



Broadcasting Decision CRTC 2020-356

PDF version

References: 2019-321 and 2019-321-1

Ottawa, 22 October 2020

Bell Canada

Various locations in Ontario, Quebec and the Atlantic Provinces

Public record for these applications: 2017-0863-7, 2017-0864-5 and 2017-0865-3

Various terrestrial broadcasting distribution undertakings – Licence renewals

*The Commission **renews** the regional broadcasting licences for Bell Canada's broadcasting distribution undertakings serving various areas in Ontario, Quebec and the Atlantic Provinces, from 1 November 2020 to 31 August 2024. These short-term renewals will allow for an earlier review of the licensee's operations in light of the Commission's concerns relating to the licensee's compliance with the relevant regulatory and policy framework.*

Applications

1. The Commission has the authority, pursuant to section 9(1) of the *Broadcasting 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 *Broadcasting Act*.
2. On 31 May 2017, the Commission issued Broadcasting Notice of Consultation 2017-179, which listed the terrestrial broadcasting distribution undertakings (BDUs) for which the licences would expire 31 August 2018 and therefore needed to be renewed to continue their operations. In that notice of consultation, the Commission requested that the licensees of those BDUs submit renewal applications for their broadcasting licences.
3. In response, Bell Canada (Bell) filed applications to renew the regional broadcasting licences for its terrestrial BDUs serving the following areas in Ontario, Quebec and the Atlantic Provinces:¹

¹ Bell requested that the three regional broadcasting licences for its terrestrial BDUs be administratively renewed for one year, until 31 August 2019, to align the expiry dates of those licences with the expiry dates of the licences for its direct-to-home (DTH) undertaking and its satellite relay distribution undertaking (SRDU), which would allow the Commission to review Bell's applications and compliance for all of its services at the same time. Accordingly, in Broadcasting Decision 2018-182, the Commission administratively renewed the licences for Bell's terrestrial BDUs until 31 August 2019. These licences were subsequently administratively renewed from 1 September 2019 to 29 February 2020 in Broadcasting Decision 2019-306, from 1 March 2020

- Greater Sudbury, Hamilton/Niagara, Kingston, Kitchener, London, Oshawa, Ottawa, Peterborough, Sault Ste. Marie, Stratford, Toronto and Windsor, and their surrounding areas, Ontario (2017-0863-7);
 - Chicoutimi, Drummondville (Centre-du-Québec region), Gatineau, Joliette (Lanaudière region), Jonquière, Montréal, Québec, Saint-Jérôme (Laurentides region), Sherbrooke and Trois-Rivières (Mauricie region), and their surrounding areas, Quebec (2017-0865-3); and
 - Fredericton and surrounding areas, Moncton and Saint John, New Brunswick; St. John's, Paradise and Mount Pearl, Newfoundland and Labrador; and Halifax, Dartmouth, Bedford and Sackville, Nova Scotia (2017-0864-5).
4. Bell requested that each of the regional broadcasting licences be renewed for a full seven-year licence term. In addition, the licensee requested the following:
- authorization to merge its BDU serving Saint-Jérôme with its Montréal undertaking;
 - authorization, by condition of licence, to operate certain community programming services using a zone-based approach; and
 - continued authorization to double its allowable contribution to local expression for its BDUs in both Ottawa and Québec in order to offer two community programming services in each of these communities (one in each official language).
5. In Broadcasting Notice of Consultation 2019-321, the Commission called for comments on Bell's applications and indicated that it would address various matters as part of the proceeding, including the following:
- the licensee's compliance with regulatory obligations, including community programming and local expression;
 - matters relating to accessibility; and
 - requests by the licensee to add, delete and/or amend certain conditions of licence.
6. The Commission received a joint supporting intervention from various individuals who were involved in the production of community access programming on Bell's community programming services. It also received an intervention from the Independent Broadcasters Group (IBG) commenting on the applications, as well as an intervention from Quebecor Media Inc. (Quebecor), who opposed certain elements of Bell's applications. Bell replied collectively to the interventions. In building the record for these applications, the Commission also engaged in numerous rounds of questions with

Bell so as to ensure that the licensee had every opportunity to provide the necessary information and that the Commission fully understood the issues.

Issues

7. After examining the record for these applications in light of applicable regulations and policies, the Commission considers that the issues it must address relate to the following:
 - the nature of Bell's community programming;
 - the licensee's direct expenses related to community programming;
 - the licensee's use of funding flexibility in regard to contributions to local expression;
 - conditions of licence permitting the licensee to operate on-demand outlets for local expression;
 - whether the licensee should be allowed to maintain the authorization to operate dual community programming services in Ottawa and Québec;
 - the licensee's compliance with certain provisions of the *Broadcasting Distribution Regulations* (the Regulations) relating to mandatory contributions to Canadian programming;
 - whether the licensee should be allowed to merge the Saint-Jérôme licensed area with its Montréal undertaking;
 - whether the licensee should be allowed to operate zone-based community programming services for certain areas in Ontario, Quebec and the Atlantic Provinces;
 - the suspension of conditions of licence relating to the Wholesale Code;
 - whether the licensee should be allowed to add conditions of licence relating to the distribution of OMNI stations;
 - conditions of licence relating to the set-top box (STB) audience measurement system;
 - accessibility; and
 - requests relating to various conditions of licence, requirements, expectations and encouragements that did not raise any concerns or issues.

Nature of Bell's community programming

8. Section 3(1) of the *Broadcasting Act* identifies that the Canadian broadcasting system comprises public, private and community elements (section 3(1)(b)). Further, the *Broadcasting Act* declares, among other things, that the Canadian broadcasting system should encourage the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic

creativity (section 3(1)(d)(ii)); should reflect the circumstances and aspirations of all Canadians (section 3(1)(d)(iii)); and should be readily adaptable to scientific and technological change (section 3(1)(d)(iv)). It also sets out that each element of the Canadian broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming (section 3(1)(e)), that the programming provided by the Canadian broadcasting system should, among other things, provide local and community reflection (sections 3(1)(i)(ii)-(iii)), and that a range of broadcasting services in English and in French shall be extended to all Canadians as resources become available (section 3(1)(k)). Consistent with these provisions, the Commission has made regulations pursuant to section 10(1) of the *Broadcasting Act*, and imposed a number of conditions of licence on licensees pursuant to section 9(1) in regard to community programming, including both programming and funding requirements.

9. In recent years, to encourage innovative proposals for outlets for local expression, the Commission has approved applications by licensees of BDUs, including Bell, to provide community programming on their related on-demand undertakings, subject to conditions of licence. Since the provisions of the Regulations relating to community programming apply exclusively to linear community channels, licensees who wish to provide community programming on an on-demand basis require separate conditions of licence on two separate types of undertakings: one that is applied to their BDU licences, which allows them to count funding to on-demand community programming towards their contributions to local expression and Canadian programming, and one for their on-demand licences, which grants that undertaking (i.e., the on-demand service) the authority to exhibit community programming and sets out the requirements for this type of programming.
10. The standard wording of the current conditions of licence for on-demand services (including those of Bell²) is now set out in the appendix to Broadcasting Regulatory Policy 2017-138, which includes requirements similar to those applicable to linear community channels as set out in the Regulations. In addition, the key definitions relating to community programming that apply to the conditions of licence and expectations set out in the appendix to that regulatory policy are the same as those set out in the Regulations.
11. As set out in the Regulations, “community programming” means, in relation to a licensed area, programming that is produced
 - (a) by the licensee in the licensed area or by members of the community served in the licensed area;

² Bell’s related on-demand service has been subject to these standard conditions of licence since 1 September 2017, when the Commission last renewed the broadcasting licence for that service (see Broadcasting Decision 2017-149). Prior to that date, the standard conditions of licence for the service were set out in Broadcasting Regulatory Policy 2011-59-1.

- (b) by the licensee in another licensed area or by the members of the community served in that other licensed area and that is relevant to the community referred to in paragraph (a);
 - (c) by another licensee in a licensed area or by the members of the community served in that other licensed area that is relevant to the community referred to in paragraph (a); or
 - (d) by a person licensed to operate a network for the purpose of producing community programming for distribution by the licensee on a community channel.
12. As noted in the Regulations, the definition of “community programming” includes community access television programming (access programming) and local community television programming, which are defined in the regulations and expanded upon in Broadcasting Regulatory Policy 2016-224 (the Community Television Policy³).
 13. Access programming is defined as programming produced by community members not employed by the BDU. It aims to turn the passive viewer into an active participant and therefore plays a role in fostering a greater diversity of voices and alternative choices by facilitating expression at the local level. This includes offering training to citizens and conducting outreach activities to increase awareness of the tools and resources at their disposal.
 14. The Community Television Policy allows for citizen access to the Canadian broadcasting system. In order to ensure citizen access, the Commission requires that community channels and community programming services produce and broadcast a minimum level of access programming. However, BDUs may assist with training and support community members in the production and distribution of access programming.
 15. Access programming is relevant in a number of contexts within the regulatory framework. In regard to access programming and exhibition requirements, pursuant to the Regulations, licensed BDUs must devote a minimum of 50% of the programming aired during each broadcast week to the broadcast of access programming. As a BDU licensee that is authorized by condition of licence to offer a community programming outlet on its on-demand service, Bell is currently subject to similar requirements, set out in the appendix to Broadcasting Regulatory Policy 2017-138. In addition, given that the definition of “local programming” necessarily includes access programming, access programming can be included in the calculation to achieve the minimum threshold for local programming.⁴ As well, in regard to expenditure requirements, licensed BDUs

³ The Commission’s policy for community television that was in effect during Bell’s licence term is set out in Broadcasting Regulatory Policy 2010-622, as corrected by Broadcasting Regulatory Policy 2010-622-1. That policy was revised in Broadcasting Regulatory Policy 2016-224. The Community Television Policy sets out a number of Commission determinations regarding the provision of community programming, as well as key policy objectives. The defining components for access programming and local community television programming essentially remained the same.

⁴ As specified in section 31(1) of the Regulations and in condition of licence 19 set out in the appendix to Broadcasting Regulatory Policy 2017-138, operators of outlets for local expression must devote a minimum of 60% of the programming aired during each broadcast week to the broadcast of local programming.

must direct at least 50% of all programming-related expenditures to access programming.

16. In order to ensure community reflection, the Commission requires that community channels and community programming services broadcast a minimum level of local community television programming, which is defined in the Regulations as follows:

In relation to a licensed area, programming that is reflective of the community served in the licensed area and that is produced

- a) by the licensee in the licensed area, by the members of the community services in the licensed area or by a community television corporation residing in the licensed area; or
- b) by another licensee in a licensed area within the same municipality as the licensee referred to in paragraph (a), by the members of the community served in that licensed area or by a community television corporation residing within that licensed area.

17. The broadcast of community programming, whether produced by members of the community or by the BDU, provides a reflection of local realities that few other television services currently provide. Among other things, it is key to supporting the activities of thousands of community and amateur sports associations across Canada, and is a source of information for municipal politics outside major centres, which is essential to achieving full democratic participation.

18. If the licensee of a BDU elects to distribute community programming, it must ensure that it does so in accordance with the provisions set out in sections 30 to 36 of the Regulations relating to the community channel, any applicable conditions of licence that relate to community programming, and the Community Television Policy, which sets out two main objectives:

- citizen access: to foster a greater diversity of voices and alternative choices by facilitating new entrants at the local level;
- community reflection: to ensure the creation and exhibition of more locally produced, locally reflective community programming.

19. In regard to Bell specifically, a number of these policy objectives are also operationalized through conditions of licence. In this regard, Bell's systems in Ontario and Quebec are subject to the following condition of licence set out in the appendix to Broadcasting Decision 2011-737:

4. The licensee shall adhere to the requirements set out in *Community television policy*, Broadcasting Regulatory Policy CRTC 2010-622, 26 August 2010, as amended by *Community television policy – Correction*, Broadcasting Regulatory Policy CRTC 2010-622-1, 13 September 2010.

20. As noted above, the community television policy referred to in the above condition of licence was updated in the Community Television Policy. However, because the condition of licence is static, Bell was required to comply with the policy elements of Broadcasting Regulatory Policies 2010-622 and 2010-622-1 during the licence term being reviewed in the present decision.
21. Bell stated that, throughout the current licence term, it has provided community programming to its subscribers on its on-demand service, branded “TV1”, in the licensed systems serving Fredericton, Saint John, Moncton, Halifax, St. John’s, Toronto, Ottawa, Montréal and Québec. It confirmed that, during the 2017-2018 broadcast year, it “launched” additional community programming services on its on-demand platforms serving Gatineau, Joliette, Sherbrooke, Trois-Rivières, Kingston, Hamilton/Niagara, Kitchener, London and Oshawa. Bell also indicated that through the use of a zone-based approach, it operates an on-demand community programming service in the Atlantic Provinces, which comprises a number of exempt systems.⁵
22. Further, Bell noted that it provides facilities and equipment to access producers in many locations where it operates on-demand community programming services. It also submitted that its TV1 staff provides training and support to access producers throughout the production process, and partners with freelance staff and independent production companies where it is unable to provide such training and support. The Commission notes that these claims were validated in a number of supporting interventions from access producers.

Local BDU productions

23. The Commission requested that Bell provide extensive information, including but not limited to a list of the community programs that it produced in each of the 2014-2015 through 2016-2017 broadcast years along with their related expenditures, for each service area where it offers a community programming service on its on-demand platform.
24. Among other things, Bell provided a list of community television program titles that it has produced and that are also offered on TV1, along with descriptions of those programs. The Commission has determined, based on its analysis of the information provided by Bell regarding the community access programming it produced, that the licensee produces a satisfactory amount and diversity of access programming in the majority of communities where it offers an on-demand community programming service. Specifically, Bell’s access programming generally features local personalities that would not otherwise have access to the broadcasting system and/or covers local events and issues, including a variety of university-level sports, local festivals involving local artists from different fields of expertise (authors, photographers, musicians, chefs, etc.), local fundraising events, municipal politics, local venues such as restaurants, and eateries and businesses. In addition, in Bell’s licensed areas in the Atlantic Provinces, almost all of the community programming produced during the current licence term was access programming, all of which was appropriately funded.

⁵ Bathurst and Edmundston, New Brunswick; Corner Brook, Bay Roberts and Carbonear, Newfoundland and Labrador; Bridgewater, Glace Bay, Kentville, New Glasgow, Truro and Sydney, Nova Scotia; and Charlottetown and Summerside, Prince Edward Island.

25. This programming, to which Bell devotes a significant portion of the funds that it allocates to local expression, includes a variety of programs that meet the broad definition of “community programming” set out in the Regulations.
26. However, the Commission has identified a number of issues relating to Bell’s local community television programming in Ontario and Quebec, specifically, to the portion of programming that Bell considers to be “local BDU productions,” which includes all programs that are not access productions. In this regard, despite the designation “BDU production,” Bell explained that it hires well-known production companies (including Bell Media Inc. (Bell Media)) to produce local community BDU productions.⁶ The Commission also notes that many of the programs identified in the table below and that Bell has designated as local BDU productions are closely related to programming broadcast on Bell-owned commercial programming services or television stations.

Community television program title (offered on Bell TV1)	Television program title	Description provided by Bell
24 CH – Le Valet (2015-2016) (2016-2017) (2017-2018)	24 CH (RDS)	In this program, our host chats with two players or members of the Montréal Canadiens organization as they go out for a car ride. The host and guests interact with local Montréal Canadiens fans and share some unexpected, funny and touching moments.
Amazing Race Canada Auditions (2014-2015) (2015-2016) (2016-2017)	Amazing Race Canada (CTV)	This program features the top audition videos from contestants in the reality TV show Amazing Race Canada. The videos are drawn from applicants from Toronto, Ottawa, Montréal and Eastern Canada.
LetterKenny, Let’s Get At’er (2017-2018)	LetterKenny (Crave TV)	This program provides audiences with a behind the scenes look at the Canadian comedy hit, LetterKenny. The show includes interviews with the award-winning cast and features the iconic set in Sudbury, Ontario. The show also focuses on the real locations in and around Sudbury that inspire the series.

⁶ Sometimes referred to as “licensee-produced” programs, these productions comprise programming that is produced or commissioned by the licensee.

Etalk @ TIFF (2015-2016) (2016-2017) (2017-2018)	Etalk (CTV)	This program covers one of Toronto's premiere local events, the Toronto International Film Festival. The show focuses on the behind the scenes aspects of the film festival covering all the local venues. Plus, the audience is given access to in-depth interviews that are typically unavailable on commercial platforms.
Investigating Cardinal (2017-2018)	Cardinal (CTV, Super Écran)	This program gives viewers an in-depth behind the scenes look at a popular, local Canadian drama series. The show features on-location footage from Toronto and includes exclusive interviews with series leads Billy Campbell and Karine Vanasse and many others.
Etalk: Road to the Oscars (2017-2018)	Etalk (CTV)	Get the inside scoop on the Oscar nominations, go shopping with the eTalk team at the hottest stores in Toronto and get an insider's perspective on what it takes to get that perfect Oscars look. Then, sit down with Ben Mulroney in the T.O. studio as he covers the big storylines of Oscars night.
À table avec la belle gang (2016-2017) (2017-2018)	La belle gang (Canal Vie)	Local personalities join Montréal Chef Danny St-Pierre as he explores and interprets fresh and seasonal foods in two different ways. Be inspired and rediscover Quebec foods with lively conversations.
Mary's Big Kitchen Party (2016-2017) (2017-2018)	Mary's Kitchen Crush (CTV)	Local Toronto chef Mary Berg shops in and around Toronto at specialty food shops, to host a dinner party with her friends in her favourite room, the kitchen.
Raptors Open Gym Fast Break (2014-2015) (2015-2016) (2016-2017)	Raptors Open Gym (TSN)	Brings the NBA to the GTA. Go behind the scenes and follow the Raptors players.
24 Hours of Food with Michael Bonacini (2014-2015) (2015-2016) (2016-2017)	Bonacini's Italy (Gusto, now CTV Life)	From breakfast, lunch, dinner, to late night eats. Michael Bonacini goes on a journey to discover and experience the best places to eat.
The Social: Lunch Dates (2015-2016) (2016-2017)	The Social (CTV)	Each of the Lunch Dates episodes is hosted by one of The Social who brings the other co-hosts to a Toronto restaurant of their choice.

The Launch Concert Series (2017-2018)	The Launch (CTV)	Follow local aspiring artists on their journey to get a hit single & get a glimpse into their lives growing up in their hometown.
Secrets de Chalet (2017-2018)	Le Chalet (VrakTV)	During this 45-minute special program, the actors of the show Le Chalet (VRAC) open the doors of the Chalet to you.
Clash: Un avenir à reconstruire (2017-2018)	Clash (VrakTV)	[translation] 10-episode documentary series by Fabienne Larouche that explains the issues of young people living with handicaps. Scholarly mix of fiction and reality, each episode takes an inspiring look at four characters from the series Clash and four young people living with the consequences of an accident.
Pour devenir Meilleur que le chef! (2017-2018)	Meilleur que le chef! (Canal Vie)	[translation] Martin Juneau and Danny St-Pierre revisit the challenges of “Meilleur que le chef!” by cooking and giving tips for becoming better than the chef!

27. Although the descriptions provided by Bell for each of these programs included explanations as to how they are locally reflective, the explanations still appeared to support the conclusion that, for many of the programs, the main function is to cross-promote Bell Media productions that air on Bell-owned commercial television stations and services rather than provide genuine local reflection of specific communities. This would run counter to the Community Television Policy’s key objective of community reflection, an important element of the definition of “local community television programming” set out in the Regulations, and to the role of the community channel, which, as specified in the Community Television Policy and in Broadcasting Regulatory Policies 2010-622 and 2010-622-1, should be “primarily of a public service nature.”⁷
28. Similarly, some of the community programming produced by Bell is related to other properties owned in whole or in part by Bell (for example, the professional sports teams Toronto Raptors, Toronto Football Club and Montréal Canadiens). As such, that programming appears to promote Bell’s interests rather than reflect local communities.
29. Furthermore, given their focus on Bell’s commercial properties, most of Bell’s local BDU productions feature events and subject matter that appear to be tailored to an audience that extends beyond the local community. Examples include “Etalk: Road to the Oscars,” which has national audience appeal, and Bell’s broadcast of certain Cirque du Soleil shows, which originate in Montréal but have a global following, with certain shows filmed in locations outside of Bell’s serving areas, such as Las Vegas, Nevada, in the United States.

⁷ In the Regulations, “local community television programming” is defined as programming, in relation to a licensed area, that is reflective of the community served in the licenced area. This goes further than the definition of “community programming,” which generally only requires that a program be produced in or “relevant” to a licenced area.

30. In Broadcasting Decision 2015-31, the Commission addressed a similar practice by Videotron G.P.⁸ (Videotron⁹) and its community channel MATv in Montréal, based on a complaint by Independent Community TV. The Commission examined Videotron's community programming produced in that area, and noted that the other programs cited by Videotron were tailored more to serve the interests of the province as a whole rather than those of a given community. The Commission added that many of those programs, although of high quality, featured as much on the program schedules of MATv in the regions outside Montréal as on the program schedule of MATv Montréal, and that programs airing in Montréal did not deal with topics specific solely to the Montréal area.
31. In light of the apparent lack of local community reflection of many of the programs produced by Bell, as described above, the licensee was questioned on the nature of its local BDU productions, including, but not limited to, whether:
- the programs constitute community programming;
 - the programs contribute to achieving the policy objective of community reflection;
 - many of these productions were intended to promote Bell brands; and
 - the same conclusions as those set out in Broadcasting Decision 2015-31 regarding certain of Videotron's local productions can be drawn in regard to Bell's local BDU productions.
32. In response, Bell submitted that its creation of non-access programming associated with popular brands is part of its overall community television programming strategy and is key to attracting viewership towards its grassroots, access productions. In this regard, Bell cited Mr. Nicolas Poitras, its Vice President of Residential Services, who noted during the Commission's 2015 review of its policy for community television that the overall viewership of Bell's access programs had doubled due to investments in local non-access programming.
33. Bell submitted that each of these programs is a stand-alone, unique program that was never distributed on a commercial platform, and that TV1 does not produce programming for commercial purposes. It further submitted that the programs meet the definition of "community programming" as set out in the Regulations. The licensee added that each program was produced by an independent producer who is a member of the community served in the licensed area. Bell argued that although some of these productions incorporate popular brands, they are community-focused.

⁸ Videotron Ltd. and 9227-2590 Quebec Inc., partners in a general partnership carrying on business as Videotron G.P.

⁹ In Broadcasting Decision 2017-453, the Commission approved an application by Videotron Ltd. for authority to acquire the assets of Videotron G.P. In the present decision, the abbreviated form "Videotron" is used to refer exclusively to Videotron G.P.

34. In reply to questions as to whether conclusions similar to those set out in Broadcasting Decision 2015-31 could be drawn in regard to its local BDU productions, Bell stated that TV1 has met all of its access and local programming obligations. It noted that the main issue that led to the findings in the Videotron decision was that a large percentage of that licensee's access programming was deemed not to be access programming, bringing it below the required 50% access programming exhibition requirement. In Bell's view, the findings set out in Broadcasting Decision 2015-31 do not apply in the present case, and there are no reasonable grounds for a finding of non-compliance. Bell submitted that should the Commission determine that a majority of its BDU productions do not qualify as local and therefore constitute non-local, non-access community programs, TV1 would still surpass the local programming requirements through other local programming that it produced.
35. When questioned on whether certain productions were intended to promote other Bell brands, the licensee indicated that its community television programs that have an association with a Bell Media brand have a negligible promotional value to Bell Media, and that audiences for these programs are very small when considered relative to the audiences for commercial programming.
36. Finally, Bell submitted that TV1 programs related to Bell Media programs are in keeping with the mandate of the community programming service, which should be "primarily," and not exclusively, of a public service nature.
37. Notwithstanding the above, Bell stated that it would fully comply with any new policy directions on a going-forward basis. It submitted, however, that in no circumstances should policy clarifications be applied retroactively, and that any new policy directions should be achieved through a public consultation process and not a licence renewal application.
38. The IBG submitted that the licensee appears to have used mandated regulatory community programming contributions as a means to produce content that is intended to support productions that air on its commercial programming services. It noted that this content includes branded programs focused on professional sports teams that are associated with Bell's sports services, and lifestyle/cooking programs associated with productions that aired on Bell's Gusto (CTV Life) programming service.
39. In the IBG's view, on the surface, this represents a diversion of funds from the support of community expression and reflection to the promotion of Bell's own commercial programming and television services. Based on the perspective of independent programming services, the IBG argued that this represents just one further illustration of the potential for cross-ownership of BDU platforms to create an uneven playing field for independent programming services.

Commission's analysis

Bell's local BDU productions and community reflection

40. The definition of “community programming” set out in the Regulations primarily serves to identify who can produce this type of programming and where it can be produced, while also referencing access programming and local community television programming. However, a licensee cannot read this definition in a vacuum in order to understand its obligations relating to community programming. Community programming services (or community channels) are outlets that, given their nature, are meant to differ from other television stations/services.¹⁰ As such, the principles that govern the nature of community programming and community channels are further elaborated via policy objectives and statements set out in the Community Television Policy, which are complementary to the applicable sections of the Regulations.
41. In Broadcasting Regulatory Policy 2010-622, the Commission explicitly prohibited the distribution of commercial programs on the community channel and set out that one of the key objectives of the Community Television Policy is to ensure the creation and exhibition of locally produced, locally reflective programming. In the Community Television Policy, community reflection was set out as one of the dual objectives of the community channel.
42. A review of the descriptions provided by Bell for how its “BDU-produced programs” reflect local realities shows that many of these productions relate to programs that air on Bell-owned commercial television stations/services. They often consist of behind-the-scenes footage or interviews with participants in the commercially-aired program and have, among other things, the same or similar titles, hosts, themes and formula. There are also several programs that focus on professional sports teams owned in part by Bell rather than on community and amateur sports associations (among others, “24 CH – Le Valet” (Montréal Canadiens, a professional hockey team), “Raptors Open Gym Fast Break” (Toronto Raptors, a professional basketball team) and “We are TFC” (Toronto Football Club, a professional soccer team)).
43. In the Commission's view, based on information provided by Bell, many of these programs do not meet the policy objective of community reflection set out in the Community Television Policy. In numerous cases, Bell's practices have enabled it to use contributions to local expression (i.e., a contribution that is meant to be directed towards a service of a public nature) to cross-promote programming that serves its commercial interests, while not meeting the objective of community reflection. BDU-produced community programs should have strong connections to local culture and expression. Programs that have little or no connection to the community in which they are broadcast do not support the objective of community reflection.
44. Finally, while Bell argued that the conclusions drawn by the Commission in Broadcasting Decision 2015-31 regarding Videotron's community programming are not directly applicable in its case, the Commission finds that there are many similarities

¹⁰ Section 3(1)(b) of the *Broadcasting Act* recognizes a distinct “community element” of the broadcasting system.

between a wide variety of Bell's BDU productions¹¹ and the community programs produced by Videotron that led the Commission to make its determinations in that decision. For example, many of those productions, including various Cirque du Soleil shows and behind-the-scenes type shows for more popular, commercial programs, do not deal with topics specific to the area where they were produced, and also feature in the community programming offerings of many other Bell service areas. In addition, many of the productions appear to be tailored to serve the interests of an audience that is much wider than a given community (for example, fans of a professional sports team, fans of a television program that airs on a national commercial television service, or fans of Cirque du Soleil).

45. The Commission therefore finds that, in regard to a majority of Bell's BDU productions in Ontario and Quebec for the 2014-2015 through 2016-2017 broadcast years, the nature of those productions does not contribute to the fulfillment of the key community television policy objective of community reflection. Going forward, Bell will be required to ensure that its BDU productions in Ontario and Quebec reflect the local community in which they are broadcast.

Bell's expenditures on local BDU-produced programming

46. Although Bell indicated that local BDU-produced programming for the 2016-2017 broadcast year made up only 5%¹² of its overall community programming (12 out of 222 programs), the proportion of the licensee's total direct programming expenditures for that broadcast year that were allocated to programs directly linked to programs that aired on commercial television stations/services owned by Bell was 19.1% in Ontario (Ottawa and Toronto) and 26.9% in Quebec (Montréal and Québec). A large portion of those expenditures were for fees paid to independent producers.
47. Paying independent producers for the acquisition of programming is not an uncommon practice by BDUs that offer community programming, and aligns with the definition of "direct programming expense" set out in the Community Television Policy and section 32(1) of the Regulations.¹³ However, many of the producers to which Bell paid and claimed expenses have some relation to Bell's BDUs (for example, Bell Media, and Maple Leafs Sports and Entertainment Ltd., or MLSE¹⁴), whereas others are related to

¹¹ Including many related to programs aired on its commercial stations.

¹² These only include programs related to Bell's commercial programming, which does not include Cirque du Soleil shows or any other programs that do not have a commercial counterpart but are nonetheless linked to Bell's commercial interest.

¹³ As specified in section 32(1) of the Regulations, "direct programming expense" means an expenditure for the production or acquisition of programming, including

(a) expenditures on volunteer training and volunteer program development and community outreach, but excluding expenditures related to technology, sales, promotion and administration as well as general expenses; and

(b) expenditures related to the acquisition of programming produced by community-based digital undertakings, community-based low-power television stations or community television corporations.

¹⁴ The Commission takes notice of the generally and widely known facts that Bell Media is a subsidiary of Bell Canada, which is itself a subsidiary of BCE Inc. (BCE), and that BCE is one of the co-owners of MLSE.

businesses with which the parent corporation of Bell, BCE Inc. (BCE), is involved (for example, the Montréal Canadiens) or to programs aired on Bell's conventional or discretionary television services (for example, "Amazing Race Canada," "Mary's Kitchen Crush," "24 CH" and "Raptors Open Gym"). The evidence on the record indicates that Bell's related entities were likely to derive some benefit from the BDUs using monies meant for the production of community programming to support other properties related to Bell, in particular, through cross-promotional opportunities. Further, programming acquired by Bell for inclusion on its on-demand community television platform (for example, "Raptors Open Gym Fast Break" and "24 CH – Le Valet") includes significant fees paid by independent producers or by Bell on behalf of the independent producers to teams from professional sports leagues for the rights for the use of names, trademarks or video content involving the professional sports teams in question.

48. There is no specific policy or regulation that prevents a BDU from acquiring community programming from a related (either directly or indirectly) independent producer, or in relation to a program that an affiliate (such as CTV, Gusto (CTV Life) and TSN for Bell) airs on conventional or discretionary television services. Similarly, there is no policy or regulation that explicitly excludes from community programming any programs made by independent producers that are about or include content for which rights were paid to a professional sports league with BDU contributions to community programming.
49. However, the Commission identified the broadcast of programs featuring professional major league sports, produced by companies generally engaged in the production of such programs, as an area of concern in the realm of community television as long ago as 2002 (see Broadcasting Public Notice 2002-61). This caution was reiterated in the 2010 and 2016 community television policies, where it was stated that such programming does not fulfil the objectives of that policy and, accordingly, will generally not be allowed on the community channel. Bell has not put forward evidence that would convince the Commission that programming including licensed content from professional sports leagues within an acquired program from an independent producer – paid for by contributions meant for community programming – can or should be considered any differently.
50. The Commission also questions whether significant percentages – as high as 40% – of direct programming expenditures going towards the types of BDU productions described above point to community programming operations that can reasonably be considered "primarily of a public service nature."

Commission's decisions

51. While a community programming service (or a community channel) can be a differentiator for a BDU in appealing to consumers, this should not come at the expense of the key objectives of the Community Television Policy relating to citizen access and community reflection. The Community Television Policy is clear in this regard: the nature of the community channel should primarily be that of a public service.

52. As noted by Bell, it would meet its local programming exhibition and access programming expenditure requirements even if the Commission determined that the majority of its BDU productions were non-local, non-access community programs. Further, in terms of programming hours and number of titles, Bell's BDU productions do not constitute a large enough proportion of the overall community programming produced to consider that the key policy objective of community reflection is generally not met within its community operations.
53. However, the way Bell funds and produces the majority of its BDU productions in Ontario and Quebec is not consistent with the objectives and the intention of the Community Television Policy. In the Commission's view, a much more significant proportion of Bell's community programming funding should have been allocated to productions that contribute to the achievement of the policy objective of community reflection. Bell's significant expenditures on productions whose links to its commercial programming or properties have been prioritized over the genuine reflection of the local community in which those productions are broadcast, as well as its expenditures on other programming that is also meant to appeal to a wider audience than the BDU's local community, result in an offering that is more akin to a commercial enterprise that promotes Bell's economic interests than an offering that serves the interests and needs of local communities. Overall, the various issues and concerns outlined above regarding how Bell funds and produces its BDU productions are not consistent with the fundamental public service role of the community programming service set out in Broadcasting Regulatory Policies 2010-622 and 2010-622-1 and reiterated in the Community Television Policy.
54. In light of all the above, the Commission determines that in Ontario and Quebec, a significant portion of Bell's contributions to local expression were spent on community programming related to programs and brands in which Bell has a commercial interest rather than being spent on community programming reflecting the local communities that it serves in the way that the Commission had envisioned in the Community Television Policy. This includes an undue emphasis on programs that relate to popular programming airing on commercial television or that feature professional sports teams.
55. Accordingly, the Commission requires that, going forward, Bell align its local BDU productions with the policy objective of community reflection as described above. Bell must ensure that the production of such programs does not cross promote the licensee's commercial television productions and/or other properties in which it has a commercial interest at the expense of the public policy objectives set out in the Community Television Policy, including that of local reflection. Further, the programming acquired from independent producers must be reflective of the relevant community in order to be eligible as local programming or as community programming. Finally, in order to provide the greatest possible clarity on the matter, any fees paid to professional major sports leagues and teams, whether for programming or the licensing of rights, shall not be considered allowable contributions to local expression. The Commission intends to scrutinize these aspects of Bell's community programming going forward.

56. In addition, pursuant to section 11(2) of the Regulations, the Commission **directs** Bell to file, within the first three months of its new licence term, a report setting out the concrete measures that it will put into place in order to effectively reflect the communities that it serves through its BDU productions on a going-forward basis, and information on how it intends to address Commission concerns relating to the following:

- the tendency of Bell funding and producing nominally local community BDU productions that nonetheless have at their core the cross-promotion of existing commercial television programming of related licensees;
- Bell's tendency of funding BDU productions that are closely aligned with Bell's commercial interests, which does not align with the intent of the Community Television Policy and comes at the expense of key community television policy objectives; and
- the use of community television funding to pay for rights to professional sports teams, which, going forward, will not count as allowable expenditures.

Bell's direct expenses related to community programming

57. Community programming allows citizen access to the Canadian broadcasting system. It plays a role in fostering a greater diversity of voices and alternative choices by facilitating expression at the local level. Encouraging and fostering access to the broadcasting system for citizens includes the offer of training, in order to help those citizens to express themselves, and outreach, to ensure that they are aware of the tools and resources at their disposal. Public access programming has been the cornerstone of the Commission's policy for community television since 1971 and continues to ensure the distinctiveness of this element of the Canadian broadcasting system.

58. In support of the above, the Regulations include provisions to ensure that BDUs that choose to offer community programming in their service areas and direct part of their required Canadian programming contributions to such endeavours do so with a purpose to meet specific targets. This includes ensuring that a certain portion of expenditures go directly to the production of community television programming in the form of required spending percentages on direct community television programming expenses rather than indirect spending and non-programming expenditures such as technical or administration expenses.

59. Section 32(1) of the Regulations sets out requirements for BDUs in regard to "direct programming expenses," that is, expenditures for the production or acquisition of programming. These include expenditures on volunteer training, volunteer program development and community outreach, but exclude expenditures related to technology, sales, promotion and administration, as well as general expenses (section 32(1)(a)) and expenditures related to the acquisition of programming produced by community-based digital undertakings, community-based low-power television stations or community television corporations (section 32(1)(b)).

60. In Circular No. 426, the Commission indicated that the following additional guidelines are acceptable:

- Direct expenses are those expenses solely attributable to the acquisition or production of programming. This includes, for example, salaries and benefits paid to staff who work exclusively in the programming department, non-staff talent fees, films, tapes, props, sets, program vehicle operating costs, and any other program-related materials and supplies.
- Indirect expenses are those expenses that are not fully attributable to the acquisition or production of programming, but which are nevertheless necessary for the acquisition or production of programming. This includes, for example, a percentage of heat, light and hydro costs related to the building in which the programming facilities are located, a percentage of salaries and benefits paid to staff who do not work exclusively in the programming department, but are, at least at times, directly involved in its operation, programming equipment maintenance, and other costs for such things as office cleaning and entertainment related to the community programming department.
- Licensees are allowed to claim as direct expenses, in the calculation of their financial contribution to local expression, the depreciation or lease payments, whether on account of capital or operating leases, for equipment used to provide a community channel.

61. As part of this licence renewal proceeding, Bell provided data regarding its direct and indirect expenses claimed as part of its local expression expenditures towards meeting its Canadian programming requirements. Based on the information on the public record, the Commission notes that the nature of several large expenditures claimed as direct programming expenses in the 2016-2017 broadcast year appeared to be questionable either as direct programming expenses or as allowable contributions to the community programming service.

62. After examining the information provided by the licensee, the Commission has also identified the following issues in regard to Bell's programming expenditures:

- ambiguity in certain contracts concerning programs related to Bell's commercial programming and properties; and
- technical expenses that Bell included as part of its direct programming expenditures.

Ambiguity in contracts concerning programs related to Bell's commercial programming and properties

63. In order to shed light on the nature of certain expenditures, the Commission requested that Bell provide copies of certain contracts/agreements between itself and the productions companies that it hired to produce BDU productions and other entities in which it has commercial interests. After examining the documents filed by the licensee

under the confidential banner, the Commission noted apparent ambiguities relating to the following:

- the identification of “24 CH,” a commercial program aired on Bell’s French-language sports service RDS, as the program produced using community programming funding;
- an apparent single agreement for the production of “Raptors Open Gym,” a commercial program aired on Bell’s English-language sports service TSN, and its community program counterpart, “Raptors Open Gym Fast Break,” in which the portion of the total amount that was dedicated specifically to the community program is unclear; and
- apparent funding used for “advertising rights.”

Bell’s reply

64. In regard to “24 CH – Le Valet,” Bell indicated that the title of the program named in the agreement was listed generically as “24 CH – 5” because the production of the Montréal Canadiens program segments was done concurrently for “24CH” and “24 CH – Le Valet.” The licensee admitted that the name “24 CH – Le Valet” should have been used rather than the ambiguous “24 CH – 5.”
65. In addition, Bell confirmed that it has only one agreement that relates to both “Raptors Open Gym,” the program it airs on its commercial programming services, and “Raptors Open Gym Fast Break,” the program it airs on its community channels. According to Bell, “Raptors Open Gym Fast Break” is a grassroots local program premised on engagement with local basketball lovers and super fans. However, the licensee admitted that there is some ambiguity in the agreement that could have been avoided with separate agreements for each of “Raptors Open Gym” and “Raptors Open Gym Fast Break.”
66. Notwithstanding the above, Bell stated that no allowable contributions to local expression were ever directed to the production, licensing or advertising for “24 CH” or for “Raptors Open Gym.” In addition, Bell indicated that the agreement for the program “Raptors Open Gym Fast Break” was a content licensing agreement, and not for advertising or promotional benefit, as the references to advertising in the agreement pertain to the commercial television program “Raptors Open Gym.” The licensee added that the community television program “Raptors Open Gym Fast Break” did not include any advertising (or generate any advertising revenue) and was never broadcast on a commercial platform. It added that “Raptors Open Gym Fast Break” was not a presenting sponsor, was never broadcast on TSN, and was never a title sponsor at Raptors.com or the Raptors YouTube channel.
67. Bell submitted that out of the total amount covered by the contract, 53% is solely attributable to “Raptors Open Gym Fast Break” for the licensing of content and not for advertising rights. “Raptors Open Gym Fast Break” did not include any advertising or promotion.

Commission's analysis and decision

68. There is no evidence that Bell used funds for local expression to produce any part of its programming meant for commercial television. However, the fact that more than half of the value of a contract concerns amounts claimed towards its community program “Raptors Open Gym Fast Break” rather than the program aired on its licensed commercial television properties raises questions regarding the grassroots nature of the “Raptors Open Gym Fast Break” program and the amount of funds that are eligible to be claimed in regard to contributions to local expression. The combined contract creates significant problems for the Commission in determining an accurate value of the claimed community programming expenditures.
69. Further, Bell acknowledged that the structure of its contracts to produce “24 CH – Le Valet” and “Raptors Open Gym Fast Break” resulted in ambiguities in regard to expenditure characterization for the community program “Raptors Open Gym Fast Break” and the nature of the agreement itself. In the Commission’s view, the ambiguity within agreements and contracts in relation to the production of certain “companion programs” makes it difficult to delineate expenditures for community programming from expenditures for commercial programming, which, in turn, makes it difficult to fully review expenses relating to claimed community programs.
70. In light of the above, the Commission reminds Bell that production contracts should leave no ambiguity in regard to the allocation of local expression expenditures. Going forward, where production contracts involve both community programming expenditures and other types of expenditures, expenditures allocated to community programming must be clearly identified and easily distinguishable from those directed elsewhere.

Technical expenses included by Bell as direct programming expenditures

71. The Commission also questioned Bell on amounts included as direct programming expenditures that appeared to be directed to technical expenses, which are explicitly excluded from direct expenses in Section A of Appendix 2 to the Community Television Policy. These related to the following:
- Production supplies/Camera Etc. – expenses relating to the purchase of 4K camera kits for the various locations, truck lease and ownership, editing production supplies (computers, graphic software, etc.) and transmission costs;
 - Media Support Services – expenses relating to post production, such as for the media team that ensures quality and assurance, marries content with captioning files, and enters program information, show descriptions and the transcoding of videos for ingestion into all platforms (video-on-demand (VOD), online, etc.); and
 - Other significant amounts – expenses relating to a software portal built for exclusive use by TV1 in Atlantic Canada to provide targeted navigation to the TV1 VOD subsection of the Bell VOD storefront for Atlantic Canada subscribers.

Bell's reply

72. Bell submitted that the majority of expenses were directly related to the production of community programming and should therefore be categorized as direct expenses for regulatory purposes. In regard to "Production supplies/Camera Etc.," for example, it stated that more than 80% of access producers used the supplied production kits for the production of TV1 access programming projects. The licensee admitted, however, that certain of the media services such as "human resources and payroll," "equipment storage" and "IT support, edit suites & general staff," which it included as part of direct expenses, would have been more appropriately categorized as indirect (for example, administrative or technical) expenses.

Commission's analysis and decision

73. There are no regulations or policies setting specifics or limits on technical expenditures, as long as other metrics are met (such as the amount of access and local programming available to subscribers). Although excluding Bell's expenditures that do not appear to be direct in nature does not bring the licensee's direct expenditure levels below the required levels, and although those expenditures technically do not run counter to Commission policies and to the Regulations, they lie on the edge of what is acceptable and what is not, particularly when considered through the lens of the Community Television Policy. Consequently, the Commission has concerns regarding certain expenditures made by Bell in fulfilling its community television responsibilities.
74. The Commission is particularly concerned that Bell claimed costs as direct programming expenses when these costs appear to be technical in nature. The purchase of a software portal in order for subscribers to access the TV1 programming appears to be technical in nature, and can be compared to the purchase of an antenna for an over-the-air station. Given that both are required equipment to access the programming, they could be regarded as technical expenses, but not as programming expenses. The majority of funds spent on a community programming service are required to be spent on programming. If a licensee allocates costs that are truly not related to programming, this reduces the amount of funding available for the creation of community programming.
75. In light of the above, the Commission reminds Bell that technical costs, such as the purchase of the VOD servers and user interface software, are not eligible to be claimed as direct programming expenses. Direct programming costs must be related to the acquisition or production of programming rather than to the technical solutions purchased in order for the content to be made available. While these technical costs would still be eligible local expression contributions, they should not be counted as direct programming expenses.

Bell's use of funding flexibility in regard to contributions to local expression

76. Sections 34 and 35 of the Regulations together require that, in each broadcast year, licensed terrestrial BDUs make a mandatory contribution to Canadian programming of an amount equal to 5% of their gross revenues derived from broadcasting activities in

the previous broadcast year. A portion of this contribution to Canadian programming can support the creation of community programming or local news, or be directed to a production fund.

77. More specifically, as currently set out, section 34(2) of the Regulations specifies that a licensee shall, for each broadcast year, contribute to Canadian programming an amount equal to 4.7% of its gross revenues derived from broadcasting activities in the previous broadcast year less any allowable contribution to local expression made by the licensee in the current broadcast year to a maximum of an amount equal to 1.5% of its gross revenues derived from broadcasting activities in the previous broadcast year. If a licensee does not make an allowable contribution to local expression in a current broadcast year and a community programming undertaking is licensed in the licensed area, except as otherwise provided under a condition of its licence, a licensee shall, for each broadcast year, contribute:

- an amount equal to 3.2% of its gross revenues derived from broadcasting activities in the previous broadcast year to Canadian programming (section 34(3)(a) of the Regulations); and
- an amount equal to 1.5% of its gross revenues derived from broadcasting activities in the previous broadcast year to the community programming undertaking (section 34(3)(b) of the Regulations).¹⁵

78. Finally, section 35 of the Regulations stipulates that a licensee shall, for each broadcast year, contribute an amount equal to 0.3% of its gross revenues derived from broadcasting activities in the previous broadcast year to the Independent Local News Fund (ILNF), which was implemented via amendments to the Regulations and took effect 1 September 2017.¹⁶ In this regard, during the 2014-2015 Let's Talk TV proceeding, many Canadians emphasized that local programming, particularly local news, is of great importance to them and a primary source of news and information.¹⁷ Further, in the Community Television Policy, the Commission emphasized the important role that the broadcast of local news plays in meeting certain objectives of the *Broadcasting Act*.

79. In the Community Television Policy, the Commission gave BDUs, and in particular BDUs owned by vertically integrated groups, the flexibility to reallocate funds currently devoted to community programming to the production of local news or to community programming in other markets. This additional flexibility allows BDUs to assess their subscribers' need for locally reflective programming and allocate their resources accordingly, whether towards community channels or local stations.

¹⁵ Prior to 1 September 2017, the Regulations provided that licensees were required to contribute to Canadian programming an amount equal to 5% of gross revenues derived from broadcasting activities in the broadcast year, less any allowable contribution to local expression (as the term was then defined) to a maximum of 2%.

¹⁶ In certain cases, these requirements may be superseded by an individual licensee's conditions of licence.

¹⁷ See Broadcasting Regulatory Policy 2015-86.

80. As set out in the Community Television Policy, licensed terrestrial BDUs serving metropolitan markets (i.e., Montréal, Toronto, Edmonton, Calgary and Vancouver) are permitted to direct their entire allowable local expression contribution to community programming in other markets and/or to designated local television stations for the production of local news. Licensed terrestrial BDUs serving non-metropolitan markets, on the other hand, are required to devote at least 50% of their allowable local expression contribution to community programming in their own markets and may allocate the other half to community programming in other markets and/or to designated local television stations for the production of local news.
81. In Broadcasting Regulatory Policy 2017-278, the Commission set out a number of amendments to the Regulations that came into force on 1 September 2017, including the definition of “contribution to local expression” set out in section 1, thereby providing terrestrial BDUs with the above-noted flexibility. In that regulatory policy, the Commission also acknowledged that it had not specified in the Community Television Policy whether the “other markets” in which licensed terrestrial BDUs serving metropolitan markets would be permitted to direct their local expression contribution to community programming were to be licensed, exempt or both. Accordingly, in Broadcasting Regulatory Policy 2017-278, the Commission clarified that its intention in regard to this additional flexibility was for money to flow from urban markets to smaller markets to better sustain community channels in those smaller markets.
82. In regard to the present case, Bell’s use of the above-noted funding flexibility during the current licence term has raised a number of concerns, which relate to the following:
- programs financed through the contribution to local expression from multiple “non-local” service areas;
 - programs that are local in areas where Bell has “discontinued” its on-demand community programming service; and
 - contributions to local expression that should not have been directed towards the production of local news on local television stations under Bell’s current conditions of licence.

Programs financed through the contribution to local expression from multiple “non-local” service areas

83. Although the Commission recently granted a certain amount of flexibility in the funding of community programming in the Community Television Policy, the Commission is concerned that Bell may have taken certain liberties with its funding approach prior to the changes to the regulatory regime, which were not consistent with the regulatory framework in place at the time.
84. According to Bell’s community programming summaries for the 2014-2015 through 2016-2017 broadcast years, many productions were duplicated on the grids of more than one licensed area. Those summaries further indicate that prior to the establishment of the funding flexibility that became effective on 1 September 2017 (i.e., before BDUs

were allowed community programming funding flexibility), Bell was using funds from multiple licensed areas to pay for high-cost community programs produced outside of those areas.¹⁸ (i.e., the high cost of many BDU productions was split among different service areas in Ontario and Quebec). The Commission notes that this programming would not be considered local programming in the majority of those service areas.

85. Although the definition of “community programming” set out in the Regulations prior to 1 September 2017 included “programming produced by the licensee in another licensed area or by the members of the community served in that other licensed area and that is relevant to the community,” the definition of “contribution to local expression” as set out in the Regulations did not include contributions made to “community programming for distribution on a community channel in another licensed area or an exempt area, that is operated by the licensee or by an affiliate.”
86. When questioned on the above, Bell stated that BDUs have always had funding flexibility, and that the Community Television Policy increased BDUs’ funding flexibility by increasing the amount that can be redirected between community television services from 40% to 50% in non-metropolitan markets, and from 40% to 100% in metropolitan markets.
87. The licensee noted that the definition of “community programming” set out in the Regulations includes “programming that is produced by the licensee in another licensed area.” It added that “community programming,” as defined in the Regulations, only has to be relevant to a community, whereas “local community programming” has to be locally reflective. Bell further noted that BDUs are required to direct at least 50% of program spending to access programs (which are local programs by definition), but are also allowed to broadcast up to 40% of non-local programming. Finally, Bell indicated that it ceased the transfer of funding between licensed systems at the end of the 2016-2017 broadcast year.
88. Accordingly, Bell’s position is that BDUs were authorized to allocate up to 40% of funding for community programming from one area to another to fund non-local productions (for example, spending money coming from Ottawa to finance a local Toronto production), even before the implementation of funding flexibility in 2017, because BDUs operating linear community channels are authorized to exhibit up to 40% of non-local programs during a broadcast week.
89. However, in the Commission’s view, Bell has conflated two distinct notions: exhibition and funding. The authorization to broadcast 40% of non-local programming on a community channel is strictly related to exhibition and did not result in an authorization to direct up to 40% of the funding drawn from a specific area towards non-local programming. At the relevant time, the definition of “contribution to local expression”

¹⁸ For instance, during the 2016-2017 broadcast year, equal amounts in production expenses for the program “Mary’s Big Kitchen Party” were claimed towards meeting the local direct programming expenditure requirements for each of the Toronto, Montréal, Québec and Ottawa systems despite the program being filmed and produced in Toronto (and therefore being local only in that area).

did not include this kind of flexibility. Although the definition of “community programming” set out in the Regulations prior to 1 September 2017 included “programming produced by the licensee in another licensed area,” there has never been any mention of additional funding flexibility to BDU licensees, as argued by Bell.

90. Before funding flexibility was allowed under the Regulations, BDUs were authorized to finance community programs using funds drawn only from the area where such programs would be considered local, even when they were sometimes broadcast in non-local markets as well. Based on the monitoring of community programming services and the community channels of the majority of BDUs during the BDU licence renewal proceeding initiated by Broadcasting Notice of Consultation 2017-160, the Commission found that many of those BDUs provided non-local community programming on their outlets, but that none of that programming¹⁹ was subsidized in the same manner as for Bell’s community programming.
91. In the Commission’s view, Bell’s argument that the portion of the production costs that were subsidized using funds from licensed areas where such programs were not produced qualifies as “non-local expenses” is based on an unreasonable amalgamation of interpretations rather than on an explicit authorization. The Commission’s policy regarding funding flexibility, which was implemented via amendments to the Regulations that were announced in Broadcasting Regulatory Policy 2017-278, expanded the definition of “allowable contribution to local expression.” Prior to its implementation, such an authorization did not exist.
92. Moreover, the Commission is concerned that in non-metropolitan areas where BDUs are allowed to allocate up to 50% of their allowable contributions to local expression to community programming produced in other areas, such an interpretation could lead to situations where a BDU significantly exceeds the 50% threshold in regard to the funding that it could allocate to non-local community productions.
93. In light of the above, the Commission finds that Bell’s funding of non-local productions before the flexible funding model was established in the Community Television Policy was not consistent with the regulatory framework in effect at the time. Bell was only authorized to redirect a portion of its community funding to support the creation of community programming in other markets as of 1 September 2017, consistent with the flexible funding model established in the Community Television Policy. Further, local and access programming exhibition requirements are not meant to be interpreted as an extension of the funding flexibility granted to BDUs in regard to the funding of non-local community programming. The Commission is therefore concerned with the self-serving nature of the liberties that Bell has taken in its interpretation of the regulatory framework as it existed at the time.

¹⁹ Including such programming from TELUS Communications Inc., a licensee that also offers its community programming on an on-demand platform.

Programs that are local in areas where Bell has “discontinued” its on-demand community programming service

94. Contrary to linear channels, on-demand community programming services are provided through a BDU’s on-demand service, which is generally offered to all of the BDU’s subscribers across all areas where it offers the service. Accordingly, BDUs that use the on-demand platform to offer outlets for local expression do not necessarily limit the programming offered in one area to the programs produced in that area. This practice aligns with an encouragement set out by the Commission in the Community Television Policy that BDUs “make their community programming available on all platforms, including online to all Canadians, free of charge.”
95. This practice also results in the “existence” of each individual outlet being based on whether or not the licensee draws funding from a specific area to produce community programming in that area. In the case of Bell, “closing” the on-demand community programming service in a particular area only implies that it stops funding the production of new community programming using monies drawn from that area. In some cases, Bell has indicated that it still offers community programming in certain areas despite having “discontinued” its on-demand community programming services in these same areas.
96. Given that the provisions of the Regulations regarding contributions to local expression apply exclusively to the distribution of linear community channels, over the years, the Commission has granted exceptions to section 34 of the Regulations via conditions of licence to a number of BDU licensees that wished to offer community programming on their on-demand platforms.
97. As noted above, Bell has conditions of licence that allow it to operate its community programming service on an on-demand basis. These conditions of licence, which currently apply to Bell’s BDUs in Ontario, Quebec and the Atlantic Provinces, read as follows:

(Ontario and Quebec, Broadcasting Decision 2011-737)

5. As an exception to the requirements set out in section 34 of the *Broadcasting Distribution Regulations*:

- a) If the licensee does not distribute its own community programming or does not produce community programming to be made available on its video-on-demand (VOD) undertaking and if a community programming undertaking is licensed in the licensed area, the licensee shall make, in each broadcast year, a contribution of 3% of its gross revenues derived from broadcasting activities in the broadcast year to Canadian programming and a contribution of 2% of its gross revenues derived from broadcasting activities to the community programming undertaking.
- b) If the licensee does not distribute its own community programming or does not produce community programming to be made available on its

VOD undertaking and if no community programming undertaking is licensed in the licensed area, the licensee shall make, in each broadcast year, a contribution of 5% of its gross revenues derived from broadcasting activities in the broadcast year to Canadian programming.

- c) If the licensee distributes its own community programming or produces community programming made available on its VOD undertaking, the licensee shall make, in each broadcast year, a contribution to Canadian programming that is equal to the greater of:
 - i). 5% of its gross revenues derived from broadcasting activities in the broadcast year, less any contribution to local expression made by the licensee in that broadcast year; and
 - ii). 3% of its gross revenues derived from broadcasting activities in the broadcast year.

(Atlantic Provinces, Broadcasting Decision 2013-156)

4. As a modification to sections 34(2), 34(3) and 34(5) of the *Broadcasting Distribution Regulations* (the Regulations):

- a) If the licensee does not distribute its own community programming, or does not produce community programming to be made available on its video-on-demand (VOD) undertaking, and if a community programming undertaking is licensed in the licensed area, the licensee shall make, in each broadcast year, a contribution of 3% of its gross revenues derived from broadcasting activities in the broadcast year to Canadian programming and a contribution of 2% of its gross revenues derived from broadcasting activities to the community programming undertaking.
- b) If the licensee does not distribute its own community programming, or does not produce community programming to be made available on its VOD undertaking, and if no community programming undertaking is licensed in the licensed area, the licensee shall make, in each broadcast year, a contribution of 5% of its gross revenues derived from broadcasting activities in the broadcast year to Canadian programming.
- c) If the licensee distributes its own community programming, or produces community programming made available on its VOD undertaking, the licensee shall make, in each broadcast year, a contribution to Canadian programming that is equal to 5% of its gross revenues derived from broadcast activities in the broadcast year, less any allowable contribution to local expression made by the licensee in that broadcast year. For the purposes of this condition of licence, “allowable contribution to local expression” shall have the same meaning as that set out in section 34(6) of the Regulations, and may include an additional contribution pursuant to section 34(7) of the Regulations.

98. These conditions of licence granted Bell the necessary exception to section 34 of the Regulations to allow it to offer community programming on its VOD platforms in its licensed areas across Ontario, Quebec and the Atlantic Provinces by mirroring the contribution regime applicable to licensed BDUs as it was set out in section 34 of the Regulations at that time, which included a maximum allowable contribution to local expression set at 2% instead of the current 1.5%.
99. When the Commission amended the Regulations in Broadcasting Regulatory Policy 2017-278, it also granted additional funding flexibility to licensed BDUs by expanding the definition of “contribution to local expression.” In doing so, the Commission stated that this amendment was intended to allow funding to flow from urban (i.e., metropolitan) markets to smaller (i.e., non-metropolitan) markets. While there were no explicit prohibitions on how this flexibility could apply to exempt systems, such systems are by nature small given that the BDU exemption order²⁰ requires that for a BDU to be eligible for exemption, it must serve fewer than 20,000 subscribers.
100. In accordance with the additional flexibility provided through the Community Television Policy and consistent with the Regulations, Bell confirmed that it had “discontinued” its on-demand community programming services in Montréal and in Toronto at the end of the 2016-2017 broadcast year in order to direct additional resources to local news programming broadcast on CTV stations. Bell therefore no longer operated a community programming service in either Montréal or Toronto as commonly understood, as it instead chose to dedicate the entirety of its allowable contribution to local expression in these cities to the production of local news on CTV stations.
101. However, during the 2017-2018 broadcast year, Bell continued to produce a significant number of BDU productions that would be considered local productions in either Montréal or Toronto. Such programs were then made available to Bell subscribers through its on-demand community service in all of its service areas, including Montréal and Toronto. In other words, in order to dedicate its full allowable contribution to local expression from these areas to CTV stations, Bell “discontinued” its community programming services in Toronto and Montréal, but continued to produce community programs in and for these two locations. As such, it appeared to still be operating community programming services in those areas.
102. Moreover, it appeared that Bell was using funding from the local expression budgets of its small exempt BDUs from many communities in the Atlantic Provinces to fund many expensive non-local productions that were based in either Toronto or Montréal. In fact, during the 2017-2018 broadcast year, Bell drew a significant amount of money from small exempt services in the Atlantic Provinces to finance the Montréal- and Toronto-based productions – all of which relate to Bell’s commercial programming.

²⁰ Broadcasting Order 2017-320, set out in the appendix to Broadcasting Regulatory Policy 2017-319.

103. Bell was asked to comment on whether it considered that programs produced in areas where it had “discontinued” its community programming services truly satisfied the definition of “community programming” in the Regulations that is set out below:

“community programming” means, in relation to a licensed area, programming that is produced

- a) by the licensee in the licensed area or by members of the community served in the licensed area;
- b) by the licensee in another licensed area or by the members of the community served in that other licensed area and that is relevant to the community referred to in paragraph (a)”.

This definition includes community access television programming and local community television programming.

104. Bell was also questioned on the appropriateness of this practice, given that, as set out in the Community Television Policy, the Commission’s intent behind the additional funding flexibility for BDUs was for funding to flow from metropolitan markets to smaller markets, and not the other way around.
105. Bell submitted that the programs in question were non-access, non-local programs that met the definition of “community programming.” In this regard, it noted that the definition in the Regulations only requires that the programming be “relevant” to a community, and argued that since the Regulations do not define the term “relevant,” the widely understood definition of that term must be applied. Accordingly, Bell explained that the programs are “relevant” to its audience in the Atlantic Provinces given that it draws significant viewership in those areas.
106. In support of this view, Bell noted that the definition of “community programming” in the Regulations refers only to a “licensed area” rather than a licensed area in which the licensee operates a community programming service. As such, the definition of “community programming” permits a community television service to distribute programming originating from outside its own service area. The licensee added that if the Commission did not want community television services to distribute non-local programming, it would simply have mandated them to distribute only local programming.
107. Bell noted that in the Community Television Policy, the Commission did not place any additional restrictions on how funding could be transferred between community television services, and that it was only in Broadcasting Regulatory Policy 2017-278 that it clarified its intention that funding should flow from larger to smaller markets. It added that this regulatory policy simply allows entities that operate both licensed and exempt BDUs to transfer funds from their licensed BDUs to their exempt undertakings, but does not address potential funding transfers from exempt to licensed systems. In Bell’s view, given that exempt systems are allowed to allocate up to 5% of their gross broadcasting revenues to community television, exempt systems often have more community television funding available compared to small licensed systems. In

addition, Bell noted that Broadcasting Regulatory Policy 2017-278 does not amend the BDU exemption order, which only includes community programming exhibition requirements, but no funding requirements.

108. Bell therefore submitted that its practices are compliant with the Regulations and the Commission's policies. Nevertheless, the licensee also confirmed that, going-forward, it would no longer commission or create any new non-local programs with funding from its exempt systems, or any new programs in the licensed service areas in Toronto or Montréal, including programs related to its commercial programming currently produced in those markets.
109. The Commission recognizes that since on-demand services are offered nationally and for purposes other than making community programming available, "discontinuing" a community programming service in a specific area may be implemented differently by BDUs that, like Bell, offer their community programming exclusively on an on-demand platform than by BDUs operating linear community channels. If Bell operated linear community channels, reallocating the entirety of its contribution to local expression from a metropolitan area to support local news would likely result in the cessation of the linear channel that was offered in that same area.
110. However, due to the nature of an on-demand service, community programming is still available to Bell's subscribers in Montréal and Toronto via the on-demand platform, despite the fact that the licensee has "discontinued" the community programming services in those areas. As a result, Bell considers that a community programming service is still being offered to its subscribers in areas where none of the allowable contribution to local expression is spent on producing or acquiring community programming.
111. The Commission's concern lies in ensuring symmetrical treatment among licensees and consistency among platforms. Where the programming service offered by Bell to subscribers in a service area, such as Montréal or Toronto, is funded principally or entirely by revenues from another service area, it ought not to be considered the community programming service of Montréal or Toronto for the purposes of funding flexibility. Consequently, in the case of an on-demand service, in any licensed area where a licensee no longer directs any of its contribution to local expression to the production of community programming during a broadcast year, a licensee will not be considered as operating a community programming service in that area over the course of that broadcast year for the purposes of the flexible funding model set out in the Community Television Policy.
112. Although Bell has "discontinued" its on-demand community programming services in Toronto and Montréal, it maintains that since it operates BDUs in both Montréal and Toronto, any community programming produced in those areas would meet the definition of "community programming." However, the Commission finds that Bell has made an overly literal interpretation of the definition of "community programming" in the Regulations, which includes "programming that is produced by the licensee in another licensed area." While it is true that the definition does not, as currently drafted, explicitly refer to "programming that is produced by the licensee in another licensed area where the licensee operates a community channel or a community programming

service,” a properly contextual reading of the definition must be understood to include such a notion. Given that the purpose of the definition is to set out a coherent meaning for the concept of community programming – one of the central concepts to the community element of the broadcasting system recognized by section 3(1)(b) of the *Broadcasting Act* – it would be inconsistent with that purpose for the definition to refer to a licensed area in which no community channel or programming service is in operation and which is thereby disconnected from this element of the broadcasting system. “Licenced area” as referred to in the definition of “community programming” in the Regulations implicitly refers to a “licensed area where the licensee operates a community channel.”

113. Other contextual indicators also favour such an interpretation. It is in line with the Commission’s statement in the Community Television Policy that it “considers it appropriate to provide BDUs with the flexibility to (a) transfer their contribution from one community channel to another or (b) use all or part of their local expression contribution to fund local news programming.”
114. Furthermore, the definition of “contribution to local expression” in the Regulations only permits the redirection of contributions to other areas where the community programming in question is “for distribution on a community channel in another licensed area or an exempt area that is operated by the licensee or by an affiliate.” This indicates that where a community channel has been discontinued, contributions to the creation of programming for that community would not count as contributions to local expression. In the Commission’s view, this also reveals that the intention was to allow licensees to reallocate contributions from one community programming service or community channel to another community programming service or community channel, not from one community channel to any other area, or vice versa.
115. As set out in the Community Television Policy, the decision to authorize BDUs to close their community channels in metropolitan markets in order to reallocate their funding to the production of local news on conventional television stations was based on the fact that Canadians living in such markets have grown less reliant on the reflection provided by the BDU’s community programming to meet their needs with respect to local expression and reflection. By continuing to fund and produce community programming that is local to either Montréal or Toronto, especially with funding coming from smaller markets served by exempt systems, Bell is undermining the policy goals of the funding flexibility granted in the Community Television Policy.
116. Moreover, the funding flexibility established by the Commission in that policy and implemented in Broadcasting Regulatory Policy 2017-278 specifically allows licensed BDUs to direct all or some of their contributions to local expression to affiliated community channels operated in other markets. However, it does not authorize exempt BDUs to redirect funding to licensed BDUs, as exempt systems generally serve smaller markets, where community programming remains an important source of local reflection. Accordingly, authorizing exempt BDUs to spend local community programming funds on non-local productions would ultimately amount to authorizing exempt BDUs to reallocate money from smaller markets to support the creation of programming in other areas, including in larger markets. This runs counter to the Commission’s intention set out in Broadcasting Regulatory Policy 2017-278 in regard to

the flexible funding model, specifically, “for money to flow from urban markets to smaller markets to better sustain community channels in those areas.”

117. The Commission acknowledges Bell’s statement that it will discontinue these practices in the future. Nevertheless, the Commission finds Bell’s use of community programming funds to produce programming in areas where it has ceased to operate community programming services to be inconsistent with the objectives of the Community Television Policy and the funding flexibility granted therein, and with the broadcasting policy for Canada, including the policy objectives set out in sections 3(1)(b) and (e) of the *Broadcasting Act*. Furthermore, reallocating community programming funds from small BDUs, whether they be exempt or licensed, to produce non-local productions in metropolitan markets is also inconsistent with the policy goals of the funding flexibility granted in the Community Television Policy.
118. Going forward, in any licensed area where a licensee no longer directs any of its contribution to local expression to the production of community programming during a broadcast year, that licensee will not be considered to be operating a community programming service in that area over the course of that broadcast year for the purposes of the flexible funding model set out in the Community Television Policy, the Regulations (including the definition of “contribution to local expression”) and any applicable conditions of licence.

Contributions to local expression that should not have been directed towards the production of local news on local television stations under Bell’s conditions of licence

119. In Broadcasting Decision 2013-623, the Commission approved an application by Bell to authorize its terrestrial BDUs serving various communities in Ontario and Quebec to redirect up to 2% of their gross annual revenues derived from broadcasting activities to each of its English- and French-language on-demand community programming services in markets where it operates such a service in each language. This was achieved through an amendment to Bell’s previous condition of licence, set out in the appendix to Broadcasting Decision 2011-737, relating to contributions to Canadian programming. The amended condition of licence, which is set out in Broadcasting Decision 2013-623 and which currently applies to Bell’s BDUs in Ontario and Quebec, reads as follows:

5. As a modification to sections 34(2), 34(3) and 34(5) of the *Broadcasting Distribution Regulations* (the Regulations):

- c) If the licensee distributes its own community programming or produces programming made available on its VOD undertaking, the licensee shall make, in each broadcast year, a contribution to Canadian programming that is equal to 5% of its gross revenues derived from broadcasting activities in the broadcast year, less any allowable contribution to local expression made by the licensee in that broadcast year to its French- and English-language community channels, provided that the deduction for such contributions not exceed 2% of its gross revenues derived from broadcasting activities for each of these community channels. For the purpose of this condition of licence, “allowable contribution to local expression” shall have the same meaning as

that set out in section 34(6) of the Regulations, and may include an additional contribution pursuant to section 34(7) of the Regulations.

120. Accordingly, Bell was granted authorization to increase its allowable contribution to local expression for its BDUs throughout Ontario and Quebec to a total amount equal to 4% of its broadcast revenues. The purpose of the amended condition of licence was to allow Bell to increase the percentage of its gross revenues derived from broadcasting activities that it was permitted to devote to local expression in licensed areas where it operated on-demand community programming services in both official languages. The Commission's rationale for granting this condition of licence was that official language minority communities (OLMC) would benefit from this additional funding for community programming in both official languages, thereby providing an additional outlet for local expression in the official language of each OLMC.²¹ In addition, the condition of licence explicitly defines "allowable contribution to local expression" by static reference to the version of the Regulations that was in force at the time the condition was imposed.²²
121. Given that the overall contribution to Canadian programming, as required by the Regulations, remains at 5%, this authority to double Bell's contribution to community programming allowed the licensee to reduce contributions to other recipients, including the Canada Media Fund (CMF). For a number of years, Bell increased its contributions to community programming in Toronto, Ottawa, Montréal and Québec.
122. As noted above, at the end of the 2016-2017 broadcast year, Bell "discontinued" its on-demand community programming services in Montréal and Toronto in order to redirect funding from these service areas to local news programming on CTV stations.²³ This change coincided with the amendments to the Regulations that decreased the allowable contribution to local expression to 1.5% and expanded the definition of "allowable contribution to local expression" to allow BDUs to direct all or a portion of these funds to local news.
123. Despite discontinuing these on-demand community programming services, in the 2017-2018 and 2018-2019 broadcast years, Bell contributed 3% of its annual broadcasting revenues from each of these two licensed areas to the production of local news

²¹ Broadcasting Decision 2013-623, paragraph 15.

²² Then, as now, an "allowable contribution to local expression" was defined as a specific subset of "contributions to local expression." At the time Bell's condition of licence was imposed, this definition involved a cap on contributions to local expression that could be considered "allowable." Also at that time, the Regulations defined "contribution to local expression" as "a contribution made by a licensee toward the creation and distribution of community programming and accounted for in accordance with the allowable expenditures for community channels identified in the [appendix to Broadcasting Regulatory Policy 2010-622-1], including programming-related expenses as defined in subsection 32(1)". Notably, contributions to local news were not included in the definition of the broader concept of "contributions to local expression" at that time, as they are now. Accordingly, they could not have been part of the narrower concept of "allowable contributions to local expression" either.

²³ This coincided with the updated Community Television Policy and amendments to the Regulations permitting local expression funding to be spent on local news, though it bears noting that Bell was not subject to the relevant provisions of the Regulations at the time; its local expression contributions were instead governed by conditions of licence.

programming on its local stations. Also, in Saint-Jérôme,²⁴ the licensee drew funding from that particular licensed area to produce community programming,²⁵ although at no time did it operate a separate on-demand community programming service in that community.

124. Similarly, during the 2017-2018 and 2018-2019 broadcast years, Bell contributed 1.5% of its annual broadcasting revenues from Ottawa and Québec, where it operated both English- and French-language on-demand community programming services, to designated local television stations for the production of local news, while the remaining amount (also 1.5%) was spent on community programming.
125. The fact that the condition of licence specifies that any deductible contribution to local expression from the licensee's mandatory contribution to Canadian programming must be directed to English- and French-language community programming services raises the question as to whether Bell was allowed to reallocate any of its contribution to local expression towards its local stations for local news.
126. Further, since the authorization to double the contribution to community programming was explicitly granted in order for Bell to produce community programming to serve OLMCs, it appears that Bell was not authorized to reallocate the double amount, or any amount at all, given that in doing so it was no longer achieving the purpose for which the conditions of licence were originally granted, i.e., to benefit OLMCs. Pursuant to Bell's other conditions of licence, if this authorization did not apply, these funds should have gone to the CMF and other independent production funds. The issue is therefore whether Bell was authorized to concurrently avail itself of the authorization set out in the conditions of licence to double its contribution as well as the increased flexibility that was granted in the amended Regulations regarding the allocation of funding to local news.
127. Bell submitted that all of its contributions to local expression that were directed to the production of local news in the 2017-2018 and 2018-2019 broadcast years were allowable contributions to local expression and, therefore, that it was in full compliance with the Regulations and its conditions of licence. It disagreed with the suggestion that any of the funding it allocated to local news programming was misdirected, and argued that it has interpreted the rules in good faith and has been transparent in its interpretations and practices. In Bell's view, it should not be held responsible for any ambiguity in its regulatory obligations.

²⁴ Saint-Jérôme is part of Statistics Canada's Montréal Census Metropolitan Area and is therefore considered to be part of a "metropolitan market" for the purposes of the Regulations. However, it is currently set out as a separate licensed area under Bell's regional licence for Quebec.

²⁵ As further explained in the analysis below, it appears that Bell considered its default contribution to local expression to be 1.5%, rather than 2%, so that a doubled contribution – such as that contemplated under the above condition of licence – would actually be 3% rather than 4%. Bell argued that this is because the Commission, in Broadcasting Regulatory Policy 2012-154, set a cap of 1.5% on the contribution by BDUs, including Bell's BDU, that were not in operation before 2010. It submitted that it would be reasonable to interpret the condition "in light of" this policy.

128. Bell added that the condition of licence granted in Broadcasting Decision 2013-623 must be interpreted in light of relevant regulations and policy. In this regard, Bell argued that the Community Television Policy clearly sets out that BDUs that have been authorized to double their contributions to local expression are permitted to continue this practice at least until their licence renewal. It added that the policy granted new flexibility to BDUs and expanded the definition of “allowable contributions to local expression,” given that such contributions can now be redirected towards community programming in other markets and/or towards designated local television stations for the production of local news. It further argued that according to the Community Television Policy, the option to fund local news in metropolitan markets comes without the requirement to fund community television, and that the Commission’s intention was to increase flexibility for BDUs, not restrict it.
129. As a result, Bell submitted that any suggestion that the amounts in excess of 1.5% of annual broadcasting revenues for the 2017-2018 broadcast year are not allowable contributions to local expression is based on an unreasonable interpretation of the condition of licence granted in Broadcasting Decision 2013-623.
130. Even if the Commission were to consider that the production of community television programming is a pre-requisite to trigger the authorization within the condition of licence to increase the allowable contribution to local expression, Bell submitted that it conforms to such a requirement. In this regard, the licensee noted that it distributes community television programming in all of its licensed areas, including Montréal, Toronto, Ottawa and Québec, much of which was produced in Montréal and Toronto.
131. Further, Bell submitted that it has always interpreted the condition of licence granted in Broadcasting Decision 2013-623 within the context of existing regulations and policies. As an example, Bell noted that it limited the amount it directed to local expression to 3% of gross broadcasting revenues in licensed areas where it operates two community channels, despite the authorization granted to it to direct up to 4% to local expression, which is a result of subsequent policy and regulatory changes in Broadcasting Regulatory Policy 2012-154 and which is set out by condition of licence. In Bell’s view, this highlights the need to interpret conditions of licence in light of current regulations and policy, such that in the current context, when interpreting the condition of licence granted in Broadcasting Decision 2013-623, it is necessary to apply the updated policy set out in the Community Television Policy.
132. Bell emphasized the fact that, going forward, it has not requested to maintain the condition of licence for the Montréal and Toronto areas. As such, it noted that once the licences for its BDUs are renewed, the CMF will receive a significant increase in contributions from those BDUs, irrespective of any potential finding by the Commission in regard to these obligations. Bell added that any such finding by the Commission would have a significant negative impact on the licensee’s ability to produce local news.

Position of parties

133. Quebecor noted that in the Community Television Policy, the Commission indicated that by evaluating BDUs' performance in regard to the reflection of OLMCs at licence renewal, it would determine whether maintaining the exception granted to certain BDU licensees to double their allowable contribution to local expression for the purpose of offering dual community channels is necessary to achieve the objectives of the *Broadcasting Act*.
134. Noting that the fundamental objective behind this condition of licence was to serve OLMCs, Quebecor submitted that the licensee's interpretation of the condition of licence is far from what was expected by the Commission in the Community Television Policy, as well as from the objectives of the *Official Languages Act*. In Quebecor's view, the Commission was clear that the requested exception must be related to the offer of community programming in both official languages to OLMCs, without the possibility of transfer to other sources of local expression as claimed by Bell.
135. In light of the above, Quebecor submitted that Bell is in non-compliance with the regulatory provisions relating to contributions to local expression. It submitted that Bell should therefore be required to remit to the CMF the excess amounts that it unduly transferred to its local stations and should no longer be permitted to double its allowable contribution to local expression in any area whatsoever.

Did Bell's conditions of licence allow a portion of its allowable contribution to local expression to be directed towards CTV stations for the production of local news?

136. Consistent with the wording of the condition of licence, the authorization to increase the level of the allowable contribution to local expression is triggered by the distribution of the licensee's own community programming or production of programming made available on its on-demand platform. Further, once this trigger is engaged, the wording of the condition of licence makes it clear that any deductible contribution to local expression from the licensee's mandatory contribution to Canadian programming must be directed to English- and French-language community programming services in order to be allowable.
137. Bell argued that the funds it has contributed to its local stations for the production of local news are "allowable contributions to local expression" that meet the current definition set out in the Regulations, which includes contributions to locally reflective news programming. However, in regard to the definition of "allowable contributions to local expression," Bell's BDUs in Ontario and Quebec are not currently subject to the Regulations, but instead to conditions of licence that function as exceptions to the Regulations. Furthermore, given that the current definition of "allowable contributions to local expression" did not exist when the condition of licence was granted, the Commission could not have taken that definition into consideration at that time. Rather, the wording of the condition of licence set out that, for its purposes, "allowable contribution to local expression" shall have the same meaning as that set out in sections 34(6) and 34(7) of the Regulations. While both of these sections of the Regulations have since been repealed, this definition did not include the elements

included in the new definition, i.e., a contribution to locally reflective news programming, relied upon by Bell. At that time, the definition of “allowable contribution to local expression” in the Regulations required that a contribution be made toward the creation and distribution of community programming.

138. The Commission questions the merits of Bell’s argument, given the clear indications in the condition of licence, the Commission’s intent when it granted that condition of licence to Bell (as explained in Broadcasting Decision 2013-623), and the fact that the condition of licence incorporates a static definition of “allowable contribution to local expression” without any indication that it should be interpreted differently in light of any subsequent amendments to the Regulations.
139. Accordingly, the Commission does not consider that the term “allowable contribution to local expression” can reasonably be interpreted as having the same meaning as is currently set out in the Regulations, as advocated by Bell. However, even leaving that specific issue aside, the express wording of the condition of licence serves to narrow the scope of the authority granted further in the circumstances. That is, the wording of the condition specifies that a contribution to local expression will only be allowable where that contribution is made to an English- or French-language community programming service (and only up to 2% of revenues per such service in a given broadcast year). Further, the Commission is not convinced that allowing a “doubled” contribution to local news would serve the stated objective of the condition of licence, namely, supporting OLMCs.
140. In the Commission’s view, if Bell wished to benefit from both the “double” contribution authorization and the more flexible definition of “allowable contribution to local expression,” the most obvious way to do this – and the method that would have resulted in the greatest certainty – would have been to submit an application to the Commission to amend its condition of licence relating to contributions to Canadian programming at the time the Commission updated its Community Television Policy and the Regulations prior to the 2017-2018 broadcast year.
141. In light of the above, the Commission finds that Bell’s conditions of licence for its Ontario and Quebec BDUs did not allow the licensee to direct any portion of its allowable contribution to local expression towards CTV stations for the production of local news.

Was Bell’s contribution to local expression in Montréal and Toronto misallocated to CTV stations for the production of local news?

142. According to the annual returns provided by Bell for the 2017-2018 and 2018-2019 broadcast years for its systems in Montréal (including Saint-Jérôme) and Toronto, the entire increased contribution (3%) for each system was allocated to the production of local news on designated local television stations. In the Commission’s view, this indicates that Bell’s entire contribution in these areas has been misallocated to CTV stations for the production of local news. In light of the above, for its Montréal, Saint-Jérôme and Toronto systems, the Commission finds Bell in non-compliance with condition of licence 5 set out in the appendix to Broadcasting Decision 2011-737, as

amended in Broadcasting Decision 2013-623, for the 2017-2018 and 2018-2019 broadcast years.

Was Bell's contribution to local expression in Ottawa and Québec misallocated to CTV stations for the production of local news?

143. According to the annual returns provided by Bell for 2017-2018 and 2018-2019 broadcast years for its Ottawa and Québec systems, half of its increased contribution (1.5%) for each system was allocated to the production of local news on designated local television stations. The remaining contribution (i.e., 1.5%) was allocated to the production of community programming in both official languages.
144. The Commission reiterates, however, that this condition of licence was meant to provide community programming to serve OLMCs. This is evident both in the wording of the condition of licence and in the text of the accompanying Broadcasting Decision 2013-623, where the Commission concluded that “OLMCs located in the markets that Bell has proposed to serve through its VOD community channel will benefit from this additional outlet for local expression” and that it would be consistent with “the policy objectives set out in section 3(1) of the [*Broadcasting Act*],²⁶ with the Community television policy and with previous decisions concerning community television offerings.”
145. In regard to the funding allocated to the production of local news in relation to these service areas, such funding fails to advance the community purpose highlighted by the Commission in Broadcasting Decision 2013-623. Further, it cannot be argued in this case that Bell has advanced the purpose of service to OLMCs in these areas since the licensee does not operate a French-language conventional station in Ottawa, nor an English-language conventional station in Québec.
146. As explained above, Bell was not authorized to amalgamate, on the one hand, the authorization granted by the condition of licence to increase allowable contributions and, on the other hand, the funding flexibility afforded with the expanded definition of “allowable contribution to local expression,” to which the condition of licence itself clearly does not refer. As such, the Commission determines that the portion of Bell’s contribution in these areas directed to CTV stations for the production of local news has

²⁶ Specifically:

- the Canadian broadcasting system, operating primarily in the English and French languages and comprising public, private and community elements, makes use of radio frequencies that are public property and provides, through its programming, a public service essential to the maintenance and enhancement of national identity and cultural sovereignty; (section 3(1)(b))
- the Canadian broadcasting system should serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada; (section 3(1)(d)(i))
- the programming provided by the Canadian broadcasting system should be varied and comprehensive, be drawn from local, regional, national and international sources, and include educational and community programs; (sections 3(1)(i)(i)-(iii)) and
- a range of broadcasting services in English and in French shall be extended to all Canadians as resources become available. (section 3(1)(k)).

been misallocated. In light of the above, for its Ottawa and Québec systems, the Commission finds Bell in non-compliance with condition of licence 5 set out in the appendix to Broadcasting Decision 2011-737, as amended in Broadcasting Decision 2013-623, for the 2017-2018 and 2018-2019 broadcast years.

Payment of misallocated contributions

147. As a result of the above, the Commission finds that Bell has misallocated \$35,869,215.
148. The Commission is concerned by Bell's failure to direct the funds in a manner consistent with its regulatory obligations. While Bell argued that it has interpreted the rules in good faith and has been transparent in its interpretations and practices, the Commission notes that its actions and explanations appear self-serving, as evidenced by the amounts that were allocated to its own local stations rather than being paid to the CMF or directed towards community programming. Furthermore, the Commission is concerned that Bell's interpretation reflects a broader tendency by the licensee to rely on self-serving practices with funding that should either go towards the operation of a service whose role should be of a public service nature or otherwise be directed towards Canadian programming. In this regard, the Commission notes that other licensees with this authorization appear to have not had issues interpreting their conditions of licence correctly.
149. In terms of how best to remedy this non-compliance, the Commission notes that the funds were directed towards local news, which the Commission has acknowledged as a priority in the Community Television Policy and has taken steps to support, such as through the implementation of the ILNF and additional funding flexibility. As such, the Commission finds that the funds Bell directed towards local news provided some value to the broadcasting system. Further, although the funds did not go to support OLMCs as intended, the Commission considers that the impact on the broadcasting system as a result of this non-compliance is mitigated to some extent.
150. In light of the above, although Bell should have requested an amendment to its condition of licence to give it the same flexibility as other licensees, in assessing the appropriate remedy, the Commission finds that allowing this licensee flexibility at the same level as for other BDUs – that is, to allocate a portion of contributions to local expression to the production of local news – would nevertheless further the policy objectives set out in sections 3(1)(b) and 3(1)(i)(ii) of the *Broadcasting Act* as well as those set out in the Community Television Policy.
151. Accordingly, the Commission finds, by majority decision, that it is appropriate to require Bell to pay \$17,924,607,²⁷ an amount that corresponds to the excess portion of its misallocated contributions to local expression to the CMF. Specifically, for its systems in Montréal, Saint-Jérôme and Toronto, of the 3% that was reallocated to its

²⁷ Given that providing the specific amounts for the five systems for each broadcast year could reveal information that is sensitive in nature and/or that was submitted in confidence, the Commission considers it appropriate to indicate only the aggregate total for the five systems.

local stations, the Commission requires that Bell pay 1.5% of that total contribution. For its systems in Ottawa and Québec, of the 1.5% that was reallocated to Bell's local stations, the Commission requires the licensee to pay 0.75% of that total contribution.

152. This measure will place Bell in the same position as a licensee who was, during the relevant time, subject to the rules currently set out in the Regulations respecting allowable contributions to local expression, as modified by a condition of licence permitting a double contribution in those areas where the contribution is used to fund community programming distributed in both official languages.
153. In light of all of the above, and pursuant to its authority under section 9(1) of the *Broadcasting Act*, the Commission requires Bell, by **condition of licence**, to make a contribution of \$17,924,607 to the CMF, with the possibility of directing up to 20% of that amount to one or more Certified Independent Production Funds (CIPF). This amount covers the amounts that were drawn from Bell's undertakings serving Montréal, Saint-Jérôme, Toronto, Ottawa and Québec and directed towards its local stations, but which should have been allocated to the CMF along with a portion to CIPFs. Further, the Commission considers it appropriate to require Bell to pay the full amount by no later than the end of the licence term granted in this decision, and to provide appropriate proof of any payment that has been made in this regard within 30 days of the payment. A **condition of licence** in this regard is set out in Appendix 1 to this decision.
154. The Commission considers that the amounts to be paid to the CMF and CIPFs will serve to remedy the harm caused to the system. In addition, they will serve to further a number of policy objectives set out in the *Broadcasting Act*, including those that relate to encouraging the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity and to reflecting the circumstances and aspirations of all Canadians (sections 3(1)(d)(ii) and (iii)); to the requirement for each element of the Canadian broadcasting system to contribute in an appropriate manner to the creation and presentation of Canadian programming (section 3(1)(e)); and to the requirement for a range of broadcasting services in English and French to be extended to all Canadians as resources become available (section 3(1)(k)).

Conditions of licence permitting Bell to operate on-demand outlets for local expression

155. In Broadcasting Decision 2011-737, for Bell's terrestrial BDUs serving locations in Ontario and Quebec, the Commission approved a request by the licensee to provide an outlet for local expression using its VOD service.²⁸ In Broadcasting Decision 2013-156, for Bell's terrestrial BDUs serving locations in the Atlantic Provinces, the Commission granted the licensee authorization to provide an outlet for local expression using its VOD service.²⁹ As noted above, the Commission also set out in those decisions, in regard to the VOD services, conditions of licence for Bell's BDUs in Ontario and Quebec (condition of licence 5 set out in the appendix to 2011-737) and the Atlantic

²⁸ See condition of licence 3 set out in the appendix to Broadcasting Decision 2011-737.

²⁹ See condition of licence 3 set out in the appendix to Broadcasting Decision 2013-156.

Provinces (condition of licence 4 set out in the appendix to 2013-156) relating to contributions to Canadian programming. Those conditions of licence mirror the contribution regime applicable to licensed BDUs as set out in section 34 of the Regulations at that time, which included a maximum allowable contribution to local expression set at 2% (instead of 1.5% as the Regulations currently specify).

156. In Broadcasting Decision 2013-623, the Commission approved an application by Bell to amend the above-noted condition of licence 5.c) applicable to licensed areas across Ontario and Quebec to allow Bell, if it elects to distribute two community channels (one in each official language) in a given market, to allocate up to 2% of its required contribution to each of these community channels (for a total of up to 4%).
157. In recent licence renewal proceedings, the Commission has granted such authorizations to BDUs within a single, new condition of licence using wording that has become standard and that encapsulates the authorizations that were granted through condition of licence 4 in Broadcasting Decision 2013-156 and condition of licence 5 in Broadcasting Decision 2013-623:

The licensee shall be subject to the following condition of licence as an exception to the requirements set out in subsections 34(2) and 34(3) of the *Broadcasting Distribution Regulations*:

- If the licensee distributes programming that qualifies as local expression on an on-demand service, the licensee shall make, in each broadcast year, a contribution to Canadian programming of not less than the greater of:
 - a) 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
 - b) 3.2% of its gross revenues derived from broadcasting activities in the licensed area in the previous broadcast year.
- If the licensee does not distribute programming that qualifies as local expression on an 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:
 - a) 3.2% of its gross revenues derived from broadcasting activities in the licensed area in the previous broadcast year to Canadian programming, and
 - b) 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 does not distribute programming that qualifies as local expression on an on-demand service, 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.
158. Bell agreed to replace the current conditions of licence with that proposed by the Commission for all of its BDUs, with the exception of those serving Ottawa and Québec. For Ottawa and Québec, Bell requested a similar condition of licence that would also authorize it to operate both an English- and a French-language community television service in each of these two areas.
159. While the Commission agrees that the proposed condition is generally appropriate, it requires minor amendments to reflect the other determinations made in this decision. In particular, given that the condition of licence will be applicable to BDUs serving metropolitan and non-metropolitan markets, the Commission notes that it should parallel the distinctions in regard to funding flexibility that are set out in the Regulations through the definition of “allowable contribution to local expression.” In light of Bell’s circumstances, the Commission considers that these amendments are necessary to ensure that Bell is in the same position with respect to funding flexibility as licensees that operate linear community channels and that are subject to the Regulations – and not in a position that would allow a greater degree of funding flexibility.
160. The Commission notes that the new condition of licence provides the necessary exceptions to the current version of the Regulations, aligns with the current contribution regime for licensed BDUs, and uses wording similar to that of conditions of licence recently granted to other BDUs that offer their community programming on their on-demand services, namely, TELUS Communications Inc. (TELUS) and Access Communications Co-operative Limited. Accordingly, the Commission **approves** Bell’s request to replace the current conditions of licence for all three regional broadcasting licences with the condition of licence set out above, including the above-noted minor amendments, applicable to all licensed areas, with the exception of Ottawa and Québec. **Conditions of licence** in this regard are set out in Appendices 2 (Ontario), 3 (Quebec) and 4 (Atlantic Provinces) to this decision. Bell’s request relating to its BDU serving Ottawa and Québec is addressed below.

Whether Bell should be allowed to maintain the authorization to operate dual community programming services in Ottawa and Québec

161. As noted above, Bell requested that the condition of licence authorizing it to operate dual community programming services (i.e., condition of licence 5.c) in the appendix to Broadcasting Decision 2011-737 as amended in Broadcasting Decision 2013-623) be maintained for its BDUs serving Ottawa and Québec. In support of its request, the licensee provided examples of access programs produced in each location by members of OLMCs. It submitted that its dual community programming services in Ottawa and Québec provide a meaningful voice to OLMCs, which further promotes the

Commission's policy objective of enhancing Canadians' access to a broad range of broadcasting services in both official languages. The licensee added that this would be lost should its request be denied.

162. Bell added that in Broadcasting Decision 2018-265, a similar request by Rogers Communications Canada Inc. (Rogers Communications) was approved for that licensee's undertakings serving Ottawa and Moncton. It noted that the amounts of funding involved in its operation of dual community programming services in Ottawa and Québec are significantly lower than the amounts invested by Rogers Communications for similar operations in Ottawa and Moncton. The licensee added that since it is a new entrant in the Ottawa and Québec markets, approval of its request would maintain competitive parity with Rogers Communications, the incumbent BDU in the Ottawa market, whereas denial of the request would be unfair in that it would allow its main competitor to operate with a significant advantage.
163. Bell was questioned on the fact that its programming summaries indicated that it has used funding, on some occasions to a significant extent, from both areas to produce BDU productions that do not constitute local or access programming in those areas, and of which most were local either in Toronto or Montréal.
164. In reply, Bell indicated that it ceased to fund non-local programs in both areas in the 2017-2018 broadcast year and that, instead, it avails itself of the flexibility provided in the Community Television Policy and directs 50% of its contributions to local expression from these areas to the production of locally reflective news programming.
165. Bell added that the preservation of Bell Media's financially challenged local news services is an ongoing priority, which has come at the expense of community television in Ottawa and Québec. Given that it redirects 50% of its contribution to local expression to the production of local news, all the funding that it directs to community television in these areas must now be used to fund local community programs, whether they be access or non-access programs.

Intervention by Quebecor

166. Quebecor submitted that approval of Bell's request would not be in the public interest and should be denied. It noted that it was Bell's decision to direct 50% of its contributions to local expression from both areas to the production of locally reflective news programming. In addition, the intervener underlined certain differences between Bell's request and the similar authorization granted to Rogers Communications in Ottawa and Moncton. In this regard, Quebecor noted that Rogers Communications' request was granted in 2004 and that the historical factor certainly played a role in the Commission's decision to maintain it. It further noted that a denial of Rogers Communications' similar request would probably have resulted in many employees being laid off, and submitted that it is fair to assume that this may have influenced the Commission's decision. In regard to Bell's application, Quebecor argued that since the operation of an on-demand community programming service does not require the same

number of employees as a linear community channel, it can be inferred that denial of the request would have no such impact on Bell.

167. Quebecor added that should the Commission approve Bell's request, the licensee could then choose to redirect 50% of that increased contribution to its conventional television stations for local news. The intervener submitted that this would be more beneficial to the licensee than it would be to members of the OLMCs, and that it would be detrimental to other BDUs that do not benefit from such an exception. Quebecor also noted that less funding would go to the CMF and other funds. In its view, Bell would be fully able to offer programming in both official languages on its on-demand community programming services to serve the members of the Ottawa and Québec OLMCs through the 1.5% of gross revenues from its broadcasting activities that it is required to direct to the production of local news and/or of community programming pursuant to section 34 of the Regulations. Quebecor also expressed the view that BDUs should not be able to double their transfers to local television stations when they offer community programming services in both official languages. It added that Bell's behaviour during the previous licence term confirms that such an exception should be abolished.

Commission's analysis

168. In the Community Television Policy, the Commission stated that it would no longer authorize BDUs to double the maximum allowable contribution for local expression to operate two community channels (one in each official language) in the same market. For any BDU that already has that authorization, the Commission stated that it would evaluate that BDU's performance in regard to the reflection of OLMCs at licence renewal to determine whether maintaining the exception is necessary to achieve the objectives of the *Broadcasting Act*. The Commission's intent, among other things, was to ensure the stability of revenues directed to the CMF.
169. In Broadcasting Decision 2018-265, when it approved Rogers Communications' request to maintain the authorization to double its contribution to local expression and to operate dual community channels in Ottawa and Moncton, the Commission noted that the authorization for that licensee to provide separate English- and French-language community channels in Ottawa and Moncton had been in place since 2004. Further, it considered that the amounts directed by Rogers Communications in 2016 to each of its English- and French-language community channels in Ottawa and Moncton was significantly less than the amount directed by Videotron to MATv in 2013,³⁰ and would have a negligible impact on the CMF and CIPFs. It was the Commission's view that maintaining the authorization was in the public interest and furthered policy objectives set out in the *Broadcasting Act*, as well as objectives of the *Official Languages Act*.

³⁰ Videotron, at the time, had filed a request to double its allowable contribution to local expression in Montréal, Montréal West and Terrebonne in order to operate dual community channels in these areas, including one in English. The Commission denied that Videotron be allowed to double its contribution to local expression, based on the fact that it was considered substantial and would have had an impact on the CMF and CIPFs.

170. The Commission notes, however, that in Broadcasting Decision 2015-32, it denied an application by Videotron to double its contribution to community programming in Montréal in order to serve the English-language OLMC. In that decision, the Commission found that Videotron was operating its community channel MATv in non-compliance with regulatory requirements relating to access programming and local programming. In addition, it considered that the “standard” contribution to local expression allocated by Videotron to MATv represented a more than adequate amount of money to serve all of the diverse elements and members of the Montréal community, as is required by the Community Television Policy.
171. The evidence on the record of the current proceeding indicates that the grassroots local and access programming produced by Bell in Ottawa and Québec is reflective of those communities, including OLMCs, with balanced amounts of original programming being produced in each official language. Further, the Commission notes that it received supporting letters from individuals from these areas that have been granted access by Bell, who acknowledged that Bell has supported or is currently supporting them through the creation of locally reflective programming that serves and reflects OLMCs, such as “Ottawa en Musique,” a docu-series focusing on French-speaking artists from Ottawa, “Les passionnés d’la broue,” a French-language television magazine program exploring the brewing trends and innovative local beers in Ottawa and Eastern Ontario, and “Shawarmaville” and “Bouge en ville,” two French-language local programs featuring local restaurants, gyms and sports facilities in the National Capital Region.
172. Further, the present application also comprises similarities with the situation of Rogers Communications in Ottawa and Moncton, notably in regard to the size of the communities in question and the available financial resources to serve these communities with local and access programming in both official languages. In this regard, the numbers provided by Bell point to a negligible impact on the funding of the CMF and CIPFs.
173. As such, the Commission considers that the benefits to Bell’s subscribers among the OLMCs in Ottawa and Québec outweigh the minimal impacts on funding to the CMF and CIPFs. Further, granting the requested authorization would be consistent with the Commission’s policy objective of providing a range of broadcasting services in English and in French, and would help maintain an element of the broadcasting system that serves to further the objectives of the *Official Languages Act*. Accordingly, approval of Bell’s request would be in the public interest and would be consistent with the broadcasting policy for Canada, including the policy objectives set out in sections 3(1)(d)(iii) and (t)(iv) of the *Broadcasting Act*.
174. However, as noted above, Bell used a portion of the additional funding obtained through its condition of licence to finance programming in other markets, whether it be non-local community programming or local news produced for conventional stations located in other markets. The percentage of funding used to this end varied from year to year, but has been significant in a number of instances. As noted above, this reallocation occurred even though the authorization granted to Bell to increase its allowable

contribution to local expression in Broadcasting Decision 2013-623 was clearly linked to the production of community programming to serve OLMCs.

175. As such, given the issues it has identified in regard to the allocation of the additional funding granted throughout the current licence term, the Commission also finds that it would be appropriate to set out clear parameters and safeguards in the condition of licence granting such an authorization to ensure that the amount of Bell's contribution that is to be allocated to community programming in fact goes to community programming produced in Ottawa and Québec, and not be directed to CTV stations or used to produce programming in other service areas, as was done in the past.
176. In light of the above, the Commission **approves** Bell's request to maintain for its BDUs serving Ottawa and Québec authorization to double the amount of its contribution that it can allocate to community programming. A **condition of licence** to that effect is set out in Appendices 2 and 3, respectively, to this decision. This condition of licence reflects the flexibility currently provided for in the Regulations but only insofar as it relates to community programming for the majority-language community (English in Ottawa and French in Québec). Bell will not be permitted to flex any of the funds that are related to programming for the OLMCs in those communities.

Bell's compliance with certain provisions of the Regulations relating to mandatory contributions to Canadian programming

177. In Broadcasting Regulatory Policy 2017-278, the Commission announced amendments to the Regulations that would reflect its conclusions and determinations set out in the Community Television Policy, including changes to the contribution regime applicable to licensed BDUs. These amendments related to, among other things, the implementation of the mandatory 0.3% contribution to the ILNF through the introduction of a new section in the Regulations (section 35), and to setting the contribution regime outlined in section 34 of the Regulations at 4.7%, so that the total mandatory contribution (under both sections 34 and 35) would remain at 5%. These amendments to the Regulations took effect 1 September 2017, the beginning of the 2017-2018 broadcast year.
178. Prior to the above, certain BDUs had been granted a condition of licence authorizing them to allocate their entire 5% Canadian programming contribution to local expression. However, since those conditions of licence would not relieve those BDUs from the 0.3% ILNF contribution, they would in effect be required to make a total contribution of 5.3% of their gross annual revenues to Canadian programming, compared to 5% for BDUs not subject to any such condition of licence.
179. To address such cases, the Commission indicated in Broadcasting Regulatory Policy 2017-278 that a BDU in such a situation could apply to amend its condition of licence relating to its contribution to local expression to include the mandatory 0.3% ILNF contribution as part of its 5% contribution to Canadian programming. Accordingly, the Commission considers that it clearly indicated that subjecting certain BDUs to a mandatory 5.3% contribution was not an intended consequence of its new contribution

regime for licensed BDUs. However, Bell did not file an application to amend its condition of licence in this regard (i.e., condition of licence 5 set out in the appendix to Broadcasting Decision 2011-737). Consequently, for the 2017-2018 and 2018-2019 broadcast years, pursuant to condition of licence 5 set out in Broadcasting Decision 2013-623 and section 35 of the Regulations, Bell was required for those broadcast years to make a contribution to Canadian programming totalling 5.3% in all of its licensed areas in Ontario, Quebec and the Atlantic Provinces. Although Bell's annual returns for those BDUs for those broadcast years indicated that the 5% contribution was made (including 0.3% to the ILNF), the licensee's payment to the ILNF should not have counted within the 5% contribution that it is required to make. This led to shortfalls in regard to Bell's contributions to Canadian programming.

180. In light of the above, given that Bell did not file an application to amend the above-noted condition of licence, the Commission finds the licensee in non-compliance with that condition of licence. However, the Commission also finds that the replacement of Bell's current conditions of licence relating to local expression by the new single condition of licence noted above, along with the licensee's expressed willingness for this change, will ensure that this is no longer an issue in the future. Accordingly, the Commission finds that no further regulatory measures are necessary and that it would be appropriate not to require any additional payments by the licensee, since it was not the Commission's intention that licensees be required to make a contribution of more than 5%.
181. Nevertheless, the Commission reminds Bell that it must strictly adhere to its regulatory obligations at all times and that it is not at liberty to interpret its conditions of licence at its own discretion and convenience. Should a licensee wish to amend any regulatory requirement to align with policy or regulatory changes, it must apply to the Commission to do so.

Whether Bell should be allowed to merge the Saint-Jérôme licensed area with its Montréal undertaking

182. Bell currently serves the Montréal and Saint-Jérôme areas under separate BDUs. The licensee requested authorization to merge those BDUs into one undertaking, and to include as part of that new undertaking's service areas all of the secondary locations covered by Statistics Canada's definition of the Montréal Census Metropolitan Area (CMA), which includes the Saint-Jérôme area. In Bell's view, combining both areas would have no impact on community programming.
183. Quebecor opposed Bell's request. It submitted, however, that should Bell be granted authorization to merge the BDUs serving the Montréal and Saint-Jérôme areas and operate them as a single undertaking, all regulations, policies and conditions of licence should apply to the entire area as a whole.
184. In this regard, Quebecor noted that the amounts that represent the 1.5% of gross revenues from broadcasting activities that can be devoted to local expression would be higher than they would be if these service areas remained separate. It further noted that

the new service area would be considered a metropolitan market and that Bell would therefore be allowed to redirect 100% of its contribution to local expression to its conventional television stations for the production of local news, whereas it would only be authorized to redirect 50% of that contribution from the Saint-Jérôme area if it were to remain separate. Finally, Quebecor submitted that approval of the licensee's request would be detrimental to the CMF and other funds.

185. In Broadcasting Regulatory Policy 2017-278, the Commission confirmed that it would adopt the following interpretation of what constitutes a “metropolitan market”:

Metropolitan markets will be considered as having the same boundaries as the census metropolitan areas (CMAs), as defined by Statistics Canada. Additionally, for a licensed area to be deemed as including a metropolitan market, a majority of the population residing in the licensed area must be residents of a municipality forming part of the CMA.

186. The definition of “metropolitan market” has been incorporated into the Regulations. In the Commission's view, Bell's rationale for merging its BDUs serving Montréal and Saint-Jérôme aligns with that definition of “metropolitan market” given that according to Statistics Canada, Saint-Jérôme is included in the Montréal CMA.
187. In regard to Quebecor's arguments, the Commission notes that, even as a separate undertaking, Saint-Jérôme is part of the Montréal CMA and that Bell is therefore permitted to redirect the entire 1.5% of gross revenues from broadcasting activities that can be devoted to local expression to its local stations. As such, approval of Bell's requests would not have an impact on the CMF and other funds. In regard to Quebecor's concerns regarding the regulations, policies and conditions of licence that should apply to the entire area as a whole, Bell has addressed this issue in its application and the Commission is satisfied with the licensee's proposed requirements for the undertaking to serve the new, broadened area.
188. In light of the above, the Commission **approves** Bell's request to merge its BDUs serving Montréal and Saint-Jérôme into one undertaking.

Whether Bell should be allowed to operate zone-based community programming services for certain service areas in Ontario, Quebec and the Atlantic Provinces

189. In order to mitigate the difficulties in providing and maintaining quality community programming in small licensed and exempt service areas where financial resources and/or community participation may be limited, certain licensed BDUs (i.e., of Cogeco Connexion Inc., Rogers Communications and Videotron Ltd.) have been permitted through conditions of licence to group together a number of distinct service areas in order to serve them with one community channel. This practice is known as the zone-based approach to community programming.

190. In order to approve applications to operate a zone-based community channel, the Commission assesses, among other things, whether the service areas proposed to be regrouped into a zone constitute a community of interest. A community of interest is one where its members share one or more of the following attributes:
- common social and economic interests;
 - common heritage, culture or history;
 - the same geographic or politically recognized boundary;
 - access to the same local/regional media.
191. Zones may comprise both licensed and exempt BDUs, which are generally permitted to count local and access programming produced by one undertaking in the zone as local and access programming for all undertakings included within the zone. Operators of exempt services are permitted to adopt a zone-based approach, pursuant to specific criteria set out in the BDU exemption order.³¹

Bell's request

192. Bell requested the addition of conditions of licence for its terrestrial BDUs serving Ontario, Quebec and the Atlantic Provinces that would allow it to operate, under a zone-based approach, on-demand community programming services serving the following areas:
- in Ontario:
 - Oshawa and Peterborough, and their surrounding areas;
 - Kitchener, London and Stratford, and their surrounding areas; and
 - Sudbury and Sault Ste. Marie, and their surrounding areas.
 - in Quebec:
 - Trois-Rivières, Drummondville and Joliette; and
 - Chicoutimi and Jonquière.
 - in the Atlantic Provinces:
 - Saint John, Moncton, and Fredericton and its surrounding areas, New Brunswick.
193. Bell submitted that the underlying objective for its requests is to improve its operational efficiency. Given that it is the new entrant in the BDU markets it serves, and given that its terrestrial BDUs are smaller than the systems of its cable competitors, Bell argued that it has less funding available for its community television operations. The licensee

³¹ Broadcasting Order 2017-320, set out in the appendix to Broadcasting Regulatory Policy 2017-319.

added that operating some of its community programming services using the zone-based approach would provide it with an opportunity to pool resources along with the necessary flexibility to deliver compelling community television programming to all of its customers.

Commission's analysis and decisions

194. In Broadcasting Decision 2018-267, the Commission denied a request by TELUS to operate various zone-based on-demand community programming services. Although the Commission did not oppose TELUS's request in principle, it expressed serious concerns over the licensee's community programming and the funds allocated to that programming. Moreover, TELUS did not provide a detailed rationale for grouping together the communities in question. Consequently, the Commission did not consider that it would be appropriate to grant TELUS further flexibility in regard to allocating community programming expenditures to community zones at that time.
195. In regard to the present applications, Bell has provided a rationale for each proposed zone. However, in regard to Bell's BDU productions in Ontario and Quebec, the Commission notes its significant concerns set out earlier in this decision relating to the licensee's community programming and related expenditures. Consequently, and to be consistent with its recent decision relating to TELUS's request in Broadcasting Decision 2018-267, the Commission **denies** Bell's request to operate, under a zone-based approach, on-demand community programming services serving the above-noted areas in Ontario and Quebec.
196. In regard to Bell's licensed systems in the Atlantic Provinces, the Commission finds that there are fewer issues relating to the community programming produced in the service areas for which the licensee requested authorization to operate under a zone-based approach. In this regard, almost all of its community programming produced in these areas is access programming. Further, the programming in question appears to be locally reflective and community-focused, and no community programming funding is drawn from these licensed areas to finance expensive, self-serving BDU productions produced in large centres.
197. However, Saint John and Moncton are already served by the same undertaking and, therefore, already get the same community programming. Further, the zone-based approach to community programming has historically been granted to licensed BDUs that operate linear community channels and are struggling either to create local and/or access programming due to the size of certain very small undertakings, or to meet their access and/or local programming exhibition requirements.
198. Without the possibility of operating under a zone-based approach, some smaller BDUs had difficulties producing enough programming to fill a weekly linear schedule and had to rely excessively on repeat programming or bulletin boards. Authorizing them to be part of a zone allows them to consider programming from nearby communities to be local, which means they can broadcast it as part of their weekly linear schedule without falling below the exhibition requirements imposed by the Commission.

199. While the Commission has never stated that the zone-based approach should be granted exclusively to BDUs that operate linear community channels, it considers that such challenges do not directly apply to community services offering programming exclusively on an on-demand basis. Such is the case for Bell, which does not operate linear channels in these markets and, therefore, does not need to fill a weekly schedule. Further, Bell's community programming summaries for both Saint John and Moncton do not point to a failure to create local and access programming. In regard to the operational efficiency that Bell claims to be seeking, the Commission notes that the licensee remained vague in its description of the challenges that it faces in its community television operations, only mentioning that it is a new entrant in the BDU market and that its systems are smaller than those of its competitors. In addition, some of the above-noted benefits of operating a linear zone-based community channel to serve multiple locations do not apply to community programming offered on an on-demand platform. The Commission is therefore not convinced that Bell has sufficiently demonstrated that the operation of zone-based community channels on an on-demand basis would provide benefits to Bell, its subscribers or the communities it serves.
200. Finally, the Commission considers that grouping together all of the undertakings a licensee operates within an entire province to operate under a zone-based approach – as Bell is proposing to do in New Brunswick – may be a step away from the very nature of community television, as it would arguably allow Bell to operate a province-wide community programming service. Bell's proposal to group together these service areas would clearly not result in the formation of a community of interest. In this regard, the Commission notes that while Rogers Communications operates zone-based community channels in Fredericton, Moncton and Saint John, these three locations are not grouped together; rather, each forms a respective zone with multiple small-sized areas.³²
201. In light of the above, the Commission **denies** Bell's request to operate, under a zone-based approach, on-demand community programming services serving the above-noted areas in the Atlantic Provinces.

Suspension of conditions of licence relating to the Wholesale Code

202. In Broadcasting Decision 2013-310, the Commission approved, subject to certain modifications, an application by Astral Media inc. (Astral) and its licensed broadcasting subsidiaries for authority to change the effective control of Astral's broadcasting undertakings to BCE. In order to establish additional safeguards regarding the efficient delivery of programming services at affordable rates and reasonable terms of carriage, the Commission determined that it would be appropriate to impose on BCE's and Astral's programming undertakings and BDUs conditions of licence that replicate certain provisions of the vertical integration code of conduct, precursor to the Wholesale

³² The Moncton zone includes Moncton, Bouctouche, Highway 505/Saint-Edouard-de-Kent, Petitcodiac, Saint-Antoine, Sainte-Anne-de-Kent, Saint-André-de-Shediac and Sainte-Marie-de-Kent; the Saint John zone includes Saint John, Brown's Flat, Keating's Corner, Morrisdale, Musquash Subdivision, Patterson/Hoyt, Welsford and Willow Grove; and the Fredericton zone includes Fredericton, Burtt's Corner, Harvey, Ludford Subdivision, McAdam, Nasonworth, Noonan and Tracy/Fredericton Junction.

Code, which is set out in the appendix to Broadcasting Regulatory Policy 2015-438. This was meant to provide the Commission with a more effective means to enforce these provisions, including through the mandatory order powers contained in section 12 of the *Broadcasting Act*.

203. Conditions of licence 1 through 4 set out in Appendix 2 to Broadcasting Decision 2013-310 specify the following for the licensed programming undertakings and BDUs operated by BCE-related entities following the close of the transaction approved in that decision:

1. The licensee shall not:

- a) require an unreasonable rate (e.g., not based on fair market value);
- b) require a party that it is contracting to accept terms or conditions for the distribution of programming on a traditional or ancillary platform that are commercially unreasonable;
- c) require an excessive activation fee or minimum subscription guarantee;
or
- d) impose, on an independent party, a most favoured nation clause or any other condition that imposes obligations on that independent party by virtue of a vertically integrated entity or an affiliate thereof entering into an agreement with any vertically integrated entity or any affiliate thereof, including its own.

2. When negotiating a wholesale rate for a programming service based on fair market value, the licensee shall take into consideration the following factors:

- a) historical rates;
- b) penetration levels and volume discounts;
- c) the packaging of the service;
- d) rates paid by unaffiliated broadcasting distribution undertakings for the programming service;
- e) rates paid for programming services of similar value to consumers;
- f) the number of subscribers that subscribe to a package in part or in whole due to the inclusion of the programming service in that package;
- g) the retail rate charged for the service on a stand-alone basis; and
- h) the retail rate for any packages in which the service is included.

3. The licensee shall file with the Commission all affiliation agreements to which it is a party with a television programming undertaking or broadcasting distribution undertaking within five days following the execution of the agreement by the parties.

4. If the licensee has not renewed an affiliation agreement to which it is a party with a licensed or exempt Canadian television programming undertaking or Canadian broadcasting distribution undertaking within the 120 days preceding the expiry date of the agreement, and if the other contracting party has confirmed its intention to renew the agreement, the licensee shall refer the matter to the Commission for dispute resolution under sections 12 to 15 of the *Broadcasting Distribution Regulations*.

204. Conditions of licence 15 and 16 set out in Appendix 2 to Broadcasting Decision 2013-310 specify the following for the BDUs operated by BCE-related entities following the close of the transaction approved in that decision:

15. Where the licensee provides its related programming services with access to multiple distribution platforms, it shall offer reasonable terms of access that are based on fair market value to non-related programming services.

16. The licensee shall give unrelated programming services marketing support that is comparable to what is given to similar services, including related services.

205. In Broadcasting Decision 2016-458, the Commission imposed the following conditions of licence relating to the Wholesale Code on Bell's BDUs serving various locations in Ontario (to take effect 1 December 2016), in Quebec (to take effect 1 December 2016) and in the Atlantic Provinces (to take effect 1 September 2018):

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.

206. In Broadcasting Decision 2017-148, the introductory decision to the 2017 licence renewals for the television services held by the large English-language ownership groups Bell Media, Corus Entertainment Inc. and Rogers Media Inc. (Rogers Media), the Commission retained conditions of licence that overlapped with the Wholesale Code and that offered safeguards to address the potential for anti-competitive behaviour, but stipulated that the application of those conditions of licence would be suspended as long as the Wholesale Code is in effect. In Broadcasting Decision 2017-149, in which the Commission renewed the broadcasting licences for the various English-language television stations and services that would form the Bell Media Group in the licence term beginning 1 September 2017 and ending 31 August 2022, the Commission included with the relevant conditions of licence the following clause:

The application of the foregoing condition of licence is suspended so long as the Wholesale Code, set out in appendix to *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015, is in effect.

207. In regard to the present applications, Bell requested that the above clause be added to certain conditions of licence for its BDUs serving locations in Ontario, Quebec and the Atlantic Provinces.

Interventions and reply

208. The IBG generally supported Bell's proposed approach and acknowledged that it would be consistent with previous decisions, as noted by the licensee. It submitted, however, that there is an important difference between the provisions of the Wholesale Code and the existing conditions of licence that Bell requests be suspended. Specifically, the IBG argued that mandatory dispute resolution upon expiry of existing affiliation agreements (i.e., the above-noted condition of licence 4) was one of the important safeguards imposed on Bell in connection with the Astral/BCE transaction as a means of assuring the Commission that inherent competitive conflicts that must arise from extensive consolidation and vertical integration could be appropriately managed.
209. Quebecor submitted that Bell appears to request that the current conditions of licence be suspended without being clearly subject to the Wholesale Code, as the licensee did not include the appropriate condition of licence as one of the conditions of licence to which it would be required to adhere during the next licence term. The intervener insisted that, as for licensees of all other terrestrial BDUs, Bell should be subject to a condition of licence requiring that it adhere to the Wholesale Code.
210. In its reply, Bell submitted that it had previously agreed to this condition of licence requiring it to adhere to the Wholesale Code as part of the Commission call for licence renewal applications in Broadcasting Notice of Consultation 2016-147, which was subsequently reflected in Broadcasting Decision 2016-458, in which the Commission renewed the regional broadcasting licences for Bell's BDUs serving Ontario, Quebec and the Atlantic Provinces from 1 December 2016 to 31 November 2017.
211. In regard to the IBG's comments, Bell submitted that the Commission should reject the request that one of the conditions of licence be maintained, given that it has already deleted conditions of licence that are redundant given the existence of the Wholesale Code for programming services. It added that maintaining the condition of licence guaranteeing mandatory dispute resolution is unnecessary given the protections already provided under the Wholesale Code.

Commission's analysis and decision

212. The Wholesale Code governs certain aspects of the commercial arrangements between BDUs and programming undertakings. Bell is bound by the condition of licence imposed in Broadcasting Decision 2016-458 requiring it to adhere to the Wholesale Code in its dealings with any licensed or exempt broadcasting undertaking. Bell proposed to maintain this condition of licence for the next licence term.

213. In regard to Quebecor's comment, as noted above, Bell did, in fact, agree to adhere to the Wholesale Code by condition of licence, and has requested that the condition of licence be maintained in its upcoming licence term, whereas the remaining above-noted existing conditions of licence would be amended but suspended as long as the Wholesale Code is in effect.
214. In regard to the IBG's request that the above-noted condition of licence relating to mandatory dispute resolution be maintained, the Commission notes that other vertically integrated BDUs do not have a similar condition of licence. Further, Bell³³ made the same request for an amendment in regard to these same conditions of licence that apply to its direct-to-home (DTH) BDU, which was approved by the Commission in Broadcasting Decision 2019-387. Finally, there are already dispute resolution mechanisms in place, including the standstill rule, that are available to programming services.
215. Accordingly, the Commission finds that it would be appropriate and consistent with its past practice to suspend conditions of licence 1, 15 and 16 for as long as Bell is required to adhere to the Wholesale Code. However, in regard to the clause to be added to the conditions of licence, the Commission finds that it would be appropriate to modify the wording proposed by Bell in order to be consistent with what has been added to similar conditions of licence for other licensees.
216. In light of the above, the Commission **approves** Bell's request to suspend its conditions of licence relating to competitive safeguards as long as the Wholesale Code is in effect. The following clause has been added to the relevant **conditions of licence** in Appendix 1 to this decision:

The application of the foregoing condition is suspended so long as the licensee is required to adhere to the Wholesale Code, set out in appendix to *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015.

Whether Bell should be allowed to add conditions of licence relating to the distribution of OMNI stations

217. In Broadcasting Decision 2017-152, the Commission approved in part an application by Rogers Media to operate a national, multilingual multi-ethnic discretionary service, to be known as OMNI Regional, for a licence term beginning on 1 September 2017 and ending on 31 August 2020. Pursuant to Broadcasting Order 2017-153, set out in Appendix 2 to that decision, OMNI Regional was to be distributed on the basic service of licensed and exempt BDUs.
218. Following that decision, the Commission issued Broadcasting Notice of Consultation 2017-154, in which it called for applications for a national, multilingual multi-ethnic television service offering third-language news and information programming that, if

³³ Bell ExpressVu Inc. (the general partner), and Bell Canada (the limited partner), carrying on business as Bell ExpressVu Limited Partnership

licensed, would receive mandatory distribution on the digital basic service. As a result of that proceeding, in Broadcasting Decision 2019-172, the Commission approved an application by Rogers Media to operate a new, national, multilingual multi-ethnic discretionary service that would be known as OMNI Regional and that would be granted mandatory distribution on the digital basic service. The Commission granted the new service a three-year licence term, ending 31 August 2023, which aligned the service's licence expiry date with that of other services benefitting from mandatory distribution.

219. OMNI Regional has four regional feeds specifically tailored to ethnic Canadians living in British Columbia, Alberta, Ontario and Quebec. The feeds in British Columbia, Alberta and Ontario mirror the programming offered on the OMNI stations in those provinces. For the feed serving Quebec (which is branded as "ICI Québec"), International Channel/Canal International supplies much of the programming.
220. In markets where an OMNI television station is operating as a local or regional station, Rogers Media had proposed that the distribution order for OMNI Regional be structured in such a way as to provide BDUs with the option to substitute OMNI Regional for the OMNI conventional television station as part of the basic service. In Broadcasting Decision 2017-152, the Commission stated that BDUs were free to request an exception should they wish to be relieved of the obligation to carry OMNI stations as part of the basic service.
221. In the present application, Bell requested that in regard to the regional broadcasting licences for its BDUs serving Ontario and Quebec, it be granted the above-noted exception relating to the obligation to carry OMNI stations as part of the basic service. In this regard, the licensee requested the following conditions of licence for its BDUs serving those provinces:

- for the licensee's BDUs serving Ontario:

As an exception to sections 16.1 and 17(1) of the *Broadcasting Distribution Regulations*, in markets where an OMNI television station is operating as a local or regional television station, the licensee is not required to distribute the OMNI television station as part of the basic service. This condition will come into effect upon the launch of the OMNI Regional discretionary service and will expire if the mandatory order for the distribution of OMNI Regional is no longer in effect.

- for the licensee's BDUs serving Quebec:

As an exception to sections 16.1 and 17(1) of the *Broadcasting Distribution Regulations*, in markets where ICI (International Channel/Canal International) is operated as a local or regional station, the licensee is not required to distribute ICI (International Channel/Canal International) as part of the basic service. This condition will come into effect upon the launch of the OMNI Regional discretionary service and will expire if the mandatory order for the distribution of OMNI Regional is no longer in effect.

222. The licensee submitted that, in both cases, the addition of these conditions of licence for those BDUs would prevent duplication of programming on the basic service.
223. In the Commission's view, Bell's requests are consistent with requests by Videotron in Quebec and by Shaw Cablesystems Limited and Shaw Cablesystems (VCI) Limited in Ontario in regard to being relieved of the obligation to carry OMNI stations as part of the basic service, which were approved in Broadcasting Decisions 2017-322 and 2017-321, respectively. In addition, in Broadcasting Decision 2019-387, as noted above, the Commission approved a similar request in regard to Bell's DTH BDU. Further, in Broadcasting Decision 2017-322, the Commission specified that Videotron's condition of licence would apply to the undertakings where ICI is a local/regional station, specifically, those serving Montréal, Montréal-Ouest and Terrebonne. In regard to the present case, the Commission notes that the exception would apply to the merged undertaking serving both Montréal and Saint-Jérôme.
224. In light of the above, the Commission **approves** Bell's requests. **Conditions of licence** to that effect are set out in Appendices 2 (Ontario) and 3 (Quebec) to this decision.

Conditions of licence relating to the set-top box audience measurement system

225. In Broadcasting Decision 2018-263, in which the Commission renewed the broadcasting licences for terrestrial BDUs that were to expire in August 2018, the Commission imposed the following condition of licence on all vertically integrated BDUs:

Where the licensee collects set-top box data regarding programming services it distributes, it shall, by no later than 30 September 2019, provide this data to a national set-top box-based audience measurement system.

For the purposes of this condition of licence, "set-top box data" means viewership data that is obtained by the licensee through a set-top box or by comparable means, but does not include any portion of such data that would allow the recipient of the data to identify a particular subscriber or household.

226. In that same decision, in order to address the possibility that a national STB-based audience measurement system could not be established by the 30 September 2019 deadline, the Commission imposed on vertically integrated BDUs the following additional condition of licence, on a suspensive basis:

Where the licensee collects set-top box data regarding programming services it distributes, it shall, upon the written request of a Canadian programming service, provide that programming service with the set-top box data regarding that programming service, in the form of raw data or reports, within 30 days,

- at no cost; and
- up to a maximum of two times per broadcast year, unless otherwise agreed to by the parties.

The application of the foregoing condition of licence is suspended until 30 September 2019 and, thereafter, so long as a national set-top box-based audience measurement system is operational.

For the purposes of this condition of licence, “set-top box data” means viewership data that is obtained by the licensee through a set-top box or by comparable means, but does not include any portion of such data that would allow the recipient of the data to identify a particular subscriber or household.

227. In Broadcasting Decision 2019-231, the Commission denied an application by Videotron Ltd. to replace the above-noted conditions of licence for its affected BDUs. In that decision, the Commission noted that delays caused by that application made it necessary to extend until 15 January 2020 the deadline for Videotron Ltd. to implement the measurement system. In addition, the Commission noted that any BDU wishing that its deadline be amended accordingly could file an application with the Commission to that effect.
228. As part of this proceeding, Bell was questioned on whether the above-noted conditions of licence should be maintained for its BDUs serving Ontario, Quebec and the Atlantic Provinces. In its reply, Bell indicated that it currently has before the Commission a [joint application](#) with Rogers Communications and Shaw Communications Inc. (Shaw), in which they requested amendments to both conditions of licence relating to the measurement system. In regard to that licence amendment application, Bell requested that the Commission’s determinations be reflected in the present licence renewal decision. However, given that the Commission is currently considering this joint Part 1 application, a decision in regard to that application has not yet been issued.
229. In its intervention, the IBG requested that Bell be subject to a condition of licence requiring it to participate in a national STB-based audience measurement system. It added that in the absence of such a system being in place by 15 January 2020, the licensee should be required to provide data to programming services upon request. The Commission notes, however, that when the IBG filed its intervention, the joint Part 1 application by Bell, Rogers Communications and Shaw had not been posted on the Commission’s website.
230. In the Commission’s view, the conditions of licence to be imposed on Bell in regard to the STB measurement system in the context of the present licence renewal proceeding should reflect the decisions taken by the Commission in the context of the above-noted joint application. However, given that a decision in regard to that application has not yet been issued, the Commission finds that it would be appropriate to re-impose the same conditions of licence on Bell’s BDUs as set out in Broadcasting Decision 2018-263. These **conditions of licence** are set out in Appendix 1 to this decision. The Commission will revisit these conditions of licence once it has considered the amendment request set out in Bell, Rogers Communications and Shaw’s joint application.

Accessibility

231. The broadcasting policy for Canada, set out in section 3 of the *Broadcasting Act*, includes objectives relating to accessibility, which articulate the principle that access is essential to full participation and integration into society. In rendering its decisions, the Commission must also ensure that it acts in a manner that is consistent with applicable laws, including the *Canadian Charter of Rights and Freedoms*, which guarantees the rights of Canadians, including people with disabilities, to equal protection and benefit of the law.
232. 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 STBs 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.
233. 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, Bell requested to maintain, amend or delete various conditions of licence relating to accessibility, but also confirmed that it would adhere to the standard conditions of licence, requirements and expectations relating to accessibility.
234. 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.
235. In regard to the present case, Bell indicated that it currently provides closed captioning for original licensee-produced programming. However, as noted below, the new licence term for Bell's BDUs serving Ontario, Quebec and the Atlantic Provinces will expire prior to 31 August 2025, the date on which the above-noted closed captioning requirement is to come into effect. Accordingly, the Commission expects Bell, for the time being, to continue its current practice regarding the closed captioning of original licensee-produced programming, and notes its intention to impose on the licensee's BDUs a condition of licence in this regard in the future.

236. In light of the above, the Commission has set out, in Appendix 1 to this decision, the standard **conditions of licence** and expectations relating to accessibility for Bell's BDUs serving Ontario, Quebec and the Atlantic Provinces.

Requests relating to various conditions of licence, requirements, expectations and encouragements that did not raise any concerns or issues

237. Bell requested to either maintain, amend or delete various conditions of licence for its terrestrial BDUs serving Ontario, Quebec and the Atlantic Provinces, as follows:
- for its BDUs serving Ontario, Quebec and the Atlantic Provinces, to amend their conditions of licence relating to adherence to the Television Service Provider Code³⁴ and participation in the Commission for Complaints for Telecommunication Services Inc.³⁵ (formerly the Commissioner for Complaints for Telecommunications Services Inc.) to delete deadlines that have expired;
 - for its BDUs serving Ontario, Quebec and the Atlantic Provinces, to delete their conditions of licence relating to participation in the National Public Alerting System given that the licensee has fully implemented the distribution of emergency alerts for its BDUs;
 - for its BDUs serving Ontario, Quebec and the Atlantic Provinces, to amend certain conditions of licence relating to the distribution of various U.S. signals on the basic service to reflect that certain of those signals are now included on the *Revised list of non-Canadian programming services and stations authorized for distribution*;
 - for its BDUs serving Ontario and Quebec, to maintain the condition of licence relating to the distribution of WGBH-FM Boston, Massachusetts and KUOW-FM Seattle, Washington, two member stations of the non-Canadian audio programming service National Public Radio;
 - for its Ontario BDU serving Kitchener, to delete the condition of licence that relieves it of the obligation to distribute the signal of CKNX-TV Wingham;
 - for its Quebec BDU serving Montréal, to maintain the condition of licence that relieves it of the requirement under section 17(1)(c) of the Regulations to distribute the programming services of the local television stations CHLT-TV (TVA) Sherbrooke and CJOH-TV-8 (CTV) Cornwall;
 - for its BDUs serving Ontario, Quebec and the Atlantic Provinces, to delete their condition of licence relating to the calculation of the licensee's annual contribution to a community programming undertaking that is licensed in a licensed area (i.e., on the basis of the licensee's gross revenues derived from

³⁴ See Broadcasting Regulatory Policy 2016-1.

³⁵ See Broadcasting and Telecom Regulatory Policy 2016-102.

broadcasting activities in that licensed area in each broadcast year), given that the Regulations have since been amended to include the basis on which such contributions must be calculated; and

- for its BDUs serving Ontario and Quebec, to amend the condition of licence requiring adherence to the requirements set out in Broadcasting Regulatory Policy 2010-622, as amended by Broadcasting Regulatory Policy 2010-622-1, so that it refer instead to the Community Television Policy (i.e., Broadcasting Regulatory Policy 2016-224). In the Commission's view, this would help ensure that policy objectives and the nature of the community programming service remain enforceable requirements in the future for those BDUs.

238. Given that these requests do not raise any concerns or issues and given that no interventions opposing the requests were filed, the Commission **approves** these requests. Where appropriate, **conditions of licence** in regard to the above are set out in the appendices to this decision.

Regulatory measures and length of licence terms

239. A licensee's performance over a given licence term, including its adherence to relevant policy frameworks and non-compliance with regulatory requirements, is evaluated in its particular context and circumstances.
240. Depending on the nature and extent of the issues identified, the Commission may apply, on a case-by-case basis, remedial measures such as renewing the licence for a short term; imposing additional conditions of licence; calling the licensee to a public hearing to respond to and discuss apparent non-compliance; issuing a mandatory order requiring the licensee to comply with regulatory requirements; or suspending, not renewing, or revoking the licence.
241. In determining the appropriate licence renewal term for Bell's BDUs serving Ontario, Quebec and the Atlantic Provinces, the Commission has considered the licensee's non-compliance with its conditions of licence relating to contributions to Canadian programming and local expression, as well as with the spirit of several of its other obligations.
242. The issues addressed in the present decision relating to the provision of community programming by Bell's BDUs in Ontario and Quebec are serious. This is particularly the case in regard to how Bell funds many community productions, which have a tendency to prioritize Bell's commercial interests at the expense of fundamental objectives of the Community Television Policy.
243. By choosing to offer community programming, Bell was given the opportunity to allocate funds to such programming that would otherwise be paid to Canadian production funds independent of its BDUs. Such an opportunity comes with a responsibility to provide a service that is of benefit to the public and, in particular, to the specific communities the BDUs serve. In the Commission's view, Bell's interpretation

of certain conditions of licence, policies and regulations does not serve to support the key objectives and goals of the Community Television Policy and runs counter to the spirit of that policy. Bell's actions have resulted in non-compliance with conditions of licence relating to contributions to Canadian programming as well as significant shortfalls in such contributions for its Ontario and Quebec BDUs.

244. In addition to certain remedies imposed on Bell in the present decision, the Commission finds that it would be appropriate to renew the regional broadcasting licences for Bell's Ontario and Quebec BDUs for a short-term period.
245. Although the above-noted issues do not apply to Bell's BDUs serving the Atlantic Provinces, the Commission finds that granting the same short-term renewal period to the BDUs serving those provinces would also be appropriate. In this regard, aligning the licence terms for Bell's BDUs serving Ontario, Quebec and the Atlantic Provinces would reduce the administrative burden on both the licensee and the Commission. This approach would also be in line with recent BDU licence renewal proceedings in which the Commission has granted certain BDUs short-term renewals based on issues that related specifically to one or several undertakings.³⁶ Finally, the Commission considers that the granting of short-term renewals for Bell's BDUs serving Ontario, Quebec and the Atlantic Provinces would allow for an earlier review of the licensee's operations in light of the Commission's concerns relating to the licensee's non-compliance with the relevant regulatory and policy framework.
246. In particular, this short-term renewal will permit a timely review of all of Bell's practices relating to community programming and local expression and will allow the Commission to verify whether these practices further the attainment of the objectives of the Community Television Policy and the broadcasting policy for Canada. In the Commission's view, reviewing Bell's performance at this shortened interval, for all of its licensed areas, is in the best interests of the broadcasting system.

Conclusion

247. In light of all of the above, the Commission **renews** the regional broadcasting licences for Bell Canada's terrestrial BDUs serving the following areas, from 1 November 2020 to 31 August 2024:
- Greater Sudbury, Hamilton/Niagara, Kingston, Kitchener, London, Oshawa, Ottawa, Peterborough, Sault Ste. Marie, Stratford, Toronto and Windsor, and their surrounding areas, Ontario
 - Chicoutimi, Drummondville (Centre-du-Québec region), Gatineau, Joliette (Lanaudière region), Jonquière, Montréal (including Saint-Jérôme/Laurentides region), Québec, Sherbrooke and Trois-Rivières (Mauricie region), and their surrounding areas, Quebec; and

³⁶ See, for example, Broadcasting Decision 2018-266 (Shaw Cablesystems Limited and Shaw Cablesystems (VCI) Limited), Broadcasting Decisions 2018-267 and 2019-230 (TELUS Communications Inc.), and Broadcasting Decision 2018-269 (Videotron Ltd.).

- Fredericton and surrounding areas, Moncton and Saint John, New Brunswick; St. John's, Paradise and Mount Pearl, Newfoundland and Labrador; and Halifax, Dartmouth, Bedford and Sackville, Nova Scotia.

248. The terms and **conditions of licence** applicable to all of Bell's BDUs serving Ontario, Quebec and the Atlantic Provinces are set out in Appendix 1 to this decision. Additional **conditions of licence** for Bell's BDUs serving Ontario are set out in Appendix 2; additional **conditions of licence** for Bell's BDUs serving Quebec are set out in Appendix 3; and additional **conditions of licence** for Bell's BDUs serving the Atlantic Provinces are set out in Appendix 4.

Other matters – Request to review the implementation by BDUs of the Commission's local and community television policy framework

249. In light of its concerns expressed above in regard to the nature of Bell's community programming, the IBG, in its intervention, requested that the Commission undertake a public consultation to review the implementation by BDUs of the Commission's local and community television policy framework. In its reply, Bell noted that the IBG appeared to imply that Bell would support a review of the implementation of the Community Television Policy, and clarified that it did not call for such a review. Bell reiterated its statements that if the Commission's written policies do not correspond with its intent, then it should clarify or update them, and that a licence renewal proceeding is not the appropriate venue to create new policy.
250. The Commission last reviewed its local and community television policy framework in 2016, with many of the resulting changes to the Regulations being implemented at the beginning of the 2017-2018 broadcast year. Since the issuance of the Community Television Policy, the Commission has found BDU actions that were not in line with policy objectives, identified issues and systemic problems, directed that corrective measures be put in place, and provided guidance on how, on a going-forward basis, these BDUs could meet the spirit and objectives of that policy and the requirements of the Regulations.³⁷
251. In regard to the IBG's request to review the implementation by BDUs of the Commission's local and community television policy framework, the Commission notes that the issues identified above in regard to community programming do not represent new policy directions or the retroactive application of clarifications to existing policies, but relate to the key policy objective of community reflection and to the public service role of the community programming service. In this regard, it has been the Commission's long standing practice to review BDUs' compliance with their regulatory obligations at licence renewal. As part of its role as an administrative tribunal, the Commission must conduct its renewal proceedings by reviewing and analyzing facts in light of the regulatory obligations that were in place at the time those facts occurred.

³⁷ See, for example, Broadcasting Decision 2018-266 (Shaw's terrestrial BDU licence renewals), Broadcasting Decision 2018-267 (TELUS's Alberta and British Columbia terrestrial BDU licence renewals) and Broadcasting Decision 2019-230 (TELUS's Quebec terrestrial BDU licence renewal).

The Commission's decision-making process does not have a retroactive effect, and does not go back in time to change the legal consequences of actions that were committed.

252. Furthermore, many of the issues relating to Bell's local BDU productions are similar to those identified for Videotron in Broadcasting Decision 2015-31. They are also similar to certain issues recently identified for other BDU licensees. For example, in Broadcasting Decisions 2018-267 and 2019-230, the Commission found a number of systemic issues regarding the community programming provided by TELUS, and gave the licensee clear indications of how, going forward, it would be able to meet the spirit and objectives of the Community Television Policy. The Commission is therefore of the view that it has already clarified to some extent the intent of the community programming policies and regulations, and can fairly assess Bell's performance over the current licence term and provide the licensee with the appropriate direction going forward.
253. In light of the above, the Commission finds that a full review of the community policy framework is not necessary at this time.

Employment equity

254. 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 2020-190, 15 June 2020
- *Various terrestrial broadcasting distribution undertakings – Administrative renewals*, Broadcasting Decision CRTC 2020-73, 25 February 2020
- *Bell TV – Licence renewal*, Broadcasting Decision CRTC 2019-387, 29 November 2019
- *Notice of applications received*, Broadcasting Notice of Consultation CRTC 2019-321, 13 September 2019, as amended by Broadcasting Notice of Consultation CRTC 2019-321-1, 31 October 2019
- *Various terrestrial broadcasting distribution undertakings – Administrative renewals*, Broadcasting Decision CRTC 2019-306, 29 August 2019
- *Various services – Licence amendments related to the national set-top box audience measurement system*, Broadcasting Decision CRTC 2019-231, 28 June 2019
- *Terrestrial broadcasting distribution undertakings serving various locations in Quebec – Licence renewal and amendments*, Broadcasting Decision CRTC 2019-230, 28 June 2019

- *Licensing of a national, multilingual multi-ethnic discretionary service*, Broadcasting Decision CRTC 2019-172 and Broadcasting Order CRTC 2019-173, 23 May 2019
- *Videotron – Licence renewal for various broadcasting distribution undertakings*, Broadcasting Decision CRTC 2018-269, 2 August 2018
- *TELUS – Licence renewal for various terrestrial broadcasting distribution undertakings*, Broadcasting Decision CRTC 2018-267, 2 August 2018
- *Shaw – Licence renewal for various terrestrial broadcasting distribution undertakings*, Broadcasting Decision CRTC 2018-266, 2 August 2018
- *Rogers – Licence renewals for various terrestrial broadcasting distribution undertakings*, Broadcasting Decision CRTC 2018-265, 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
- *Videotron G.P. – Acquisition of assets (corporate reorganization)*, Broadcasting Decision CRTC 2017-453, 18 December 2017
- *Various broadcasting distribution undertakings – Licence amendments*, Broadcasting Decision CRTC 2017-322, 31 August 2017
- *Various licensed and exempt broadcasting distribution undertakings – Licence amendments and exemption*, Broadcasting Decision CRTC 2017-321, 31 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
- *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 television stations*, Broadcasting Regulatory Policy CRTC 2017-278, 4 August 2017
- *Call for licence renewal applications*, Broadcasting Notice of Consultation CRTC 2017-179, 31 May 2017
- *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2017-160, 18 May 2017, as amended by Broadcasting Notice of Consultation CRTC 2017-160-1, 13 October 2017
- *Call for applications for a national, multilingual multi-ethnic television service offering news and information programming*, Broadcasting Notice of Consultation CRTC 2017-154, 15 May 2017

- *OMNI Regional – National, multilingual multi-ethnic discretionary service*, Broadcasting Decision CRTC 2017-152 and Broadcasting Order CRTC 2017-153, 15 May 2017
- *Bell Media Inc. – Licence renewals for English-language television stations and services*, Broadcasting Decision CRTC 2017-149, 15 May 2017
- *Renewal of licences for the television services of large English-language ownership groups – Introductory decision*, Broadcasting Decision CRTC 2017-148, 15 May 2017
- *Standard requirements for on-demand services*, Broadcasting Regulatory Policy CRTC 2017-138, 10 May 2017
- *Licence renewal of broadcasting distribution undertakings – Review of practices relating to the small basic service and flexible packaging options and imposition of various requirements*, Broadcasting Decision CRTC 2016-458, 21 November 2016
- *Policy framework for local and community television*, Broadcasting Regulatory Policy CRTC 2016-224, 15 June 2016
- *Call for licence renewal applications – Submission of renewal applications for broadcasting licences of terrestrial broadcasting distribution undertakings (BDUs) that will expire in 2016 and 2017; implementation of certain conditions of licence and review of practices in regard to the small basic service and flexible packaging requirements for all BDU licensees*, Broadcasting Notice of Consultation CRTC 2016-147, 21 April 2016
- *Review of the structure and mandate of the Commissioner for Complaints for Telecommunications Services Inc.*, Broadcasting and Telecom Regulatory Policy CRTC 2016-102, 17 March 2016
- *The Television Service Provider Code*, Broadcasting Regulatory Policy CRTC 2016-1, 7 January 2016
- *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015
- *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
- *Let's Talk TV – The way forward – Creating compelling and diverse Canadian programming*, Broadcasting Regulatory Policy CRTC 2015-86, 12 March 2015
- *English-language community channel in Montréal*, Broadcasting Decision CRTC 2015-32, 4 February 2015
- *Complaint by Independent Community TV against Videotron G.P. and its community channel MATv*, Broadcasting Decision CRTC 2015-31, 4 February 2015

- *Terrestrial broadcasting distribution undertakings serving various communities in Ontario and Quebec – Licence amendments*, Broadcasting Decision CRTC 2013-623, 22 November 2013
- *Astral broadcasting undertakings – Change in effective control*, Broadcasting Decision CRTC 2013-310, 27 June 2013
- *Terrestrial broadcasting distribution undertakings serving various communities in the Atlantic Provinces – Licence renewal and licence amendments*, Broadcasting Decision CRTC 2013-156, 27 March 2013
- *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
- *Revised approach regarding contributions by broadcasting distribution undertakings to local expression*, Broadcasting Regulatory Policy CRTC 2012-154, 15 March 2012
- *Regional broadcasting licences for terrestrial broadcasting distribution undertakings serving various communities in Ontario and Quebec – Licence renewals and amendments*, Broadcasting Decision CRTC 2011-737, 30 November 2011
- *Community television policy*, Broadcasting Regulatory Policy CRTC 2010-622, 26 August 2010, as corrected by *Community television policy – Correction*, Broadcasting Regulatory Policy CRTC 2010-622-1, 13 September 2010
- *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009
- *Policy framework for community-based media*, Broadcasting Public Notice CRTC 2002-61, 10 October 2002
- *Guidelines respecting financial contributions by the licensees of broadcasting distribution undertakings to the creation and presentation of Canadian programming*, Circular No. 426, 22 December 1997

This decision and the appropriate appendices are to be appended to each licence.

Appendix 1 to Broadcasting Decision CRTC 2020-356

Terms, conditions of licence and expectations applicable to all terrestrial broadcasting distribution undertakings for which the licences have been renewed in this decision

Terms

The licence will take effect 1 November 2020 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 undertakings.
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 Telecommunication Services Inc.
4. a) The licensee shall not:
 - i) require an unreasonable rate (e.g., not based on fair market value);
 - ii) require a party that it is contracting to accept terms or conditions for the distribution of programming on a traditional or ancillary platform that are commercially unreasonable;
 - iii) require an excessive activation fee or minimum subscription guarantee; or
 - iv) impose, on an independent party, a most favoured nation clause or any other condition that imposes obligations on that independent party by virtue of a vertically integrated entity or an affiliate thereof entering into an agreement with any vertically integrated entity or any affiliate thereof, including its own.
- b) When negotiating a wholesale rate for a programming service based on fair market value, the licensee shall take into consideration the following factors:
 - i) historical rates;
 - ii) penetration levels and volume discounts;
 - iii) the packaging of the service;
 - iv) rates paid by unaffiliated broadcasting distribution undertakings for the programming service;

- v) rates paid for programming services of similar value to consumers;
 - vi) the number of subscribers that subscribe to a package in part or in whole due to the inclusion of the programming service in that package;
 - vii) the retail rate charged for the service on a stand-alone basis; and
 - viii) the retail rate for any packages in which the service is included.
- c) The licensee shall file with the Commission all affiliation agreements to which it is a party with a television programming undertaking or broadcasting distribution undertaking within five days following the execution of the agreement by the parties.
- d) If the licensee has not renewed an affiliation agreement to which it is a party with a licensed or exempt Canadian television programming undertaking or Canadian broadcasting distribution undertaking within the 120 days preceding the expiry date of the agreement, and if the other contracting party has confirmed its intention to renew the agreement, the licensee shall refer the matter to the Commission for dispute resolution under sections 12 to 15 of the *Broadcasting Distribution Regulations*.

The application of the foregoing condition of licence is suspended so long as the licensee is required to adhere to the Wholesale Code, set out in appendix to *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015.

5. a) Where the licensee provides its related programming services with access to multiple distribution platforms, it shall offer reasonable terms of access that are based on fair market value to non-related programming services.
- b) The licensee shall give unrelated programming services marketing support that is comparable to what is given to similar services, including related services.

The application of the foregoing condition of licence is suspended so long as the licensee is required to adhere to the Wholesale Code, set out in appendix to *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015.

6. Where the licensee collects set-top box data regarding programming services it distributes, it shall provide this data to a national set-top box-based audience measurement system.

For the purposes of this condition of licence, “set-top box data” means viewership data that is obtained by the licensee through a set-top box or by comparable means, but does not include any portion of such data that would allow the recipient of the data to identify a particular subscriber or household.

7. Where the licensee collects set-top box data regarding programming services it distributes, it shall, upon the written request of a Canadian programming service, provide that programming service with the set-top box data regarding that programming service, in the form of raw data or reports, within 30 days,

- i) at no cost; and
- ii) up to a maximum of two times per broadcast year, unless otherwise agreed to by the parties.

The application of the foregoing condition of licence is suspended so long as a national set-top box-based audience measurement system is operational.

For the purposes of this condition of licence, “set-top box data” means viewership data that is obtained by the licensee through a set-top box or by comparable means, but does not include any portion of such data that would allow the recipient of the data to identify a particular subscriber or household.

8. By no later than **31 August 2024**, the licensee shall contribute an amount totalling \$17,924,607 to Canadian programming. Of this amount, not less than 80% shall be directed to the Canada Media Fund and not more than 20% shall be directed to one or more Certified Independent Production Funds. This amount shall be in addition to any other contributions to Canadian programming required under the *Broadcasting Distribution Regulations* or the licensee’s other conditions of licence.

The licensee shall provide such evidence to the Commission as is required by the Commission to ensure that the amount has been paid in full and on time, including proof of any payment made pursuant to this condition of licence within 30 days of the payment being made.

9. 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.
10. 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).
11. The licensee shall provide the necessary training to hosts and access producers associated with its community programming service concerning the provision of audio description.

12. 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.
13. The licensee shall promote information on all of its disability-specific services and products, in the accessible manner(s) of its choice.
14. 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.
15. 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.
16. 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.
17. The licensee shall make accessible any customer service functions that are available solely over its website.
18. 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 100% of original licensee-produced English- and French-language programming aired on its community programming service is closed captioned.

The Commission expects the licensee to ensure that 100% of original English- and French-language access programming aired on its community programming service is closed captioned by the end of its licence term.

The Commission expects the licensee to ensure that advertising, sponsorship messages and promos inserted into local availabilities are closed captioned.

Appendix 2 to Broadcasting Decision CRTC 2020-356

Additional conditions of licence applicable to the broadcasting distribution undertakings serving Greater Sudbury, Hamilton/Niagara, Kingston, Kitchener, London, Oshawa, Ottawa, Peterborough, Sault Ste. Marie, Stratford, Toronto and Windsor, and their surrounding areas, Ontario

1. The licensee is authorized to distribute WGBH-FM Boston, Massachusetts and KUOW-FM Seattle, Washington, two member stations of the non-Canadian audio programming service National Public Radio.
2. The licensee shall adhere to the requirements set out in *The Policy Framework for Local and Community Television*, Broadcasting Regulatory Policy CRTC 2016-224, 15 June 2016.
3. As an exception to sections 16.1 and 17(1) of the *Broadcasting Distribution Regulations*, in markets where an OMNI television station is operating as a local or regional television station, the licensee is not required to distribute the OMNI television station as part of the basic service. This condition will expire if the mandatory order for the distribution of OMNI Regional is no longer in effect.

Conditions of licence applicable to the broadcasting distribution undertakings serving Greater Sudbury, Hamilton/Niagara, Kingston, Kitchener, London, Oshawa, Peterborough, Sault Ste. Marie, Stratford, Toronto and Windsor, and their surrounding areas, Ontario

4. The licensee shall be subject to the following condition of licence as an exception to the requirements set out in sections 34(2) and 34(3) of the *Broadcasting Distribution Regulations*:
 - a) If the licensee 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 not less than the greater of:
 - i) 4.7% of its gross revenues derived from broadcasting activities in the licensed area in the previous broadcast year, less any allowable contribution to local expression made by the licensee in the licensed area in the current broadcast year, and
 - ii) 3.2% of its gross revenues derived from broadcasting activities in the licensed area in the previous broadcast year.
 - b) If the licensee 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:
 - i) 3.2% of its gross revenues derived from broadcasting activities in the licensed area in the previous broadcast year to Canadian programming, and

ii) 1.5% of its gross revenues derived from broadcasting activities in the licensed area in the previous broadcast year to the community programming undertaking.

- c) If the licensee does not distribute programming that qualifies as local expression on a related on-demand service, 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, “allowable contribution to local expression” shall have the same meaning as that set out in the *Broadcasting Distribution Regulations*, and a reference to “community channel” shall be deemed to include a related on-demand service.

Condition of licence applicable to the broadcasting distribution undertakings serving Hamilton/Niagara, Kingston, Oshawa, Peterborough, Stratford, Toronto, Kitchener, London and Ottawa, and their surrounding areas

5. The licensee is authorized to distribute on a discretionary basis the signal of WNYO-TV Buffalo, New York.

Condition of licence applicable to the broadcasting distribution undertakings serving Hamilton/Niagara, Kingston, Oshawa, Peterborough, Stratford, Toronto, Kitchener, London and Ottawa, and their surrounding areas

6. The licensee is authorized to distribute the signal of WPBS-TV Watertown, New York as part of the basic service.

Condition of licence applicable to the broadcasting distribution undertaking serving Sudbury and its surrounding areas

7. The licensee is authorized to distribute the signal of WMED-TV (PBS) Calais, Maine as part of the basic service.

Condition of licence applicable to the broadcasting distribution undertaking serving Ottawa and its surrounding areas

8. -As an exception to section 34(2) of the *Broadcasting Distribution Regulations* (the Regulations), the licensee shall make a contribution to Canadian programming, in each broadcast year, of an amount equal to 4.7% of its gross revenues derived from broadcasting activities in the previous broadcast year less
- a) any allowable contribution to local expression made by the licensee in the current broadcast year in relation to its English-language related on-demand community programming service serving Ottawa, Ontario to a maximum of an amount equal to 1.5% of its gross revenues derived from broadcasting activities in the previous broadcast year; and,

- b) any contribution to community access television programming and local community television programming on its related French-language on-demand community programming service serving Ottawa, Ontario to a maximum of an amount equal to 1.5% of its gross revenues derived from broadcasting activities in the previous broadcast year.

For greater clarity, the licensee is permitted to contribute up to 1.5% of its gross revenues derived from broadcasting activities in the previous broadcast year to community access television programming and local community television programming on each of its related French- and English-language on-demand community programming services serving Ottawa, Ontario. The licensee may only exercise the flexibility associated with the definition of “allowable contribution to local expression” for its related English-language on-demand community programming service.

For the purposes of this condition, the terms “allowable contribution to local expression,” “community access television programming” and “local community television programming” shall have the same meanings as those set out in the Regulations, and a reference to “community channel” shall be deemed to include a related on-demand service.

Appendix 3 to Broadcasting Decision CRTC 2020-356

Additional conditions of licence applicable to the broadcasting distribution undertakings serving Chicoutimi, Drummondville (Centre-du-Québec region), Gatineau, Joliette (Lanaudière region), Jonquière, Montréal (including Saint-Jérôme/Laurentides region), Québec, Sherbrooke and Trois-Rivières (Mauricie region), and their surrounding areas, Quebec

1. The licensee is authorized to distribute WGBH-FM Boston, Massachusetts and KUOW-FM Seattle, Washington, two member stations of the non-Canadian audio programming service National Public Radio.
2. The licensee shall adhere to the requirements set out in *The Policy Framework for Local and Community Television*, Broadcasting Regulatory Policy CRTC 2016-224, 15 June 2016.
3. As an exception to sections 16.1 and 17(1) of the *Broadcasting Distribution Regulations*, in markets where ICI (International Channel/Canal International) is operated as a local or regional station, the licensee is not required to distribute ICI (International Channel/Canal International) as part of the basic service. This condition will expire if the mandatory order for the distribution of OMNI Regional is no longer in effect.

Conditions of licence applicable to the broadcasting distribution undertakings serving Chicoutimi, Drummondville (Centre-du-Québec region), Gatineau, Joliette (Lanaudière region), Jonquière, Montréal (including Saint-Jérôme/Laurentides region), Sherbrooke and Trois-Rivières (Mauricie region), and their surrounding areas, Quebec

4. The licensee shall be subject to the following condition of licence as an exception to the requirements set out in sections 34(2) and 34(3) of the *Broadcasting Distribution Regulations*:
 - a) If the licensee 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 not less than the greater of:
 - i) 4.7% of its gross revenues derived from broadcasting activities in the licensed area in the previous broadcast year, less any allowable contribution to local expression made by the licensee in the licensed area in the current broadcast year, and
 - ii) 3.2% of its gross revenues derived from broadcasting activities in the licensed area in the previous broadcast year.
 - b) If the licensee 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:

i) 3.2% of its gross revenues derived from broadcasting activities in the licensed area in the previous broadcast year to Canadian programming, and

ii) 1.5% of its gross revenues derived from broadcasting activities in the licensed area in the previous broadcast year to the community programming undertaking.

- c) If the licensee does not distribute programming that qualifies as local expression on a related on-demand service, 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, “allowable contribution to local expression” shall have the same meaning as that set out in the *Broadcasting Distribution Regulations*, and a reference to “community channel” shall be deemed to include a related on-demand service.

Condition of licence applicable to the broadcasting distribution undertakings serving Drummondville (Centre-du-Québec region), Joliette (Lanaudière region) and Trois-Rivières (Mauricie region), and their surrounding areas

5. The licensee is authorized to distribute the signal of WCFE-TV (PBS) Plattsburgh, New York as part of the basic service.

Conditions of licence applicable to the broadcasting distribution undertaking serving Gatineau and its surrounding areas

6. The licensee is authorized to distribute the signal of WPBS-TV (PBS) Watertown, New York as part of the basic service.
7. The licensee is authorized to distribute on a discretionary basis the signal of WNYO-TV Buffalo, New York.

Conditions of licence applicable to the broadcasting distribution undertaking serving Montréal (including Saint-Jérôme/Laurentides region) and its surrounding areas

8. The licensee is authorized to distribute the signal of WCFE-TV (PBS) Plattsburgh, New York as part of the basic service.
9. The licensee is relieved of the requirement under section 17(1)(c) of the *Broadcasting Distribution Regulations* to distribute the programming services of local television stations CHLT-TV (TVA) Sherbrooke and CJOH-TV-8 (CTV) Cornwall.

Condition of licence applicable to the broadcasting distribution undertakings serving Chicoutimi and Jonquière, and their surrounding areas

10. The licensee is authorized to distribute the signal of WMED-TV (PBS) Calais, Maine as part of the basic service.

Condition of licence applicable to the broadcasting distribution undertaking serving Québec and its surrounding areas

11. As an exception to section 34(2) of the *Broadcasting Distribution Regulations* (the Regulations), the licensee shall make a contribution to Canadian programming, in each broadcast year, of an amount equal to 4.7% of its gross revenues derived from broadcasting activities in the previous broadcast year less

- a) any allowable contribution to local expression made by the licensee in the current broadcast year in relation to its related French-language on-demand community programming service serving Québec, Quebec to a maximum of an amount equal to 1.5% of its gross revenues derived from broadcasting activities in the previous broadcast year; and,
- b) any contribution to community access television programming and local community television programming on its related English-language on-demand community programming service serving Québec, Quebec to a maximum of an amount equal to 1.5% of its gross revenues derived from broadcasting activities in the previous broadcast year.

For greater clarity, the licensee is permitted to contribute up to 1.5% of its gross revenues derived from broadcasting activities in the previous broadcast year to community access television programming and local community television programming on each of its related French- and English-language on-demand community programming services serving Québec, Quebec. The licensee may only exercise the flexibility associated with the definition of “allowable contribution to local expression” for its related French-language on-demand community programming service.

For the purposes of this condition, the terms “allowable contribution to local expression,” “community access television programming” and “local community television programming” shall have the same meanings as those set out in the Regulations, and a reference to “community channel” shall be deemed to include a related on-demand service.

Appendix 4 to Broadcasting Decision CRTC 2020-356

Additional conditions of licence applicable to the broadcasting distribution undertakings serving Fredericton and surrounding areas, Moncton and Saint John, New Brunswick; St. John's, Paradise and Mount Pearl, Newfoundland and Labrador; and Halifax, Dartmouth, Bedford and Sackville, Nova Scotia

1. The licensee is authorized to distribute, as part of the basic service, WMED-TV (PBS) Calais, Maine, or, alternatively, the signal of a different affiliate of the same network located in the same time zone and included on the *List of non-Canadian programming services and stations authorized for distribution*, as amended from time to time and approved by the Commission.
2. The licensee shall be subject to the following condition of licence as an exception to the requirements set out in sections 34(2) and 34(3) of the *Broadcasting Distribution Regulations*:
 - a) If the licensee 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 not less than the greater of:
 - i) 4.7% of its gross revenues derived from broadcasting activities in the licensed area in the previous broadcast year, less any allowable contribution to local expression made by the licensee in the licensed area in the current broadcast year, and
 - ii) 3.2% of its gross revenues derived from broadcasting activities in the licensed area in the previous broadcast year.
 - b) If the licensee 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:
 - i) 3.2% of its gross revenues derived from broadcasting activities in the licensed area in the previous broadcast year to Canadian programming, and
 - ii) 1.5% of its gross revenues derived from broadcasting activities in the licensed area in the previous broadcast year to the community programming undertaking.
 - c) If the licensee does not distribute programming that qualifies as local expression on a related on-demand service, 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, “allowable contribution to local expression” shall have the same meaning as that set out in the *Broadcasting Distribution Regulations*, and a reference to “community channel” shall be deemed to include a related on-demand service.