy framework. In particular, it will allow the Commission to review TELUS's community programming offering and verify whether that programming contributes to the achievement of the objectives of the Community Television Policy and of the Act. The terms and **conditions of licence** for those BDUs are set out in the appendix to this decision.

Reminders

62. In regard to requirements relating to access programming, the Commission reminds TELUS that the original idea for an access program must originate from a member of the specific community that is designated as the source of the original idea for the access program. The Commission further reminds TELUS of the importance of encouraging access to the broadcasting system while at the same time promoting access opportunities and ensuring that adequate funds are invested in developing access programming.

Employment equity

63. 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

- *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
- *TELUS – Licence renewal for various terrestrial broadcasting distribution undertakings*, Broadcasting Decision CRTC 2018-267, 2 August 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
- *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 stations*, Broadcasting Regulatory Policy CRTC 2017-278, 4 August 2017
- *Revised exemption order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers*, Broadcasting Regulatory Policy CRTC 2017-319 and Broadcasting Order CRTC 2017-320, 31 August 2017
- *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
- *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
- *Complaint by Independent Community TV against Videotron G.P. and its community channel MAtv*, Broadcasting Decision CRTC 2015-31, 4 February 2015
- *Standard requirements for video-on-demand undertakings – Provision of an outlet for local expression, measures to control the loudness of commercial messages and annual filing of aggregate statistical data*, Broadcasting Regulatory Policy CRTC 2011-59-1, 8 May 2012
- *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 Regulatory Policy CRTC 2009-544, 31 August 2009
- *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009
- *Licence amendments related to the provision of an outlet for local expression by video-on-demand*, Broadcasting Decision CRTC 2008-135, 30 June 2008

Appendix to Broadcasting Decision CRTC 2019-230

Terms, conditions of licence and expectations for the terrestrial broadcasting distribution undertakings serving Baie-Comeau, Montmagny, Mont-Tremblant, Sainte-Marie, Saint-Georges and Sept-Îles, and their surrounding areas, Quebec

Terms

The licence will take effect 1 July 2019 and expire 31 August 2024.

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.
 - 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.

- 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.

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.

5. The licensee is authorized to distribute, at its option, a channel that consists of
 - a) programming that
 - i. meets the definition of community programming set out in the *Broadcasting Distribution Regulations*; and
 - ii. originates from the licensee’s on-demand community programming service from any of the licensee’s licensed or exempt undertakings in Quebec.
 - b) programming listed in sections 30(1)(b) to (k) of the *Broadcasting Distribution Regulations*.

For greater clarity, the programming described in a) above includes live local events such as municipal council meetings or sporting events. Any expenditures allocated to such live events can be credited as contributions to local expression on the licensee's on-demand community programming service in the service area to which the program is related, provided that this programming appears within the same broadcast year, on the on-demand community programming service.

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 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).
8. The licensee shall provide the necessary training to hosts and access producers associated with its community programming concerning the provision of audio description.
9. 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.
10. The licensee shall promote information on all of its disability-specific services and products, in the accessible manner(s) of its choice.
11. 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.
12. 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.
13. 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.

14. The licensee shall make accessible any customer service functions that are available solely over its website.

15. 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.