

28 November 2018

To: Mr. Claude Doucet  
Secretary General  
Canadian Radio-television and  
Telecommunications Commission  
Ottawa, Ontario  
K1A 0N2

**Subject: Part 1 Request for an Amendment to the Conditions of Licence Requiring Broadcasters to Increase the Amount of Described Video Programming**

Dear Mr. Doucet,

1. Bell, Corus and Rogers (the Parties) are filing this Part 1 Application to request that the Commission amend the condition of licence (COL) applicable to the provision of described video (DV) programming during prime time, which takes effect on 1 September 2019.
2. As detailed in this Application, we propose that the Commission amend the condition to provide an exception for non-Canadian programs which are received less than 72 hours prior to broadcast. More specifically, while such qualifying programs would not initially include DV, it would be provided with subsequent broadcasts aired in prime time 72 hours after the original broadcast. In support of our request, we have provided evidence to support this amendment, including how many hours of each of the Parties' prime time programming is received less than 72 hours prior to broadcast.
3. The Parties do not make this request lightly. We fully support the Commission's goal of improving the accessibility of the broadcasting system and increasing the amount of DV available to blind and partially sighted Canadians. However, it is simply impossible to meet the new requirement as of 1 September 2019. Canadian television broadcasters receive a significant amount of U.S. content without embedded DV very close to broadcast and there is insufficient time to produce or outsource DV in these circumstances. In addition, live DV is not a viable option for reasons that we further outline. To demonstrate the operational barriers to providing DV for U.S. programming, we have included supporting letters from DV suppliers and our content partners in the U.S.
4. Further, while this Application is being filed on behalf of the Parties, we would be supportive of similar applications by other affected broadcasters. The difficulties in providing DV, as we describe further below, impact most, if not all, television licensees.

## **Background**

5. In the Notice of Consultation<sup>1</sup> leading to BRP 2015-104<sup>2</sup>, the Commission issued a working document outlining its preliminary views on various issues, including the provision of DV. The Commission's proposal in the working document was as follows:

The amount of described video would be increased through a requirement that by the end of the next licence term [emphasis added]:

- broadcasters that are currently subject to described video requirements, as well as those that are part of a vertically integrated group, are required to provide described video for programming aired between 7 p.m. and 11 p.m. (prime time) that could be described based on existing program categories for described video; and
- all licensed broadcasters, including educational broadcasters, are required to provide four hours of described video per week, consistent with the existing described video requirement.<sup>3</sup>

6. It is clear that the Commission originally contemplated a gradual introduction of the requirement to include DV in all prime time programming. Notably, during the Television Policy Review, there was recognition of the fact that Canadian prime time broadcast schedules include a significant amount of U.S. programming that does not include DV. In particular, Accessible Media noted the following:

AMI is well aware and supportive of consumers' desire for increased hours of DV programming. However, for the record, we would like to bring our analysis of DV programming in prime time to the Commission's attention. AMI has analyzed the prime time schedules of the top four Canadian broadcasters using our DV Guide data. Based on our analysis, fully 80 percent of the Canadian prime time programming, excluding news, sports or live event, is available with described video. In contrast, only 35 per cent of U.S.-originating programs broadcast by the top four Canadian broadcasters were available with DV.

Clearly, Canadian broadcasters are doing their part to increase the availability of described video in the content that they control. The issue of DV availability appears to be more related to U.S. programming, as evidenced by our review of the top 10 and top 30 programs as reported by BBM.<sup>4</sup>

7. However, with the introduction of BRP 2015-104, the Commission accelerated the DV prime time requirement to 1 September 2019 and determined the following:

In light of the above, the Commission will implement a tiered approach to ramp up the amount of described video being provided by television broadcasters, with the tiered requirements reflecting the size and resources of broadcasters. Specifically:

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<sup>1</sup> Broadcasting Notice of Consultation CRTC 2014-190, *Let's Talk TV* (BNC 2014-190).

<sup>2</sup> Broadcasting Regulatory Policy CRTC 2015-104, *Let's Talk TV – Navigating the Road Ahead – Making informed choices about television providers and improving accessibility to television programming*.

<sup>3</sup> BRP 2015-104, paragraph 31.

<sup>4</sup> BNC 2014-190, Hearing Transcript, Volume 8, lines 17668-17669.

- By September 2019, broadcasters currently subject to described video requirements as well as those that belong to vertically integrated entities will be required to provide described video for programming broadcast between 7 p.m. and 11 p.m. (prime time), seven days a week. This requirement will apply to programs that fall into existing program categories that have been identified for described video.
- By the fourth year of their respective next licence terms, all other non-exempt broadcasters will be required to provide four hours of programming with described video per week, consistent with existing requirements.
- The current requirement to provide two hours of programming with described video that are original to the service will be discontinued, as the increased described video requirements, in the Commission's view, will ensure that a greater diversity of content featuring described video is continually available.
- Exempt broadcasters will not have to adhere to a new described video requirement, although they are encouraged to provide programming with described video.<sup>5</sup>

8. With respect to the accelerated implementation date, the Parties suggest that an understanding that the U.S. was going to achieve 100% DV by 2020 may have led the Commission to move away from its thinking in the working document (i.e., requiring DV in prime time programs by the end of the licence term). For example, Descriptive Video Works stated:<sup>6</sup>

Many viewers tell us that their preferred programs are not described, and the only way to meet those very needs of this audience is 100 percent described video coverage.

The availability of descriptive video is increasing worldwide. During discussions at the 2014 American Council of the Blind conference that I attended, several credible sources said that they felt 100 percent described coverage of U.S. television programming will happen before the target of 2020.

9. However, the 21st Century Communications and Video Accessibility Act (CVAA), signed in 2010, does not require 100% of programming in the U.S. to be described by 2020. Current requirements are closer to 40%, and that includes repeats. As such, the Parties believe that it is highly unlikely the U.S. will be able to achieve 100% DV by 2020, which in turn will impact the ability of the Parties to meet their condition of licence for DV in prime time given the time constraints in having DV added to U.S. programs that are broadcast in Canada.

10. Furthermore, in order to avoid unintended impacts, the Commission decided that broadcasters subject to the most substantial DV requirements would have their requirements reviewed on a case-by-case basis during licence renewal.<sup>7</sup> In this regard, we note that during the oral phase of the group licence renewal hearing, the discussions relating to DV mainly revolved around the provision of DV for Canadian programming, with an acknowledgement by the Commission that it is U.S. programming that is frequently delivered without DV.

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<sup>5</sup> BRP 2015-104, paragraph 43.

<sup>6</sup> BNC 2014-190, Hearing Transcript, Volume 8, lines 17445-17446.

<sup>7</sup> Ibid.

11. For example, during Rogers' appearance in the BNC 2016-225<sup>8</sup> hearing, the following exchange occurred:<sup>9</sup>

THE CHAIRPERSON: Thank you.

The MAC had made some suggestions concerning procurement policies and licensing agreements to ensure that there's more described video for accessible - - made accessible for blind and partially sighted Canadians. Is this something you already do?

MS. WATSON: It is. Everything we commission has that requirement. The CMF applications also include that requirement.

It is something we seek to buy when we acquire programming. As Mr. Maavara pointed out correctly earlier, the last minute arrival of some programming often omits DV. We seek to rectify that and get it on for the replay and it is something we will continue to work with. It is something that we hope on the American side would become a priority in which case then it would just simply be passed through.

THE CHAIRPERSON: Is there a penalty in the contracts with independent producers when they don't deliver the described video along with the principal tapes?

MS. WATSON: I am not familiar with the fine print of the contracts so I'd have to get that back to you.

THE CHAIRPERSON: Don't you think that would be a way to focus the mind so that they did deliver it on time?

MS. WATSON: There is no problem; with respect to everything we commission it comes always captioned and DV'ed.

THE CHAIRPERSON: When you go to air?

MS. WATSON: For -- you mean penalties with respect to the American programming?

THE CHAIRPERSON: No, no, I'm talking about -- I'm just in the Canadian context here.

MS. WATSON: Yeah. It's not happened on the Canadian side.

THE CHAIRPERSON: So it's the foreign content that sometimes arrives without the described video. I understand.

MS. WATSON: Yes.

THE CHAIRPERSON: Let me move to the second bucket of issues.

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<sup>8</sup> Broadcasting Notice of Consultation CRTC 2016-225, *Renewal of television licences held by large English- and French-language ownership groups*.

<sup>9</sup> BNC 2016-225, Hearing, Transcript, 1 December 2016: <https://crtc.gc.ca/eng/transcripts/2016/tb1201.htm>, lines 6777-6791.

12. In addition, during Bell Media's appearance, a similar conversation occurred:

THE CHAIRPERSON: During Media Access Canada's appearance earlier this week, they suggested that including a line item in your procurement policies and licensing agreements for described video would ensure that programming is accessible for people who are blind or partially sighted. Is that something you already do?

MR. GOLDSTEIN: Yes.

THE CHAIRPERSON: Across the board or only in specific instances?

MR. GOLDSTEIN: Specifically with our Canadian programming, as the best of my know, for example, specifically with respect to closed captioning. I believe also with respect to described video, it falls into one of the categories that would be appropriate for description. We already build that into the budget line item so that it happens at the production level, and that -- so that's something we do now.<sup>10</sup>

13. Finally, Corus had more substantial discussions with the Commission regarding the difficulties in providing DV for all prime time programming. As part of the process leading to BRP 2016-436<sup>11</sup> and in their licence renewal application, Corus informed the Commission of the problem Canadian broadcasters encounter when they acquire U.S. prime time programming. In its subsequent decision, the Commission summarized Corus' position as follows:

Corus stated, however, that it sometimes receives programming that is live or near-live (i.e., prepared shortly before being aired), which offers limited opportunity to prepare described video for the programming content. It therefore requested an exception to its described video requirement that would take into account the timing between the receipt of programming and when that programming is aired, thereby providing it with sufficient time to create described video files.<sup>12</sup>

14. Corus proposed an amendment to the new DV COL that would have removed the obligation of broadcasters to include DV in pre-recorded programs received less than five days from scheduled broadcast. However, the Commission denied Corus' proposed amendment stating, first, no other broadcasters had indicated that securing prime time DV was problematic and second, Corus had had ample time to adjust its procurement agreements to ensure that acquired programs included DV. Regardless, as evidenced by the above excerpts from the public hearing, it was clear that Canadian broadcasters contractually require that Canadian programs include DV, and that it is U.S. programs that are often delivered without DV.

15. Corus is not the only broadcaster that indicated that it would be unable to meet the requirements of the new DV COL. Many independent broadcasters have also stated that they anticipate problems in meeting the new requirement. As part of the BNC 2017-183<sup>13</sup>, the Commission asked the independent broadcasters to confirm they would accept the new "prime

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<sup>10</sup> Ibid. Lines 6200 to 6203.

<sup>11</sup> Broadcasting Regulatory Policy CRTC 2016-436, *Standard requirements for television stations, discretionary services, and on-demand services*.

<sup>12</sup> Broadcasting Decision CRTC 2017-150, *Corus Entertainment Inc. – Licence renewals for English-language television stations and services*, paragraph 92.

<sup>13</sup> Broadcasting Notice of Consultation CRTC 2017-183, *Call for licence renewal applications*.

time" DV requirements. The independent broadcasters raised legitimate concerns regarding the prime time DV requirement and asked for an amendment or an exemption.

16. For example, CHCH-DT described the significant challenges of receiving programming shortly before it is scheduled to air and the lack of time to produce a DV track for this content:

Due to the nature of broadcast television, CHCH-DT often receives content only hours or days before it is scheduled to air. CHCH-DT is unable to produce or outsource described video tracks in such a short window of time. Creating professional-quality described video for one hour of programming takes between 4 and 5 workdays for a single described video professional. In the case of near live or simulcast programming, which is not made available until the day of broadcast, broadcasters are unable to produce or acquire a DV track before the first airing.<sup>14</sup>

17. Irrespective, the Commission began to impose the described video requirements as COLs on television broadcasters at the time of their licence renewal, often citing a lack of evidence to support the difficulties in complying with the pending COL. To date, the DV requirement for prime time programming has been imposed on the following broadcasters through the following Commission decisions:

- Bell Media (Decision 2017-144 and Decision 2017-149, 15 May 2017);
- Corus Entertainment (Decision 2017-145 and Decision 2017-150, 15 May 2017);
- Groupe V Media (Decision 2017-146, 15 May 2017);
- Quebecor Media (Decision 2017-147, 15 May 2017);
- Rogers Media (Decision 2017-151, 15 May 2017]
- Rogers Media (Omni Regional), (Decision 2017-153, 15 May 2017);
- Telelatino (Decision 2017-156, 15 May 2017);
- DHX Television Ltd (Decision 2018-228, 5 July 2018); and
- WOW Unlimited Networks Inc. (Decision 2018-230, 9 July 2018).

### **U.S. DV requirements are less stringent than Canada's**

18. All Canadian broadcasters who purchase U.S. programming grapple with the same challenges related to providing DV. This programming is frequently delivered without sufficient turnaround time to produce a DV version prior to broadcast and some of that programming arrives the same day as the Canadian broadcast.

19. While the amount of U.S. programming with DV is slowly increasing, much of the U.S. broadcast schedule still does not include DV. U.S. television broadcasters are currently required to provide 87.5 hours of video description per calendar quarter (about seven hours per week).<sup>15</sup> In addition, there are two significant differences between the U.S. requirement and that of the Parties.

- First, the U.S. does not require DV for all programs broadcast during prime time. For clarity, in the U.S., the seven hours of programming with DV can be from any part of the broadcast day.
- Second, in order to attain the current 87.5 hours per quarter, U.S. broadcasters are permitted to use repeat broadcasts towards their DV hours.

<sup>14</sup> CHCH-DT Reply letter to CRTC dated 31 August 2017, page 2.

<sup>15</sup> See: [US Electronic Code of Federal Regulations](#).

20. Moreover, U.S. broadcasters have an exemption for live or near-live programming.<sup>16</sup> In addition, the U.S. requirements currently only apply to the following networks in the top 60 markets: ABC, CBS, FOX, NBC, Disney, History, TBS, TNT, and USA. Furthermore, the CVAA gives the FCC authority, beginning in 2020, to phase in DV requirements for up to an additional 10 markets each year.<sup>17</sup> Given that there are still markets in the U.S. that will not have any DV requirements until at least 2020, it is clear that there cannot be 100% DV coverage in the U.S. by 2020 as suggested during the Television Policy Review.

21. As a result, a significant amount of popular U.S. programming that is acquired by Canadian broadcasters and aired in prime time does not arrive with DV and is unlikely to in the near future. Canadian broadcasters simply do not have the market power to dictate program procurement standards to U.S. providers. Consequently, there is an insurmountable challenge in ensuring that all applicable prime time programming contains DV.

22. Finally, it would be detrimental, particularly to local television stations, to delay the broadcast of U.S. programs that are provided without DV until such time that DV is embedded in the program. Any delay in the broadcasting of U.S. network programs would eliminate the ability of over-the-air (OTA) stations to perform simultaneous substitution. The subsequent loss of advertising revenues would have catastrophic implications for local TV as well as the production of local news. The struggle of these stations to remain viable, in this current state, is well-documented.

### **The Scale of the Challenge**

23. To assist the Commission in understanding the scale of the challenge, we have calculated the amount of prime time U.S. programming received by the Parties that does not contain DV and the timeframes within which Canadian broadcasters receive this programming.<sup>18</sup> In this regard, we refer the Commission to the chart in Appendix A which provides a current snapshot of the situation. The chart also demonstrates that the amount of DV programming in the broadcast system will be incremental to the current regulatory requirement. We expand on these points below.

24. First, the short turnaround to provide DV for U.S. programming affects both conventional OTA stations and discretionary services.<sup>19</sup> OTAs receive a significant portion of U.S. prime time content, without DV, within three days of scheduled broadcast. In the case of some OTA broadcasters, as much as 50% of their prime time schedule would require the production of DV within a three-day window. For discretionary services, we note that some receive up to 36% of their U.S. prime time programming without DV less than 72 hours before broadcast.

25. Second, the Parties are currently only required to provide four hours of DV programming throughout the broadcast week with no requirement to provide DV programming during prime time. However, based on Appendix A, and irrespective of the issue with U.S. programming, the amount of DV programming in the system will clearly be incremental to the current requirement.

26. In particular, Canadian programming is not explicitly required to have DV in prime time (although it is broadcast with DV where it is provided). As the Parties are not requesting relief

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<sup>16</sup> Ibid.

<sup>17</sup> <https://www.gpo.gov/fdsys/pkg/BILLS-111hr3101pcs/pdf/BILLS-111hr3101pcs.pdf>.

<sup>18</sup> The Parties used their October 2018 schedules; however, it should be noted that broadcast schedules are subject to change.

<sup>19</sup> See the last column in the section "U.S. and other Foreign Programming (hours)".

for the Canadian programming broadcast in prime time, this alone will increase the amount of DV programming aired. For example, CTV's prime time schedule would have 3.5 hours of incremental DV programming; TMN would have 6.75 hours of incremental DV programming and notably, IFC would have 21.5 hours of incremental DV programming.<sup>20</sup>

27. Moreover, in examining the total number of DV hours in prime time (and excluding the programming that is not required to have DV as it does not fall into one of the enumerated programming categories), CTV would be providing 18.5 hours of DV programming in prime time and for CTV2, it would be 19.5 hours. The City TV and OMNI stations would both air 20 hours of DV programming in prime time. In addition, Global would air 14 hours of DV programming in prime time. Finally, the majority of discretionary services will include DV for all their required prime time programming.<sup>21</sup>

28. However, given the scale of the challenge for the Parties (let alone the entire industry) across their OTA and discretionary services, creating DV for all U.S. primetime programming is not currently possible. With the number of programs that would have to be described, a short turnaround would be extremely unlikely. One of the key reasons that a quick turnaround time is not possible stems from the fact that DV is itself a creative process. DV producer Red Bee Media highlights the creative nature of DV:

Described Video is a creative process – it's not an audio form of captioning, where the captioner is simply transcribing dialogue with pointers as to music and sound effects. DV begins creatively with a blank page, and there are many decisions to be made – from understanding what is the most important thing to describe at any given moment, through considerations of tone and language, to the technical aspects of how to describe them within the time constraints of the gaps in dialogue available.<sup>22</sup>

29. The creative nature of DV combined with the sheer volume of programs is why live DV is not a viable solution either; this is particularly the case for scripted program given the complicated nature of the DV process. The provision of DV involves several steps to complete including script creation, voice record, edit/mix and the delivery for ingest of content. In particular, DV projects range not just in length but in complexity; a two-hour program with a lot of visual content that needs to be described takes longer than something that is light on visual content. In addition, continuity is also an issue that can delay DV production; for example, a program series requires continuity in how characters and gestures are described. Moreover, it is important to recognize that DV production happens within the context of real world operational constraints. Finally, we note that the process to provide DV is significantly different than the process required to provide closed captioning. In this regard, providing closed captioning is a technical process and not a creative one. Given this, it is achievable to provide 100% closed captioning regardless of when programming is provided to broadcasters.

30. Given these important nuances, we believe that 72 hours is the absolute minimum amount of time required in which to add DV to U.S. prime time programming. In support of our proposed 72-hour DV timeframe, we are including letters from DV suppliers attesting to the steps and efforts required to produce DV (see Appendix B). In addition, in Appendix C, we provide letters from the U.S. studios attesting to their delivery times for prime time programming.

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<sup>20</sup> See the second last column "received without DV" in the section "Canadian Programming (hours)".

<sup>21</sup> See the first column "hours" in the section "Prime Time Total".

<sup>22</sup> See Appendix 1, Red Bee Media Letter, paragraph 2.

### **An Amendment to the Prime time DV Requirement is Warranted**

31. Given that the Parties will not be able to meet the prime time DV requirement by 1 September 2019, we believe that an exception to the implementation of the prime time DV requirement is warranted.

32. We recognize that the Commission has considered previous requests to amend this condition of licence. In assessing previous requests, the Commission has noted the following:

- broadcasters have had sufficient time to update their procurement agreements to reflect the described video requirement;
- programming supported by Canadian Independent Production Funds must now be provided to broadcasters with closed captioning and DV; and
- broadcasters typically require all appropriate original first run Canadian programming to be delivered with described video.<sup>23</sup>

33. The Parties very much support the Commission's determinations concerning the production of DV for Canadian programming, however, as we have detailed above, the situation is very different for U.S. programming. Quite simply, Canadian broadcasters do not have the market power to dictate that U.S. studios deliver programming with DV. Given this fact, Canadian broadcasters must commission the production of DV and this production process cannot be expedited in a shorter timeframe than 72 hours given the volume of U.S. programs that air in prime time.

34. In view of the above, we respectfully submit that the Commission should consider an exception to the prime time DV requirement that takes into account the late delivery of content without DV. We propose the following amendment to the 2019 prime time DV requirement:

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) with the exception of non-Canadian programs that are received less than 72 hours prior to air. Such programs will be broadcast with described video for repeat airings scheduled in prime time greater than 72 hours from delivery.

35. In this manner, the Parties will be able to comply with the intent of the Commission's policy (i.e., to increase the availability of DV programming in prime time) with the proposed amendment taking into account a significant operational barrier.

36. We note that the Parties currently provide AMI with the requisite information to populate the DV Guide that AMI provides for consumers. In this regard, we confirm our continued willingness to participate in this program such that consumers will have ready access to where and when they can view programming with DV.

37. Finally, in order to properly monitor broadcaster compliance with this revised COL, we also propose that broadcasters be required to keep a log detailing the receipt date of all U.S. programs, broadcast in prime time, received without DV. A suggested template is provided in

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<sup>23</sup> Decision 2017-150, paragraph 97.

Appendix D. Further, should the Commission choose to audit compliance, broadcasters would be required to keep proof of the time of receipt of these programs for a period of twelve months.

### **Conclusion**

38. For the reasons given above, we respectfully submit that the Commission should amend the DV requirements related to the broadcast of prime time programming. In addition, we wish to reiterate that the Parties fully support the provision of DV programming and that they will ensure that all of their prime time programming is accessible to visually impaired viewers when the provision of DV is technically feasible.

39. Should the Commission require any additional information to support this application by the Parties, we would be pleased to provide it upon request.

Yours truly,

#### **Kevin Goldstein**

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