



Broadcasting Decision CRTC 2020-211

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Reference: Part 1 licence renewal application posted on 3 February 2020

Ottawa, 2 July 2020

Bragg Communications Incorporated (Eastlink)
Across Canada

Public record for this application: 2019-1016-7

Bragg Communications Incorporated, operating as Eastlink – Licence renewal

*The Commission **renews** the broadcasting licence for the on-demand service of Bragg Communications Incorporated, operating as Eastlink, from 1 September 2020 to 31 August 2025.*

Application

1. On 3 June 2019, the Commission issued Broadcasting Notice of Consultation 2019-192 (the call), which listed the television services and stations for which the licences needed to be renewed to continue their operations.
2. In response to the call, Bragg Communications Incorporated, operating as Eastlink (Eastlink), filed an application to renew the broadcasting licence for its on-demand service, which expires on 31 August 2020. The Commission did not receive any interventions in regard to this application.
3. The Commission has the authority, pursuant to section 9(1) of the *Broadcasting Act* (the Act), to issue and renew 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 section 3(1) of the Act.
4. The licensee agreed to adhere to the standard conditions of licence, expectations and encouragements for on-demand services set out in the appendix to Broadcasting Regulatory Policy 2017-138, with the exception of the amendments described below.

Non-compliance

5. Condition of licence 7 as set out in Appendix 6 to Broadcasting Regulatory Policy 2014-444, states that the licensee is prohibited from offering:
 - (a) a non-Canadian subscription video-on-demand (SVOD) package that is directly competitive with a Canadian linear pay or specialty service or

- (b) a Canadian SVOD package that is directly competitive with a genre-protected Canadian linear pay or specialty service, unless the package is an on-demand extension of this Canadian linear pay or specialty service.
6. In the 2018-2019 broadcast year, Eastlink offered Falcon TV, a non-Canadian SVOD service that was directly competitive with a Canadian linear pay or specialty service. The licensee stated that as soon as it became aware of the non-compliance, steps were taken to remove the non-Canadian SVOD package from its platform.
 7. In light of the above, the Commission finds the licensee in non-compliance with its condition of licence 7 as set out in Appendix 6 to Broadcasting Regulatory Policy 2014-444. However, the Commission acknowledges that Eastlink removed the non-Canadian SVOD package from its platform as soon as it became aware of the non-compliance and replaced it with a Canadian package as required. The Commission agrees that the licensee reacted quickly to correct the non-compliance and considers that no further corrective measures are required.

Licence amendments

8. Section 3(1)(p) of the Act declares that programming accessible by disabled persons should be provided within the Canadian broadcasting system as resources become available for the purpose.
9. Pursuant to this provision, Eastlink's linear community channels, operated by Eastlink's licensed broadcasting distribution undertakings in Halifax and Sudbury, are subject to a condition of licence that requires 100% of their original licensee-produced English- and French-language programming to be close captioned by the end of the licence term, that is by 31 August 2025.¹
10. However, to continue distributing community programming from its Halifax and Sudbury community channels on its on-demand service under the standard requirements for on-demand services set out in the appendix to Broadcasting Regulatory Policy 2017-138, the licensee would be required to meet the 100% closed captioning threshold by day one of its new licence term, that is by 1 September 2020. The licensee wishes to harmonize the closed captioning requirements across its platforms.
11. The licensee also noted that its on-demand service is required to close caption significantly more community programming than its linear community channels. A requirement to close caption its on-demand service programming five years earlier than that of its linear community channels would be cost prohibitive.

¹ The conditions of licence for Eastlink's linear community channels (Halifax and Sudbury) are set out in Broadcasting Decision 2018-268.

12. Therefore, the licensee proposed to replace the standard condition of licence 21, which requires the licensee to caption 100% of its English- and French-language programs, with the exception of community access television programming, with the following proposed condition of licence:

As an exception to condition of licence 21 in Broadcasting Regulatory Policy 2017-138, the licensee shall caption:

- (a) 100% of the English- and French-language programs in its inventory, with the exception of community programming, and
- (b) by the end of the licence term, 100% of original licensee-produced community programming produced by the licensee's Halifax and Sudbury community channels.

13. The licensee also proposed to replace its standard expectation 3, which states that "The Commission expects the licensee to ensure that 100% of original community access television programming is closed captioned," with the following proposed expectation:

As an exception to expectation #3 in Broadcasting Regulatory Policy CRTC 2017-138, the Commission expects the licensee to ensure that 100% of original community access television programming distributed by the licensee's Halifax and Sudbury community channels is captioned by the end of the licence term.

14. The licensee stated that the standard requirements would be too onerous and could impede its capacity to continue distributing community programming from its Halifax and Sudbury community channels on its on-demand platform.
15. The Commission acknowledges that Eastlink's linear services (Halifax and Sudbury) are subject to a condition of licence that requires it to close caption 100% of original licensee-produced English- and French-language programming aired on its community channel by the end of the licence term (31 August 2025). The Commission expects the licensee to ensure that 100% of original English- and French-language access programming aired on its community channels is close captioned by the end of its licence term.
16. The Commission agrees that the imposition of the above-mentioned standard condition of licence and expectation as set out in Broadcasting Regulatory Policy 2017-138 would be onerous and cost prohibitive. The Commission is also of the view that losing the community channel programming on Eastlink's on-demand service would not be in the public interest.
17. In light of the above, the Commission **approves** the request by the licensee to amend its condition of licence and expectation regarding closed captioning. A **condition of licence** and expectation to that effect are set out in the appendix to this decision.

Conclusion

18. In light of all the above, the Commission **renews** the broadcasting licence for the on-demand service of Bragg Communications Incorporated, operating as Eastlink, from 1 September 2020 to 31 August 2025. The terms and **conditions of licence** are set out in the appendix to this decision.

Secretary General

Related documents

- *Call for licence renewal applications*, Broadcasting Notice of Consultation CRTC 2019-192, 3 June 2019
- *Eastlink – Licence renewal for various terrestrial broadcasting distribution undertakings*, Broadcasting Decision CRTC 2018-268, 2 August 2018
- *Standard requirements for on-demand services*, Broadcasting Regulatory Policy CRTC 2017-138, 10 May 2017
- *Amendments to various regulations, the standard conditions of licence for video-on-demand undertakings and certain exemption orders - Provisions requiring the mandatory distribution of emergency alert messages*, Broadcasting Regulatory Policy CRTC 2014-444 and Broadcasting Orders CRTC 2014-445, 2014-446, 2014-447 and 2014-448, 29 August 2014

This decision is to be appended to the licence.

Appendix to Broadcasting Decision CRTC 2020-211

Terms, conditions of licence, expectations and encouragements for the on-demand service of Bragg Communications Incorporated, operating as Eastlink

Terms

The licence will expire 31 August 2025.

Conditions of licence

1. The licensee shall adhere to the standard **conditions of licence** for on-demand services set out in the appendix to *Standard requirements for on-demand services*, Broadcasting Regulatory Policy CRTC 2017-138, 10 May 2017, with the exception of condition of licence 21, to be replaced by the following:

21. The licensee shall caption:

- (a) 100% of the English- and French-language programs in its inventory, consistent with the approach set out in *A new policy with respect to closed captioning*, Broadcasting Public Notice CRTC 2007-54, 17 May 2007, with the exception of original licensee-produced community programming and access programming, and
- (b) 100% of original licensee-produced community programming produced by the licensee's Halifax and Sudbury community channels by the end of the licence term.

Expectations

The licensee shall adhere to the standard expectations for on-demand services set out in the appendix to *Standard requirements for on-demand services*, Broadcasting Regulatory Policy CRTC 2017-138, 10 May 2017, with the exception of expectation 3, to be replaced by the following:

3. The Commission expects the licensee to ensure that 100% of original community access television programming distributed by the licensee's Halifax and Sudbury community channels is captioned by the end of the licence term.

Encouragements

The licensee shall adhere to the standard encouragements for on-demand services set out in the appendix to *Standard requirements for on-demand services*, Broadcasting Regulatory Policy CRTC 2017-138, 10 May 2017.