



Broadcasting Decision CRTC 2023-341

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

Ottawa, 16 October 2023

Saskatchewan Telecommunications

Across Canada

Public record: 2020-0636-1

SaskTel Pay-Per-View – Licence renewal

Summary

The Commission **renews** the broadcasting licence for the on-demand service SaskTel Pay-Per-View from 1 January 2024 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*.
2. Saskatchewan Telecommunications (SaskTel) filed an application to renew the broadcasting licence for the on-demand service SaskTel Pay-Per-View, which expires 31 December 2023.¹ The Commission did not receive any interventions in regard to this application.
3. After the renewal of the licence for SaskTel Pay-Per-View in Broadcasting Decision 2014-376, the Commission created the category of on-demand services by consolidating what were formerly known as pay-per-view and video-on-demand services. SaskTel requested to adhere to the standard conditions and expectations for on-demand services² instead of those for pay-per-view services.³ SaskTel also requested to maintain its exception to the expectation relating to employment equity.

¹ The original licence expiry date for the service was 31 August 2021. The licence was administratively renewed until 31 August 2022 as a result of Broadcasting Decision 2021-285, until 31 August 2023 as a result of Broadcasting Decision 2022-178 and until 31 December 2023 as a result of Broadcasting Decision 2023-299.

² See the appendix to Broadcasting Regulatory Policy 2017-138.

³ See the appendix to Broadcasting Regulatory Policy 2013-561.

4. Further, SaskTel requested to delete three of its current conditions, as these conditions are imposed in the standard conditions for on-demand services,⁴ as well as its condition relating to the maintenance of an independent programming committee.⁵

Issues

5. After examining the record for this application in light of applicable regulations and policies, the Commission considers that it must examine the following issues:
 - the licensee's apparent non-compliance with its requirements, including:
 - a standard condition for pay-per-view services relating to the exhibition of Canadian content during the 2020-2021 broadcast year; and
 - a standard condition for pay-per-view services relating to contributions to Canadian programming for the 2016-2017 broadcast year;
 - the licensee's request to adhere to the conditions and expectations for on-demand services (while maintaining its exception to the expectation relating to employment equity) and to replace three of its current conditions with three of the standard conditions for on-demand services; and
 - the licensee's request to delete its condition relating to the maintenance of an independent programming committee.

Non-compliance

6. 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.
7. 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 resources available to them, contribute significantly to the creation and presentation of Canadian programming (subparagraph 3(1)(s)(i) of the old *Broadcasting Act*).

⁴ See conditions 2 through 4 in the appendix to Broadcasting Decision 2014-376 and conditions 18 through 20 in the appendix to Broadcasting Regulatory Policy 2017-138.

⁵ See condition 5 in the appendix to Broadcasting Decision 2014-376.

Exhibition of Canadian content

8. 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), in the appendix to Broadcasting Regulatory Policy 2013-561, the Commission imposed the following condition of licence on pay-per-view services (which are now known as on-demand services⁶), including SaskTel Pay-Per-View:⁷
 4. Not less than 20% of all programming other than feature films available to subscribers in each broadcast year shall be Canadian.
9. Based on Commission records, the percentage of such programming available to subscribers during the 2020-2021 broadcast year was less than the 20% minimum set out in the condition above.
10. According to SaskTel, this requirement was not met during the 2020-2021 broadcast year due to the COVID-19 pandemic, which caused the cancellation of various sporting events, public concerts and public exhibitions, thereby eliminating Canadian content that could otherwise have been offered to subscribers (including Canada West football, junior hockey and other sporting events normally carried by SaskTel Pay-Per-View).
11. The licensee submitted that the COVID-19 pandemic was the direct cause for this apparent non-compliance and that it is unlikely to be repeated. SaskTel added that the 2022-2023 broadcast year was not impacted by a lack of eligible content and that it has demonstrated a commitment to providing such content to its subscribers. For instance, according to SaskTel, this content comprised approximately 28% of SaskTel Pay-Per-View's programming for the three preceding broadcast years (2017-2018 through 2019-2020).
12. The Commission acknowledges the challenges resulting from the COVID-19 pandemic. Indeed, the Commission previously stated in paragraph 216 of Broadcasting Decision 2021-274 that it would, at the time of licence renewal, include such challenges in its examination of instances of non-compliance relating to exhibition and content requirements.
13. The challenges outlined by SaskTel are unlikely to recur. Given the licensee's commitment to high exhibition levels historically and to fulfilling this requirement moving forward, the Commission is satisfied with SaskTel's response and is confident that SaskTel will be able to comply with this requirement in the next licence term.

⁶ In this regard, see Broadcasting Regulatory Policy 2016-436.

⁷ The requirement for the licensee of this service to adhere to the requirements set out in Broadcasting Regulatory Policy 2013-561 is set out in Broadcasting Decision 2014-376.

14. In light of the above, the Commission finds the licensee in non-compliance with the standard condition for pay-per-view services relating to the exhibition of Canadian content during the 2020-2021 broadcast year. However, given the reasons noted above, the Commission considers that no additional measures are required to ensure the licensee's compliance moving forward.

Contributions to Canadian programming

15. 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), in the appendix to Broadcasting Regulatory Policy 2013-561, the Commission also imposed the following condition of licence on pay-per-view services, including SaskTel Pay-Per-View:⁸

8. The licensee shall contribute at least 5% of its gross annual revenues to an existing Canadian independent production fund administered independently of its undertaking. Contributions shall take the form of monthly instalments, to be remitted within 45 days of month's end, and shall represent at least 5% of that month's gross revenues.

16. Based on Commission records, the licensee made a contribution for the 2016-2017 broadcast year representing only 4.4% of its gross annual revenues.

17. SaskTel submitted that it had met this requirement and that the Commission had incorrectly calculated its required contribution amount. SaskTel stated that it is still bound by the conditions imposed on pay-per-view services in the appendix to Broadcasting Regulatory Policy 2013-561 (not those imposed on on-demand services in the appendix to Broadcasting Regulatory Policy 2017-138) and that it calculated its contributions using the same calculation method that it has always used.

18. SaskTel submitted that the Commission inappropriately calculated its required contribution amount using the revised methodology introduced as a result of the new conditions imposed in Broadcasting Regulatory Policy 2017-138. SaskTel added that the revenue figure that it reported on Form 1171 is the appropriate amount for calculating contributions.

19. The Commission agrees that the licensee must adhere to the 2013 conditions imposed on pay-per-view services but rejects the licensee's argument that the apparent shortfall is the result of the Commission applying an inappropriate methodology. Indeed, the Commission notes that it calculated the required contribution amount using the above-mentioned revenue figure from Form 1171.

20. Although there was a shortfall in the 2016-2017 broadcast year, the licensee has made surplus contributions for every other broadcast year in the current licence term

⁸ The requirement for the licensee of this service to adhere to the requirements set out in Broadcasting Regulatory Policy 2013-561 is set out in Broadcasting Decision 2014-376.

(resulting, in total, in a surplus contribution of more than \$80,000 over the course of the licence term).

21. In light of the above, the Commission finds the licensee in non-compliance with a standard condition for pay-per-view services relating to contributions to Canadian programming for the 2016-2017 broadcast year. Given that the shortfall occurred early in the licence term and was relatively minor, and that SaskTel exceeded its contribution requirements during the rest of the licence term, the Commission considers that this instance of non-compliance has not resulted in any harm to the broadcasting system and that no further compliance measures are required.

Standard requirements

22. SaskTel noted that the policy framework for what were formerly known as pay-per-view services has been revised and incorporated in the standard requirements for on-demand services. Accordingly, SaskTel requested to amend its conditions of service, which are set out in the appendix to Broadcasting Decision 2014-376 and which currently incorporate, through condition 1, the pay-per-view standard conditions set out in the appendix to Broadcasting Regulatory Policy 2013-561. SaskTel requested that the revised on-demand standard conditions be incorporated instead.
23. SaskTel is currently subject to the above-mentioned standard conditions for pay-per-view services as well as the standard expectations (except that relating to employment equity). SaskTel requested instead to be subject to the standard conditions and expectations for on-demand services (while maintaining its current exception to the expectation relating to employment equity), which are set out in the appendix to Broadcasting Regulatory Policy 2017-138.
24. Both sets of standard conditions contain an expectation relating to employment equity. In particular, the expectation notes that entities with 100 or more employees are subject to the *Employment Equity Act* and indicates that entities with between 25 and 99 employees should have an employment equity plan in place, consistent with the Commission's Employment Equity Policy.⁹ SaskTel submitted that it is a provincial Crown corporation not subject to the federal *Employment Equity Act*, and that it participates actively in the Employment Equity Program of the Saskatchewan Human Rights Commission. As a result, it requested that the Commission's expectation not apply to it.
25. SaskTel also requested to delete three conditions imposed in the appendix to Broadcasting Decision 2014-376 (specifically, conditions 2 through 4). It indicated that these conditions could be replaced by three of the standard conditions for on-demand services (specifically, conditions 18 through 20 in the appendix to

⁹ See Public Notices 1992-59 and 1997-34.

Broadcasting Regulatory Policy 2017-138), which would impose the same obligations and to which it would adhere.

26. The Commission finds that it would be appropriate for the licensee to be made subject to the standard conditions and expectations for on-demand services rather than those for pay-per-view services, consistent with the Commission's revised policy for what are now known as on-demand services.
27. Further, given that SaskTel is a provincial Crown corporation, the Commission finds that it would be appropriate to maintain the exception to the Commission's standard expectation relating to employment equity. However, the Commission would encourage the licensee to continue considering employment equity in its practices.
28. Accordingly, the Commission deletes the existing condition 1 as set out in the appendix to Broadcasting Decision 2014-376 and, pursuant to subsection 9.1(1), **orders** Saskatchewan Telecommunications, by **condition of service**, to adhere to the standard conditions for on-demand services set out in the appendix to Broadcasting Regulatory Policy 2017-138. Standard expectations 11 and 12 do not apply to the licensee, but the licensee is encouraged to continue considering employment equity in its hiring practices and in all other aspects of its management of human resources.
29. Finally, the Commission finds that conditions 2 through 4 as set out in the appendix to Broadcasting Decision 2014-376 would duplicate the requirements of standard conditions 18 through 20 in the appendix to Broadcasting Regulatory Policy 2017-138 and, therefore, deletes these conditions.

Condition of service regarding the maintenance of an Independent Programming Committee

30. SaskTel requested that the Commission delete condition 5 in the appendix to Broadcasting Decision 2014-376, which reads as follows:
 5. The licensee shall maintain an Independent Programming Committee in accordance with the terms of reference set out below, as amended and approved by the Commission from time to time, with a view to ensuring that the licensee enjoys freedom of expression and journalistic, creative and programming independence in the pursuit of its objects and in the exercise of its powers.
31. SaskTel noted that the Commission chose to relieve it of a similar condition when renewing the licence for SaskTel's on-demand (formerly video-on-demand) service MaxTV in Broadcasting Decision 2018-205. In that decision, the Commission stated that MaxTV would be required to adhere to the standard conditions for on-demand services and that these standard conditions do not prohibit SaskTel from providing an independent programming committee.
32. The Commission considers that the licensee's requests to be relieved of the requirement to maintain an independent programming committee for each of these

on-demand services are comparable and maintains the view that it expressed in Broadcasting Decision 2018-205.

33. Under the *Direction to the CRTC (Ineligibility to Hold Broadcasting Licences)*,¹⁰ the Governor in Council has directed the Commission not to issue or renew broadcasting licences to agents of His Majesty in right of any province. The independent programming committee has, historically, been a method for the Commission to satisfy itself that agents of the provincial Crown are not directly controlled by a provincial government and that they enjoy programming independence.
34. In the case of SaskTel, it is controlled by a board appointed by the Lieutenant Governor in Council of Saskatchewan, rather than directly by the Government of Saskatchewan. Further, the nature of on-demand services is such that no opportunity for interference in the independence of the service's programming would generally arise.
35. In light of the above, the Commission finds that it would be appropriate to relieve SaskTel of this requirement and, therefore, deletes condition 5 as set out in the appendix to Broadcasting Decision 2014-376.

Conclusion

36. In light of all of the above, the Commission **renews** the broadcasting licence for the on-demand service SaskTel Pay-Per-View from 1 January 2024 to 31 August 2028.
37. 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 were 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 continued to apply to the licensee up to the date of this decision. The Commission has now either amended or deleted these conditions, as described above.
38. With respect to the condition of service imposed at paragraph 28, given that this renewal application was filed and processed prior to the coming into force of the new *Broadcasting Act*, and that interested parties had an opportunity to comment on the issue of the Commission's standard requirements for on-demand services, the Commission considers the public proceeding sufficient to achieve the purposes of the publication and consultation requirements set out in subsection 9.1(4) of the new *Broadcasting Act* in this case. The specifics of the licensee's conditions of service are set out in the appendix to this decision.
39. Further, the formal broadcasting licence document issued to a licensee may set out additional requirements for the undertaking, relating to, for example, technical

¹⁰ SOR/85-627, 27 June 1985, as amended from time to time.

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

- *Various conventional and educational television programming undertakings, community programming services, discretionary services, on-demand services and terrestrial broadcasting distribution undertakings – Administrative renewals*, Broadcasting Decision CRTC 2023-299, 29 August 2023
- *Various independent television programming undertakings – Administrative renewals*, Broadcasting Decision CRTC 2022-178, 4 July 2022
- *National on-demand services – Administrative renewals*, Broadcasting Decision CRTC 2021-285, 13 August 2021
- *Regulatory relief for private Canadian broadcasters in the context of the COVID-19 pandemic*, Broadcasting Decision CRTC 2021-274, 12 August 2021
- *MaxTV – Licence renewal*, Broadcasting Decision CRTC 2018-205, 13 June 2018
- *Standard requirements for on-demand services*, Broadcasting Regulatory Policy CRTC 2017-138, 10 May 2017
- *Standard requirements for television stations, discretionary services, and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016
- *SaskTel Pay-Per-View – Licence renewal and amendment*, Broadcasting Decision CRTC 2014-376, 18 July 2014
- *Revised regulatory framework for pay-per-view services*, Broadcasting Regulatory Policy CRTC 2013-561, 23 October 2013
- *Amendments to the Commission’s Employment Equity Policy*, Public Notice CRTC 1997-34, 2 April 1997
- *The reporting of Canadian programming expenditures*, Public Notice CRTC 1993-93, 22 June 1993
- *Implementation of an employment equity policy*, Public Notice CRTC 1992-59, 1 September 1992

This decision is to be appended to the licence.

Appendix to Broadcasting Decision CRTC 2023-341

Terms, conditions of service, expectations and encouragements for the on-demand service SaskTel Pay-Per-View

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. Further, the licensee shall adhere to the requirements set out in the broadcasting licence for the undertaking.
2. The licensee shall adhere to all applicable requirements set out in the *Discretionary Services Regulations*, that were made under paragraph 10(1)(a) or under paragraph 10(1)(i) of the old *Broadcasting Act*.¹¹

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. Expectations 11 and 12 do not apply to this licensee.

Cultural diversity

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

Encouragements

Standard 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.

¹¹ 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*.

Employment equity

The Commission encourages the licensee to consider employment equity in its hiring practices and in all other aspects of its management of human resources.