



Broadcasting Decision CRTC 2019-258

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Reference: Part 1 application posted 8 November 2017

Ottawa, 17 July 2019

Quebecor Media Inc.

Various locations in Quebec

Public record for this application: 2017-1028-6

Various discretionary services and conventional television stations – Licence amendment

*The Commission **denies** an application by Quebecor Media Inc. on behalf of TVA Group Inc. to amend the condition of licence relating to described video for the conventional television stations of the TVA network and all of its television services except LCN, TVA Sports and TVA Sports 2. This condition of licence was imposed on all Group TVA discretionary services and television stations as part of the television licence renewal proceeding for large ownership groups,*

The Commission reminds television broadcasters of the importance of described video to ensure accessibility to programming. All television broadcasters, from independent to large vertically integrated entities, must promote access to programming for persons with disabilities, whether visually or hearing impaired individuals by providing programming adapted to their particular needs and thereby enabling them to fully participate in Canadian society.

Background

1. Paragraph 3(1)(p) of the *Broadcasting Act* (the Act) stipulates that programming accessible by disabled persons should be provided within the Canadian broadcasting system as resources become available for the purpose. Along the same lines, in Broadcasting and Telecom Regulatory Policy 2009-430, the Commission stated that persons with disabilities should be able to access programming with described video from both the public and private sectors in French and English.
2. In Broadcasting Regulatory Policy 2015-104, the Commission stated that it would implement a tiered approach to described video production, under which described video requirements would increase over time according to the size and resources of the broadcaster.¹ The base requirement of four hours of described video programming per week, two hours of which must be original to the service, was subsequently replaced by the tiered approach. Under this approach, starting in September 2019, broadcasters

¹ See paragraph 43 of Broadcasting Regulatory Policy 2015-104.

previously subject to described video requirements as well as those that belong to vertically integrated (VI) entities will be required to provide described video for all programming drawn from the identified categories broadcast during prime time, seven days a week. Other non-exempt broadcasters will be required to provide, by the fourth year of their next licence term, four hours of described video programming from the identified categories per week.

3. In developing its regulatory policy, the Commission considered the costs relating to described video and therefore offered television broadcasters a timeframe that it considered reasonable to achieve the target, which was slightly more than four years. The Commission also established a parallel with coded closed captioning requirements, which, once introduced and gradually scaled up, resulted in more captioning providers to respond to the growing industry demand.
4. In Broadcasting Regulatory Policy 2016-343, the Commission required that all programming funded by Certified Independent Production Funds (CIPFs), regardless of the platform on which it is broadcast, must include coded closed captioning and described video. The Commission held that all programming, regardless of platform, should be accessible to every Canadian and that all elements of the broadcasting system should support the accessibility of programming, including CIPFs.
5. Consequently, in Broadcasting Regulatory Policy 2016-436, the Commission, taking into account the difference between small and large VI entities and their previous requirements, set out the following standard condition of licence for television stations and non-exempt discretionary services:

In accordance with *Let's Talk TV: Navigating the Road Ahead – Making informed choices about television providers and improving accessibility to television programming*, Broadcasting Regulatory Policy CRTC 2015-104, 26 March 2015:

- a) if the licensee broadcasts four hours or more per broadcast week of English- or French-language programming drawn from any of the program categories listed below, it shall, by the beginning of the fourth year of the first licence term during which this condition of licence applies, provide a minimum of four hours of described video per broadcast week for that programming;
- b) if the licensee broadcasts less than four hours per broadcast week of English- or French-language programming drawn from any of the program categories listed below, it shall, by the beginning of the fourth year of the first licence term during which this condition of licence applies, provide described video for all of that programming.

These requirements apply to programming drawn from the following program categories set out in Item 6 of Schedule 1 to the *Television Broadcasting Regulations, 1987*, as amended from time to time: 2(b) Long-form documentary, 7 Drama and comedy, 9 Variety, 11(a) General entertainment and human interest

and 11(b) Reality television, and/or to programming targeting preschool children (0-5 years of age) and children (6-12 years of age).

6. In paragraph 48 of Broadcasting Regulatory Policy 2016-436, the Commission also acknowledged the importance of distinguishing between small and large VI entities:

In the definition proposed by the Commission, “vertically integrated entity” refers to an entity that owns or controls both programming and distribution undertakings, or both programming undertakings and production companies. However, the Commission’s intention in regard to the provision of described video is for the larger vertically integrated entities to be subject to the requirement to provide described video on all primetime programming over their services’ next licence terms. Smaller entities that were not subject to described video requirements prior to their last licence renewals would be subject to the more limited requirement of four hours of described video during each broadcast week. The Commission would nevertheless expect these smaller entities to ramp up to the higher levels for their subsequent licence terms, at which time appropriate, revised levels could be discussed.

7. Consequently, in Broadcasting Decision 2017-147, concerning the licence renewal for its French-language services and television stations, TVA Group Inc. (TVA Group) was given increased requirements for described video, namely those intended for large VI entities (hereinafter the VIDV condition).² The VIDV condition is as follows:

The licensee shall, by 1 September 2019, provide described video for all English- and French-language programming that is broadcast during prime time (i.e., from 7 p.m. to 11 p.m.), and that is drawn from program categories 2(b) Long-form documentary, 7 Drama and comedy, 9 Variety, 11(a) General entertainment and human interest and 11(b) Reality television, and/or is programming targeting preschool children (0-5 years of age) and children (6-12 years of age).

8. During the proceeding, Quebecor Media Inc. on behalf of TVA Group (Quebecor or the licensee), argued that described video costs could amount to up to 25% of the programming budget for certain discretionary services, necessitating cuts to content that it maintained would conflict with the objectives of the Act. It thus requested that the Commission enforce the new requirements only for conventional television stations, and not discretionary services, and apply them only to original first-run programming. It asserted that adding described video to repeat programming was a lengthy process requiring more effort and resources than adding it during production.
9. The Commission found that Quebecor had not demonstrated that it had financial problems that justified an exemption from the Commission’s policy, which was intended

² The other large VI entities were subject to the same enhanced condition of licence for their respective renewals.

to improve access to broadcasting for visually impaired Canadians. Quebecor's application was therefore denied.

Application

10. The Commission received a Part 1 application from Quebecor, on behalf of TVA Group, to amend the condition of licence regarding provision of described video, set out in Broadcasting Decision 2017-147 for stations and services operated by TVA Group. The current condition of licence applies to the following discretionary services and television stations: the services Yooopa, Prise 2, AddikTV, Casa, Moi et Cie, the TVA network and the stations CFCM-DT Québec, CFER-DT Rimouski, CFTM-DT Montréal, CHEM-DT Trois-Rivières, CHLT-DT Sherbrooke and CJPM-DT Saguenay (Quebec).
11. The services LCN, TVA Sports and TVA Sports 2 are subject to the conditions of licence for national news services and sports services, respectively, and consequently are thus not included in the current application. Moreover, Zeste and Évasion services were recently acquired by Quebecor and are not part of the proceeding.
12. Quebecor asked the Commission to amend the VIDV condition imposed on the concerned television stations and discretionary services of TVA Group so that it applies only to first-run programming broadcast after 1 September 2019, rather than to any repeat programming first broadcast before 1 September 2019. More specifically, Quebecor proposed that the wording of the VIDV condition be amended as follows (amendment requested in **bold**):

The licensee shall, by 1 September 2019, provide described video for all **new** English- and French-language programming that is broadcast during prime time (i.e., from 7 p.m. to 11 p.m.), and that is drawn from program categories 2(b) Long-form documentary, 7 Drama and comedy, 9 Variety, 11(a) General entertainment and human interest and 11(b) Reality television, and/or is programming targeting preschool children (0-5 years of age) and children (6-12 years of age).
13. Quebecor noted that in paragraph 82 of Broadcasting Decision 2017-147, the Commission acknowledged that “the costs relating to described video can prove significant.” Quebecor argued that this is all the more true when it becomes necessary to spend considerable sums on producing described video for both new programs and those that are being broadcast for the second time or more. It asserted that for the period from 2019–2020 to 2021–2022, it would cost on average more than \$1.8 million per year to produce described video solely for original first-run programming drawn from the categories covered by the VIDV. According to Quebecor, this represents approximately 25,000 hours of work per year that must be performed by experts.
14. Quebecor stated that in the event the Commission upheld its decision by denying this application, 38,000 additional hours of work would be necessary to add described video to its inventory. According to the applicant, the cost of repeat programming from 2019–2020 to 2021–2022 would likely reach around \$3,189,000 for all concerned services.

15. It added that described video costs for the year beginning 1 September 2019, could amount to up to 20% of the programming budget of certain discretionary services, a situation that it found completely unreasonable. Quebecor argued that in the current uncertain television environment, this represents a significant expense for repeat programs with generally lower viewership.
16. Quebecor stated that in such circumstances, described video requirements for programs being rebroadcast for the second time or more would cause considerable harm and could even affect the viability of certain services. The applicant stated that while described video is a commendable initiative that it is engaged in, it is important for additional expenses to be proportional to the real benefits provided to viewers. It thus viewed it as essential to maximize financial resources by amortizing spreading described video costs over a limited number of many broadcasts, as will be the case for new programming broadcast as of 1 September 2019. On an annual basis starting on 1 September 2019, Videotron intends to provide described video for all new programming in the specified categories, which would result in 33% of programming having described video in 2019–2020, 66% in 2019–2020, and 100% in 2021–2022.
17. The Commission received a number of interventions from individuals, as well as from the Association des personnes handicapées visuelles de Lanaudière (APHVL), the Association des personnes handicapées visuelles de l’Estrie (APHVE), the Confédération des organismes de personnes handicapées du Québec (COPHAN), the Canadian National Institute for the Blind (CNIB), the Regroupement des aveugles et amblyopes du Montréal Métropolitain (RAAMM), and the Regroupement des aveugles et amblyopes du Québec (RAAQ). All of these interventions were made in opposition to Quebecor’s application. Quebecor responded directly to the CNIB’s intervention and also addressed the intervenors as a group.

Interventions

18. APHVL and RAAQ maintained that it was false to assert that a television series only lasts two or three years, noting that many series are rebroadcast for a number of years. Adding described video to repeat series would therefore not, in their opinion, be wasted effort, but rather an investment in increasing the accessibility of content. According to APHVL, described video has existed long enough for all broadcasters to have been aware of its importance before the decisions related to *Let’s Talk TV* were handed down. RAAQ objected to the “(translation) purely transactional and transient” vision of televised content put forward by Quebecor. Moreover, RAAQ held that if a broadcaster decides to not offer described video for a program before 1 September 2019, it is consciously excluding visually impaired individuals to save on production costs.
19. APHVE asserted that, for various reasons, described video is a service essential to information, entertainment and culture for everyone. It added that visually impaired people have the same rights as sighted people. According to APHVE, described video allows those with declining vision to follow along with their favourite programs at the same time as their sighted friends and family, helping to reduce the stigmatization of non-sighted people. The Association concluded by asserting that approving this

application could cause a bandwagon effect and encourage other broadcasters to cut back on these services to stay financially competitive. This would represent a serious ethical mistake concerning visually impaired people on the part of the broadcasters, which are ultimately responsible for complying with the rules in effect and making their content as accessible as possible.

20. COPHAN also disagreed with Quebecor's arguments. On the contrary, it submitted that the applicant was attempting, in a roundabout way, to exclude individuals represented by the organization and that Quebecor is trying to circumvent future regulations.
21. The CNIB underlined the importance of described video for non-sighted individuals and those with declining vision, asserting that it represent more than just a means of access to entertainment, but also a social equalizer in the context of the bonding made possible through collective participation to popular culture, providing "water cooler conversations" as an example. The CNIB added that described video allows visually impaired Canadians to experience films and television programming in a similar way to sighted individuals and thus play a greater role in society. The CNIB noted that this accessibility is directly aligned with the principles outlined in the Act.
22. The CNIB added that instead of permitting cuts to the quantity of described video offered, as requested by Quebecor, the Commission should enforce the policy and decisions in place to ultimately ensure that all programming is in described video. With closed captioning having reached this target, the CNIB stated it was pleased that Canadians who need this service have been able to access it for a number of years. According to the CNIB, given the expectations set out by the Commission since 2009 and the social benefits they provide to those with limited vision, the only reasonable response to Quebecor's application is a denial. The CNIB supported its position by reinforcing what was said in the public service announcements created by Accessible Media Inc., which, in its opinion, demonstrates how described video can enrich the experience of visually impaired viewers.
23. Regarding the costs relating to described video reported by Quebecor, the CNIB admitted that it does not have the level of experience that Quebecor does in this area. The CNIB nevertheless submitted various documents that it found demonstrated that described video costs are not as prohibitive as Quebecor indicated in its application. For example, according to its own research, an hour of English-language described video costs roughly \$1,200 whereas an hour of French-language described video costs \$1,400. In the same vein, according to a 2008 report prepared for the Canadian Broadcasting Corporation by Nordicity Group Ltd. and submitted as an attachment to the CNIB's intervention, the five-year average production cost for an hour of French-language content is \$329,000. The CNIB thus held that the cost of described video represents less than one percent of the average cost of an hour of production.
24. The CNIB argued that even though the financial aspect supports Quebecor and is a barrier to the production of described video content, described video is no longer unnecessary; on the contrary, it is essential. The CNIB cited other clear decisions and

raised a few expectations expressed by the Commission in various documents over the last decade:

- Broadcasting and Telecom Regulatory Policy 2009-430 (para. 104) – The Commission is of the view that persons with disabilities should be able to access programming with described video from both the public and private sectors in French and English. ... The Commission notes that the shortage of programming with described video is particularly acute for French-language programming since, up until now, none had been required and none had been provided.
- Broadcasting Regulatory Policy 2015-104 (para. 36) – Section 3 of the *Broadcasting Act* sets out objectives for the Canadian broadcasting system, including those relating to accessibility, that articulate the principle that access promotes full participation in and integration into society.

25. The CNIB concluded by stating that the CRTC has long been expecting broadcasters to gradually increase the availability of described video. In its view, the costs associated with described video are now nominal compared with overall content production costs. As a result, the CNIB urged the Commission to again deny Quebecor's application. It added that even more content should be in described video, as shown by the growing availability of this kind of content on online platforms, including Amazon, Netflix and YouTube.

26. RAAQ, APHVL, COPHAN and the CNIB argued that broadcasters have had a number of years to plan for the inclusion of described video in their programming and that, as a result, they had the time to prepare and organize the addition of described video according to obligations stemming from the Let's Talk TV proceeding.

27. Meanwhile, RAAMM stated its opposition to Quebecor's application in general terms.

Quebecor's reply

28. Quebecor indicated that it recognizes the importance of described video and is aware of the need to include people who are blind or visually impaired. It has noted a significant lack of understanding in some interventions and stated that the intent of its application is certainly not to sidestep or be exempted from the described video requirement imposed by the Commission.

29. Quebecor indicated that it is instead seeking a slight change to the VIDV condition in order to give it an opportunity to gradually increase the quantity of described video programming in the coming years, while enabling it to absorb the resulting costs more easily. It repeated its proposed condition of licence and stated that, by September 2019, only TVA and AddikTV will be required, by condition of licence, to offer described video for at least four hours of programming per broadcasting week, two hours of which must be broadcast in described video for the first time.

30. In its reply, Quebecor argued that contrary to what the CNIB mentioned, the hourly rate for described video production largely exceeds the average cost of 1% of a French-

language production, or \$329,000 according to the CNIB. Quebecor stated that, even though the CNIB estimate of \$1,400 per hour of described video is accurate, the average cost of a French-language production differs considerably compared with actual figures.

31. It concluded by asking the Commission not to consider the unsubstantiated comments of the intervenors regarding its request to amend the VIDV condition. It repeated its intention of providing described video for all its eligible prime time programming by 2022. However, it asked the Commission to grant a slight amendment to the VIDV condition imposed in Broadcasting Decision 2017-147, in order to allow it to increase progressively the quantity of described video in the coming years, while enabling it to absorb the resulting costs more easily, therefore reducing the financial burden that the original VIDV condition would represent on some services.
32. It also repeated that the intent was not to sidestep the requirement but, rather, to better comply with Commission regulations and decisions that it submitted in its application, in spite of the tough economic situation that broadcasters currently find themselves in.

Commission's analysis and determination

33. The Commission applied the tiered approach to Comedy Gold (WoW Unlimited Networks, as part of an acquisition of assets) and the Family Channel (DHX, as part of a licence renewal), among others. Although they are deemed to be independent, both services were made subject to the condition of licence reserved for services that are part of large VI entities, because they had previously been subject to a condition of licence with respect to described video. For lack of a successful demonstration that financial considerations prevented the services from providing the level of described video required, the Commission imposed the strictest condition of licence.
34. In this case, the applicant is an experienced operator with solid foundation in several segments of the Quebec French-language market. Indeed, according to Communications Monitoring Report 2018,³ Quebecor holds 37.6% of the Francophone market share across Canada, slightly more than double that of its closest rival, the Canadian Broadcasting Corporation, which holds 18.3%.
35. Quebecor is a VI entity that operates audiovisual programming undertakings, distribution undertakings, and production companies. It recently added Zeste and Évasion to its television portfolio. In addition, this portfolio includes MELS, one of the biggest North American film and television studios. The services provided by MELS range from filming to post-production of feature films, television and advertising, and also include described video. In response to a request for information from the Commission, Quebecor submitted a document indicating that MELS is the sole source of described video for programming broadcast by TVA Group services and stations, when it needs to be produced for original programming. It was also mentioned at the hearing for group-based

³ See the Communications Monitoring Report 2018 at:
<https://crtc.gc.ca/eng/publications/reports/policymonitoring/2018/cmr4c.htm>

licence renewals in November 2016 in Laval, Quebec, which led to Broadcasting Decision 2017-147.

36. In its response to the Commission's request for information, Quebecor illustrated the quantities of described video broadcast by each of the TVA Group discretionary services and television stations during prime time. It also demonstrated, for each, the costs associated with providing described video and the additional costs that would be incurred as a result of the obligations stemming from the VIDV condition.
37. The information gathered shows a gap between the condition of licence currently in effect and the one proposed by Quebecor according to the programming offered (in other words, the quantity of new programming, quantity and frequency of repeats, etc.). For example, services such as Yooopa and AddikTV, owing to the nature of their programming, would be required to offer a large quantity of described video if Quebecor's current application were denied totalling 85% and 100% respectively for their prime time programming. If, on the other hand, the Commission approved Quebecor's proposal for the 2019-2020 broadcast year, these figures would be very different, representing 24% for Yooopa and 68% for AddikTV. Meanwhile, the conventional stations of the TVA network would have to offer 79% of its programming in described video during prime time under the VIDV condition, as opposed to 53% according to Quebecor's proposal.
38. Likewise, the investment required for described video becomes proportionally greater when the condition is applied as imposed compared with the investment required under Quebecor's proposal. For the 2019-2020 broadcast year, for example, Quebecor indicated that, in accordance with the VIDV condition, the production or acquisition of described video needed to cover all eligible programming on all services concerned would be roughly double the cost under its proposed condition of licence. Again, the costs vary according to the service or station in question.
39. According to the Commission's information, these investments for the 2019-2020 broadcast year, the first of the three years covered by the VIDV condition, would represent only a low percentage of the overall programming budget for Quebecor's conventional stations and concerned discretionary services. In reality, the current condition of licence represents only a slight increase in the overall programming budget compared with Quebecor's proposal, again for the first year only. This increase should be smaller in the second year (2020-2021), and described video programming during the first year would enter the repeat cycle and be broadcast again, in described video, on Quebecor's various services. It would likely decrease in the third year (2021-2022).
40. The Commission finds that Quebecor, as a large VI entity, can use its own resources, such as its production companies and MELS studios, to benefit from internal synergies and thereby reduce or spread out the cost of described video for the TVA Group services and stations. It would not be required to provide described video for all inventoried programming to which it owns the rights, only that which is part of the specified categories and which it expects to repeat in the coming years. As well, it could share its programming more widely among its varied services, broadcasting several repeats of

programs that would have been broadcast only once, for example, which Quebecor raises as one of the main issues related to return on investment. In this regard, the conventional stations of the TVA Network are, by Quebecor's own admission, the ones that benefit the most from sharing programming among its services. It should thus not be difficult for them to achieve the required level of programming in described video.

41. Quebecor can also rely to a greater extent on the Canada Media Fund or one of the many CIPFs. As indicated above, to receive support from these funds, programming produced with the help of their funding must be accompanied by described video. Increased use of these funds would allow Quebecor to augment its programming budget and thus amortize the costs of described video.
42. Ultimately, the Commission finds, as mentioned by the RAAQ, APHVL, COPHAN and the CNIB, that, considering the time it had to prepare for the requirement since the publication of Broadcasting Regulatory Policy 2015-104 and given its experience and the means at its disposal, Quebecor should be able to lead the movement of change to increase described video for its TVA Group services and stations programming instead of asking for the pace of change to be reduced.
43. Furthermore, a number of factors come into play with described video, including financial considerations. Nevertheless, the value of described video goes beyond this single aspect: the benefits enjoyed by people with a visual impairment have an impact on their autonomy and access to television programming. For instance, programming being broadcast for the last time would likely be the final opportunity people with a visual impairment have to watch the programming, making the investment even more significant for these people.
44. Higher levels of described video represent a necessary and important transition that all non-exempt broadcasters must make, regardless of whether they are independent or part of a VI entity. The date of 1 September 2019 established in Broadcasting Regulatory Policy 2015-104 is the deadline for VI entities to reach the prescribed level of described video, and all broadcasters subject to this deadline have had to gradually increase the quantity of described video or take measures for this quantity to comply with the level imposed by the VIDV condition on that date. In this case, Quebecor did not demonstrate it had sufficiently important financial considerations to justify the Commission granting relief with respect to this.
45. In light of the foregoing, the Commission **denies** the application by Quebecor on behalf of TVA Group Inc. to amend its broadcasting licences and, consequently, maintains the current condition of licence regarding described video, as imposed in Broadcasting Decision 2017-147.

Reminder

46. Described video is an essential component for people who need it to access television programming. All broadcasters, from the independents to large VI entities, are required, under paragraph 3(1)(p) of the Act, to promote access to programming for persons with

disabilities, whether it be a visual or auditory impairment, by offering programming that is tailored to the specific needs of these people, so that they may fully take part in Canada's social life.

Secretary General

Related documents

- *Quebecor Media Inc. – Group-based licence renewals for French-language television stations and services*, Broadcasting Decision CRTC 2017-147, 15 May 2017
- *Standard requirements for television stations, discretionary services, and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016
- *Policy framework for Certified Independent Production Funds*, Broadcasting Regulatory Policy CRTC 2016-343, 25 August 2016
- *Let's Talk TV – Navigating the Road Ahead – Making informed choices about television providers and improving accessibility to television programming*, Broadcasting Regulatory Policy CRTC 2015-104, 26 March 2015
- *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009