



## Broadcasting Decision CRTC 2018-319

PDF version

References: 2017-365, 2017-365-1 and 2017-365-2

Ottawa, 27 August 2018

### **Accessible Media Inc.**

Across Canada

*Public record for these applications: 2017-0585-7, 2017-0588-1 and 2017-0589-9*

*Public hearing in the National Capital Region*

*30 April 2018*

### **AMI-audio, AMI-tv and AMI-télé – Licence renewals and renewal of mandatory distribution orders**

*The Commission **renews** the broadcasting licences for the national, English-language audio programming undertaking AMI-audio, the national, English-language discretionary service AMI-tv and the national, French-language discretionary service AMI-télé from 1 September 2018 to 31 August 2023. These services will continue to provide a wide breadth of programming to Canadians who are blind and partially sighted.*

*Further, the Commission **renews** the orders for mandatory distribution of these services on the basic service, pursuant to section 9(1)(h) of the Broadcasting Act.*

### **Applications**

1. Accessible Media Inc. (AMI) filed applications to renew the broadcasting licences for the national, English-language audio programming undertaking AMI-audio, the national, English-language specialty Category A service AMI-tv and the national, French-language specialty Category A service AMI-télé, which expire 31 August 2018. The licensee also requested continued mandatory distribution of these services on the basic service of Canadian cable and satellite providers, pursuant to orders issued under section 9(1)(h) of the *Broadcasting Act* (the Act).
2. AMI is a not-for-profit organization controlled by its board of directors.
3. For AMI-tv and AMI-télé, AMI confirmed that it would abide by requirements set out in Appendix 2 to Broadcasting Regulatory Policy 2016-436, with the exception of the following:
  - the general programming requirements set out in conditions of licence 6, 7 and 8 as their existing nature of service condition of licence will be maintained;

- condition of licence 17 relating to the minimum described video requirement given that all of the programming on these services must be provided in open-format described video; and
  - conditions of licence 18(a), (b), (c) and (d) restricting the broadcast of advertising.<sup>1</sup>
4. AMI also proposed the following amendments to the conditions of licence for AMI-tv and AMI-télé:
- the deletion of the condition of licence requiring these services to broadcast at least 500 new hours of fully described programming per broadcast year, of which at least 30% must be Canadian;
  - various amendments to the wording of current conditions of licence to update relevant cross-references;
  - an amendment to the conditions of licence designating the services as specialty Category A services so as to designate them instead as discretionary services with mandatory distribution as part of the digital basic service and to add the services to the first-tier offering of licensed broadcasting distribution undertakings pursuant to the relevant broadcasting orders; and
  - the deletion of the standard expectation to display a described video logo and the encouragement to broadcast an audio announcement indicating the presence of described video given that all of their programming is described video programming.
5. AMI proposed to maintain the existing conditions of licence for AMI-audio.
6. With respect to its requests for mandatory distribution on the digital basic service, the applicant stated that its three services continue to meet the criteria set out in paragraph 11 of Broadcasting Regulatory Policy 2010-629. It did not propose an increase to its per-subscriber monthly wholesale rates.

## **Interventions**

7. The Commission received numerous interventions supporting AMI's applications to renew its licences for its services with mandatory distribution. The Commission also received interventions commenting on the applications, to which the applicant replied.

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<sup>1</sup> In Broadcasting Decision 2008-191, the Commission eliminated the restrictions now set out in standard conditions 18(a), (b) and (c) for AMI-tv.

8. Bragg Communications Inc., carrying on business as Eastlink, and Saskatchewan Telecommunications opposed the renewal of the distribution orders for all applicants considered as part of this proceeding. Kosiner Venture Capital Inc. opposed AMI's applications specifically, raising concerns with respect to what it perceived as a lack of transparency in several areas and AMI's content arrangements with other broadcasters.

### **Commission's analysis and decisions**

9. The applicant provided a detailed response to the concerns raised by the opposing interveners. The Commission is satisfied with the applicant's reply to these concerns.
10. The Commission is also satisfied that AMI's services continue to meet the criteria for mandatory distribution on the digital basic service set out in paragraph 11 of Broadcasting Regulatory Policy 2010-629. Notably, the Commission is of the view that the licensee has demonstrated that its described video services will continue to give access for people who are blind or partially sighted to a large amount of programming and information that would otherwise be inaccessible to them, thus meeting an extraordinary need among its intended audience. The services facilitate access by people who are blind and partially sighted to described programming, and in the case of AMI-audio to news and information, helping them to participate in Canadian society. As such, the Commission considers that the service contributes in an exceptional manner to achieving the objectives of the Act and the basic service.
11. The Commission also recognizes that due to the services' limited commercial potential, the licensee's business plan and implementation of its specific commitments for each service are dependent on their distribution on the basic service and the services would not be able to fulfill their programming commitments without mandatory distribution. The Commission is also satisfied that the proposed wholesale rates for the services are sufficient for them to fulfill their commitments, without unduly impacting the ability of broadcasting distribution undertakings (BDUs) to offer an affordable basic service to subscribers.
12. Accordingly, the Commission **approves** the licensee's requests for continued mandatory distribution for a five-year term, pursuant to Broadcasting Orders 2018-320, 2018-321 and 2018-322, also issued today. The Commission considers that the licence terms for the services should coincide with those of the associated orders.
13. The mandatory distribution orders associated with these services formerly contained a provision authorizing distribution licensees to increase the basic monthly fee to be paid by their subscribers by no more than the amount required under the order for the distribution of the services. However, since the Commission no longer regulates retail rates for BDU services except for basic service and since section 17.1 of the *Broadcasting Distribution Regulations* already addresses this matter, the Commission has not retained this provision in the renewed mandatory distribution orders effective 1 September 2018.

14. However, the Commission **denies** AMI's request for a condition of licence designating AMI-tv and AMI-télé as discretionary services with mandatory distribution on the digital basic service and on the first tier offering of BDUs. In the Commission's view, this additional designation is unnecessary and confusing for services that already have mandatory distribution on the basic service and will continue to be distributed in this way throughout its licence term.
15. The Commission **approves** most of the proposed licence amendments, including the deletion of the condition of licence requiring AMI-tv and AMI-télé to broadcast at least 500 new hours of fully described programming per broadcast year, which it has replaced instead with a reporting requirement regarding the original described programming broadcast on these services that is acquired or commissioned from Canadian independent producers or produced by AMI.
16. The Public Interest Advocacy Centre (PIAC) expressed concern about how deletion of the condition of licence on described programming would enable AMI-tv and AMI-télé to demonstrate an exceptional commitment to original, first-run Canadian programming. In reply, AMI reiterated that would dedicate 48% of the services' previous year's gross revenues to the acquisition of, or investment in, Canadian programs, which is significantly higher than the Canadian expenditure levels adopted for other services without 9(1)(h) status. The Commission is satisfied with the applicant's response and considers that the reporting requirement will provide the Commission with sufficient information to evaluate AMI-tv's and AMI-télé's ongoing commitment to broadcast programming with described video.
17. Additionally, the Commission considers it appropriate to exempt both AMI-tv and AMI-télé from the advertising restrictions set out in condition of licence 18 of Appendix 2 to Broadcasting Regulatory Policy 2016-436. The Commission considers that the same arguments that applied to AMI-tv as set out in Broadcasting Decision 2008-191 also apply to AMI-télé. Consistent with the view expressed in Broadcasting Decision 2008-191, this will maximize the licensee's opportunities to simulcast described video programming by allowing it to distribute programming from broadcasters not subject to advertising limits.

### **Publication of financial information**

18. The Commission's general practice is to publish only partial financial information for services without distribution rights that are also not owned by vertically integrated entities. However, the services at issue in this decision are all 9(1)(h) services that have mandatory distribution and for which the Commission sets wholesale rates that are paid for by BDU subscribers. In order to ensure that services are transparent in the disbursement of the funds that are received, the Commission finds that the publication of complete financial information for these services is in the public interest. Accordingly, the Commission will continue to publish the same information for 9(1)(h) services as it had in the past, despite the changes to the type of licence these services hold. Additionally, the Commission will continue to publish the same

information for audio programming 9(1)(h) services as it had for 9(1)(h) discretionary services in the past.

## Conclusion

19. In light of the above, the Commission **renews** the broadcasting licences for the national, English-language audio programming undertaking AMI-audio, the national, English-language discretionary<sup>2</sup> service AMI-tv and the national, French-language discretionary service AMI-télé from 1 September 2018 to 31 August 2023. The terms and **conditions of licence** for each service are set out in the appendices to this decision.

Secretary General

## Related documents

- *Distribution of AMI-télé by licensed broadcasting distribution undertakings*, Broadcasting Order CRTC 2018-322, 27 August 2018
- *Distribution of AMI-tv by licensed broadcasting distribution undertakings*, Broadcasting Order CRTC 2018-321, 27 August 2018
- *Distribution of AMI-audio by licensed broadcasting distribution undertakings*, Broadcasting Order CRTC 2018-320, 27 August 2018
- *The Accessible Channel – Licence amendment*, Broadcasting Decision CRTC 2008-191, 20 August 2008
- *Standard requirements for television stations, discretionary services, and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016
- *Criteria for assessing applications for mandatory distribution on the digital basic service*, Broadcasting Regulatory Policy CRTC 2010-629, 27 August 2010
- *Accessible Channel – Licence amendment*, Broadcasting Decision CRTC 2008-191, 20 August 2008

*This decision is to be appended to each licence.*

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<sup>2</sup> In Broadcasting Regulatory Policy 2015-86, the Commission announced that it would consolidate television programming service licences into three broad categories. Under this new streamlined licensing approach, specialty Category B services are now designated as discretionary services.

## **Appendix 1 to Broadcasting Decision CRTC 2018-319**

### **Terms, conditions of licence and encouragement for the national English-language audio programming undertaking AMI-audio**

#### **Terms**

The licence will take effect 1 September 2018 and will expire 31 August 2023.

#### **Conditions of licence**

1. The licensee shall adhere to the provisions of Part 1.1 of the *Radio Regulations, 1986*.
2. The licensee shall broadcast no more than four minutes of advertising in any clock hour.

For the purpose of this condition, the term “clock hour” shall have the same meaning as set out in the *Television Broadcasting Regulations, 1987*.

3. By November 30 of each year and in a manner and form prescribed by the Commission, the licensee shall file with the Commission a report on its expenditures on Canadian programming and its exhibition.

#### **Encouragements**

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.

## Appendix 2 to Broadcasting Decision CRTC 2018-319

### Terms, conditions of licence, expectations and encouragements for the national English-language discretionary service AMI-tv

#### Terms

The licence will take effect 1 September 2018 and will expire 31 August 2023.

#### Conditions of licence

1. The licensee shall adhere to the conditions set out in the licence for the undertaking as well as to the standard conditions of licence set out in Appendix 2 to *Standard requirements for television stations, discretionary services and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016, with the exception of conditions of licence 6, 7, 8, 17 and 18.
2. As regards the nature of service:
  - (a) The licensee shall provide a national, English-language discretionary service. One hundred percent of the programming provided by the service shall be open format described video programming so as to provide access to a wide breadth of news, information, drama, entertainment and other television programming to blind and partially sighted Canadians.
  - (b) The licensee may draw programming from all program categories set out in item 6 of Schedule I to the *Discretionary Services Regulations*, as amended from time to time.
3. In each broadcast year, the licensee shall devote at least 60% of the programming broadcast during the broadcast day and at least 50% of the programming broadcast between 6 p.m. and midnight to Canadian programs.
4. The licensee shall expend on the acquisition of or investment in Canadian programs at least 48% of the previous year's gross revenues derived from the operation of the service.
5. As regards Canadian program expenditures:
  - (a) In each broadcast year of the licence term, excluding the final year, the licensee may expend an amount on Canadian programs that is up to 5% less than the minimum required expenditure for that year calculated in accordance with this condition; in such case, the licensee shall expend in the next broadcast year of the licence term, in addition to the minimum required expenditure for that year, the full amount of the previous year's under-expenditure;
  - (b) In each broadcast year of the licence term, where the licensee expends an amount on Canadian programs that is greater than the minimum required

expenditure for that year calculated in accordance with this condition, the licensee may deduct:

(i) from the minimum required expenditure for the following year of the licence term, an amount not exceeding the amount of the previous year's over-expenditure; and

(ii) from the minimum required expenditure for any subsequent broadcast year of the licence term, an amount not exceeding the difference between the over-expenditure and any amount deducted under (i) above.

(c) Notwithstanding paragraphs (a) and (b) above, during the licence term, the licensee shall expend on Canadian programs, at a minimum, the total of the minimum required expenditures calculated in accordance with this condition of licence.

6. On or before 30 November of each year, the licensee shall file with the Commission a report for the previous broadcast year, in a form acceptable to the Commission, containing information on the number of hours broadcast by the service that are comprised of:
  - a. original described video acquired programming that is described for the first time;
  - b. original described video programming commissioned from Canadian independent producers; and
  - c. original described video programming produced by AMI.
7. By November 30 of each year and in a manner and form prescribed by the Commission, the licensee shall file with the Commission a report on its expenditures on Canadian programming and its exhibition.

#### **Definitions**

For the purposes of these conditions, the terms "broadcast day," "broadcast year" and "Canadian program" shall have the same meanings as set out in the *Television Broadcasting Regulations, 1987*.

#### **Expectations**

With the exception of standard expectation 3, the standard expectations applicable to this licensee are set out in Appendix 2 to *Standard requirements for television stations, discretionary services and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016.



## **Encouragements**

With the exception of standard encouragement 1, the standard encouragements applicable to this licensee are set out in Appendix 2 to *Standard requirements for television stations, discretionary services and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016.

## Appendix 3 to Broadcasting Decision CRTC 2018-319

### Terms, conditions of licence, expectations and encouragements for the national French-language discretionary service AMI-télé

#### Terms

The licence will take effect 1 September 2018 and will expire 31 August 2023.

#### Conditions of licence

1. The licensee shall adhere to conditions set out in the licence for the undertaking as well as to the standard conditions of licence set out in Appendix 2 to *Standard requirements for television stations, discretionary services and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016, with the exception of conditions of licence 6, 7, 8, 17 and 18.
2. As regards the nature of service:
  - (a) The licensee shall provide a national, French-language discretionary service. One hundred percent of the programming will be open format described video programming so as to provide access to a wide breadth of news, information, drama, entertainment and other television programming to Canadians who are blind and visually impaired.
  - (b) The licensee may draw programming from all program categories set out in item 6 of Schedule I to the *Discretionary Services Regulations*, as amended from time to time.
3. In each broadcast year, the licensee shall devote at least 60% of the programming broadcast during the broadcast day and at least 50% of the programming broadcast between 6 p.m. and midnight to Canadian programs.
4. The licensee shall expend on the acquisition of or investment in Canadian programs at least 48% of the previous year's gross revenues derived from the operation of the service.
5. As regards Canadian program expenditures:
  - (a) In each broadcast year of the licence term, excluding the final year, the licensee may expend an amount on Canadian programs that is up to 5% less than the minimum required expenditure for that year calculated in accordance with this condition; in such case, the licensee shall expend in the next broadcast year of the licence term, in addition to the minimum required expenditure for that year, the full amount of the previous year's under-expenditure;
  - (b) In each broadcast year of the licence term, where the licensee expends an amount on Canadian programs that is greater than the minimum required

expenditure for that year calculated in accordance with this condition, the licensee may deduct:

- (i) from the minimum required expenditure for the following year of the licence term, an amount not exceeding the amount of the previous year's over-expenditure; and
- (ii) from the minimum required expenditure for any subsequent broadcast year of the licence term, an amount not exceeding the difference between the over-expenditure and any amount deducted under (i) above.

(c) Notwithstanding paragraphs (a) and (b) above, during the licence term, the licensee shall expend on Canadian programs, at a minimum, the total of the minimum required expenditures calculated in accordance with this condition of licence.

6. On or before 30 November of each year, the licensee shall file with the Commission a report for the previous broadcast year, in a form acceptable to the Commission, containing information on the number of hours broadcast by the service that are comprised of:
  - a. original described video acquired programming that is described for the first time;
  - b. original described video programming commissioned from Canadian independent producers; and
  - c. original described video programming produced by AMI.
7. By November 30 of each year and in a manner and form prescribed by the Commission, the licensee shall file with the Commission a report on its expenditures on Canadian programming and its exhibition.

### **Definitions**

For the purposes of these conditions, the terms "broadcast day," "broadcast year" and "Canadian program" shall have the same meanings as set out in the *Television Broadcasting Regulations, 1987*.

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With the exception of standard expectation 3, the standard expectations applicable to this licensee are set out in Appendix 2 to *Standard requirements for television stations, discretionary services and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016.

## **Encouragements**

With the exception of standard encouragement 1, the standard encouragements applicable to this licensee are set out in Appendix 2 to *Standard requirements for television stations, discretionary services and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016.