



Broadcasting Decision CRTC 2009-276

Route reference:
Broadcasting Public Notice 2008-63

Ottawa, 15 May 2009

Videotron Ltd.
Province of Quebec

Application 2008-0743-0, received 27 May 2008

Illico sur demande – Licence amendment

*The Commission, by majority decision, **denies** the application by Videotron Ltd. to amend the broadcasting licence for the video-on-demand programming undertaking known as Illico sur demande so as to modify the condition of licence relating to closed captioning in order to be exempt from the requirement to close caption adult programming and programs directed to children of pre-school age.*

The application

1. The Commission received an application by Videotron Ltd. (Videotron) to amend the broadcasting licence for its video-on-demand (VOD) programming undertaking known as Illico sur demande by modifying the current condition of licence relating to closed captioning. Under the modified condition of licence, the licensee would be required to close caption 90% of all programming it broadcasts, excluding adult programming and programs directed to children of pre-school age.
2. The licensee made this request to alleviate the costs related to the closed captioning of adult programming and programs for children of pre-school age. It claimed that these requirements generate costs and an administrative burden that exceed the service provided to the public. The licensee affirmed that the financial resources made available as a result of the proposed amendment would be devoted to increasing closed captioning of programs targeting the general public and improving the quality of that captioning.
3. The Commission received an intervention from Rogers Cable Communications Inc. (Rogers) supporting the application, an intervention from Bell Canada (Bell) supporting certain elements of the application and an intervention from an individual opposing the application. The licensee did not reply to the interventions. The public record of this proceeding is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Commission's analysis and determinations

4. After examining the application in light of applicable regulations and policies and taking into account the interventions received, the Commission considers that the issues to be addressed in its determinations are the following:
 - Is approval of the requested exemption warranted?
 - Is the licensee in compliance with its current condition of licence relating to closed captioning?

Is approval of the requested exemption warranted?

5. In support of its application for an exemption, the licensee cited Public Notice 1995-48, where the Commission acknowledged that closed captioning may not be appropriate for some types of programming such as programming targeted to pre-school children. The Commission also recognized that requiring 100% captioning at all times would not be reasonable due to unforeseen circumstances.
6. In its intervention, Rogers supported Videotron's claim that programming for pre-school-aged children, who are generally visual in nature, does not need closed captioning. Echoing some of Videotron's arguments, Bell submitted that closed captioning of adult programming is of little value and that it is difficult to find captioning companies prepared to do this type of work.
7. The intervention filed by an individual submitted that the Commission no longer distinguishes between types of programs to be closed captioned. The intervener also noted that the licensee did not provide financial evidence to demonstrate that the costs of closed captioning were so high as to exceed the service provided to the public.
8. The Commission notes that it has updated its closed captioning policy. In Broadcasting Public Notice 2007-54, the Commission established a requirement for English- and French-language broadcasters to caption 100% of their programs over the broadcast day. Broadcasters are not required to close caption advertising and promos. However, the Commission did not make any exception in its requirements for closed captioning of all programs regardless of category.
9. In that same public notice as well as in Broadcasting Decision 2004-27, the Commission recognized the importance of closed captioned programs for children of pre-school age so that these programs can fulfil their role in improving the literacy skills of adults and children who are learning to read as well as giving parents access to the programs their children watch. Further, while the Commission has previously acknowledged the challenges associated with the closed captioning of adult programming (see, for example, Broadcasting Decision 2004-162), it has not exempted broadcasters in this regard. Instead, the Commission proposed to accommodate them by allowing them to gradually increase the number of closed-captioned programs broadcast.

10. In Broadcasting Public Notice 2007-54, the Commission also advised broadcasters requesting an exemption from the policy that they would be required to demonstrate, with specific and detailed supporting evidence, including financial information, that it is impossible for them to meet the 100% captioning requirement and that a tailoring of the requirement is necessary.
11. The Commission notes that the licensee has already been granted an exemption to the closed captioning requirements. It is required to close caption only 90% of all programming during the broadcast day. The Commission also notes that the licensee did not present detailed evidence, including financial information, to support its application. The licensee did not demonstrate how the closed captioning of programs for children of pre-school age and of adult programming would result in such significant expenditures and administrative burden on the undertaking to justify its request for an exemption to the Commission's policy.
12. In light of the above, the Commission finds that approval of the requested exemption is not warranted.

Is the licensee in compliance with its current condition of licence relating to closed captioning?

13. Condition of licence number 8, set out in the appendix to Broadcasting Decision 2002-203, imposed the following requirement on the licensee:

No later than 1 September 2006 and until the end of the licence term, the licensee shall caption at least 90% of all programs it airs during the broadcast day.
14. In Broadcasting Decision 2008-121, the Commission reiterated this requirement in condition of licence number 11.
15. However, in its application, the licensee stated that it would be able to close caption 90% of its programming only in September 2008, rather than by 1 September 2006. In light of this information, the Commission is concerned that the licensee may not be in compliance with its current condition of licence relating to closed captioning.
16. As indicated in Broadcasting Decision 2008-121, the licensee is exempt from the program log requirements. Verifying the licensee's compliance with its closed captioning obligations is therefore difficult. Accordingly, the Commission expects the licensee to provide evidence that it is in compliance with the closed captioning obligations imposed on it by condition of licence.
17. Furthermore, the Commission notes that it does not help licensees fulfil their programming obligations by amending their conditions of licence to lower their requirements. Rather, Commission practice is to refuse to consider any application by a licensee that does not comply with its conditions of licence.

Conclusion

18. In light of the above, the Commission, by majority decision, **denies** the application by Videotron Ltd. to amend the broadcasting licence for the VOD programming undertaking known as Illico sur demande so as to modify the condition of licence relating to closed captioning in order to be exempt from the requirement to close caption adult programming and programs directed to children of pre-school age.
19. The Commission expects the licensee to submit, within 30 days of the date of this decision, evidence as to how it is complying with its current condition of licence relating to closed captioning.

Secretary General

Related documents

- *Illico sur demande – Licence amendment*, Broadcasting Decision CRTC 2008-121, 6 June 2008
- *A new policy with respect to closed captioning*, Broadcasting Public Notice CRTC 2007-54, 17 May 2007
- *Licence amendment for Canal Indigo*, Broadcasting Decision CRTC 2004-162, 23 April 2004
- *Treehouse TV – Licence renewal*, Broadcasting Decision CRTC 2004-27, 21 January 2004
- *Théâtre Archambault @ la maison – video-on-demand service*, Broadcasting Decision CRTC 2002-203, 23 July 2002
- *Introduction to decisions renewing the licences of privately-owned English-Language television stations*, Public Notice CRTC 1995-48, 24 March 1995

This decision is to be appended to the licence. It is available in alternative format upon request and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>.