



# Broadcasting Decision CRTC 2023-401

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

Ottawa, 4 December 2023

**2251723 Ontario Inc.**  
Across Canada

*Public record: 2022-0786-0*

## **VMedia – National on-demand service – Licence renewal**

### **Summary**

The Commission **renews** the broadcasting licence for the national, on-demand service VMedia from 1 January 2024 to 31 August 2026. This short-term renewal will allow for an earlier review of the licensee’s compliance with its regulatory requirements.

### **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. 2251723 Ontario Inc. (2251723 Ontario) filed an application to renew the broadcasting licence for the national on-demand<sup>1</sup> service VMedia, which expires 31 December 2023.<sup>2</sup> The Commission did not receive any interventions in regard to this application.
3. VMedia is a non-transactional service through which a variety of content, previously broadcast on a linear basis, has been made available to subscribers on demand by the original broadcaster. VMedia does not provide its customers with the ability to rent or purchase content and does not charge a subscription fee.

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<sup>1</sup> In Broadcasting Decision 2015-42, the Commission approved an application by 2251723 Ontario to operate a video-on-demand (VOD) service. The inclusion of VOD services in the broad licensing category “on-demand services” is explained in Broadcasting Regulatory Policy 2016-436.

<sup>2</sup> The original licence expiry date for this 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.

## **Apparent non-compliance regarding the annual submission of aggregate statistical data**

4. 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. Consistent with that authority, in Appendix 6 to Broadcasting Regulatory Policy 2014-444, the Commission imposed on on-demand services, including VMedia, condition of licence 22, which requires licensees to file, as part of their annual returns on 30 November each year, aggregate statistical data for the previous broadcast year ending 31 August. The specific information to be filed is set out in that condition of licence, and in the Commission's statistical data form (i.e., the 1380 form) to be filed by the licensee.
5. Based on Commission records, for the 2018-2019 through 2020-2021 broadcast years, the licensee filed the 1380 form, but did not provide any statistical data within that form.
6. 2251723 Ontario stated that it has always strived to remain compliant with this requirement. It noted, however, that since its on-demand service is non-transactional, and features linear content made available by programming services, it has little control over, or information regarding the programming available. The licensee added that the volume of titles offered makes it practically impossible to determine certain required information, such as the nationality of the programming.
7. Nonetheless, 2251723 Ontario stated that it is currently investigating options that could be implemented in order to obtain the required information and adequately fill in form 1380 going forward. It noted that this approach will be adopted by Quebecor Media Inc., which recently acquired VMedia.<sup>3</sup>
8. In terms of the impact of the apparent non-compliance, 2251723 Ontario argued that the Commission has no reason to worry about the content on its on-demand platform and its impact on the market as VMedia simply provides customers with a subsequent window to view previously aired content.
9. The Commission acknowledges that VMedia is different than most other licensed on-demand services, given the nature of its service. The Commission accepts that there are challenges for the licensee in reporting the required indicators. Further, the Commission notes that VMedia's service would be unlikely to have a negative impact on other licensed broadcasters.
10. Nevertheless, VMedia was subject, during the relevant time, to the standard conditions of licence for on-demand services set out in Broadcasting Regulatory Policy 2014-444. The

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<sup>3</sup> In a letter decision dated 30 June 2022, the Commission administratively approved an application by Quebecor Media Inc., on behalf of 2251723 Ontario, for authorization to acquire all of the shares of VMedia Inc. and ultimate control of 2251723 Ontario.

licensee was therefore required to provide the aggregate statistical data for its on-demand service, which it did not do.

11. Furthermore, in Broadcasting Decision 2015-42, in which the Commission approved the licensing of the service, the Commission accepted 2251723 Ontario's submission that it had taken steps to ensure compliance with the standard requirements by hiring an employee dedicated to overseeing the service. Despite these past assurances, VMedia was unable to satisfy this requirement.
12. In light of the above, the Commission finds 2251723 Ontario in non-compliance with condition of licence 22 set out in Appendix 6 to Broadcasting Regulatory Policy 2014-444 for the 2018-2019 through 2020-2021 broadcast years.
13. The Commission considers that it would be in the public interest to monitor the licensee's compliance more closely going forward. In particular, the licensee should report periodically on its progress with the development of a system to ensure compliance with its statistical reporting requirement. Regardless of the size of the service, regulatory compliance is imperative. Further, paragraph 3(1)(h) of the old *Broadcasting Act* stated, at the time of the non-compliance, that all persons who are licensed to carry on broadcasting undertakings have a responsibility for the programs they broadcast.
14. Accordingly, and pursuant to subsection 9.1(1) of the *Broadcasting Act*, the Commission **orders** 2251723 Ontario Inc., by **condition of service**, to report periodically on its progress in implementing a sustainable system to properly complete the statistical data form. The specifics of the condition of service are set out in the appendix to this decision.

### **Standard requirements**

15. The Commission notes that the policy framework for what were formerly known as video-on-demand (VOD) services has been revised and that the current Commission policy is reflected in the standard requirements for on-demand services. Accordingly, VMedia's conditions of service, which currently incorporate the outdated standard requirements for VOD services, should be amended. In particular, the standard requirements for on-demand services, which reflect the revised policy framework, should be incorporated instead.
16. Accordingly, the Commission deletes the condition incorporating the standard requirements set out in Appendix 6 to Broadcasting Regulatory Policy 2014-444, and, pursuant to subsection 9.1(1) of the *Broadcasting Act*, **orders** 2251723 Ontario Inc., by **condition of service** to adhere to the standard conditions of service for on-demand services set out in the appendix to Broadcasting Regulatory Policy 2017-138. The specifics of the condition of service are set out in the appendix to this decision.

### **Conclusion**

17. In light of all of the above, the Commission **renews** the broadcasting licence for the national, on-demand service VMedia from 1 January 2024 to 31 August 2026. In light of the licensee's compliance issues and the need to monitor the licensee more closely going

forward, this short-term renewal will allow for an earlier review of the licensee's compliance with its regulatory requirements.

18. 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, except to the extent they have been amended by this decision.
19. Regarding the conditions of service that were imposed at paragraphs 14 and 16, under the new *Broadcasting Act*, the Commission has responsibilities to publish and consult on proposed orders. Given that this renewal application was filed and published prior to the coming into force of the new *Broadcasting Act*, and that interested parties had an opportunity to comment on the issue of compliance, statistical reporting, and the standard requirements for on-demand services, as part of the licence renewal proceeding, the Commission considers the public Part 1 proceeding sufficient to achieve the purposes of the publication and consultation requirement set out in subsection 9.1(4) of the new *Broadcasting Act* in this case.
20. For ease of reference, and in light of paragraphs 14 and 16 of this decision, the Commission has set out the **conditions of service** for this licensee 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

- *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
- *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
- *Video-on-demand service*, Broadcasting Decision CRTC 2015-42, 13 February 2015
- *Amendments to various regulations, the standard conditions of licence for video-on-demand undertakings and certain exemption orders - Provisions requiring the*

*mandatory distribution of emergency alert messages*, Broadcasting Regulatory Policy CRTC 2014-444 and Broadcasting Orders CRTC 2014-445, 2014-446, 2014-447 and 2014-448, 29 August 2014

*This decision is to be appended to the licence.*

# Appendix to Broadcasting Decision CRTC 2023-401

## Terms, conditions of service, expectations and encouragements for the national on-demand service VMedia

### Terms

The licence will expire 31 August 2026.

### 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* and referred to in 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, that were made under paragraph 10(1)(a) or under paragraph 10(1)(i) of the old *Broadcasting Act*.<sup>4</sup>
3. The licensee shall, by 30 November for each broadcast year of the licence term, provide a report to the Commission describing its progress in implementing the system it plans to put in place to comply with its condition relating to aggregate statistical data (condition 25 set out in the appendix to *Standard requirements for on-demand services*, Broadcasting Regulatory Policy CRTC 2017-138, 10 May 2017).

### Expectations

#### Standard expectations

The standard expectations for this service 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.

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<sup>4</sup> 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*.

## **Encouragements**

### **Standard encouragements**

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