



## Broadcasting Public Notice CRTC 2006-132

Ottawa, 16 October 2006

### **Amendment to the *Exemption order respecting closed circuit video programming undertakings***

*The Commission amends the Exemption order respecting closed circuit video programming undertakings to ensure that such undertakings do not operate in a manner that prevents a hotel or motel guest, hospital patient or prison inmate from receiving any programming service listed in section 37 of the Broadcasting Distribution Regulations, which sets out the television programming services that must be distributed by direct-to-home (DTH) broadcasting distribution undertakings as part of the basic service.*

#### **Introduction**

1. On 19 May 2005, the Commission issued *Call for comments – Proposed amendments to the Exemption order respecting closed circuit video programming undertakings*, Broadcasting Public Notice CRTC 2005-52, 19 May 2005 (Public Notice 2005-52). In Public Notice 2005-52, the Commission sought comments on proposed amendments to the *Exemption order respecting closed circuit video programming undertakings* (the Exemption Order) set out in the appendix to *Final revisions to certain exemption orders*, Public Notice CRTC 2000-10, 24 January 2000, as corrected by *Correction to Public Notice CRTC 2000-10; Final revisions to certain exemption orders*, Public Notice CRTC 2000-10-1, 27 March 2001.
2. The proposed amendments sought to ensure that exempt closed circuit video programming undertakings (CCVPUs) do not allow their programming to displace the programming of the Aboriginal Peoples Television Network (APTN), the French-language television network TVA, and the Cable Public Affairs Channel (CPAC) and at least one Canadian all-news service in each official language. Public Notice 2005-52 also proposed that the Exemption Order be amended to provide that a CCVPU not operate in a manner that prevents a hotel or motel guest, hospital patient or prison inmate from receiving any programming service set out in section 37 of the *Broadcasting Distribution Regulations* (the Regulations), which sets out the television programming services that direct-to-home (DTH) broadcasting distribution undertakings (BDUs) must distribute as part of the basic service.

#### **Background**

3. Hotels, motels, hospitals and prisons (hereinafter referred to as “Temporary Residences”) often acquire packages of both licensed and unlicensed programming services. Licensed programming services are acquired in one of two ways. The first way is through a contract with a licensed BDU. In this case, the Temporary Residence enters into an

agreement with a cable, satellite or multipoint distribution system (MDS) BDU permitting it to deliver certain programming services to its clients. This activity does not require any authorization from the Commission.

4. The second way is by operating under the Commission's *Exemption order respecting master antenna television systems* set out in the appendix to *Amendment to the exemption criteria for master antenna television systems (MATV)*, Broadcasting Public Notice CRTC 2002-35, 9 July 2002. In this case, the Temporary Residence, or a third party operating the system on behalf of the Temporary Residence, acquires programming services from a variety of sources and makes those services available to guests.
5. In addition to the above activities, some Temporary Residences also acquire or contract for unlicensed programming or non-programming services, such as movies or video games, which are made available to guests for a fee. The provision of programming material falls under the definition of a programming undertaking in the *Broadcasting Act* (the Act) and would ordinarily require a licence. However, this activity can fall under the current Exemption Order.
6. The Exemption Order currently requires that the exempt undertaking does not operate in a manner that prevents a hotel or motel guest, hospital patient or prison inmate from receiving certain programming services. This means that those services, where they are made available by a licensed or exempt BDU as part of its basic service, must not be displaced in order to provide the movie and video game services referred to above. For greater clarity, where a Temporary Residence does not have the technical capacity to offer its clients services that ordinarily must be passed through under the Exemption Order, the Exemption Order does not require the Temporary Residence to increase its capacity in order to offer them, for example, where the BDU carries priority channels above channel 70 and the hotel has only a 60-channel system. However, when, in the normal course, systems are upgraded to increase their capacity, the exempt CCVPU must not allow its programming to be carried in a manner that prevents guests, patients, and inmates from receiving the services noted in the Exemption Order.

### **Positions of parties**

7. Twelve comments were filed by the deadline date of 19 October 2005. The Office of the the Commissioner of Official Languages, Saskatchewan Telecommunications' Hospitality Network (SaskTel), Bell Canada (Bell), Aboriginal Peoples Television Network Incorporated (APTN Inc.), and the Hotel Association of Canada either opposed or suggested changes to the proposed amendments.
8. The Office of the Commissioner of Official Languages generally supported the proposed amendments but suggested that the programming provided by CPAC be provided "in both official languages."

9. The Hotel Association of Canada and Bell opposed the proposal that would ensure access to Canadian all-news television services in both official languages when delivered by a BDU as part of its basic service. These interveners submitted that, by approving this amendment, the Commission would, in effect, be elevating Canadian all-news television services, using the Exemption Order, to the same regulatory status as those services distributed pursuant to orders issued under section 9(1)(h) of the Act.
10. Both SaskTel and the Hotel Association submitted that a significant capital investment would be required to upgrade CCVPUs to allow distribution of the proposed additional services. SaskTel estimated a cost of \$500,000 for its network, and the Hotel Association of Canada estimated that the cost for its members could be as high as \$117,653,200.
11. APTN Inc. fully supported the proposed amendments to the Exemption Order to ensure that Temporary Residences provide certain fundamental Canadian programming services, as provided to them by another BDU. APTN Inc. suggested, however, that the proposed amendments be modified in order to provide Temporary Residences with a six month grace period to come into compliance with the amended Exemption Order.
12. Although SaskTel and the Hotel Association of Canada expressed concern about the technical upgrades that they considered would be necessary should the proposed amendments to the Exemption Order be approved, SaskTel's Hospitality Network stated that it is already passing through all the additional programming services proposed in Public Notice 2005-52, where it is technically capable of doing so. It is also committed to upgrade its facilities over time to enable the transmission of these services throughout its system.

### **Commission's analysis and determinations**

13. The Exemption Order currently requires that Temporary Residences pass through those services listed in section 17 or section 32 of the Regulations, provided that they are not carried by the licensed BDU on channels beyond the capacity of the exempted undertaking.

### **Services that must be distributed**

14. Currently, the Commission has licensed four national all-news television specialty services, two in English – CBC Newsworld and CTV NewsNet – and two in French - Le Réseau de l'information (RDI) and Le Canal Nouvelles (LCN). The Commission's distribution and linkage requirements for Class 1 and Class 2 licensees set out the rules regarding the distribution of programming services on an analogue basis.<sup>1</sup> For CBC Newsworld and RDI, the Commission requires Class 1 BDUs to distribute these services on a dual status basis, that is, as part of the basic service unless the services agree to distribution as part of a tier. For CTV NewsNet and LCN, the Commission currently requires Class 1 BDUs to distribute these services on a modified dual status basis, that is,

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<sup>1</sup> *Distribution and linkage requirements for Class 1 and Class 2 licensees*, Broadcasting Public Notice CRTC 2005-119, 14 December 2005.

on a discretionary basis, unless the BDU and the programming service operator agree to their distribution as part of the basic service. The Commission understands that most exempt CCVPUs are served by Class 1 BDUs and therefore have access to at least one all-news Canadian service in each official language.

15. Pursuant to section 9(1)(h) of the Act, the Commission “may require any licensee who is authorized to carry on a distribution undertaking to carry, on such terms and conditions as the Commission deems appropriate, programming services specified by the Commission.” The Commission has used this authority in various circumstances, including requiring the distribution of certain television services as part of the basic service offered by most BDUs. These services include TVA, the French-language television network service operated by TVA Group Inc.; the satellite-to-cable programming services APTN, operated by APTN Inc. and CPAC, operated by Cable Public Affairs Channel Inc. In addition, the Commission has used section 9(1)(h) to require the distribution of the audio programming service VoicePrint operated by the National Broadcast Reading Service Inc. VoicePrint is carried on a secondary audio channel of Newsworld. Collectively, these services will be referred to as the 9(1)(h) services for the purpose of this Public Notice.
16. The Commission considers that distribution of such 9(1)(h) services, as part of the basic service, is necessary to ensure wide distribution of these services across the country. Consequently, the Commission considers that CCVPUs should not operate in a manner that would undermine important broadcasting policy objectives by allowing Temporary Residences to offer non-Canadian programming consisting of feature films and video games in lieu of important Canadian programming services.
17. However, the Commission considers that the record of this proceeding does not provide a clear understanding of the impact of requiring Temporary Residences to pass through the 9(1)(h) services and at least one Canadian all-news television service in each official language. As noted earlier, both the Hotel Association and SaskTel estimated that significant technical upgrades would be required in order to implement the Commission’s proposals and that these would entail high costs. Further, the record does not provide information with respect to the existing capacity of Temporary Residences or their timetables for technical upgrades.
18. The Commission recognizes that broadcasting systems are in the process of transitioning from analogue distribution to digital distribution and from standard definition digital to high definition digital. When this digital transition is complete, capacity issues related to the distribution of services may be resolved. In the meantime, the Commission expects that every effort be made to provide guests, patients or inmates with Canadian all-news channels in both official languages as well as the 9(1)(h) television services: APTN, TVA, as well as CPAC in both official languages.

19. However, the Commission will not, at this time, amend the Exemption Order as proposed with respect to programming services that are distributed by BDUs pursuant to orders of the Commission issued under section 9(1)(h) of the Act or Canadian all-news television services in both official languages.

**Services received from DTH BDUs**

20. The Commission notes that Temporary Residences receive programming from DTH BDUs, as well as from cable BDUs. The Commission therefore considers that it is appropriate to amend the Exemption Order by revising paragraph five to ensure that CCVPUs do not operate in a manner that prevents a hotel or motel guest, hospital patient or prison inmate from receiving any programming service listed in section 37 of the Regulations, which sets out the television programming services that must be distributed by DTH BDUs as part of the basic service. The revised paragraph 5, which is included in the Exemption Order set out in the appendix to this decision, reads as follows:

The undertaking does not operate in a manner that prevents a hotel or motel guest, hospital patient or prison inmate from receiving any programming service listed in sections 17, 32 or 37 of the *Broadcasting Distribution Regulations* when that service is provided to the owner or operator of a hotel, motel, hospital or prison as part of the basic service of a licensed or exempt broadcasting distribution undertaking that is subject to one or another of those sections, or from receiving any signal of a local television station when that signal is provided by a master antenna television system operating in accordance with the *Exemption Order respecting master antenna television systems*.

Secretary General

*This document is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>*

## Appendix to Broadcasting Public Notice CRTC 2006-132

### Exemption order respecting closed circuit video programming undertakings

The Commission, pursuant to subsection 9(4) of the *Broadcasting Act*, by this order, exempts from the requirements of Part II of the Act and any regulations, those persons carrying on broadcasting undertakings of the class defined by the following criteria:

#### Purpose

The purpose of these television programming undertakings is to provide a programming service, whether for a separate fee or not, to temporary residents of hotels, motels and hospitals or the inmates of prisons only, and not to residents of permanent dwelling places. The programming consists only of feature motion pictures intended for theatrical release, video games programming services, or information about the city or about the premises served by the undertaking, and does not contain any commercial messages.

#### Description

1. The Commission would not be prohibited from licensing the undertaking by virtue of any direction to the Commission by the Governor in Council.
2. The undertaking meets all technical requirements of the Department of Industry and has acquired all authorizations or certificates prescribed by the Department.
3. The undertaking does not broadcast programming that is religious or political in nature, excepting feature motion picture films intended for theatrical release.
4. The undertaking provides a programming service consisting only of feature motion picture films intended for theatrical release or promotions for such films, video games programming services, and information about the city and the facilities for the guests of hotels or motels, the patients of hospitals and the inmates of prisons.
5. The undertaking does not operate in a manner that prevents a hotel or motel guest, hospital patient or prison inmate from receiving any programming service listed in sections 17, 32 or 37 of the *Broadcasting Distribution Regulations* when that service is provided to the owner or operator of a hotel, motel, hospital or prison as part of the basic service of a licensed or exempt broadcasting distribution undertaking that is subject to one or another of those sections, or from receiving any signal of a local television station when that signal is provided by a master antenna television system operating in accordance with the *Exemption Order respecting master antenna television systems*.