



Broadcasting Decision CRTC 2007-82

Ottawa, 13 March 2007

Bell ExpressVu Inc., (the general partner) and BCE Inc. and 4119649 Canada Inc. (partners in BCE Holdings G.P., a general partnership that is the limited partner), carrying on business as Bell ExpressVu Limited Partnership
Across Canada

Application 2006-1541-1

Broadcasting Public Notice CRTC 2006-164

21 December 2006

Distribution of satellite subscription radio services

*The Commission **approves** an application by Bell ExpressVu Inc., (the general partner) and BCE Inc. and 4119649 Canada Inc. (partners in BCE Holdings G.P., a general partnership that is the limited partner), carrying on business as Bell ExpressVu Limited Partnership to amend the broadcasting licence for its national, direct-to-home satellite distribution undertaking, in order to add a **condition** authorizing the licensee to distribute, at its option, the audio programming service of one or more licensed satellite subscription radio (SSR) undertakings on a digital basis, subject to the following provisions:*

- the licensee is not permitted to use the signals of conventional radio programming undertakings, with the exception of those required to be distributed under section 22 of the Broadcasting Distribution Regulations (the Regulations), to fulfil the preponderance requirement set out in section 6(2) of the Regulations, unless a subscriber is already receiving at least 40 channels of one or more pay audio programming undertakings; and*
- the Canadian-produced channels of the SSR undertaking that are being distributed will be considered Canadian programming services for the purposes of section 6(2) of the Regulations.*

The application

1. The Commission received an application by Bell ExpressVu Inc., (the general partner) and BCE Inc. and 4119649 Canada Inc. (partners in BCE Holdings G.P., a general partnership that is the limited partner), carrying on business as Bell ExpressVu Limited Partnership (Bell ExpressVu) to amend the broadcasting licence for its national, direct-to-home satellite distribution undertaking (DTH BDU). The licensee requested that it be

authorized, by condition of licence, to distribute, at its option, the audio programming service of one or more licensed satellite subscription radio (SSR) undertakings on a digital basis.

2. Bell ExpressVu submitted that approval of this condition of licence would assist SSR undertakings to deliver benefits to Canadian artists and consumers, as set out in their original applications.

Interventions

3. The Commission received an intervention expressing general comments with respect to this application, by Rogers Cable Communications Inc. (Rogers) as well as an intervention in opposition by the Canadian Independent Record Production Association (CIRPA).
4. Rogers stated that, while it did not oppose the application submitted by Bell ExpressVu, it was of the view that approval should be on terms that are equivalent to those granted to Rogers in *Distribution of satellite subscription radio services*, Broadcasting Decision CRTC 2006-650, 28 November 2006 (Decision 2006-650).
5. CIRPA argued that the applications for SSR services were predicated and approved by the Commission on the underlying assumption that these services would be delivered via satellite to receivers designed specifically for that purpose. The intervener also submitted that the widespread distribution of satellite radio by BDUs was not contemplated in the satellite radio applications or in the Commission's decision to impose lighter Canadian content obligations on the SSR services than on pay audio services or conventional radio stations. In addition, CIRPA raised concerns that BDU distribution of SSR services could have a negative impact on the pay audio services, potentially resulting in their demise and the attendant loss of a significant amount of airplay for Canadian music.

Licensee's reply

6. In response to Rogers' intervention, Bell ExpressVu submitted that identical terms to those set out in Decision 2006-650 would not be useful. Specifically, Bell ExpressVu stated that an obligation to carry at least 40 channels of one or more pay audio services would prevent it from offering many Canadian commercial and non-commercial radio undertakings to national audiences and from allowing a greater exchange of regional cultures and ideas.
7. Bell ExpressVu submitted that the Commission should reject CIRPA's position as it has done with similar interventions for other applications requesting the distribution of satellite subscription radio services.

Commission's analysis and determinations

8. In Decision 2006-650, the Commission approved, subject to specific provisions, an application by Rogers to distribute one or more licensed SSR services on a digital basis on its BDUs serving various locations in Ontario, New Brunswick, and Newfoundland and Labrador.
9. The Commission notes that Bell ExpressVu's DTH BDU operates under similar circumstances as those of Rogers. The Commission concludes that, consistent with Decision 2006-650, it is appropriate to authorize Bell ExpressVu to distribute the SSR services on a digital basis, subject to the same provisions as those imposed on Rogers. The Commission finds that it is appropriate to authorize Bell ExpressVu to distribute SSR services, under provisions in respect of such distribution that will place those services on a relatively equal competitive footing with pay audio services, which are subject to a linkage ratio of one Canadian service to one non-Canadian service. The Commission further finds it appropriate that the applicable provisions offer some incentive to distributors to continue to distribute pay audio services, as well as the SSR services. In this way, both subscribers and the Canadian broadcasting system can potentially benefit from a greater diversity in audio services. At the same time, the use of Canadian creative and other resources in the provision of audio programming on BDUs can be maximized.
10. The Commission is imposing a **condition**, as set out below, specifying that conventional radio signals, with the exception of those required under section 22 of the *Broadcasting Distribution Regulations* (the Regulations),¹ may not be used to fulfil the preponderance requirement set out in section 6(2) of the Regulations, unless a subscriber is already receiving at least 40 channels of pay audio.² The Canadian-produced channels of the SSR service that are being distributed may also be used to fulfil the requirements set out in section 6(2) of the Regulations; that is, the Canadian-produced channels of the SSR service that are being distributed will be considered Canadian programming services for the purposes of section 6(2) of the Regulations.
11. In light of the above, the Commission **approves**, with the provisions described above, the application by Bell ExpressVu Inc., (the general partner) and BCE Inc. and 4119649 Canada Inc. (partners in BCE Holdings G.P., a general partnership that is the limited partner), carrying on business as Bell ExpressVu Limited Partnership, to amend the broadcasting licence for its national, direct-to-home satellite distribution undertaking, in order to add the following **condition**:

¹ Under section 22 of the Regulations, BDUs must distribute local community, campus and native radio programming undertakings as well as at least one Canadian Broadcasting Corporation radio programming undertaking operating in English and one operating in French.

² The Commission notes that the requirement set out in section 6(2) of the Regulations applies to each of analog and digital technology, as well as to audio and video channels, separately. Thus, conventional radio stations, whether or not they must be distributed pursuant to section 22 of the Regulations, can only be taken into account for these purposes if they are distributed on a digital basis.

The licensee is authorized to distribute, at its option, the audio programming service of any licensed satellite subscription radio undertaking on a digital basis. The distribution of satellite subscription radio signals is subject to the following provisions:

- (i) Subject to the exception outlined in (ii), the licensee may not count the signals of conventional radio programming undertakings for the purpose of fulfilling the preponderance requirement set out in section 6(2) of the *Broadcasting Distribution Regulations* (the Regulations) unless a subscriber is already receiving 40 channels of one or more licensed pay audio programming undertakings.
- (ii) A licensee is entitled to count the signals of conventional radio programming undertakings that a licensee is required to distribute under section 22 of the Regulations for the purpose of fulfilling the preponderance requirement set out section 6(2) of the Regulations.
- (iii) The Canadian-produced channels offered by the satellite subscription radio undertaking are deemed to be “Canadian programming services” for the purposes of section 6(2) of the Regulations.

Secretary General

This decision is to be appended to the licence. It 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>

