



Broadcasting Decision CRTC 2023-287

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Reference: Part 1 licence renewal application posted on 2 February 2023

Ottawa, 25 August 2023

Cogeco Connexion Inc.
Montréal, Quebec

Public record: 2022-0795-1

Cogeco On Demand – Licence renewal

Summary

The Commission **renews** the broadcasting licence for the on-demand service Cogeco On Demand from 1 September 2023 to 31 August 2028.

Application

1. The Commission has the authority, pursuant to subsections 9(1), 9.1(1) and 11.1(2) of the *Broadcasting Act*, to issue and renew licences and to make orders imposing conditions on the carrying on of a broadcasting undertaking that it considers appropriate for the implementation of the broadcasting policy set out in subsection 3(1) of the *Broadcasting Act*, and to make orders respecting expenditures.
2. Cogeco Connexion Inc. (Cogeco) filed an application to renew the broadcasting licence for the on-demand service Cogeco On Demand, which expires on 31 August 2023. The Commission did not receive any interventions in regard to this application.

Non-compliance

3. Pursuant to subsection 9(1) of the old *Broadcasting Act*, the Commission had the authority 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 deemed appropriate for the implementation of the broadcasting policy set out in subsection 3(1) of that Act.
4. Paragraph 3(1)(e) of the *Broadcasting Act* declares that each element of the Canadian broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming. The old *Broadcasting Act* also provided that private networks and programming undertakings should, to an extent consistent with the financial and other resources available to them, contribute significantly to the creation and presentation of Canadian programming (subparagraph 3(1)(s)(i) of the old *Broadcasting Act*).

5. Pursuant to the authority granted in subsection 9(1) of the old *Broadcasting Act*, and consistent with the provisions set out in paragraph 3(1)(e) and former subparagraph 3(1)(s)(i), the Commission required Cogeco On Demand to contribute 5% of the service's gross annual revenues to an existing Canadian independent production fund.
6. According to Commission records, there was a shortfall in Cogeco On Demand's contribution to Canadian programming in the 2017-2018 broadcast year.
7. Upon questioning, the licensee confirmed this shortfall and committed to contribute the amount of the shortfall to existing Canadian independent production funds, in addition to its contribution payment for the 2021-2022 broadcast year. The licensee followed through on this commitment and submitted proof of payment for the 2017-2018 broadcast year shortfall.
8. Though the licensee was in non-compliance with its contribution requirement for the 2017-2018 broadcast year, it was compliant in all subsequent years and paid the shortfall promptly when this was brought to its attention. Accordingly, the Commission finds that no further measures are warranted.

Provision of described video

9. In its application, the licensee noted its commitment to undertaking its best efforts to offer described video going forward. The licensee pointed to its existing arrangements with programming undertakings, which do not require the provision of described video tracks, as the technical barrier currently preventing this.
10. While on-demand services are not currently required to offer described video, the Commission has set out expectations that all content offered with described video at some point in the broadcasting system be offered with described video when rebroadcast,¹ and that where possible, on-demand services acquire and make available described versions of programming.² Entering arrangements with programming undertakings without requiring the provision of described video tracks does not fulfill these expectations.
11. The Commission considers that described video is an important service that renders broadcasting more accessible without barriers to persons with disabilities and furthers the policy objectives of the new *Broadcasting Act*.³ The Commission further considers that the time is opportune to re-examine obligations relating to described video.
12. Under the old *Broadcasting Act*, the Commission could generally only impose new conditions of licence on undertakings when their licences were renewed. However,

¹ See paragraph 45 of Broadcasting Regulatory Policy 2015-104.

² As set out in the appendix to Broadcasting Regulatory Policy 2017-138.

³ Paragraphs 3(1)(p) and 3(1)(p.1) of the *Broadcasting Act* both speak to the importance of programming that is accessible without barriers to persons with disabilities and the latter specifically references described video.

under the new *Broadcasting Act*, the Commission can impose conditions of service on any persons carrying on broadcasting undertakings at any time.

13. To this end, the Commission will be launching a proceeding shortly to develop a regulatory policy for described video and audio description that allows viewers to equitably access programming, regardless of the platform, including on-demand services and those operated by online undertakings, falling under the scope of the new *Broadcasting Act*. This proceeding will allow the Commission to examine the issue of described video in a coherent and consistent way for all similar services rather than taking the piecemeal approach of focusing only on a single broadcaster. The proceeding may result in the imposition of new conditions of service. Once available, more information regarding this proceeding will be made public so that all interested persons can participate.
14. In the meantime, the Commission expects Cogeco to take the necessary steps to follow through on its commitment and to revise its arrangements with programming undertakings, as necessary.
15. Furthermore, the Commission reminds Cogeco that the Commission may request additional information regarding Cogeco's progress in this regard at any time.

Conclusion

16. In light of all of the above, the Commission **renews** the broadcasting licence for the on-demand service Cogeco On Demand from 1 September 2023 to 31 August 2028.
17. Pursuant to subsections 49(1) and 50(2) of the *Online Streaming Act*, the conditions of licence that existed prior to the date of royal assent of that Act are deemed to be conditions imposed under an order made pursuant to section 9.1 of the new *Broadcasting Act*, or subsection 11.1(2) in the case of expenditure requirements. As such, the conditions of licence for this licensee became conditions of service and continue to apply to the licensee. For ease of reference, the **conditions of service** for this licensee are set out in the appendix to this decision. Further, the formal broadcasting licence document issued to a licensee may set out additional requirements for the undertaking, relating to, for example, technical parameters or prohibitions on transfer. The licensee shall also adhere to any such requirements set out in the broadcasting licence for the undertaking.

Secretary General

Related documents

- *Standard requirements for on-demand services*, Broadcasting Regulatory Policy CRTC 2017-138, 10 May 2017
- *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

This decision is to be appended to the licence.

Appendix to Broadcasting Decision CRTC 2023-287

Terms and conditions of service, expectations and encouragements for the on-demand service Cogeco On Demand

Terms

The licence will expire 31 August 2028.

Conditions of service

1. The licensee shall adhere to the conditions of service set out in the appendix to *Standard requirements for on-demand services*, Broadcasting Regulatory Policy CRTC 2017-138, 10 May 2017.⁴ Further, the licensee shall adhere to the requirements set out in the broadcasting licence for the undertaking.

Expectations

Standard expectations

The standard expectations applicable to this licensee are set out in the appendix to *Standard requirements for on-demand services*, Broadcasting Regulatory Policy CRTC 2017-138, 10 May 2017.

Cultural diversity

The Commission expects the licensee to reflect the cultural diversity of Canada in its programming and employment practices.

Encouragements

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

⁴ Pursuant to subsection 49(2) of the *Online Streaming Act*, which made a certain number of amendments to the *Broadcasting Act* when it came into force on 27 April 2023, any regulation made under paragraphs 10(1)(a) or 10(1)(i) of the old *Broadcasting Act* is deemed to be an order made under section 9.1 of the new *Broadcasting Act*. Accordingly, with respect to standard condition of service 1, which incorporates the *Discretionary Services Regulations* by reference, the licensee shall continue to adhere to those regulations, as amended from time to time, with the exception of sections 2 and 8, as conditions of service.