



## Broadcasting Decision CRTC 2023-99

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Ottawa, 27 March 2023

*Public record: 2023-0094-5*

### Hill Valley's application for final offer arbitration regarding the distribution of TVA Sports

#### Summary

The Commission **denies** the Coopérative de câblodistribution Hill Valley's request for final offer arbitration regarding the distribution of the national discretionary service TVA Sports.

#### Background

1. The Coopérative de câblodistribution Hill Valley (Hill Valley) was added to the list of exempt broadcasting distribution undertakings (BDU) pursuant to Broadcasting Order 2017-320 on 3 February 2021.
2. Since commencing operations, Hill Valley has been distributing the national discretionary service TVA Sports absent an affiliation agreement with TVA Group Inc. (TVA).
3. In Broadcasting Decision 2022-346, the Commission denied Quebecor Media Inc.'s (Quebecor) application to revoke Hill Valley's exempt status and sanction it for the alleged retransmission of TVA and TVA Sports without the appropriate rights.
4. In that decision, the Commission encouraged the parties to negotiate a mutually acceptable distribution agreement. The Commission further noted that there are Commission dispute resolution mechanisms available to the parties, including staff-assisted mediation.

#### Regulatory framework

5. The *Broadcasting Act* (the Act) confers on the Commission explicit powers with regard to dispute resolution. In particular, paragraph 10(1)(h) of the Act states:

The Commission may, in furtherance of its objects, make regulations for resolving, by way of mediation or otherwise, any disputes arising between programming undertakings and distribution undertakings concerning the carriage of programming originated by the programming undertakings.

6. Pursuant to this authority, the Commission has enacted various regulations regarding dispute resolution including sections 12 to 15.02 of the *Broadcasting Distribution*

*Regulations* and sections 14 and 15 of the *Discretionary Services Regulations*. The Commission has also put in place various mechanisms to assist with regulating relationships between broadcasting undertakings, including the Wholesale Code and undue preference provisions.

7. Generally speaking, final offer arbitration (FOA) is a mechanism of last resort. The Commission expects parties to have made reasonable efforts to resolve their dispute prior to requesting FOA, including through staff-assisted mediation, and to have resolved any outstanding issue, other than those that are monetary, through appropriate channels.
8. Should parties fail to resolve a dispute, they can request FOA if the dispute meets the following criteria, as set out in Broadcasting and Telecom Information Bulletin 2019-184:
  - the dispute is exclusively monetary;
  - the dispute is bilateral;
  - the parties have been unable to resolve the dispute by other methods;
  - the dispute is relevant to the regulation and supervision of either the Canadian broadcasting or telecommunications system, primarily to matters of interpretation or application of an existing Commission decision, policy or regulation; and
  - the resolution of the dispute does not require the establishment of a new policy or change to an existing policy.

### **Request for final offer arbitration**

9. On 10 January 2023, Hill Valley filed an application requesting that the Commission initiate a FOA proceeding with Quebecor regarding the distribution of TVA Sports. Hill Valley's application included an overview of its efforts to seek a bilateral agreement with Quebecor, including its overtures for bilateral negotiations and requests to enter into staff-assisted mediation.
10. In its application, Hill Valley stated that, pursuant to sections 12 to 15.02 of the *Broadcasting Distribution Regulations* and to Broadcasting and Telecom Information Bulletin 2019-184, the present situation meets all the criteria for FOA.
11. Accordingly, Hill Valley asked for its application to be accepted for FOA in order to set a fixed-term agreement for the linear distribution of TVA Sports between March 2020 and February 2025.
12. Hill Valley noted three obstacles to reaching an agreement with Quebecor:

- Quebecor is actively trying to delay any negotiated resolution in order to protect Quebecor's subsidiary, Fibrenoire;<sup>1</sup>
- Quebecor is using its own subsidiary news organizations and sales representatives to discredit Hill Valley; and
- a 20 February 2023 deadline for reaching an agreement, after which the Federal Court will, in lieu of the Commission, interpret and decide the issue of Hill Valley's distribution of TVA Sports.

### **Quebecor's reply**

13. In its reply, Quebecor stated that it refused to conclude an affiliation agreement with a BDU that it alleged pirates its services, and that it categorically refused Hill Valley's request for FOA. Quebecor stated that Hill Valley has demonstrated a clear and constant disregard for the legal and regulatory provisions governing its activities, which should concern the Commission.
14. Quebecor stated that it is under no obligation to offer its discretionary services to Hill Valley and therefore, that it has no obligation to negotiate, as set out in Broadcasting Decision 2022-346.
15. Finally, Quebecor noted that Hill Valley's claims that Quebecor is using its own news organizations and sales representatives improperly are unfounded.

### **Commission's analysis**

16. As noted above, FOA is a mechanism of last resort and the Commission expects parties to have made reasonable efforts to resolve their dispute and to have engaged with one another such that they have resolved all but a limited number of issues prior to seeking FOA. In particular, the remaining issues should be exclusively monetary.
17. In the present case, the parties have not engaged each other in bilateral negotiations prior to requesting FOA and, as such, still have multiple issues to investigate and consider, specifically the scope and the term of the FOA. Based on the information provided to the Commission, the dispute appears to involve factors that are not exclusively monetary and, therefore, this dispute does not fit the criteria for FOA.
18. There is no regulatory requirement for Quebecor to provide its discretionary programming service to Hill Valley for distribution. Conversely, there is no requirement for Hill Valley to distribute TVA Sports, or for TVA Sports to be offered by Hill Valley.
19. Moreover, Quebecor's refusal to engage in negotiations leaves no room for an FOA process to unfold.

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<sup>1</sup> Fibrenoire offers commercial-only fibre optic connectivity services across Montréal, Toronto, Ottawa and Québec.

20. Accordingly, the Commission considers that an FOA process is not the appropriate vehicle to resolve the dispute between Hill Valley and Quebecor given the present circumstances.

## **Conclusion**

21. In light of the above, the Commission **denies** Hill Valley's request for FOA.

22. The Commission notes that it would be beneficial to both parties involved as well as the Canadian broadcasting system if a mutually agreeable way forward was sought. As noted above, there are a number of other dispute resolution mechanisms and tools available to Hill Valley for use, such as the filing of a Part 1 undue preference application. The Commission encourages the parties to utilize these other tools and to negotiate a mutually acceptable agreement.

Secretary General

## **Related documents**

- *Quebecor's application to revoke Hill Valley's exempt broadcasting distribution undertaking status*, Broadcasting Decision CRTC 2022-346, 21 December 2022
- *Practices and procedures for dispute resolution*, Broadcasting and Telecom Information Bulletin CRTC 2019-184, 29 May 2019
- *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
- *Practices and procedures for staff-assisted mediation, final offer arbitration and expedited hearings*, Broadcasting and Telecom Information Bulletin CRTC 2013-637, 28 November 2013