



Broadcasting Order CRTC 2012-408

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Route reference: 2011-804

Additional references: 2011-601, 2011-601-1 and 2011-804-1

Ottawa, 26 July, 2012

Amended exemption order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers – Implementation of the regulatory framework relating to vertical integration and other amendments

The Commission amends the terms and conditions of the exemption order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers. These amendments, which were proposed in Call for comments on proposed amendments to the terms and conditions of the exemption order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers, Broadcasting Notice of Consultation CRTC 2011-804, 22 December 2011, implement determinations made by the Commission in Regulatory framework relating to vertical integration, Broadcasting Regulatory Policy CRTC 2011-601, 21 September 2011, as well as other amendments proposed in the aforementioned notice of consultation. The amended exemption order is set out in the appendix to this document.

Introduction

1. In Broadcasting Regulatory Policy 2011-601, the Commission noted that vertical integration refers to the ownership or control by one entity of both audiovisual programming services, such as conventional television stations, or pay and specialty services, as well as distribution services, such as cable systems or direct-to-home satellite services. The Commission further noted that vertical integration also includes ownership or control by one entity of programming undertakings and production companies.
2. In that regulatory policy, the Commission set out its decisions relating to its regulatory framework for vertical integration. The Commission's main objective in establishing its vertical integration framework was to ensure that consumers continue to benefit from a wide range of programming in a broadcasting system where programming and distribution have become increasingly integrated.
3. In order to implement certain determinations set out in Broadcasting Regulatory Policy 2011-601, the Commission issued Broadcasting Notice of Consultation 2011-804, in which it called for comments on proposed amendments to the terms and conditions of the exemption order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers (terrestrial BDU exemption

order). The amendments proposed in that notice of consultation sought to implement the following key determinations set out in Broadcasting Regulatory Policy 2011-601:

- the establishment of rates, terms and conditions surrounding the distribution of newly launched programming services absent a commercial agreement, and the establishment of requirements with respect to the resolution of disputes surrounding the distribution of such services; and
 - the distribution of programming services after the expiry of a commercial agreement and pending the conclusion of a new agreement or resolution of the dispute by the Commission, and the establishment of requirements with respect to the resolution of disputes surrounding the distribution of such services.
4. The Commission also proposed amendments in order to incorporate the definition of “obscene material” set out in section 8(3) of the *Broadcasting Distribution Regulations* (the Regulations), as well as to harmonize paragraph 11 of the terrestrial BDU exemption order with section 7 of the Regulations, as amended in Broadcasting Regulatory Policy 2011-455.
 5. The Commission notes that it has also issued today Broadcasting Regulatory Policy 2012-407, in which it sets out amendments to the *Broadcasting Distribution Regulations*, the *Pay Television Regulations, 1990*, the *Specialty Services Regulations, 1990*, the *Television Broadcasting Regulations, 1987* in regard to the implementation of the regulatory framework relating to vertical integration, as well as Broadcasting Order 2011-409, in which it sets out amendments to the *Exemption order for digital media broadcasting undertakings* (formerly, the *Exemption order for new media broadcasting undertakings*).
 6. The Commission received several comments in connection with Broadcasting Notice of Consultation 2011-804. The public record for this proceeding can be found on the Commission’s website at www.crtc.gc.ca under “Public Proceedings.”

Commission’s analysis and decision

7. The Commission has taken into consideration all of the comments received and considers that the following issues need to be addressed in detail:
 - the definition of “new” in the context of head start;
 - the limitation of dispute resolution to final offer arbitration;
 - various issues related to the standstill provisions; and
 - various issues related to dispute resolution provisions.

8. The Commission notes, however, that the interveners that provided comments on the above-listed issues voiced the same comments in reply to the call for comments initiated by Broadcasting Notice of Consultation 2011-806. That notice of consultation has resulted in Broadcasting Regulatory Policy 2012-407, also issued today, which announces amendments to various regulations in regard to the implementation of the regulatory framework relating to vertical integration. The Commission is of the view that the discussion of these issues set out in Broadcasting Regulatory Policy 2012-407, to the extent that it relates to proposed amendments to the *Broadcasting Distribution Regulations*, applies equally to the relevant amendments to the terrestrial BDU exemption order. Accordingly, parties interested in the discussion of those issues are requested to refer to Broadcasting Regulatory Policy 2012-407.
9. A copy of the amended terrestrial BDU exemption order is appended to the present document.

Secretary General

Related documents

- *Amendments to the Exemption order for new media broadcasting undertakings (now known as the Exemption order for digital media broadcasting undertakings)*, Broadcasting Order 2012-409, 26 July 2012
- *Amendments to various regulations - Implementation of the regulatory framework relating to vertical integration*, Broadcasting Regulatory Policy 2012-407, 26 July 2012
- *Call for comments on proposed amendments to the terms and conditions of the exemption order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers*, Broadcasting Notice of Consultation CRTC 2011-804, 22 December 2011, as amended by Broadcasting Notice of Consultation CRTC 2011-804-1, 2 February 2012
- *Regulatory framework relating to vertical integration*, Broadcasting Regulatory Policy CRTC 2011-601, 21 September 2011, as corrected by *Regulatory framework relating to vertical integration – Correction*, Broadcasting Regulatory Policy CRTC 2011-601-1, 14 October 2011
- *Amendments to the Broadcasting Distribution Regulations and other Commission Regulations*, Broadcasting Regulatory Policy CRTC 2011-455, 29 July 2011

Appendix to Broadcasting Order CRTC 2012-408

Terms and conditions of the exemption order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers

Description

The purpose of these broadcasting distribution undertakings is to provide programming services to fewer than 20,000 subscribers, using co-axial cable, fibre, digital subscriber line or multi-point distribution system technology.

A. Definition of terms

1. For the purpose of this order, the terms “affiliate,” “anglophone market,” “broadcast year,” “Canadian production fund,” “Canadian programming service,” “community access television,” “community channel,” “comparable,” “contribution to local expression,” “Corporation,” “educational television programming service,” “francophone market,” “independent production fund,” “licensed,” “licensed area,” “local television station,” “new programming service,” “pay television service,” “programming service,” “regional television station,” “radiocommunication distribution undertaking,” “relay distribution undertaking,” “specialty service,” “station” and “subscriber” have the same meaning as that set out in the *Broadcasting Distribution Regulations*; “basic service” means the package of programming services provided to all subscribers for a single fee; “gross revenues derived from broadcasting activities” has the same meaning as that set out in *Guidelines respecting financial contributions by the licensees of broadcasting distribution undertakings to the creation and presentation of Canadian programming*, Circular No. 426, 22 December 1997; “local head end” means (a) in respect of an undertaking other than a radiocommunication distribution undertaking, the specific location at which the undertaking receives the majority of the programming services that are transmitted by local television stations or, if there are no such stations, by regional television stations, and that are distributed by the exempt undertaking in the service area, and (b) in respect of a radiocommunication distribution undertaking, the undertaking’s transmitter site; “service area” means the area in which an exempt undertaking carries on a broadcasting distribution undertaking; and an undertaking that “serves more than 2,000 subscribers” means an undertaking whose subscriber base at the time it becomes exempt exceeds 2,000, or an undertaking whose subscriber base at the time it becomes exempt did not exceed 2,000 but has subsequently exceeded 2,000 for at least two consecutive broadcasting years as reported pursuant to paragraph 24, below.

B. Provisions applicable to exempt distribution undertakings

General provisions

2. 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.

3. The undertaking meets all the technical requirements of the Department of Industry (the Department) and has acquired all authorizations or certificates prescribed by the Department.

4. In total, the number of subscribers served by the individual undertaking is fewer than 20,000, and the undertaking either (a) does not serve all or part of the licensed area of a licensed terrestrial broadcasting distribution undertaking (BDU) that serves 20,000 or more subscribers within that licensed area, or (b) serves all or part of the licensed area of a licensed terrestrial BDU that serves 20,000 or more subscribers only by virtue of the fact that the licensed BDU expanded to operate within the service area of the undertaking at some time following the time at which the undertaking came into being. Once exempt, the undertaking does not have more than 21,000 subscribers in any two consecutive broadcasting years as reported pursuant to paragraph 24, below.

Distribution of the basic service

5. The undertaking does not provide a subscriber with any programming services, other than licensed pay-per-view services, licensed video-on-demand services or the programming services of exempt programming undertakings, without also providing the basic service.

Distribution of conventional television stations

6. In regard to the provision of a basic service:

- a) The undertaking distributes as part of its basic service all services of local television stations, with no degradation of the signal received.
- b) If the undertaking serves more than 2,000 subscribers, it distributes as part of its basic service all services of regional television stations, other than affiliates or members of the same network of which a local television station distributed pursuant to paragraph 6(a), above, is also an affiliate or member. These stations are distributed with no degradation of the signal received. If the programming services of the two or more regional television stations that are affiliates or members of the same network are received at the local head end or equivalent, the undertaking is required to distribute only one of them.
- c) If not otherwise distributed as a local or regional television station, the undertaking distributes at least one television station owned and operated by the Corporation, in each of the official languages, where the Corporation makes its signals available and pays the costs associated with the transport and reception of its signals to the undertaking's local head end or equivalent.
- d) If the undertaking receives television stations that are identical, the undertaking is required to distribute only one of them under this section.
- e) If the undertaking serves more than 2,000 subscribers, it distributes as part of its basic service, and with no degradation of the signal received, educational

television programming services the operation of which is the responsibility of an educational authority designated by the province in which the service area of the undertaking is located.

Majority of Canadian programming services

7. A majority of each of the video and audio channels received by each subscriber, other than the programming distributed on program repeat channels, are devoted to the distribution of Canadian programming services. For the purposes of this paragraph, each pay television service, television pay-per-view service, and video-on-demand service is counted as a single video channel.

Programming services in the language of the minority

8. If the undertaking delivers any programming service on a digital basis, it distributes:

- a) at least one French-language Canadian pay or specialty service, excluding the services that the undertaking may be required to distribute under paragraphs 14 and 15, below, for every ten English-language programming services distributed by the undertaking, if the undertaking is operating in an anglophone market; and
- b) at least one English-language Canadian pay or specialty service, excluding the services that the undertaking may be required to distribute under paragraphs 14 and 15, below, for every ten French-language programming services distributed by the undertaking, if the undertaking is operating in a francophone market.

Distribution of adult programming services

9. The undertaking does not package an adult programming service in such a way that subscribers are obliged to purchase the service in order to purchase any other programming service. The undertaking takes measures to fully block the reception of both the audio and video portions of any adult programming service to subscribers who request that it not be receivable in their home (in either unscrambled or scrambled mode).

Distribution of single point-of-view religious services

10. The undertaking distributes a single or limited point-of-view religious pay or specialty service only on a “stand-alone basis” or in a package with other single or limited point-of-view religious services, and all such services are distributed only on a discretionary basis.

Alteration or deletion of a programming service

11. The undertaking does not alter the content or format of a programming service or delete a programming service in the course of its distribution except:

- a) for the purpose of complying with section 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 service area;
- c) for the purpose of altering a programming service to insert a warning to the public announcing:
 - i. any danger to life or property if the insertion is provided for in an agreement entered into by the undertaking with the operator of the service or the network responsible for the service; or
 - ii. an imminent or unfolding danger to life if there is no agreement 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;
- 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;
- f) for the purpose of deleting the described video programming of a service distributed on an analog basis; or
- g) for the purpose of inserting a commercial message in a Canadian programming service, excluding a video-on-demand service, if the insertion is in accordance with an agreement between the undertaking and the operator of the service or the network responsible for the service and that pertains to commercial messages that are directed to a target market of consumers.

Prohibited programming content

12. The undertaking does not distribute a programming service that the undertaking originates and that contains:

- a) anything that contravenes any law;
- b) any abusive comment or abusive pictorial representation that, when taken in context, tends to or is likely to expose an individual or group or class of individuals to hatred or contempt on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, age or mental or physical disability;
- c) any obscene or profane language or pictorial representation; or

- d) any false or misleading news.

For the purpose of (b), sexual orientation does not include the orientation towards a sexual act or activity that would constitute an offence under the *Criminal Code*.

For the purpose of (c), material is obscene if it has as a dominant characteristic the undue exploitation of sex or the combination of sexual content with one or more of the following subjects, namely, crime, horror, cruelty and violence.

Other services distributed

13. a) No service received over-the-air or by any other means is distributed over the undertaking, other than a service that the Commission, by regulation or otherwise, has authorized. If the Commission has authorized a service for distribution subject to terms and conditions intended to address the concerns addressed in paragraph 12, above, the undertaking distributes the service subject to those terms and conditions.

b) The undertaking distributes no more than two sets of U.S. 4+1 signals, with the exception of signals receivable by the undertaking over the air, to its subscribers.

c) The undertaking is authorized to undertake any activity authorized in the regulatory policy entitled *General authorizations for broadcasting distribution undertakings*, as amended from time to time, under the terms and conditions set out in that regulatory policy.

Distribution of services subject to orders under section 9(1)(h) of the *Broadcasting Act*

14. If the undertaking serves more than 2,000 subscribers, it distributes, as part of the basic service,

- a) the Aboriginal Peoples Television Network programming service;
- b) the programming service of TVA Group Inc. (CFTM-TV Montréal or the programming service of one of its affiliates);
- c) if the undertaking is operating in a francophone market, the licensed public affairs programming service of the Cable Public Affairs Channel Inc. (CPAC) and the federal parliamentary service exempted pursuant to the *Parliamentary and Provincial or Territorial Legislature Proceedings Exemption Order*, as may be amended from time to time, including the main audio channel of those services in the French language and an auxiliary audio channel of those services in the English language;
- d) if the undertaking is operating in an anglophone market, the licensed public affairs programming service of CPAC and the federal parliamentary service exempted pursuant to the *Parliamentary and Provincial or Territorial Legislature Proceedings Exemption Order*, as may be amended from time to

time, including the main audio channel of those services in the English language and an auxiliary audio channel of those services in the French language;

- e) if the undertaking is operating in a francophone market, a second version of the licensed public affairs programming service of CPAC and the federal parliamentary service exempted pursuant to the *Parliamentary and Provincial or Territorial Legislature Proceedings Exemption Order*, as may be amended from time to time, including the main audio channel of those services in the English language, which may be distributed as part of the basic service or on a discretionary basis;
- f) if the undertaking is operating in an anglophone market, a second version of the licensed public affairs programming service of CPAC and the federal parliamentary service exempted pursuant to the *Parliamentary and Provincial or Territorial Legislature Proceedings Exemption Order*, as may be amended from time to time, including the main audio channel of those services in the French language and an auxiliary audio channel of those services in the French language, which may be distributed as part of the basic service or on a discretionary basis;
- g) where the undertaking elects to distribute, as part of its basic service, both an English-language and a French-language version of the licensed public affairs programming service of CPAC and the service exempted pursuant to the *Parliamentary and Provincial or Territorial Legislature Proceedings Exemption Order*, as may be amended from time to time, it is relieved of the requirement to distribute an auxiliary audio channel for any of these services;
- h) if the undertaking is operating in an anglophone market and distributes the Corporation's CBC News Network programming service on an analog basis, the programming service AMI-audio¹ as the secondary audio program of the former service; and
- i) the undertaking does not distribute the Corporation's CBC News Network programming service on an analog basis, the programming service AMI-audio on an audio channel.

15. If the undertaking serves more than 2,000 subscribers and delivers any programming service on a digital basis, it distributes to all digital subscribers:

- a) AMI-tv;²

¹ In March 2012, the National Broadcast Reading Service (Voiceprint) was rebranded as AMI-audio.

² In January 2012, the Accessible Channel was rebranded as AMI-tv.

- b) if it operates in a francophone market, CBC News Network, Canal M³ and, until 31 August 2015, Météomedia;
- c) if it operates in an anglophone market, le Réseau de l'information and, until 31 August 2015, The Weather Network; and
- d) if it operates in the province of Quebec, Avis de Recherche.

16. An exempt undertaking is not required to distribute any of the programming services noted in paragraphs 14 and 15, above, with the exception of AMI-audio and Canal M, unless the licensee or operator of the programming service or a third party pays for the satellite uplink and transponder costs associated with the delivery of its programming service to the exempt undertaking.

Dispute resolution

17. In regard to the resolution of disputes:

- a) If a dispute concerning the terms and conditions under which programming services are distributed arises between the exempt undertaking and a programming undertaking, whether operating by licence or by exemption order, the undertaking submits to such mediation and/or dispute resolution process or processes as may be required by the Commission and to any decision that may ultimately result therefrom.
- b) If a dispute, within the meaning of paragraph 17(a), arises with respect to a programming undertaking's programming services being distributed in the absence of a commercial agreement and the matter proceeds before the Commission for dispute resolution, the undertaking submits to having the dispute resolved as provided for in Broadcasting and Telecom Information Bulletin CRTC 2009-38, dated 29 January 2009, as amended from time to time, and further submits to the rates, terms and conditions established by the Commission as of the date on which the programming was first made available to the relevant undertaking in the absence of a commercial agreement.
- c) If a dispute, within the meaning of paragraph 17(a), arises with respect to a programming undertaking's new programming service that is being distributed in the absence of a commercial agreement and the matter proceeds before the Commission for dispute resolution, the undertaking further submits to the rates, terms and conditions established by the Commission for the duration of the contractual term established by the Commission.
- d) If a dispute concerning the terms and conditions under which programming services are provided to the undertaking arises between the undertaking and a

³ In Spring 2011, La Magnétothèque was rebranded as Canal M.

relay distribution undertaking, whether operating by licence or by exemption order, the undertaking submits to such mediation and/or dispute resolution process or processes as may be required by the Commission and to any decision that may ultimately result therefrom.

- e) For greater certainty, nothing in paragraphs 17(a) through (d) prevents parties from reaching an agreement with respect to rates, terms or conditions that differ from those established by the Commission.
- f) If the Commission accepts a referral of a matter for dispute resolution, the undertaking submits to produce and file such additional information as may be requested by the Commission or any individual named by the Commission to act as mediator in a given dispute.

Obligation during dispute

18. a) During any dispute between the undertaking and a person licensed to carry on a programming undertaking or the operator of an exempt programming undertaking concerning the carriage or terms of carriage of programming services or concerning any right or obligation under the Act, the undertaking shall continue to distribute those programming services subject to the dispute, at the same rates and on the same terms and conditions as it did before the dispute.

b) For the purposes of paragraph 18(a), a dispute exists from the moment that written notice of the dispute is provided to the Commission and served on the other undertaking that is party to the dispute and ends when an agreement settling the dispute is reached by the concerned undertakings or when the Commission renders a decision concerning any unresolved matter, whichever is first.

c) An undertaking that distributes a new programming service with respect to which it has no commercial agreement shall abide by the rates, terms and conditions established by the operator of the concerned programming undertaking until such time as a commercial agreement is reached between the parties or the Commission renders a decision concerning any unresolved matter.

Programming service substitution

19. If the undertaking serves more than 2,000 subscribers, the undertaking deletes the programming service of a television station and substitutes the programming service of a local television station or, with the agreement of the broadcaster operating the local television station, has that broadcaster carry out the deletion and substitution, if

- a) the main studio of the local television station (i) is located within the service area of the undertaking, and (ii) is used to produce locally originated programming;
- b) the programming service to be deleted and the programming service to be substituted are comparable and simultaneously broadcast;

- c) in a case where the broadcaster operating the local television station is not to carry out the deletion and substitution under an agreement with the undertaking, the undertaking has, at least four days before the date on which the programming service is broadcast, received from the broadcaster operating the local television station a written request for the deletion and substitution; and
- d) if a substitution is requested by more than one broadcaster, the undertaking gives priority, in the following order, to (i) if the studios of the stations are located in the same province as the service area of the undertaking or in the National Capital Region, as described in the schedule to the *National Capital Act*, the programming service of the station whose main studio is closest to the local head end, or equivalent, of the service area; (ii) in any other case, the programming service of the station that has a studio located in the same province as the service area.

An undertaking may discontinue a deletion and substitution if the programming services in respect of which the deletion and substitution are made are not, or are no longer, comparable and broadcast simultaneously.

Community channel

20. Subject to paragraph 21, if the undertaking serves more than 2,000 subscribers, it shall make a contribution to Canadian programming in each broadcast year of an amount not less than 5% of that undertaking's gross revenues derived from broadcasting activities in the year, less any contribution to local expression made by the undertaking in that year. Contributions to Canadian programming shall consist of:

- a) a contribution to the Canadian production fund of at least 80% of the undertaking's total required contribution; and
- b) to one or more independent production funds, the remainder of its total required contribution.

21. For the 2011-2012 broadcast year, the contribution to Canadian programming referred to in paragraph 20 above shall amount to not less than 5% of that undertaking's gross revenues derived from broadcasting during the period between 1 April 2012 and 31 August 2012, less any contribution to local expression made by the undertaking during that same period.

22. The undertaking is authorized to offer a zone-based community channel (where two or more exempt BDU service areas are combined to share local and community access television programming) under the following condition:

Exempt systems that make up a zone must be part of a community of interest. A community of interest would be determined by the following criteria:

A community of interest is one where its members share one or more of the following attributes:

- common social and economic interests;
- common heritage, culture or history;
- the same geographic or politically recognized boundary;
- access to the same local/regional media.

23. If the undertaking serves more than 2,000 subscribers and elects to offer a community channel or a zone-based community channel, the community channel offers programming that meets the following requirements:

- a) the programming offered consists of at least:
 - i. 60% local community television programs that are reflective of the community and produced in the undertaking's service area by the undertaking or by other members of the community served by the undertaking;
 - ii. 30% access programming consisting of programs produced by members of the community served by the undertaking;
- b) alternatively,
 - i. where an undertaking is an affiliate of a licensed cable undertaking, and the Commission has prescribed specific conditions of licence governing the offering of a community channel by that licensed undertaking, the undertaking may offer its community channel on the same basis as that approved for the licensed undertaking;
 - ii. where an undertaking is not an affiliate of a licensed cable undertaking, it may offer a community channel on the same basis as approved by condition of licence for any licensed undertaking that has a licensed area that includes any part of the same province or territory in which the undertaking operates;
- c) the programming includes no more than two minutes per hour of promotional messages and at least 75% of this promotional time is made available for the promotion of the community channel, non-related Canadian programming undertakings and for unpaid Canadian public service announcements;
- d) reasonable efforts are made to ensure that all the communities included within a zone-based community channel are proportionately represented; and
- e) the programming offered adheres to:

- i. the *Cable television community channel standards*, as amended from time to time; and
- ii. the Canadian Association of Broadcasters' *Violence Code*, as amended from time to time and approved by the Commission.

Information requirements

24. The undertaking or its representative submits the following information to the Commission by 30 November of each year:

- a) the name and contact information of the operator of the undertaking;
- b) the location of the undertaking and the communities served by the undertaking;
- c) the total number of basic subscribers served by the undertaking as of 31 August of that year;
- d) if the undertaking offers community programming exclusively through a video-on-demand service or provides community programming under a “zone based” approach, and does not operate separate head-end facilities or distribute a distinct local or regional television station, a statement as to its gross revenues derived from broadcasting activities in the past broadcast year and the amount and percentage of those revenues that have been contributed to community programming as described in paragraph 20(a); and
- e) whether any programming services are provided on a digital basis.

25. If the exempt undertaking serves more than 2,000 subscribers, the undertaking submits the simplified annual return for exempt broadcasting distribution undertakings by 30 November of each year.

26. The undertaking submits any information requested by the Commission in order to ascertain the undertaking's compliance with the terms of this order.