



October 25, 2011

Submitted via E-Pass

Mr. John Traversy
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario K1A 0N2

Dear Mr. Traversy:

Re: Broadcasting Notice of Consultation CRTC 2011-600: Applications to renew the broadcasting licence for various national video-on-demand (“VOD”) programming undertakings:

- TELUS Communications Company (“TELUS”): Application 2011-0037-0;
 - Bell ExpressVu Limited Partnership (“Bell”): Application 2011-0039-6;
 - Rogers Communications Partnership (“Rogers”): Application 2011-0042-9;
 - Videon Cablesystems Inc. (“Shaw”): Application 2011-0046-1;
 - Vidéotron G.P. (“Vidéotron”): Application 2011-0038-8;
 - Cogeco Cable Canada LP (“Cogeco”): Application 2011-0206-1;
 - MTS Allstream Inc. (“MTS”): Application 2011-0041-1;
 - Saskatchewan Telecommunications (“SaskTel”): Application 2011-0043-7
1. The Writers Guild of Canada (the WGC) is the national association representing over 2000 professional screenwriters working in English-language film, television, radio and digital media production in Canada. The WGC is actively involved in advocating for a strong and vibrant Canadian broadcasting system containing high-quality Canadian programming. As such, the WGC wishes to **support** the above-mentioned applications to renew their VOD services, subject to the issues raised in this intervention as they relate to some services.
 2. Due to the increasingly complex and competitive environment in Canada’s broadcasting system, some of the applicants have asked for additional regulatory flexibility in order to be more competitive. The WGC supports efforts to strengthen the regulated system and its players so long as they continue to support the goals of the *Broadcasting Act*. The WGC is concerned, however, that a number of the applicants’ proposals could actually serve to weaken their obligations to Canadian programming.
 3. Cogeco and Vidéotron have both requested the elimination of the requirement that a VOD service contribute 5% of their gross annual revenues to a Canadian production fund. They argue that this amounts to “double-taxation” since the BDU that the VOD service is affiliated with must also make a similar 5% contribution to Canadian programming.

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4. We find it hard to believe that Cogeco and Vidéotron are again making this argument. The Commission most recently reaffirmed the requirement that VOD services make contributions to Canadian programming in Broadcasting Regulatory Policy CRTC 2011-59. Although BDUs own VOD services, the two are separate undertakings with separate licences and revenue streams. Most of the BDUs also now own conventional and specialty broadcasting services which have CPE obligations. Each element of the Canadian broadcasting system, whether owned by another regulated entity or not, has its own obligations to the creation and presentation of Canadian programming. We trust that the Commission will yet again deny this request.
5. We also urge the Commission to ensure that Vidéotron complies with the requirement that a minimum of 5% of its English language film inventory is Canadian. At 2.6%, Vidéotron offers only half the required volume¹. There is no need to relieve Vidéotron from this standard condition of licence required of all VOD services. There is clearly enough programming available to meet this requirement if the other VOD services are all in compliance.
6. The WGC also urges the Commission to remind Telus of its responsibility to comply with the VOD standard condition that a minimum of 20% of all programming other than feature films in the inventory is Canadian. Telus argues that its SVOD service is in compliance because its suppliers, Movie Central, HBO Canada and Super Channel, have conditions of licence requiring Canadian programming. As the licensee, Telus alone is responsible for the content that it broadcasts, not its suppliers. The purpose of this provision is to ensure that there is a single entity that the Commission can contact to address complaints and enforce compliance.
7. Rogers, Cogeco and Vidéotron have requested regulatory flexibility for their SVOD services so that they can acquire the same programming rights as unregulated, Internet-based services. Rogers explains that it needs to match the 'range and scope' of the programming offered by foreign OTT services. We agree that granting additional flexibility to Canadian SVOD services could enable them to compete better and we do want to see Canadian SVOD services survive as an element of the Canadian broadcasting system. However, their efforts to match competitors such as Netflix could marginalize Canadian programming in the regulated sphere. As illustrated in the Joint Submission of WGC, CMPA, ACTRA and DGC to the Commission's recent Fact Finding Consultation on OTT Services,² Netflix is currently offering very little Canadian content and without any form of regulation we do not expect that situation to improve. Allowing SVOD services complete freedom to match Netflix's programming is a race to the bottom at a time when the Commission should

¹ Vidéotron Application: DM#1546443-20011-0038-8 – APP Doc 5 – Annexe 3 Tableau VSD – Conformité de licence – illico sur demand – Mars 2011.

² Broadcasting and Telecom Notice of Consultation CRTC 2011-344, July 5, 2011

instead be looking for ways to preserve or extend Canadian's ability to choose Canadian programming.

8. The WGC therefore suggests that the Commission balance the request for SVOD flexibility with the existing VOD obligations to support Canadian programming. The WGC recommends that the Commission grant additional flexibility subject to the standard VOD requirements regarding inventory of Canadian feature films and television programming. Any such flexibility granted to Rogers, Cogeco and Vidéotron should also be extended to the other VOD services being renewed.
9. Finally, given how quickly the Canadian broadcasting system and its environment are evolving, and the growing importance of VOD and SVOD within that environment, we urge the Commission to renew the applicants' VOD licences for a maximum of five years. The recent broadcast licences subject to the English Group Licence Renewal were renewed for five years and the Commission is considering a five year licence for the upcoming French-language market renewals. A consistent approach to length of the term would be appropriate here.
10. We thank the Commission for this opportunity to provide you with our comments.

Sincerely,



Maureen Parker
Executive Director

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