



## Broadcasting Decision CRTC 2021-367

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Reference: Part 1 applications posted on 6 May 2021 and 15 June 2021

Ottawa, 4 November 2021

**Quebecor Media Inc., on behalf of Videotron Ltd., and Bragg Communications Incorporated, carrying on business as Eastlink Across Canada**

*Public record for these applications: 2020-0647-8 and 2021-0391-9*

### **Illico sur demande and Eastlink OnDemand – Licence amendment**

The Commission **approves** the applications by Quebecor Media Inc., on behalf of Videotron Ltd., and Bragg Communications Incorporated, carrying on business as Eastlink, to amend the broadcasting licence for their on-demand services, Illico sur demande and Eastlink OnDemand, respectively, to be relieved from the requirements regarding local expression, set out in conditions of licence 18, 19 and 20 in the appendix to Broadcasting Regulatory Policy 2017-138.

### **Applications**

1. The Commission has the authority, pursuant to subsection 9(1) of the *Broadcasting Act* (the Act), to issue licences for such terms not exceeding seven years and subject to such conditions related to the circumstances of the licensee as it deems appropriate for the implementation of the broadcasting policy set out in subsection 3(1) of the Act, as well as to amend those conditions on application of the licensee.
2. Quebecor Media Inc. (Quebecor), on behalf of Videotron Ltd. (Videotron), filed an application to amend the broadcasting licence for its on-demand service Illico sur demande. Specifically, Quebecor requested to be relieved from the requirements set out in conditions of licence 18, 19 and 20 in the appendix to Broadcasting Regulatory Policy 2017-138 regarding local expression for on-demand programming services.
3. Bragg Communications Incorporated, carrying on business as Eastlink (Eastlink) also filed an application to amend the broadcasting licence for its on-demand service Eastlink OnDemand in order to be relieved from the requirements regarding local expression, set out in conditions of licence 18, 19 and 20 in the appendix to Broadcasting Regulatory Policy 2017-138.
4. Videotron operates eight licensed terrestrial broadcasting distribution undertakings (BDUs) in Quebec as well as the on-demand service Illico sur demande. It also

provides community programming on its linear community channels, MAtv. Some of the programs broadcast on MAtv are also offered on Illico sur demande.

5. Eastlink operates two licensed terrestrial BDUs and the on-demand service Eastlink OnDemand. Eastlink provides community programming on its linear community channels, Eastlink Community TV. Many programs broadcast on its linear community channels are also offered on Eastlink OnDemand.
6. In its application, Quebecor submitted that since Illico sur demande is not its main outlet for community programming, the service should not be subject to conditions of licence 18, 19 and 20 set out in Broadcasting Regulatory Policy 2017-138. It added that Videotron's obligations regarding community programming are being met by MAtv, in accordance with the *Broadcasting Distribution Regulations* (the Regulations).
7. In addition, Quebecor stated that in Broadcasting Notice of Consultation 2020-227, the Commission did not make a clear distinction between community programming originally aired on a community channel and offered to subscribers on-demand on a complementary basis and community programming produced by or for the on-demand community programming service that has a condition of licence allowing it to operate this particular service.
8. Quebecor submitted that it decided to offer some community programming on an on-demand basis as a complementary service for its subscribers. It added that should the Commission deny its request for relief, it would be compelled to remove the complementary community programming offered on Illico sur demande altogether.
9. According to Quebecor, removing community programming on Illico sur demande would have the undesirable consequence of limiting the visibility of the content, which would be contrary to the Commission's objectives. Therefore, it proposed the addition of the following condition licence:

The licensee is relieved of conditions of licence 18, 19 and 20 relating to community programming set out in the appendix to *Standard conditions of licence, expectations and encouragements for on-demand services*, Broadcasting Regulatory Policy CRTC 2017-138, 10 May 2017. The application of this condition of licence will remain in effect as long as the programming from its linear community channel is distributed on a complementary basis on its on-demand service.

10. In its application, Eastlink argued that conditions of licence 18, 19 and 20 were intended to apply to BDUs that only offer community programming services on demand. It specified that its linear community channels are the main outlets for local expression and that the community programming content available on Eastlink OnDemand is not offered to fulfill its obligations related to community channels. Eastlink also confirmed that none of its community channel content is designed or developed for distribution on demand.

11. Eastlink submitted that Broadcasting Information Bulletin 2021-155 is inconsistent with Broadcasting Regulatory Policy 2016-224 (the Community Television Policy), which encouraged BDUs to make their linear community channel available on their on-demand platforms, since this encouragement was met with onerous requirements for BDUs who voluntarily make their linear community channel content available on demand. As such, Eastlink indicated that the Commission must continue to distinguish BDUs that use their on-demand service as their outlet for local expression from BDUs that use a linear community channel as their outlet for local expression but also distribute content from that channel on their on-demand platform as a convenience for their customers.
12. Further, Eastlink noted that condition of licence 18 and portions of condition of licence 19 set out in Broadcasting Regulatory Policy 2017-138 are not applicable to its exempt BDUs. It added that compliance with these conditions of licence would create a financial burden on its BDUs as additional resources would have to be allocated to producing separate community programming logs for its on-demand community programming service and labelling or organizing content based on its community of origin.
13. Accordingly, Eastlink proposed the addition of the following condition of licence:

The licensee is relieved of conditions of licence 18, 19 and 20 set out in the appendix to *Standard conditions of licence, expectations and encouragements for on-demand services*, Broadcasting Regulatory Policy CRTC 2017-138, 10 May 2017. This condition of licence will remain in effect as long as community programming from Eastlink’s linear community channels is distributed on a complementary basis on its on-demand service.
14. The Commission is of the view that the applications by Quebecor and Eastlink raise similar issues. Accordingly, the Commission considers it appropriate to merge the records and issue one decision for both applications.

## **Background**

15. Paragraph 10(1)(c) of the Act authorizes the Commission to make regulations, in furtherance of its objects, regarding the allocation of broadcasting time for the purpose of giving effect to the broadcasting policy set out in subsection 3(1) of the Act. Those policy objectives specify that the community element forms part of the Canadian broadcasting system which, among other things, should encourage the development of Canadian expression, provide programming that is varied and comprehensive and that serves the needs and interests and reflects the circumstances and aspirations of all Canadians, as well as provide a reasonable opportunity to be exposed to different views.
16. Consistent with this authority, the Commission authorized the distribution by BDUs of community channels in the Regulations and also established regulations regarding the distribution of particular types of community programming. In particular,

subsection 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. Subsection 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.

17. Licensed on-demand services are not subject to the Regulations. However, consistent with its authority in subsection 9(1) to issue and renew licences subject to such conditions related to the circumstances of the licensee as it deems appropriate for the implementation of the broadcasting policy set out in subsection 3(1) of the Act, all licensed on-demand services are subject to the standard conditions of licence, expectations and encouragements set out in Broadcasting Regulatory Policy 2017-138. Requirements related specifically to local expression on an on-demand platform are set out in conditions of licence 18, 19 and 20. These conditions of licence refer to the type of programming that can be offered, the minimum local and access programming requirements and the requirements relating to the retention of program logs and audiovisual recordings. In their applications, Quebecor and Eastlink are seeking relief from these conditions of licence.
18. In Broadcasting Notice of Consultation 2020-227, the Commission called for comments on a standardized approach to monitoring linear community channels and on-demand community programming services. In response to that notice, Cogeco Communications inc. (Cogeco) submitted an intervention in which it argued that BDUs providing community programming primarily through a linear community channel should not have their compliance with exhibition requirements assessed based on the programming offered on their on-demand platform, as they must ensure compliance with these requirements through their principal linear community channel.
19. In Broadcasting Information Bulletin 2021-155, the Commission adopted a standardized approach to monitoring linear community channels and on-demand community programming services. In response to Cogeco's intervention, the Commission stated that it would not be appropriate to amend a licensee's conditions of licence as part of that proceeding. It added that a potential change in the requirements of a licensee that offers community programming on demand as a complement to a BDU's linear community channel would be more appropriately examined in the context of an application to amend the on-demand licence in question.

## **Interventions and replies**

20. The Commission received interventions for both applications. Specifically, Eastlink and the Conseil provincial du secteur des communications du Syndicat canadien de la fonction publique (CPSC-SCFP) submitted interventions regarding Quebecor's application, and Quebecor and BCE Inc. (BCE), on behalf of Bell TV, submitted interventions regarding Eastlink's application.

### **Quebecor's application**

21. Eastlink filed an intervention in support of Quebecor's application. It submitted that the requirements set out in conditions of licence 18, 19 and 20 were unnecessary and unduly burdensome. Eastlink added that these conditions of licence were a disincentive to the very behaviour the Community Television Policy sought to encourage. As such, it proposed that the Commission issue a statement to specify that conditions of licence 18, 19 and 20 apply only to the BDUs authorized to operate on-demand community programming services or initiate a proceeding to modify Broadcasting Regulatory Policy 2017-138 in order to clarify this issue.

22. In its intervention, the CPSC-SCFP indicated that it failed to see why it would be difficult for Illico sur demande to comply with conditions of licence 18, 19 and 20 given that these conditions of licence mirror the requirements applicable to Videotron's linear community channel. The CPSC-SCFP also argued that the future of broadcast distribution is closely tied to the offering of programming on an on-demand basis and that Commission regulations should aim to ensure that all Canadian programming is available on demand and eventually online.

23. In its reply, Quebecor supported Eastlink's suggestion to clarify conditions of licence 18, 19 and 20 in a statement, but argued that although the suggestion to initiate a proceeding to modify Broadcasting Regulatory Policy 2017-138 was valid, this would not allow a change to the conditions of licence in a timely manner.

24. In reply to CPSC-SCFP's intervention, Quebecor argued that it would not be able to comply with the programming threshold in the same manner on its on-demand platform as it does on its linear channel, since some programs offered on its linear community channel, such as live programs, do not lend themselves well to an on-demand platform. In addition, Quebecor indicated that the regulatory requirements could not be achieved in the same manner for the linear and the on-demand community programming service. Complying with the programming threshold in the same manner would result in additional costs and administrative burden.

### **Eastlink's application**

25. Quebecor submitted an intervention in support of Eastlink's application. It indicated that BDUs such as Eastlink and Videotron that only offer some of the programs from their linear community channels on an on-demand basis would be faced with additional costs and administrative burden if they were required to comply with the

standard conditions of licence set out in Broadcasting Regulatory Policy 2017-138 and with Broadcasting Information Bulletin 2021-155.

26. According to Quebecor, Eastlink's arguments are justified and the Commission should approve the addition of the proposed condition of licence for Eastlink's on-demand service.
27. In its intervention, BCE opposed Eastlink's application. Specifically, it argued that the application runs counter to Broadcasting Regulatory Policy 2017-138 and Broadcasting Information Bulletin 2021-155. It added that the application misinterprets the standard conditions of licence for on-demand services and should the Commission approve the application, it would create an uneven competitive playing field between BDUs.
28. BCE also indicated that Broadcasting Information Bulletin 2021-155 clearly stated that the standard conditions of licence for on-demand services apply to all licensees of on-demand services that elect to offer an outlet for local expression through that service, whether the licensee uses the on-demand platform as the primary outlet for community programming or as a complementary outlet to showcase a limited number of community programs also aired on the linear community channel. As such, BCE stated that the standard conditions for on-demand services apply as soon as a BDU begins distributing community television programs on demand. BCE indicated that Eastlink can modify the programming it distributes on demand to comply with existing regulations.
29. BCE further argued that approving Eastlink's application would create competitive asymmetries and questioned how the Commission would determine a BDU's primary outlet for BDUs delivering community television programming on multiple platforms.
30. Finally, BCE proposed that only community television content from the last two years be subject to the requirements set out in Broadcasting Information Bulletin 2021-155 and that this flexibility apply to all BDUs that distribute community programming on demand. BCE indicated that should this flexibility be permitted, Eastlink would only have to reorganize a portion of its on-demand community television program titles.
31. In reply to BCE's intervention, Eastlink stated that the approval of its proposed condition of licence would not create an uneven playing field, since this condition would have no impact on its compliance with the Community Television Policy, the relevant provisions of the Regulations or Broadcasting Order 2017-320. It added that the requirements set out in these documents are substantively similar to the requirements applicable to BCE's on-demand community programming service.
32. Eastlink also indicated that in Broadcasting Decision 2019-230, the Commission approved a request by TELUS Communications Inc. (TELUS) to relieve its linear community channel from the exhibition requirements set out in subsections 31(1) and 31(2) of the Regulations given that it operated an on-demand community

programming service as its primary outlet for local expression. In Eastlink's view, the proposed condition of licence would ensure that it is in a position to continue distributing valuable content on its on-demand service.

33. In response to BCE's suggestion to modify the program mix on its on-demand platform, Eastlink reiterated that this would not resolve compliance issues with conditions of licence 18, 19 and 20 of Broadcasting Regulatory Policy 2017-138 and that it would create financial and administrative burden on its BDU.
34. Eastlink did not oppose BCE's proposal that only community programming from the last two years be subject to the requirements set out in Broadcasting Information Bulletin 2021-155 but stated that this would not address the issues raised in its application.

## **Issues**

35. After examining the record for this application in light of applicable regulations and policies, the Commission considers that the issues it must address are the following:
  - the appropriateness of the relief sought;
  - the availability of local and access programming; and
  - other matters.

### **Appropriateness of the relief sought**

36. In their applications, Quebecor and Eastlink argued that their on-demand service is not their main outlet for local expression, as on-demand community programming is offered as a complement to their linear community channel. Therefore, in their view, their on-demand services should not be subject to all the requirements set out in Broadcasting Regulatory Policy 2017-138.
37. In Broadcasting Decision 2019-230, the Commission approved an application by TELUS to have its compliance with exhibition requirements assessed based on the programming offered on its on-demand community programming services and, as such, to be relieved from the exhibition requirements for its linear community channel. The Commission specified that it generally tries to avoid depriving customers of a service to which they are accustomed to receiving, so as to minimize customer disruption. Therefore, it considered that TELUS could be authorized to operate its on-demand community service as its main community programming outlet for local expression.
38. In the Commission's view, similar considerations should apply when assessing the applications by Quebecor and Eastlink. In their applications, both licensees indicated that they could cease to distribute local programming on their on-demand service should their application be denied. The Commission recognizes that such a decision by BDUs would lead to subscribers losing an opportunity to access and view locally-

relevant programming on demand, which runs counter to the objectives of the Community Television Policy.

39. The Commission also recognizes that Quebecor and Eastlink could potentially face additional financial and administrative burdens if they were required to comply with conditions of licence 18, 19 and 20 of Broadcasting Regulatory Policy 2017-138 as well as to their obligations under the Regulations.
40. In regard to CPSC-SCFP's argument that BDUs could include all community programming on both platforms in order to comply with conditions of licence 18, 19 and 20, the Commission considers that this solution would not constitute the most practical or appropriate option, given that not all programming lends itself well to both the linear and the on-demand platforms. With respect to CPSC-SCFP's suggestion to make all community programming available online, the Commission considers that this issue is outside the scope of the current proceeding.
41. In regard to BCE's concerns regarding regulatory asymmetries between licensees should these applications be approved, the Commission notes that nothing prevents other BDUs from requesting similar relief should they decide to start offering community programming on a secondary outlet. This could minimize or eliminate any asymmetries.
42. In light of the above and given that the continued offering of community programming on demand by Quebecor and Eastlink is a desirable outcome, the Commission finds that the relief sought by the applicants is reasonable and consistent with Broadcasting Decision 2019-230.

#### **Availability of local and access programming**

43. Although the Commission finds that certain on-demand undertakings should be relieved from regulatory requirements related to community programming, it notes that without regulatory requirements, on-demand community programming services could potentially decide to only make available a certain type of programs (e.g., licensee-produced programming) to the detriment of other types of community programs (e.g., access programming). This approach would not be consistent with the intent of the Community Television Policy, which identifies citizen access as one of the objectives of community television.
44. As such, the community programming offered on demand should not only remain readily available to Canadians, but also appropriately reflect the programming offered on the linear community channel and meet the objectives of the Community Television Policy, including citizen access.
45. Accordingly, the Commission considers it appropriate to impose an expectation on the applicants to ensure that the programming offered on demand is relevant to and reflective of the communities they serve and that it includes access programming. The expectation is set out below.



46. At any point during the licence term, the Commission may request information regarding local and access programming should there be any concerns that the licensees have not made reasonable efforts to include local and access programming on their on-demand platforms, even if such programming is offered on a complementary basis.

### **Other matters**

47. In its intervention in support of Quebecor's application, Eastlink indicated that the Commission should clarify conditions of licence 18, 19 and 20 of Broadcasting Regulatory Policy 2017-138 in a statement or initiate a proceeding to modify that regulatory policy.

48. In Broadcasting Information Bulletin 2021-155, the Commission already clarified that the requirements set out in the above-mentioned regulatory policy apply whether the licensee uses the on-demand platform as a primary outlet for community programming or as a complementary outlet to showcase a limited number of community programs also aired on the linear community channel.

49. In that same information bulletin, the Commission added that a potential change in the requirements of a licensee that offers community programming on demand as a complement to a BDU's linear community channel would be more appropriately examined in the context of an application to amend the on-demand licence in question. The Commission considers that a case-by-case approach provides an opportunity to evaluate the BDU's operations prior to approval, including whether local and access programming would continue to be offered on the secondary outlet. The Commission could then assess the necessity of the relief and determine whether alternate obligations should be imposed.

50. While Eastlink argued that many BDUs operating linear community channels would apply for similar relief, as of now, only Quebecor and Eastlink filed applications regarding conditions of licence 18, 19 and 20. Accordingly, the Commission does not consider a blanket relief for numerous licensees to be necessary.

51. In regard to BCE's proposal that only community television content from the last two years should be subject to the requirements of Broadcasting Information Bulletin 2021-155, the Commission considers that this would not resolve the issue at hand. Further, the Commission is of the view that it is not appropriate to examine such a request in the context of the present decision.

### **Conclusion**

52. In light of all of the above, the Commission **approves** the applications by Quebecor Media Inc., on behalf of Videotron Ltd., and Bragg Communications Incorporated, carrying on business as Eastlink, to amend the broadcasting licence for their on-demand services, Illico sur demande and Eastlink OnDemand, respectively, in order to be relieved from the requirements regarding local expression, set out in conditions of licence 18, 19 and 20 in the appendix to Broadcasting Regulatory Policy 2017-138.

53. Accordingly, the following condition is added to the licences for Illico sur demande and Eastlink OnDemand:

The licensee is relieved of conditions of licence 18, 19 and 20 set out in the appendix to *Standard requirements for on-demand services*, Broadcasting Regulatory Policy CRTC 2017-138, 10 May 2017. The application of this condition of licence will remain in effect as long as community programming from its linear community channels is distributed on a complementary basis on its on-demand service.

54. Should other licensees seek similar relief, the Commission expects them to demonstrate, in their applications, how they would ensure that the local and access community programming broadcast on their secondary outlets would remain relevant to and reflective of the communities served.

### **Expectation**

55. The following expectation is also added to the licences for each undertaking:

The Commission expects that, when offered on the licensee's on-demand service on a complementary basis, the local and access community programming originally broadcast on the community channel be relevant to and reflective of the respective communities served.

### **Reminder**

56. The Commission reminds Quebecor and Eastlink that they must continue to operate their linear community channels in accordance with the Regulations.

Secretary General

### **Related documents**

- *Monitoring linear community channels and on-demand community programming services*, Broadcasting Information Bulletin CRTC 2021-155, 3 May 2021
- *Call for comments on a standardized approach to monitoring linear community channels and on-demand community programming services*, Broadcasting Notice of Consultation CRTC 2020-227, 16 July 2020
- *Terrestrial broadcasting distribution undertakings serving various locations in Quebec – Licence renewal and amendments*, Broadcasting Decision CRTC 2019-230, 28 June 2019
- *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

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