



## Broadcasting Decision CRTC 2009-353

Route reference: 2009-36

Ottawa, 17 June 2009

### **Huron Telecommunications Co-operative Limited**

Goderich, Wingham, Lucknow, Ripley and Kincardine, Ontario

*Application 2008-1309-9, received 30 September 2008*

*Public Hearing in the National Capital Region*

*30 March 2009*

### **Video-on-demand service**

*The Commission **approves** an application by Huron Telecommunications Co-operative Limited for a broadcasting licence to operate a regional video-on-demand service largely composed of feature films but that may also include other types of programming such as children's videos, short films, drama, comedies and adult programming.*

### **Introduction**

1. Huron Telecommunications Co-operative Limited (Huron) filed an application for a broadcasting licence to operate a regional video-on-demand (VOD) programming undertaking to serve Goderich, Wingham, Lucknow, Ripley and Kincardine, Ontario.
2. Huron is a co-operative with share capital controlled by its board of directors.

### **Proposed service**

3. Huron indicated that the proposed VOD service would consist primarily of feature films but may also include other types of programming such as children's videos, short films, drama, comedies and adult programming. In addition, Huron indicated that while it would offer predominantly English-language programming, it would offer programming in other languages in accordance with demand.
4. Huron stated that it would provide closed captioning of its VOD programming to serve the needs of viewers who are deaf or hard of hearing. The applicant committed to caption 100% of all English-language and French-language programs and 90% of all third-language programs in its inventory by the beginning of the sixth year of its licence term. Huron stated that it would source films that are already captioned. It added that it would strive to meet the 100% captioning requirement of its English- and French-language titles in year five.

5. Regarding accessibility of its programming through video description (also known as described video) and audio description for persons with visual impairments, Huron stated in its application that as a small company with limited resources, it did not have the equipment that would allow it to provide audio description of textual, graphic design and still image elements that are posted on the screen. As for its plans to provide titles with video description, Huron stated that it would ensure that all video description already contained in its programming will be made available to subscribers.
6. The Commission received one intervention in opposition to the application. The intervention can be found on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Public Proceedings." The Commission has considered the intervention and is of the view that it does not raise any substantive issues relating to this application.

### **Commission's analysis and determinations**

7. The Commission is satisfied that the application is in conformity with the licensing framework for VOD services set out in Public Notice 2000-172. Accordingly, the Commission **approves** the application by Huron Telecommunications Co-operative Limited for a broadcasting licence to operate a regional video-on-demand programming undertaking to serve Goderich, Wingham, Lucknow, Ripley and Kincardine, Ontario. The terms and **conditions of licence** are set out in the appendix to this decision.

### **Closed captioning**

8. In Broadcasting Public Notice 2007-54, the Commission indicated that it would require all English- and French-language broadcasters to caption 100% of their programs over the broadcast day, with the exception of advertising and promotions, beginning in the first year of the licence term. The Commission also indicated that it is prepared to consider requests to tailor this requirement (e.g., to allow services to reach the 100% requirement over time), only if such a request is supported with specific and detailed evidence, including financial information, that demonstrates that it is impossible for the applicant to meet the 100% captioning requirement.
9. Although Huron argued that it is a small company with limited resources, it did not provide sufficient evidence so as to allow the Commission to determine the costs that the applicant would incur in order to provide closed captioning in compliance with the approach set out in Broadcasting Public Notice 2007-54. The Commission is therefore unable to determine whether the hardship the applicant would face in complying with the above-mentioned approach would outweigh the strong public interest in ensuring that the applicant caption 100% of the English-language and French-language programs in its inventory.
10. In light of the above, the Commission requires Huron to caption 100% of its English- and French-language programs, beginning in the first year of the licence term. A **condition of licence** to that effect is set out in the appendix to this decision.

11. The Commission encourages broadcasters to work on solutions for making third-language programming more accessible, and to caption third-language programming whenever possible. The licensee will be asked to report on its progress in providing third-language closed captioning at the time of licence renewal.

#### **Audio description and video description**

12. Currently, the Commission expects VOD licensees to provide audio description and video description of programming as well as customer service to respond to the needs of visually-impaired customers. In Broadcasting Notice of Public Hearing 2008-8 and Telecom Public Notice 2008-8, the Commission initiated a review of issues relating to the accessibility of broadcasting and telecommunications services to persons with disabilities. Following this review, the Commission may impose additional requirements on some or all licensees.

#### **Proposed regulatory framework for video-on-demand services**

13. In Broadcasting Public Notice 2008-101, the Commission called for comments on its preliminary determinations on a proposed new regulatory framework for VOD services arising from its review of the regulatory frameworks for broadcasting distribution undertakings and discretionary programming services (see Broadcasting Public Notice 2008-100). The Commission notes that upon completion of this proceeding, it may impose additional requirements on some or all licensees.

Secretary General

#### **Related documents**

- *Call for comments on a proposed regulatory framework for video-on-demand undertakings* – Notice of Consultation, Broadcasting Public Notice CRTC 2008-101, 30 October 2008
- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services* – Regulatory policy, Broadcasting Public Notice CRTC 2008-100, 30 October 2008
- *Unresolved issues related to the accessibility of telecommunications and broadcasting services to persons with disabilities* – Notice of Consultation, Broadcasting Notice of Public Hearing CRTC 2008-8 and Telecom Public Notice CRTC 2008-8, 10 June 2008
- *A new policy with respect to closed captioning*, Broadcasting Public Notice CRTC 2007-54, 17 May 2007

- *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*

*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 2009-353

## Terms, conditions of licence, expectations and encouragement

### Terms

#### Issuance of the broadcasting licence to operate a regional video-on-demand programming undertaking to serve Goderich, Wingham, Lucknow, Ripley and Kincardine, Ontario

The licence will expire 31 August 2015.

A 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 17 June 2011. 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.

### Conditions of licence

1. The licensee shall adhere to the *Pay Television Regulations, 1990*, as amended from time to time, with the exception of section 4 pertaining to 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. The list must identify each program by programming category and by country of origin, and indicate 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 100% of the programs in its inventory, consistent with the approach set out in *A new policy with respect to closed captioning*, Broadcasting Public Notice CRTC 2007-54, 17 May 2007.
  10. The licensee shall adhere to the Canadian Association of Broadcasters’ *Equitable Portrayal Code*, as amended from time to time and approved by the Commission. However, the application of the foregoing condition of licence will be suspended if 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. However, the application of the foregoing condition of licence will be suspended if the licensee is a member in good standing of the Canadian Broadcast Standards Council.

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. However, the application of the foregoing condition of licence will be suspended if the licensee is a member in good standing of the Canadian Broadcast Standards Council.

## **Expectations**

### **Program offering in both official languages**

The Commission notes the licensee's commitment to offer programming in other languages in accordance with demand. Therefore, the Commission expects the licensee to make its program offering available, to the maximum extent possible, to customers in both official languages.

### **Programming packages**

The Commission expects the licensee to limit to one week the total period during which the programming in programming packages may be viewed.

### **Adult programming**

The Commission expects the licensee to adhere to its internal policy on adult programming. The Commission further expects that any future changes made by the licensee to its internal policy on adult programming will be submitted for Commission approval prior to their implementation.

### **Cultural diversity**

The Commission expects the licensee to endeavour, through its programming and employment opportunity, to reflect the presence in Canada of ethnocultural minorities, Aboriginal peoples, and persons with disabilities. The Commission further expects the licensee 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**

The Commission expects the licensee 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 the licensee 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.

## **Encouragement**

### **Employment equity**

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.