



Broadcasting Decision CRTC 2009-278

Route reference: 2009-59

Ottawa, 15 May 2009

Bell ExpressVu Inc. (the general partner) and BCE Inc. and Bell Canada (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 2009-0237-1, received 28 January 2009

Extension of authorization to distribute partial or omnibus channels

*The Commission **approves** the application by Bell ExpressVu Inc. (the general partner) and BCE Inc. and Bell Canada (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 direct-to-home satellite distribution undertaking in order to extend the authorization to distribute partial or omnibus channels containing unique local or regional programming.*

Introduction

1. The Commission received an application by Bell ExpressVu Inc. (the general partner) and BCE Inc. and Bell Canada (partners in BCE Holdings G.P., a general partnership that is the limited partner), carrying on business as Bell ExpressVu Limited Partnership (ExpressVu), to amend the broadcasting licence for its direct-to-home (DTH) satellite distribution undertaking in order to extend the authorization to distribute partial or omnibus channels containing unique local or regional programming granted in Broadcasting Decision 2005-457. The licensee requested that this authorization be extended to 31 August 2010, the end of its current licence term.
2. In Broadcasting Decision 2008-47, the Commission extended ExpressVu's initial authorization to distribute partial or omnibus channels until 90 days following the publication of the Commission's determinations with respect to the review of the regulatory frameworks for broadcasting distribution undertakings (BDUs) and discretionary programming services (Broadcasting Notice of Public Hearing 2007-10). In Broadcasting Public Notice 2008-100, dated 30 October 2008, the Commission set out its determinations regarding the regulatory frameworks for BDUs and discretionary programming services. The authorization therefore expired on 28 January 2009.
3. ExpressVu argued that not granting a further extension to the authorization would deny consumers access to the local news programs of the following stations, which would no longer be distributed by ExpressVu on a part-time basis: CBAT-TV Fredericton/Saint John, New Brunswick; CBCT Charlottetown, Prince Edward Island; CFER-TV Rimouski, Quebec; and CBLFT Toronto and CJOH-TV Ottawa, Ontario.

4. The Commission received an intervention in support of and interventions commenting on the application. The Commission also received an intervention in conditional support by CTVglobemedia Inc. (CTVgm), to which the applicant replied. The interventions and the applicant's reply are available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."
5. The Commission considers that the issue to be determined is whether approving the applicant's request for an extension of its authorization is appropriate.

Commission's analysis and determination

6. CTVgm stated that it was prepared to support ExpressVu's application on condition that ExpressVu guarantee the carriage of local stations into their local markets as its first priority once capacity becomes available and provide a timetable relating to such capacity. CTVgm also noted that numerous parties, including itself, have requested that the 31 August 2011 implementation date for the changes to the rules governing the distribution of local over-the-air television stations by DTH providers be moved up.¹
7. Regarding CTVgm's first condition, ExpressVu noted in its reply that it has been its longstanding priority to distribute as many local signals as is practical given its satellite capacity, the number of priority, specialty and pay must-carry services, the demand for extra capacity for high-definition services, and the need to accommodate the broad range of subscriber viewing interests and preferences through the distribution of discretionary services. ExpressVu further noted that despite its capacity constraints, its distribution of local signals on a full-time basis significantly exceeds its regulatory obligations.
8. With respect to CTVgm's second condition, ExpressVu noted that it had recently filed two reports (August 2007 and December 2008) detailing the state of its evolving technological capabilities, its distribution capacity and its plans to deal with prevailing constraints. It also indicated that abridged versions of both reports are on the public record.
9. As set out in Broadcasting Decision 2005-457 and reiterated in Broadcasting Decision 2008-47, the Commission considers that partial or omnibus distribution of unique programming is a reasonable means of providing access to the greatest possible range of unique local and regional programming for all of ExpressVu's subscribers while minimizing the impact on the licensee's capacity. Partial or omnibus distribution provides benefits for subscribers and for ExpressVu, as well as for programming services that are not currently distributed on a full-time basis.
10. The Commission considers that the opposing interventions received relating, for example, to the absence of CBC Edmonton from ExpressVu's channel line-up fall outside the scope of this application.

¹ See Broadcasting Public Notice 2008-100.

11. In light of all of the above, the Commission **approves** the application by Bell ExpressVu Inc. (the general partner) and BCE Inc. and Bell Canada (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 direct-to-home satellite distribution undertaking. The licensee's condition of licence relating to the distribution of partial or omnibus channels is hereby replaced by the following **condition**:

The licensee is relieved from the requirements of section 7 of the *Broadcasting Distribution Regulations* solely for the purpose of distributing, on a part-time basis, via partial and/or omnibus channels, the local and regional news, weather, sports and other unique local or regional programming exhibited by those licensed over-the-air, i.e., conventional, television stations not distributed by the licensee in their entirety. Distribution of programming on a part-time basis is subject to the following requirements:

- a) Distribution of part-time programming may only take place on a partial channel with the prior written consent of the television station originating the programming. In addition, the further prior written consent of the television station is necessary in order to distribute this part-time programming on an omnibus channel, or at a time that is not simultaneous with its original broadcast on the television station.
- b) Prior notification must be given to the Commission before the programming of a television station to be distributed on a part-time basis is added to the licensee's channel line-up.
- c) The licensee shall provide equitable distribution of participating television stations distributed in the manner described above, according to the principles set out in the Schedule to Appendix 1 of *ExpressVu – Licence renewal*, Broadcasting Decision CRTC 2004-129, 31 March 2004.

12. The Commission intends to review this condition of licence at the licensee's next licence renewal.

Secretary General

Related documents

- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services – Regulatory policy*, Broadcasting Public Notice CRTC 2008-100, 30 October 2008
- *Extension of authorization to distribute partial and omnibus channels*, Broadcasting Decision CRTC 2008-47, 27 February 2008

- *Review of the regulatory frameworks for broadcasting distribution undertakings and discretionary programming services*, Broadcasting Notice of Public Hearing CRTC 2007-10, 5 November 2007
- *Authorization to distribute partial or omnibus channels containing unique local and regional programming*, Broadcasting Decision CRTC 2005-457, 8 September 2008

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>.