



Broadcasting Regulatory Policy CRTC 2019-392

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Amendment proposed by Bell Media Inc., Corus Entertainment Inc. and Rogers Media Inc. to their condition of licence that requires prime time programming to be broadcast with described video

The Commission recognizes that described video (DV) is critical to the viewing experience of Canadians who are blind or partially sighted. Sharing of common viewing experiences fosters social interaction and inclusion, and promotes equitable opportunities for participation in society. The Commission has taken into consideration the DV policy framework objective to reduce barriers to accessing programming for those who rely on DV when making its determinations.

*Accordingly, the Commission **approves with amendments** the condition of licence proposed by Bell Media Inc., Corus Entertainment Inc., and Rogers Media Inc. (the Licensees). The amended condition of licence will require that Licensees provide DV programming on all English- and French-language programming that is broadcast during prime time with the exception of U.S. programming received without DV less than 24 hours prior to air. The Licensees will be required to monitor the impact of this on viewers' choice and this issue will be reviewed at their next licence renewal.*

The Commission acknowledges the Licensees' commitment to work in consultation with persons who are blind or partially sighted in reducing accessibility barriers with respect to the provision of DV, and encourages the Licensees to hold regularly occurring consultations with DV stakeholders consistent with this commitment, for the purpose of, among other things, collaboratively developing a solution to address the issue that requires the 24 hours exception granted by the Commission in this decision. For these consultations, the Commission encourages the Licensees to adopt a working group model similar to the Closed Captioning Working Group, and to consider and explore solutions informed by DV best practices, innovations and new technologies.

*To ensure that all interested stakeholders are informed of the Licensees' consultation efforts, the Commission requires the Licensees to file a progress report with the Commission every six months from the date of this decision until their next licence renewals. The reports are to be provided to the Commission no later than **3 June 2020, 3 December 2020, 3 June 2021, and 3 December 2021.***

This approach incents the Licensees to take concrete steps to remediate the underlying issues in collaboration with persons who are blind or partially sighted, consistent with the best practice of involving persons with disabilities in the development of solutions, colloquially known as “nothing about us without us.”

At its core, this approach focuses on the progressive removal of barriers to accessing Canada’s broadcasting system by establishing an environment of collaboration and by inciting investment and innovation in Canadian DV infrastructure.

Introduction

1. In Broadcasting Regulatory Policy 2015-104, the Commission stated that it would implement a tiered approach to the provision of described video (DV). This approach would ramp up DV requirements over time in accordance with the size and resources of broadcasters.
2. In Broadcasting Regulatory Policy 2016-436, the Commission established standard conditions of licence establishing initial levels of DV programming. However, the Commission also noted in that regulatory policy that requirements relating to the provision of DV for undertakings for which more substantial levels are appropriate would be discussed with those undertakings at licence renewals and imposed on a case-by-case basis. Accordingly, when the Commission renewed the broadcasting licences for the English- and French-language stations and services belonging to large ownership groups in 2017¹, based on the public record of that proceeding, it imposed the following DV requirement:

The licensee shall, by 1 September 2019, provide described video for all English- and French-language programming that is broadcast during prime time (i.e., from 7 p.m. to 11 p.m.) and that is drawn from program categories 2(b) Long-form documentary, 7 Drama and comedy, 9 Variety, 11(a) General entertainment and human interest and 11(b) Reality television, and/or is programming targeting preschool children (0-5 years of age) and children (6-12 years of age).

Application

3. On 28 November 2018, Bell Media Inc. (Bell), Corus Entertainment Inc. (Corus) and Rogers Media Inc. (Rogers) (collectively, the Licensees), filed a Part 1 application requesting that the Commission amend their condition of licence that requires that all prime time programming (7 p.m. to 11 p.m.) to be broadcast with DV.
4. Specifically, the Licensees requested an exception such that they be allowed to air non-Canadian programs when such programming is received without embedded DV less than 72 hours prior to broadcast. For such programming, the Licensees indicated that they would subsequently provide this programming with DV when scheduled at a time greater than 72 hours from delivery.

¹ See Broadcasting Decisions 2017-149, 2017-150, and 2017-151.

5. The Licensees argued that the exception is necessary because a significant amount of U.S. content arrives without embedded DV very close to the time of broadcast and that there is insufficient time to produce or outsource DV in these circumstances. They added that live DV is not a viable option. They also proposed that broadcasters be required to keep a log detailing the receipt date of all U.S. programs received without DV and broadcast in prime time, and provided a template for that purpose.
6. The application included letters from DV vendors and various U.S.-based production/distribution studios that specify timeframes for delivery to Canada for first-run television series.

Interventions

7. The Commission received a number of interventions from individuals, as well as independent broadcasters (DHX Television Ltd. (DHX); Newfoundland Broadcasting Company (NTV) and the Independent Broadcasters Group (IBG), a not-for-profit broadcaster (Accessible Media Inc.), groups and organizations representing people who are blind or partially sighted (Media Access Canada (MAC), The CNIB Foundation/Fondation INCA Vision, Loss Rehabilitation, Regroupement des aveugles et amblyopes du Québec, Canadian Council of the Blind, Manitoba Blind Sports Association Alliance for Equality of Blind Canadians), and Rothschild & Co.
8. DHX, NTV, and IBG supported the proposed amendment and requested that should the Commission grant relief to the Licensees that it also extend the relief to them. They added that independent broadcasters face unique barriers as they have less ability to require non-Canadian studios to meet specific demands, as well as less ability to amortize DV costs across an entire broadcast network and multiple local markets.
9. All interventions from individual Canadians and organizations representing people who are blind or partially sighted were opposed to the Licensees' application. Some of these interveners argued that the proposed amendment omits a commitment to increase DV in prime time hours. Others also argued that the Licensees' have demonstrated no progress to date and, if allowed to continue, arguably they will not make any progress before their licence renewals in 2022, and asserted that the application should fail on that merit alone.
10. Some interveners in opposition to the amendment also argued that consultation with users should be done before seeking exemptions that could have a negative impact on Canadians with disabilities. They were also concerned with how DV customers will find out when programs will be rebroadcast with DV. Some interveners argued that in extreme circumstances such as where programming is delivered late that "some DV is better than no DV".
11. To that end, MAC added that in the case of late-arriving programming, "basic DV" or "live DV" would provide a reasonable interim measure to ensure some level of accessibility in the short term. However, according to MAC, the Licensees are unlikely to replace basic DV with higher quality DV versions for future broadcasts.

12. MAC argued that by delaying the availability of accessible prime time DV programming, blind or partially sighted viewers are not on an equal footing with their sighted peers as they are deprived of sharing the experience of consuming media at the same time, which impedes their social interactions. MAC expressed its dissatisfaction that the Licensees did not articulate how DV customers would find out when programs are to be rebroadcast with DV, which forces Canadians who need DV to access programming to continue to rely on logos and announcements made at air time and thus, undermining the benefits and value of personal video recorder recordings. MAC also submitted that the Licensees did not demonstrate a commitment to repeat broadcasts in prime time.
13. MAC asserted that meaningful consultation with stakeholders who are impacted by these problems is imperative in order to advise the community of the problem, but also in seeking solutions that are achievable and acceptable to the community. MAC highlighted that had the Commission not engaged in public consultation regarding this application, this community would not have been made aware of the problem.
14. MAC confirmed that it would support the imposition of a more granular and tiered implementation structure for prime time DV requirements leading to 100% compliance with ongoing reporting and monitoring requirements.
15. Rothschild & Co. did not oppose the amendment proposed by the Licensees, but rather proposed that the wording be amended as follows (amendment requested in **bold**):

[...] with the exception of non-Canadian programs that are received less than 72 hours to air. Such programs will be rebroadcast with described video for repeat airing schedule in **primetime** greater than 72 hours from delivery.

Licensees' reply

16. The Licensees argued that they cannot negotiate with U.S. studios to provide DV for programming where it does not exist, and that Canadian broadcasters do not have the ability to influence the actual production process. The Licensees added that provision of DV would be resolved in time through the Federal Communications Commission (FCC) rules governing DV in the U.S. The Licensees noted that they “never identified cost as a prohibiting factor in the provision of described video,” and have relationships and contracts with third party DV vendors for the production of DV for both Canadian programming, and U.S. programs delivered more than 72 hours before broadcast. Rather, they asserted that the issue is one of “time and supply.”
17. The Licensees indicated that the Canadian National Institute for the Blind (CNIB) hosted a “Tele-Townhall” on 30 May 2019 at which they explained the issues to their DV customers.

Commission's analysis and decisions

18. Having examined the public record for this proceeding in light of applicable regulations and policies, the Commission considers that the issues it must examine are the following:
 - How much programming is potentially at issue?

- What efforts have the Licensees undertaken since Broadcasting Regulatory Policy 2015-104 to meet their prime time DV condition of licence?
- Is the proposed amendment appropriate to effectively address the Licensees' issues?
- How can the Commission ensure that the requirement continues to meet the needs of DV users?

How much programming is potentially at issue?

19. Though the Licensees initially indicated that “a significant amount of popular U.S. programming that is acquired by Canadian broadcasters and aired in prime time does not arrive with DV and is unlikely to in the near future”, the Commission notes that in response to questions from the Commission, the Licensees acknowledged that the amount of the programming in question is small and is largely limited to first-run live, near-live or embargoed programs. The Licensees added that live episodes and programs embargoed prior to broadcast by U.S. rights holders to ensure programs are not leaked or distributed illegally are more likely to be provided less than 72 hours before broadcast.
20. In Appendix A of their application, the Licensees submitted programming data from an unspecified sample week. Commission analysis of that data reveals that less than 10% of English-language non-Canadian programming broadcast by Bell, Corus and Rogers in prime time is received i) without DV, and ii) less than 72 hours before broadcast.
21. The Commission acknowledges that the Licensees' prime time schedule are subject to change from year to year, and that the data the Licensees' submitted only represents a snapshot in time. However, the data do appear to confirm the Licensees assertions that the amount of programming that would be impacted is limited.

What efforts have the Licensees undertaken since Broadcasting Regulatory Policy 2015-104 to meet their prime time DV condition of licence?

FCC DV Rules

22. The Commission notes that there is general confusion as to whether the FCC DV rules will enable the Licensees' to meet their prime time DV condition of licence by the 2022 licence renewal and whether reliance on the U.S. market is a viable mechanism for this purpose.
23. The FCC DV rules are designed differently than the requirements established for Canadian broadcasters as in the U.S. they focus on market and broadcast quarters rather than imposing obligations for a specific time of the broadcast day (i.e. prime time). The FCC report and order implementing the *Twenty-First Century Communications and Video Accessibility Act* stipulates that as of July 2017, the FCC DV rules require local affiliates of the U.S. networks in the top 60 markets to broadcast 87.5 hours per calendar quarter of DV programming, of which 50 hours must be prime time and/or children's programming and 37.5 hours may be any type of programming shown between 6 a.m. and midnight, whereas in Canada the Commission requires the Licensees to provide DV for programming from the relevant

categories aired in prime time every day of the week, which could be up to 28 hours per week.

24. The Commission does not expect the FCC's requirements to further increase at this time because as set out in FCC's order, the increase to 87.5 hours per quarter was the maximum increase permissible under the *Twenty-First Century Communications and Video Accessibility Act*. Accordingly, the Commission considers that relying solely on FCC rules will not fill prime time hours in a way that obviates the need for the Licensees to make additional effort to achieve compliance with their DV conditions of licence.

Procurement

25. In terms of procurement, the Licensees procure programming with DV from Canadian and U.S. suppliers through commercial arrangements/agreements. However, with respect to U.S. programming, Rogers and Corus indicated that they procure DV solely on an "as available basis". The Licensees argued that it is not possible for Canadian broadcasters to influence the actual production process in the U.S. as it would impact the production timelines and deadlines for delivery to the U.S. market. The Licensees also argued that paying U.S. suppliers in advance to prepare DV versions of programming would not provide a sufficient incentive for those suppliers to alter their production timelines.
26. MAC asserted that the application should fail on the basis that the Licensees are unable to provide a reasonable explanation concerning the efforts made to address and resolve these issues in-house and with their content suppliers.
27. The Commission considers that the Licensees did not provide evidence of actual efforts to influence their U.S. suppliers to support their assertions.

Is the proposed amendment appropriate to effectively address the Licensees' issues?

Non-Canadian programs

28. The Commission notes in the proposed amendment the use of the phrase "non-Canadian programming", which refers to programming that is received without DV. The bulk of 2018-2019 programming supplied on the record is from Canada and the U.S. with only a small percentage from other countries. Moreover, the issues in question relates to the supply of DV programming specific to the U.S., as the Licensees only referred to U.S. suppliers.
29. Accordingly, based on the arguments and information put forward by the Licensees, the Commission finds the term "non-Canadian" to be broader than necessary. The Commission considers it appropriate to replace "non-Canadian programming" with "U.S. programming".

72 hours prior to air

30. The Licensees argued that 72 hours is required operationally to provide DV for the programming at issue. They included letters from production houses/studios and DV vendors with their application. The production houses/studios attested that they frequently deliver first-run US programming on the day of broadcast and often only a few hours before air time. The DV vendors provided information regarding the time it takes to describe programming.

According to one of its vendors, RED BEE, on average, DV for a 30 minute segment can be provided in 4 hours and a 60 minute segment in 8 hours. ONEXTRA stated that for documentaries and dramas it typically takes 9.5 hours and less for other types of programming.

31. In light of the above, the Commission considers that the Licensees have failed to demonstrate the need for a 72 hours timeframe as correspondence the Licensees provided from DV vendors indicates that DV can be provided in shorter timeframes. Accordingly, the Commission considers that the “72 hours to air time” is not the appropriate timeframe and considers “24 hours prior to air time” to be more suitable and more reflective of the evidence on the public record.

How can the Commission ensure that the requirement continues to meet the needs of DV users?

32. Interveners opposed to the amendment, including MAC, argued that the Licensees could or should have better consulted the blind or partially sighted community to address the problems and find solutions that are acceptable to the community. MAC strongly recommended that in the future, “meaningful consultation with stakeholders who are impacted by these problems” should occur when an application for exceptions related to accessibility requirements is filed with the Commission.
33. In their reply, the Licensees noted that they reviewed the public interventions carefully as they wanted to understand the impact of the amendment on viewers who are blind or partially sighted. They also noted that they held a “Tele-Townhall” convened by CNIB on 30 May 2019. The Licensees asserted that the “Tele-Townhall” provided them with the opportunity to explain why an amendment was required and to respond to the concerns of the community. It also provided the community the opportunity to provide feedback and share ideas for future change.
34. The objectives of the current requirement for prime time DV, as set out in Broadcasting Regulatory Policy 2015-104 and as reflected in the current condition of licence, are to increase DV in the system during prime time hours (7 p.m. to 11 p.m.), 7 days per week and to provide a seamless experience for Canadians with disabilities when accessing the content of their choice. The Commission considers that the prime time DV requirement reduces a longstanding accessibility barrier and acknowledges that the sharing of common viewing experiences fosters social interaction and inclusion, and promotes equitable opportunities for participation in society.
35. The Commission acknowledges that the Licensees did hold a “Tele-Townhall” and have committed to conduct “regularly-occurring consultations going forward” and to investigate “the best forum for these ongoing consultations, as well as the frequency”.
36. The Commission notes that there are examples of the working group model providing a forum in which Canadians with disabilities have been meaningfully engaged in the development of solutions to accessibility barriers. Most recently, the Closed Captioning

Working Group that was formed and supported by the English Broadcasters Group² provided a collaborative forum for all stakeholders that resulted in an innovative, made-for-Canada solution to measuring the accuracy of live English-language closed captioning, set out in Broadcasting Regulatory Policy 2019-308.

37. Accordingly, the Commission encourages the Licensees to hold regularly occurring consultations with DV stakeholders consistent with this commitment, for the purpose of collaboratively developing solutions to address the issue requiring the 24 hours exception granted by the Commission in this decision.
38. For these consultations, the Commission encourages the Licensees to adopt a working group model similar to the Closed Captioning Working Group to work in consultation with persons who are blind or partially sighted in reducing accessibility barriers with respect to the provision of DV. The Commission also encourages the Licensees to consider and explore solutions informed by DV best practices developed in other contexts and by innovations and new technologies.
39. To make certain that all interested stakeholders are informed of the progress of the working group's activities, the Commission requires the Licensees to file a progress report with the Commission every six months from the date of this decision until the next licence renewal. The reports are to be provided to the Commission no later than **3 June 2020, 3 December 2020, 3 June 2021, and 3 December 2021**. The reports will be made available on the Commission's website and will be reviewed during the proceeding to renew the Licensees' licences, which expire in 2022.

Conclusion

40. In light of all of the above, the Commission **approves with amendments** the condition of licence for prime time programming to be broadcast with DV for Bell Media Inc., Corus Entertainment Inc., and Rogers Media Inc. The changes to the condition of licence are in **bold**:

The licensee shall, by 1 September 2019, provide described video for all English- and French-language programming that is broadcast during prime time (i.e., from 7 p.m. to 11 p.m.) and that is drawn from program categories 2(b) Long-form documentary, 7 Drama and comedy, 9 Variety, 11(a) General entertainment and human interest and 11(b) Reality television, and/or programming targeting preschool children (0-5 years of age) and children (6-12 years of age) **with the exception of U.S. programming received without described video less than 24 hours prior to air. Such programs will be broadcast with described video for any repeat airings scheduled greater than 24 hours from delivery.**

² The Closed Captioning Working Group consists of representatives from broadcasters as well as representatives from Media Access Canada, the Canadian Association of the Deaf, the Canadian Hard of Hearing Association, and the Canadian Hearing Society, National Captioning Canada and Closed Caption Services (closed captioning providers), and the Northern Alberta Institute of Technology.

41. The Commission reminds the Licensees that this is an exceptional measure and that they should make every effort possible to exhaust all avenues to procure the programs and/or episodes with DV.
42. For programming that is subject to the exception, a logo is to be displayed at the start of the first airing and an audio notification is to be provided indicating that repeat broadcasts will be aired with full DV at a future time.
43. The Commission requires the Licensees to file a report with the Commission on the progress made by the working group every six months from the date of this decision until the next licence renewal. The reports are to be provided to the Commission no later than **3 June 2020**, **3 December 2020**, **3 June 2021**, and **3 December 2021**.
44. The Commission notes that the Licensees proposed in their application to keep logs detailing the receipt date of all U.S. programs received without DV and broadcast in prime time “in order to properly monitor broadcaster compliance.” The Commission would expect that this type of information, including U.S. programming received without DV prior to the 24 hours exemption threshold and that the Licensees were required to describe, among other things, would be included in the renewal applications of the Licensees so that the impact of this exception can be assessed.
45. The Commission is of the view that the above will result in the provision of programming with DV in a manner that meets the needs of Canadians who are blind or partially sighted.

Secretary General

Related documents

- *English-language closed captioning mandatory quality standards relating to the accuracy rate for live television programming*, Broadcasting Regulatory Policy CRTC 2019-308, 30 August 2019
- *Rogers Media Inc. – Licence renewals for English-language television stations, services and network*, Broadcasting Decision CRTC 2017-151, 15 May 2017
- *Corus Entertainment Inc. – Licence renewals for English-language television stations and services*, Broadcasting Decision CRTC 2017-150, 15 May 2017
- *Bell Media Inc. – Licence renewals for English-language television stations and services*, Broadcasting Decision CRTC 2017-149, 15 May 2017
- *Standard requirements for television stations, discretionary services, and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 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