



Broadcasting Decision CRTC 2018-264

PDF version

References: 2017-160 and 2017-160-1

Ottawa, 2 August 2018

Cogeco Connexion Inc.

Various locations in Ontario and Quebec

Public record for applications: 2016-0951-2 and 2016-0953-8

Public hearing in the National Capital Region

16 October 2017

Cogeco – Licence renewal for various terrestrial broadcasting distribution undertakings

*The Commission **renews** the regional licences for the terrestrial broadcasting distribution undertakings serving various locations in Ontario and Quebec, as set out in this decision, from 1 September 2018 to 31 August 2025.*

Applications

1. Cogeco Connexion Inc. (Cogeco) filed applications to renew the regional licences for its terrestrial broadcasting distribution undertakings (BDUs) serving the following locations in Ontario and Quebec, which expire 31 August 2018:¹

Locations	Application number
Burlington, Hamilton/Stoney Creek, Kingston, Niagara Falls, Sarnia, St. Catharines and Windsor, Ontario	2016-0951-2
Drummondville, Rimouski, Saint-Hyacinthe, ² Trois-Rivières and their surrounding areas, Quebec	2016-0953-8

¹ The Commission renewed these licences from 1 December 2016 to 30 November 2017 in Broadcasting Decision 2016-458. The Commission administratively renewed the licences from 1 December 2017 to 31 May 2018 in Broadcasting Decision 2017-159 and from 1 June 2018 to 31 August 2018 in Broadcasting Decision 2018-182.

² In a letter dated 30 July 2018, the Commission approved a request by Cogeco to remove the licensed area of Saint-Hyacinthe from its Quebec regional licence. Going forward, Cogeco will operate an exempt undertaking in Saint-Hyacinthe.

2. The Commission received several interventions in regard to the applications, to which Cogeco replied.

Commission's analysis and decisions

3. The Commission's determinations relating to issues common to all terrestrial BDUs renewed in this proceeding are set out in Broadcasting Decision 2018-263 (the Introductory Decision), also issued today, which should be read in conjunction with this decision.
4. The Introductory Decision addresses, among other things, issues relating to community programming; a proposal to impose conditions of licence relating to best practices for the small basic service and flexible packaging options; the pricing of standalone services; a national set-top box audience measurement system; accessibility; and the insertion of unpaid Canadian public service announcements within the local availabilities of non-Canadian services. Where applicable, the determinations are reflected in the conditions of licence for Cogeco's BDUs, set out in the appendices to this decision.
5. In regard to accessibility, the Commission has determined that certain of the BDU licensees listed in the Introductory Decision, including Cogeco, will be required, by condition of licence, to close caption original licensee-produced programming by 31 August 2025. They will also be required to include in the annual returns for their BDUs certain information relating to the availability and penetration of accessible set-top boxes and remote controls, as well as accessibility-related queries. In addition, these BDUs will be expected to close caption any advertising, sponsorship messages and promos inserted in local availabilities. Finally, for the purpose of standardization, the Commission has replaced the current requirements, expectations and encouragements relating to accessibility for those BDUs with a common set of accessibility-related conditions and expectations.
6. Having examined the public record for these applications, the Commission considers that the outstanding issues for Cogeco's BDUs that it must address in this decision relate to the following:
 - programming broadcast on the community channel;
 - allocation of a preponderance of contributions to local expression to direct expenses; and
 - previously identified non-compliance relating to contributions to Canadian programming.

Programming broadcast on the community channel

7. In light of the information gathered throughout the BDU renewal proceeding, including complaints filed with respect to Cogeco's community programming, the Commission has addressed the following issues:

- Cogeco's use of network formats;
- whether Cogeco provided sufficient information to justify categorizing certain programs as access programming; and
- whether Cogeco is taking adequate measures to seek citizen participation in its community channels.

Cogeco's use of network formats

8. The Canadian Association of Community Television Users and Stations (CACTUS) raised concerns over the categorization of numerous programs whose titles or formats indicated, in its view, that the idea for the program did not originate from the community member requesting access.
9. Cogeco replied that it was not appropriate to judge a program's categorization based solely on its title and that it is not surprising that similar community programs across Canada have similar formats.
10. During the hearing, when asked about access programs that have the same titles (e.g. Queen's Park Report) but that are broadcast on its different community channels, Cogeco explained that the programs in question had similar titles and concepts, but that ultimately these programs originated with the access requesters, not with Cogeco staff.
11. The Commission considers that, during the proceeding, Cogeco provided sufficient information in its logs on the roles of individuals requesting access to justify access designation for the individual programs identified by CACTUS as "Cogeco network format" programs. The Commission is satisfied with the evidence provided by Cogeco and therefore finds that these programs qualify as access programming.

Information justifying categorization of certain programs as access programming

12. While CACTUS submitted that Cogeco's program logs were missing information on certain other programs to justify their categorization as access programming, the Commission does not agree. The Commission identified two instances where Cogeco failed to provide questionnaire grids for specific program episodes. However, sufficient information was provided elsewhere on the record to justify the categorization of the programs in question as access programming elsewhere on the record. Accordingly, the Commission finds that no further action is required.

Citizen participation

13. CACTUS submitted that many BDUs, including Cogeco, exhibited very little programming produced by community members unassisted by the licensee. CACTUS argued that this was a result of Cogeco not taking sufficient measures to seek citizen participation in the community channel and instead cherry picking experienced radio

hosts, fitness club owners, chefs and sports clubs to make access programming assisted by the licensee.

14. Cogeco replied that the high levels of programming produced assisted by the licensee should be interpreted as a sign of a BDU's fulfillment of the community channel mandate to assist community members, provide training and promote access to the community channel.
15. At the hearing, Cogeco stated that over the course of the last broadcast year, 957 volunteers contributed 44,179 volunteer hours to its community television activities, which resulted in 4,966 hours of first-run access programming in the areas that it serves throughout Ontario. Cogeco did not provide specific numbers for the community channels in Quebec.
16. Moreover, the Commission received approximately 50 letters in support of Cogeco's renewal applications, with many letters coming from individuals that had requested access and who commended Cogeco for the opportunities and assistance that was given to them.
17. Based on the record of the proceeding, the Commission finds that Cogeco has made significant efforts to encourage public participation in its community channels and has provided the communities served with the opportunity to access their respective community channels. In regard to CACTUS's claim, there is no specific exhibition requirement for programming produced by community members and unassisted by the licensee. In fact, the definition of "access programming" in Broadcasting Regulatory Policy 2016-224 (the Community Television Policy) specifically includes programming that is produced by members of the community, either assisted or unassisted by the licensee.

Allocation of a preponderance of contributions to local expression to direct expenses

18. For the 2014-2015 through 2016-2017 broadcast years, BDUs were required to allocate a preponderance (at least 50%) of their contributions to local expression to direct programming costs incurred by community channels. This requirement was set out in section 32(2) of the version of the *Broadcasting Distribution Regulations* (the Regulations) that was in force prior to 1 September 2017. Direct expenses are those expenses solely attributable to the acquisition or production of programming. Indirect expenses are those expenses that are not attributable in full to the acquisition or production of programming, but which are nevertheless necessary. Examples of indirect expenses include a percentage of heat, light and hydro costs related to the building in which the programming facilities are located and a percentage of salary and benefits paid to staff who do not work exclusively in the programming department.
19. Cogeco's community channels in Drummondville and Trois-Rivières each spent less than 50% of total expenses on direct expenses in the 2015-2016 broadcast year.

Cogeco acknowledged that it did not meet this requirement for Drummondville (48.3%) and Trois-Rivières (48.9%) for that broadcast year. It stated that its other two community channels in Quebec spent well over 50% of total expenses on direct expenses, citing 62% for Saint-Hyacinthe and 64% for Rimouski as examples.

20. Cogeco submitted that if the four community channels in Quebec were taken together as a whole, the amount of total expenses attributed to direct expenses would be 59%. It also stated that this situation will not re-occur as it is committed to greater monitoring. Additionally, future payments will be based on the previous fiscal year, allowing for better planning during the year.
21. The Community Television Policy requires expenditures to be made by each licensed system to serve the area covered. This ensures that all monies being directed to a community channel in a given year reflect the community where the revenues are generated.
22. While the amount underspent on direct expenses is modest, Cogeco nonetheless did not meet the required levels for these two systems for the broadcast year in question. Accordingly, the Commission finds Cogeco in non-compliance with section 32(2) of the Regulations that were in effect prior to 1 September 2017. Consequently, the Commission will require the licensee to submit a detailed expense report for its Drummondville and Trois-Rivières systems for the 2017-2018 and 2018-2019 broadcast years. A **condition of licence** to that effect is set out in Appendix 3 to this decision.

Previously identified non-compliance relating to contributions to Canadian programming

23. The Commission performed a compliance audit regarding BDU contribution requirements during the current licence term. Following the completion of the audits, the Commission found Cogeco Câble Québec General Partnership³ in non-compliance with the requirements set out in sections 34 and 35 of the Regulations in effect prior to 1 September 2017 for the 2009-2010 through 2011-2012 broadcast years. Specifically, Cogeco excluded certain revenue streams from the broadcasting activities revenue base in calculating its required contributions, which the Commission ultimately found to be non-compliant. The non-compliance stemmed from the fact that Cogeco adjusted its reported revenues for the 2009-2010 through 2011-2012 broadcast years because some broadcasting-related revenues were not initially included as part of the reported revenues. This resulted in contribution shortfalls of \$244,009 for Canadian programming and \$170,244 for the Local

³ In Broadcasting Decision 2016-330, the Commission approved a multi-step corporate reorganization resulting in the transfer of various broadcasting assets to Cogeco Cable Canada GP Inc. As a result of the first step of the transaction, Cogeco Câble Québec General Partnership, the licensee of terrestrial BDUs serving Drummondville, Rimouski, Saint-Hyacinthe and Trois-Rivières, was dissolved, and Cogeco Cable Canada GP Inc. became the licensee of these terrestrial BDUs. The final step of the corporate reorganization included Cogeco Cable Canada GP Inc. changing its corporate name to Cogeco Connexion Inc.

Programming Improvement Fund⁴ (LPIF). In a [letter](#) dated 30 July 2014, the Commission informed Cogeco of this non-compliance. Cogeco paid the full amount in August 2014 as directed in the Commission letter.

24. Given that the LPIF was discontinued in September 2014 and that Cogeco rectified the above-noted Canadian programming contribution shortfalls in a timely manner, the Commission does not find it necessary to impose any further measures in regard to this non-compliance.

Conclusion

25. In light of all the above, the Commission **renews** the regional licences for the terrestrial BDUs set out in paragraph 1 of this decision from 1 September 2018 to 31 August 2025. The terms and **conditions of licence** for each undertaking are set out in the appendices to this decision.

Employment equity

26. Since the licensee is subject to the *Employment Equity Act* and files reports concerning employment equity with the Department of Employment and Social Development, its employment equity practices are not examined by the Commission.

Secretary General

Related documents

- *Renewal of licences for various terrestrial broadcasting distribution undertakings that will expire in August 2018 – Introductory decision*, Broadcasting Decision CRTC 2018-263, 2 August 2018
- *Various terrestrial broadcasting distribution undertakings – Administrative renewals*, Broadcasting Decision CRTC 2018-182, 24 May 2018
- *Various terrestrial broadcasting distribution undertakings – Administrative renewals*, Broadcasting Decision CRTC 2017-159, 18 May 2017
- *Licence renewal of broadcasting distribution undertakings – Review of practices relating to the small basic service and flexible packaging options and imposition of various requirements*, Broadcasting Decision CRTC 2016-458, 21 November 2016
- *Terrestrial broadcasting distribution undertakings and video-on-demand service – Acquisition of assets (corporate reorganization)*, Broadcasting Decision CRTC 2016-330, 16 August 2016

⁴ This fund was created as a means of providing support to television stations for incremental expenditures on local programming, with the amount varying over the course of its existence from 0.5% to 1.5% of the gross revenues of a BDU derived from broadcasting activities in the previous broadcast year.

- *Policy framework for local and community television*, Broadcasting Regulatory Policy CRTC 2016-224, 15 June 2016

This decision and the appropriate appendices are to be attached to each licence.

Appendix 1 to Broadcasting Decision CRTC 2018-264

Terms, conditions of licence, and expectations applicable to all terrestrial broadcasting distribution undertakings renewed in this decision

Terms

The licences will take effect 1 September 2018 and expire 31 August 2025.

Conditions of licence

1. The licensee shall adhere to the Wholesale Code set out in the appendix to *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015, in its dealings with any licensed or exempt broadcasting undertaking.
2. The licensee shall adhere to the Television Service Provider Code set out in the appendix to *The Television Service Provider Code*, Broadcasting Regulatory Policy CRTC 2016-1, 7 January 2016.
3. The licensee shall be a participant in the Commission for Complaints for Telecom-television Services Inc.
4. In the annual return that the licensee is required to submit to the Commission by 30 November for the broadcast year ending the previous 31 August, the licensee shall include information relating to the following:
 - the availability of accessible set-top boxes and remote controls, and their accessibility features;
 - the penetration of accessible set-top boxes and remote controls with the licensee's customer base; and
 - the number of accessibility-related queries received by the licensee, and the number successfully resolved.
5. The licensee shall close caption 100% of original licensee-produced English- and French-language programming aired on its community channel by the end of its licence term.
6. The licensee shall provide audio description for all key elements of information programs, including news programming on its community channel (that is, the voice-over of key textual, graphic design and still image elements, such as phone numbers, stock information or weather maps that are posted on the screen).
7. The licensee shall provide the necessary training to hosts and access producers associated with its community channel concerning the provision of audio description.

8. The licensee shall provide one or more simple means of accessing described programming, whether in an open or embedded format, that requires little or no visual acuity.
9. The licensee shall promote information on all of its disability-specific services and products, in the accessible manner(s) of its choice.
10. The licensee shall incorporate an easy-to-find home page link to the sections of its website dealing with the needs of persons with disabilities, if its website includes such sections.
11. The licensee shall make the information on its website accessible to the point of providing reasonable accommodation for persons with disabilities. Examples of what the Commission considers to be reasonable accommodations are listed in paragraph 66 of *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009.
12. Where customer service functions on its website are not accessible, the licensee shall ensure that persons with disabilities will not incur a charge or otherwise be disadvantaged if they use an alternate avenue of customer service.
13. The licensee shall make accessible any customer service functions that are available solely over its website.
14. The licensee shall make its general call centres accessible to the point of providing reasonable accommodation to persons with disabilities by:
 - training customer service representatives in handling enquiries from persons with disabilities and familiarizing them with the service provider's products and services for persons with disabilities; and
 - making its Interactive Voice Response systems accessible.

Expectations

The Commission expects the licensee to ensure that subscribers are able to identify programming with described video in the electronic program guide.

The Commission expects the licensee to make information available in alternative formats to subscribers regarding, among other things, the programming and services offered and the channel line-up.

The Commission expects the licensee to ensure that 100% of original English- and French-language access programming aired on its community channel is closed captioned by the end of its licence term.

The Commission expects the licensee to ensure that advertising, sponsorship messages and promos inserted into local availabilities are closed captioned.

Appendix 2 to Broadcasting Decision CRTC 2018-264

Cogeco Connexion Inc.
Application 2016-0951-2

Conditions of licence for the terrestrial broadcasting distribution undertakings serving Burlington, Hamilton/Stoney Creek, Kingston, Niagara Falls, Sarnia, St. Catharines and Windsor, Ontario

Conditions of licence applicable to all licensed service areas

1. The licensee is authorized to distribute, on a discretionary basis, WNYO-TV Buffalo, New York.
2. The licensee is authorized to provide zone-based community channels for the following licensed and exempt service areas:

Zone 1 (Belleville): Belleville

Zone 2 (Burloak): Burlington and Oakville

Zone 3 (Hamilton): Hamilton/Central-East, Hamilton/North-West, Hamilton/Stoney Creek and Hamilton/Dundas

Zone 4 (Kingston): Kingston and Bath

Zone 5 (Niagara): Niagara Falls, St. Catharines, Grimsby, Douglastown and Smithville

Zone 6 (Peterborough): Peterborough

Zone 7 (Sarnia): Sarnia

Zone 8 (Windsor): Windsor and Leamington

Condition of licence applicable to the terrestrial broadcasting distribution undertaking serving Kingston

3. The licensee is authorized to distribute, at its option, WWNY-TV (CBS) Watertown, New York as part of the basic service.

Appendix 3 to Broadcasting Decision CRTC 2018-264

Cogeco Connexion Inc.
Application 2016-0953-8

Conditions of licence for the terrestrial broadcasting distribution undertakings serving Drummondville, Rimouski, Trois-Rivières and their surrounding areas, Quebec

Condition of licence applicable to all licensed service areas

1. The licensee is authorized to provide zone-based community channels for the following licensed and exempt service areas:

Zone 1 (Mauricie): Trois-Rivières, Louiseville, Grand-Mère, Nicolet, Bécancour (zone Gentilly), Daveluyville, Sainte-Gertrude and Saint-Léonard d'Aston

Zone 2 (Drummondville): Drummondville, Acton Vale, Notre-Dame-du-Bon-Conseil, Saint-Théodore-d'Acton and Valcourt

Zone 3 (Saint-Hyacinthe): Saint-Hyacinthe

Zone 4 (Rimouski): Rimouski

Condition of licence applicable to the terrestrial broadcasting distribution undertakings serving Drummondville and Trois-Rivières

2. Along with the annual returns for the 2017-2018 and 2018-2019 broadcast years for the Drummondville and Trois-Rivières systems, the licensee shall submit a detailed breakdown of all expenses and a listing of direct and indirect expenses. The breakdown must include all material expenses on an individual basis as well as a total for all expenses below the materiality threshold. If an allocation method is used to determine any expenses, the licensee must include documentation supporting the methodology used in determining the allocation.