



Broadcasting Notice of Consultation CRTC 2011-290

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Ottawa, 3 May 2011

Call for comments on amendments to the *Exemption order respecting radiocommunication distribution undertakings*

The Commission calls for comments on amendments to the Exemption order respecting radiocommunication distribution undertakings (RDUs). Specifically, the Commission proposes to delete criteria 3, 7, 8 and 9 of the exemption order, as well as amend criterion 4 to add the word “curtail.” Further, since the purpose of an RDU is to serve small, rural and/or often remote communities, the Commission also seeks proposals for a new criterion that would serve to better frame its purpose and provide an additional safeguard to ensure that an exempt RDU is not assigned the “last frequency” in a medium- or large-size market, thereby preventing the future licensing of a local radio service.

The Commission invites current RDU licensees to provide prior consent for the revocation of their licences should it determine following this public process that their RDUs qualify for exemption under the exemption order as amended. Consent must be provided within the comment period noted below.

*The Commission will accept comments that it receives on or before **2 June 2011**.*

Background

1. Section 9(4) of the *Broadcasting Act* (the Act) states that the Commission shall exempt persons who carry on broadcasting undertakings of any class from any or all of the requirements of Part II of the Act or a regulation made thereunder if it is satisfied that compliance with those requirements will not contribute in a material manner to the implementation of the broadcasting policy for Canada.
2. In Broadcasting Public Notice 2002-45, the Commission set out an *Exemption order respecting radiocommunication distribution undertakings* specifying the criteria to be met to operate a radiocommunication distribution undertaking (RDU) under the exemption order. Many RDUs are already operating under this exemption order. However, some RDUs do not qualify for exemption since they do not meet at least one of the criteria.
3. Among the criteria established in the exemption order are the following:

Criterion 3: Except as permitted by paragraph 4 below, the undertaking distributes without curtailment or alteration, the services of programming undertakings.

Criterion 7: The undertaking operates in an area covered by the Grade A contour of no more than two licensed television programming undertakings.

Criterion 8: Each channel used by the undertaking to distribute radio and/or television signals does not exceed the power limits for low and very low power transmitters, as defined in the Department of Industry's Broadcast Procedures and Rules (Parts II, III and IV).

Criterion 9: The undertaking does not make use of digital MDS technology.

4. In Public Notice 1996-59, the Commission stated that it would conduct a periodic review of exemption orders, which would normally take place five years from the issuance of an order. Since the exemption order for RDUs was published in 2002, the Commission considers that it may be appropriate to revise the exemption order as set out below.

Proposed amendments

Curtailment or alteration of programming services (criterion 3)

5. The Commission notes that the current criterion 3 addresses the curtailment and alteration of the programming services distributed, while the current criterion 4 addresses the alteration and deletion of programming services in the course of their distribution. For administrative purposes and to remove redundancy, the Commission considers it appropriate to amalgamate the current criteria 3 and 4 by deleting criterion 3 and adding the word "curtail" to criterion 4.

Framing of purpose of an RDU (criterion 7)

6. The Commission originally established criterion 7 to maintain the small-market focus of the order, that is, to ensure that exempt RDUs serve small and often remote communities.
7. The Commission notes that it has licensed only a few new RDUs over the last five years which either operate or operated in small markets. As such, the Commission considers that this criterion may no longer be required. However, the Commission is of the view that it may be necessary to better frame the purpose of an RDU to eliminate the potential for an exempt RDU start-up in a large- or medium-size market where there is a scarcity of radio frequencies.
8. Accordingly, the Commission seeks proposals for a new criterion that would serve to better frame the purpose of an RDU and ensure that an exempt RDU is not assigned the "last frequency" in a medium- or large-size market, thereby preventing the future licensing of a local radio service.

Transmitter power restrictions (criterion 8)

9. Broadcasting Public Notice 2002-45 states that criterion 8 was imposed because high-powered signals have the potential to cause interference with local and international

signals and therefore there is greater need to manage the potential signal conflicts that could arise. In this respect, the Commission notes that criterion 2 reads as follows:

The undertaking meets all the technical requirements of the Department of Industry and has acquired all authorization or certificates prescribed by that department.

10. The Commission further notes that the Department of Industry is responsible for addressing interference issues both in the approval phase and once transmitters are operational.
11. Given the above, the Commission is of the view that deleting criterion 8 from the exemption order should have no impact.

Use of digital MDS technology (criterion 9)

12. The Commission imposed this criterion to exclude digital multipoint distribution system (MDS) undertakings from the RDU exemption order. As of 1 September 2011, only one MDS undertaking will still be in operation and it distributes its services only on an analog basis.
13. The Commission further notes that MDS technology has channel capacity constraints and that such equipment is no longer readily available. As such, the Commission is of the view that the exclusion provided for in criterion 9 is no longer warranted.

Procedure

14. The new *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure*, SOR/2010-277 (the Rules of Procedure), set out, among other things, the rules for filing, content, format and service of interventions. Accordingly, the procedure set out below must be read in conjunction with the Rules of Procedure and its accompanying documents, which can be found on the Commission's website under "CRTC Rules of Practice and Procedure."
15. The Commission invites interventions that address the issues set out above. The Commission also invites comments from licensed RDUs on their concerns, if any, regarding operating their undertakings under an exemption order with set criteria. The complete text of the proposed amended exemption order, with the exception of the criterion addressed at paragraph 8, is set out in the appendix to this notice. The Commission will accept interventions that it receives on or before **2 June 2011**. The Commission cannot be held responsible for postal delays and will not notify a party whose intervention is received after the deadline date. The intervention will not be considered by the Commission and will not be part of the public file.
16. The Commission will not formally acknowledge interventions. It will, however, fully consider all interventions, and they will form part of the public record of the proceeding, provided that the procedures for filing set out in the Rules of Procedure and this notice have been followed.

17. The Commission also invites licensed RDUs to provide their prior consent for the revocation of their licences should it determine following this public process that they qualify for exemption under the amended exemption order. This will eliminate the need for licensed RDUs to subsequently submit an application for revocation of their licences. Consent must be provided within the above-noted comment period.
18. Interested persons must file their interventions to the Secretary General of the Commission in **only one** of the following formats:

by using the
[\[Intervention/comment/answer form\]](#)

or

by mail to
CRTC, Ottawa, Ontario K1A 0N2

or

by fax at
819-994-0218

19. Submissions longer than five pages should include a summary.
20. Each paragraph of the submission should be numbered. In addition, where the comment is filed by electronic means, the line ***End of document*** should be entered following the last paragraph of the document, as an indication that the document has not been damaged during electronic transmission.

Important notice

21. All information that parties provide as part of this public process, except information granted confidentiality, whether sent by postal mail, facsimile, e-mail or through the Commission's website at www.crtc.gc.ca, becomes part of a publicly accessible file and will be posted on the Commission's website. This information includes personal information, such as full names, e-mail addresses, postal/street addresses, telephone and facsimile numbers, and any other personal information parties provide.
22. The personal information that parties provide will be used and may be disclosed for the purpose for which the information was obtained or compiled by the Commission, or for a use consistent with that purpose.
23. Documents received electronically or otherwise will be put on the Commission's website in their entirety exactly as received, including any personal information contained therein, in the official language and format in which they are received. Documents not received electronically will be available in PDF format.

24. The information that parties provide to the Commission as part of this public process is entered into an unsearchable database dedicated to this specific public process. This database is accessible only from the web page of this particular public process. As a result, a general search of the Commission's website with the help of either its own search engine or a third-party search engine will not provide access to the information that was provided as part of this public process.
25. The Commission encourages parties and interested persons to monitor the record of the proceeding, which is available on the Commission's website, for additional information that they may find useful when preparing their submissions.

Examination of documents

26. A list of all interventions and answers will also be available on the Commission's website. The list is accessible by selecting "View all proceedings open for comment" from the "Public Proceedings" section of the Commission's website and clicking on the "Interventions/Answers" link associated with this notice.
27. The public may examine public interventions and related documents at the following Commission offices during normal business hours.

Location of Commission offices

Toll-free telephone: 1-877-249-2782
Toll-free TDD: 1-877-909-2782

Les Terrasses de la Chaudière
Central Building
1 Promenade du Portage, Room 206
Gatineau, Quebec
J8X 4B1
Tel.: 819-997-2429
Fax: 819-994-0218

Regional offices

Metropolitan Place
99 Wyse Road
Suite 1410
Dartmouth, Nova Scotia
B3A 4S5
Tel.: 902-426-7997
Fax: 902-426-2721

205 Viger Avenue West
Suite 504
Montréal, Quebec

H2Z 1G2
Tel.: 514-283-6607

55 St. Clair Avenue East
Suite 624
Toronto, Ontario
M4T 1M2
Tel.: 416-952-9096

Kensington Building
275 Portage Avenue
Suite 1810
Winnipeg, Manitoba
R3B 2B3
Tel.: 204-983-6306
Fax: 204-983-6317

2220 – 12th Avenue
Suite 620
Regina, Saskatchewan
S4P 0M8
Tel.: 306-780-3422

10405 Jasper Avenue
Suite 520
Edmonton, Alberta
T5J 3N4
Tel.: 780-495-3224

858 Beatty Street
Suite 290
Vancouver, British Columbia
V6B 1C1
Tel.: 604-666-2111
Fax: 604-666-8322

Secretary General

Related documents

- *Exemption order respecting radiocommunication distribution undertakings (RDUs)*, Broadcasting Public Notice CRTC 2002-45, 12 August 2002
- *Policy regarding the use of exemption orders*, Public Notice CRTC 1996-59, 26 April 1996

Appendix to Broadcasting Notice of Consultation CRTC 2011-290

Proposed amended exemption order for radiocommunication distribution undertakings

Pursuant to subsection 9(4) of the *Broadcasting Act* (the Act), the Commission by this order exempts from the requirements of Part II of the Act and any regulations made thereunder those persons carrying on radiocommunication distribution undertakings (RDUs) defined by the following criteria.

Purpose

The purpose of these RDUs is to serve small, rural and/or often remote communities having small populations by distributing the services of one or more programming undertakings, as authorized by the Commission.

Description

1. The Commission would not be prohibited from licensing the undertaking by virtue of any Act of Parliament or any direction to the Commission by the Governor in Council.
2. The undertaking meets all the technical requirements of the Department of Industry and has acquired all authorization or certificates prescribed by that department.
3. The undertaking does not alter, curtail or delete a programming service in the course of its distribution except
 - a) for the purpose of complying with subsection 328(1) of the *Canada Elections Act*;
 - b) for the purpose of deleting a programming service to comply with an order of a court prohibiting the distribution of the service to any part of the licensed area;
 - c) for the purpose of altering a programming service to insert an emergency alert message in accordance with an agreement entered into with the operator of the service or the network responsible for the service;
 - d) for the purpose of preventing the breach of programming or underlying rights of a third party, in accordance with an agreement entered into with the operator of the service or the network responsible for the service; or
 - e) for the purpose of deleting a subsidiary signal, unless the signal is itself a programming service or is related to the service being distributed.
4. The undertaking originates no programming itself.
5. The undertaking distributes services by means of radiocommunication and distributes no service of a programming undertaking other than one which the Commission, by regulation or otherwise, has authorized.