



Broadcasting Decision CRTC 2006-635

Ottawa, 23 November 2006

Câblevision du Nord de Québec inc.
Province of Quebec

*Application 2006-0245-0
Public Hearing in Québec, Quebec
11 September 2006*

Video-on-demand service

*The Commission **approves** the application by Câblevision du Nord de Québec inc. (CNQ) for a broadcasting licence to operate a regional video-on-demand (VOD) service largely composed of feature films.*

*The Commission **denies** CNQ's request for authorization to allocate the entire 5% of the annual gross revenues generated by its VOD service to the resources of the community channel of its broadcasting distribution undertaking rather than to an independent Canadian production fund.*

*The Commission also **denies** CNQ's request to be relieved of the condition of licence requiring all VOD services to remit to the rights holders of Canadian films 100% of the revenues earned from their exhibition by their respective services.*

The application

1. The Commission received an application by Câblevision du Nord de Québec inc. (CNQ) for a broadcasting licence to operate a regional, general-interest video-on-demand (VOD) programming undertaking to serve the province of Quebec.
2. CNQ proposed to offer primarily feature films, but also proposed to offer non-live events, children's programming, adult programming and archival television programming, and to include a barker channel where appropriate. According to the applicant, approximately 90% of the programming would be in French and 10% in English.
3. CNQ also requested a condition of licence authorizing it to allocate the entire 5% of the annual gross revenues generated by its VOD service to the resources of the community channel of its broadcasting distribution undertaking (BDU) rather than to an independent Canadian production fund. CNQ believes that these contributions would promote the creation and presentation of more locally produced community programming that reflects the local reality.

4. CNQ also asked to be relieved of the condition of licence requiring all VOD services to remit to the rights holders of Canadian films 100% of the revenues earned from their exhibition by their respective services. CNQ proposed in exchange to negotiate with the film distributors the amount of revenues it would remit to them for the broadcasting of Canadian films.
5. According to CNQ, this condition of licence would make it impossible for it to cover the costs of broadcasting Canadian films and, as a result, would be a disincentive to broadcasting them.

Interventions

6. The Commission received interventions opposing CNQ's proposed allocation of the entire 5% of the annual gross revenues generated by its VOD service to the resources of its BDU's community channel, and opposing its request to be relieved of the condition of licence requiring all VOD services to remit to the rights holders of Canadian films 100% of the revenues earned from their exhibition on their respective services.
7. With respect to CNQ's first proposal, the Canadian Association of Broadcasters (CAB) and the Canadian Film and Television Production Association (CFTPA) expressed the view that, in approving this request, the Commission would be relieving CNQ of a fundamental requirement applicable to all VOD licensees, i.e., to provide financial support to the independent production sector. CAB also expressed the view that CNQ did not present valid arguments that would justify such an exception, and suggested that approving this request would set a precedent likely to lead to similar requests from licensees of BDUs also holding licences for VOD services, which would benefit their respective community channels to the detriment of the independent production sector. CFTPA added that the BDUs' contribution to the Canadian Television Fund and other independent production funds must be maintained to ensure the production of under-represented programming, such as drama, children's programming and music-based programming.
8. Concerning CNQ's second proposal, CFTPA stated that the applicant did not provide valid reasons that would justify its request to allocate the resources of its VOD service to other initiatives within the undertaking rather than to the creation of quality Canadian programming, as the Commission requires. CFTPA was also concerned that the Commission's approval of this request would set a precedent that could significantly impact the entire Canadian broadcasting system.

The Commission's analysis and determinations

Proposal regarding funding for programming for CNQ's community channel

9. As mentioned above, CNQ requested a condition of licence authorizing it to allocate the entire 5% of the annual gross revenues generated by its VOD service to the resources of its BDU's community channel. The condition of licence requiring VOD services to contribute 5% of their annual gross revenues to an independent Canadian production

fund complies with the framework for the licensing of VOD and pay-per-view services set out in *Introductory statement to Decisions CRTC 2000-733 to 2000-738: Licensing of new video-on-demand and pay-per-view services*, Public Notice CRTC 2000-172, 14 December 2000 (Public Notice 2000-172). The Commission considers that an exception to its customary practice is not warranted in this instance.

10. Accordingly, the Commission **denies** CNQ's request. A **condition of licence** set out in the appendix to this decision requires that CNQ contribute a minimum of 5% of the gross annual revenues generated by its VOD service to an existing, independently administered Canadian program production fund.

Proposal regarding the remittance of distribution revenues to rights holders of Canadian films

11. CNQ also proposed to negotiate with film distributors the amount of the revenues it will remit to them for broadcasting Canadian films, instead of being subject to the condition of licence requiring it to remit 100% of the revenues to the rights holders. The Commission is not persuaded of the merits of this proposal, and will retain the approach it customarily applies to all VOD services.
12. Accordingly, the Commission **denies** CNQ's proposal. A **condition of licence** set out in the appendix to this decision requires that CNQ remit to the rights holders of all Canadian films 100% of revenues earned from the exhibition of these films by its service.

Closed captioning

13. The Commission is committed to improving service to viewers who are deaf or hard of hearing, and has consistently encouraged broadcasters to increase the amount of closed captioned programming that they provide. It is the Commission's current practice to require licensees of VOD services to provide closed captioning for a minimum of 90% of all titles offered, by no later than the beginning of the sixth year of the licence term.
14. In its application, CNQ stated that it will ensure that 15% of French-language titles are closed captioned, beginning in the first year of operation, and that this will increase to 50% in the fourth year and to 80% in the sixth year of operation. The applicant also stated that it will ensure that 30% of English-language titles are closed captioned, beginning in the first year, and that this will increase to 50% in the third year and to 80% in the sixth year of operation. Beginning in the seventh year of operation, 90% of the programs aired by the applicant during the broadcast day will be closed captioned.
15. Under its current approach, the Commission requires the applicant to closed caption at least 90% of the programming in its inventory by 1 September 2011 at the latest. A **condition of licence** to that effect is set out in the appendix to this decision.

French- and English-language programming

16. As stated above, CNQ proposes to provide 90% of its programming in French and the remainder in English. In Public Notice 2000-172, the Commission underscored the importance it places on subscribers being able to select programming in the official language of their choice. Accordingly, as part of its licensing framework for VOD services, the Commission stated that it would expect, to the maximum extent possible, that each VOD service would make its program offering available to customers in both official languages, and that licensees would adhere to their commitments with respect to programming in the other official language. The Commission confirms the applicability of these expectations to CNQ's proposed VOD service.

Programming packages

17. In accordance with its policy set out in Public Notice 2000-172, the Commission expects the applicant not to offer programming packages where the total period during which the programming may be viewed exceeds one week.

Adult programming

18. In *Industry code of programming standards and practices governing pay, pay-per-view and video-on-demand services*, Broadcasting Public Notice CRTC 2003-10, 6 March 2003 (Public Notice 2003-10; Industry code of programming standards), the Commission approved and announced a new code specifically addressing adult programming on pay, pay-per-view and VOD services.
19. The Commission notes that CNQ included a copy of its internal policy on adult programming in compliance with Public Notice 2003-10.
20. The Commission further expects the applicant to adhere to its internal policy on adult programming. The Commission is also imposing a **condition of licence**, set out in the appendix to this decision, requiring the applicant to comply with the Industry code of programming standards.

Cultural diversity

21. The Commission expects the applicant to endeavour, through its programming and employment opportunities, to reflect the presence in Canada of ethnocultural minorities, Aboriginal peoples and persons with disabilities. The Commission further expects the applicant to ensure that the on-screen portrayal of such groups is accurate, fair and non-stereotypical.

Service to persons who are blind or whose vision is impaired

22. The Commission is committed to improving the accessibility of television programming for persons with visual impairments through the provision of audio description and video description (also known as described video). Accordingly, the Commission expects CNQ to provide an audio description of all programming that provides textual or graphic

information, including programming broadcast on the barker channel. The Commission also expects CNQ to acquire and make available described versions of programming, where possible, and to ensure that its customer service responds to the needs of visually impaired customers. CNQ indicated that it would work with distributors to determine whether existing automated services can be adapted for VOD.

The Commission's conclusion

23. Based on its examination of this application and taking into account the denials and expectations set out above, the Commission is satisfied that this application is in conformity with the licensing framework for VOD services as set out in Public Notice 2000-172.
24. Accordingly, the Commission **approves** the application by Câblevision du Nord de Québec inc. for a broadcasting licence to operate a regional VOD programming undertaking serving the province of Quebec.
25. The undertaking will be subject to the **conditions of licence** that are generally applicable to all VOD undertakings, including those relating to Canadian content and expenditures on Canadian programming.
26. The licence will expire 31 August 2013, and will be subject to the conditions specified therein and to the **conditions of licence** set out in the appendix to this decision.

Issuance of the licence

27. The licence for this undertaking will be issued once the applicant has informed the Commission in writing that it is prepared to commence operations. The undertaking must be operational at the earliest possible date and in any event no later than 24 months from the date of this decision, unless a request for an extension of time is approved by the Commission before 23 November 2008. In order to ensure that such a request is processed in a timely manner, it should be submitted at least 60 days before this date.

Employment equity

28. In accordance with *Implementation of an employment equity policy*, Public Notice CRTC 1992-59, 1 September 1992, the Commission encourages the licensee to consider employment equity issues in its hiring practices and in all other aspects of its management of human resources.

Secretary General

This decision is to be appended to the licence. It is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>

Appendix to Broadcasting Decision CRTC 2006-635

Conditions of licence

1. The licensee shall adhere to the *Pay Television Regulations, 1990*, with the exception of section 4 (logs and records).
2. The licensee shall maintain for a period of one year, and submit to the Commission upon request, a detailed list of the inventory available on each file server, identifying each program by programming category and by country of origin, and indicating the period of time that each program was on the server and available to subscribers.
3. Except as authorized by the Commission, the broadcasting undertaking licensed herein shall be operated in fact by the licensee itself.
4. The licensee shall ensure that, at all times:
 - a) not less than 5% of the English-language feature films and not less than 8% of the French-language feature films in the inventory available to subscribers are Canadian;
 - b) the feature film inventory includes all new Canadian feature films that are suitable for video-on-demand exhibition and meet the approved *Industry code of programming standards and practices governing pay, pay-per-view and video-on-demand services*; and
 - c) not less than 20% of all programming other than feature films in the inventory available to subscribers is Canadian.
5. The licensee shall contribute 5% of its gross annual revenues to an existing Canadian program production fund administered independently of its undertaking.

For the purpose of this condition:

- a) “gross annual revenues” shall be 50% of the total revenues received from customers of the broadcasting distribution undertaking distributing the video-on-demand service, when the video-on-demand service is a “related service”;
- b) a “related service” is one in which the broadcasting distribution undertaking distributing the video-on-demand service, or any of its shareholders owns, directly or indirectly, 30% or more of the equity of the video-on-demand service;

- c) “gross annual revenues” shall be the total amount received from the broadcasting distribution undertaking distributing the video-on-demand service, when the video-on-demand service is not a “related service”.
6. The licensee shall ensure that not less than 25% of the titles promoted each month on its barker channel are Canadian titles.
 7. The licensee shall remit to the rights holders of all Canadian feature films 100% of revenues earned from the exhibition of these films.
 8. The licensee shall not enter into an affiliation agreement with the licensee of a broadcasting distribution undertaking unless the agreement incorporates a prohibition against linkage of its service with any non-Canadian discretionary service.
 9. The licensee shall caption at least 90% of the programming in its inventory, beginning no later than 1 September 2011.
 10. The licensee shall adhere to the guidelines on gender portrayal set out in the Canadian Association of Broadcasters’ *Sex-role portrayal code for television and radio programming*, as amended from time to time and approved by the Commission. The application of the foregoing condition of licence will be suspended as long as the licensee is a member in good standing of the Canadian Broadcast Standards Council.
 11. The licensee shall adhere to the *Pay television and pay-per-view programming code regarding violence*, as amended from time to time and approved by the Commission.
 12. The licensee shall adhere to the *Industry code of programming standards and practices governing pay, pay-per-view and video-on-demand services*, as amended from time to time and approved by the Commission.