



Broadcasting Notice of Consultation CRTC 2011-350

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Route reference: 2008-100

Ottawa, 27 May 2011

Call for comments on a possible exemption order respecting satellite relay distribution undertakings and on the transport of Canadian pay and specialty services by such undertakings

*The Commission calls for written comments on a possible exemption order respecting satellite relay distribution undertakings (SRDUs), and on the transport of Canadian pay and specialty services by SRDUs, whether licensed or exempt. The deadline for submitting comments is **11 July 2011**.*

Introduction

1. Satellite relay distribution undertakings (SRDUs) are licensed undertakings that generally function as wholesalers by transporting broadcasting services and making those services available to broadcasting distribution undertakings (BDUs), which then offer them to subscribers. SRDU licences encompass the reception of conventional television stations and of some non-Canadian programming services, as well as their delivery to terrestrial BDUs, but not the transport of Canadian pay and specialty services.
2. There are currently two licensed SRDUs in Canada, one licensed to Shaw Satellite Services Inc., and the other licensed to Bell ExpressVu Inc. (the general partner), and Bell Canada and Bell ExpressVu Inc., partners in BCE Holdings, G.P. (the limited partner), carrying on business as Bell ExpressVu Limited Partnership. In addition, in Broadcasting Decision 2010-61, the Commission approved an application by FreeHD Canada Inc. for a broadcasting licence to operate an SRDU, but it notes that this SRDU is not yet in operation.
3. In Broadcasting Public Notice 2008-100, the Commission announced that it would, at the next renewal of SRDU licences, consider whether exempting SRDUs from licensing requirements would constitute an appropriate course of action. The Commission also announced that it would consider incorporating the satellite transport of pay and specialty services into either SRDU licences or an SRDU exemption order. The Commission reiterated this position in Broadcasting Order 2009-638, in which it amended the exemption order respecting terrestrial relay distribution undertakings (TRDUs).

Key issues

4. Consistent with Broadcasting Public Notice 2008-100 and Broadcasting Order 2009-638, the Commission considers that the key issues to be addressed in the present notice of consultation are the following:
 - a possible exemption order respecting SRDUs; and
 - the transport of Canadian pay and specialty services by SRDUs, whether licensed or exempt.

Possible exemption order respecting satellite relay distribution undertakings

5. Section 9(4) of the *Broadcasting Act* (the Act) specifies the following:

The Commission shall, by order, on such terms and conditions as it deems appropriate, exempt persons who carry on broadcasting undertakings of any class specified in the order from any or all of the requirements of this Part or of a regulation made under this Part where the Commission is satisfied that compliance with those requirements will not contribute in a material manner to the implementation of the broadcasting policy set out in subsection 3(1).

6. With this in mind, the Commission seeks comment as to whether it is necessary to continue licensing SRDUs in order to ensure that these undertakings contribute to the objectives of the Act.
7. In Broadcasting Public Notice 2008-100, the Commission noted that the signal transport sector was dominated by one undertaking, Shaw Broadcast Services, and that until more effective competition had emerged in the sector, the exemption of SRDUs from licensing requirements would not benefit the Canadian broadcasting system. Since the issuance of Broadcasting Public Notice 2008-100, the Commission has adopted certain measures to encourage competition in the signal transport sector, including the elimination of certain requirements for TRDUs¹ and the removal of a requirement that licensed BDUs receive certain services from a licensed SRDU.²
8. In regard to the above, the Commission seeks comments on the following questions:
 - Should the Commission exempt SRDUs from licensing requirements, or is it necessary to continue licensing SRDUs so that these undertakings contribute to the objectives of the Act?
 - If the Commission determines that it is appropriate to exempt SRDUs from licensing requirements, under what terms or conditions should an exemption order respecting SRDUs be issued?

¹ See Broadcasting Order 2009-638.

² See Broadcasting Regulatory Policy 2009-639.

- Has effective competition emerged in all areas of the transport of programming services, i.e., between SRDUs and TRDUs and/or other transport facilities?
 - What impact would exempting SRDUs from licensing requirements have on other players involved in the broadcasting system, especially smaller BDUs, independent broadcasters, and pay and specialty services?
 - What impact would exempting SRDUs from licensing requirements have on the negotiation process between either SRDUs or their affiliated BDUs, and the pay and specialty services?
 - How could the Commission minimize or eliminate any potential negative impacts, such as those noted above, within the context of an SRDU exemption order?
9. In the event the Commission determines that exempting SRDUs from licensing requirements constitutes an appropriate course of action, it has set out a proposed exemption order in the appendix to the present notice. Interested parties are also invited to comment on the specific terms and conditions proposed in this order.

Transport of Canadian pay and specialty services by satellite relay distribution undertakings, whether licensed or exempt

10. In Broadcasting Public Notice 2008-100, the Commission also announced that it would consider incorporating the transport of Canadian pay and specialty services into either SRDU licences or an SRDU exemption order.
11. As mentioned above, SRDU licences do not currently encompass the transport of these services. However, the need for an efficient means of transporting Canadian pay and specialty services to distributors across Canada (i.e., their uplink to satellite and downlink to terrestrial BDUs) has resulted in the use of SRDU facilities in a way that is practically indistinguishable from that used for transporting conventional and non-Canadian services.
12. The Commission notes that, in Broadcasting Order 2009-638, it incorporated the transport of pay and specialty services in the TRDU exemption order. The Commission further notes that, in Telecom Decision 2002-57, it concluded that an SRDU's uplinking activities constitute broadcasting by a broadcasting undertaking.
13. Accordingly, the Commission seeks comments on the following questions relating to the possible inclusion of the transport of Canadian pay and specialty services as well as non-Canadian services (other than the U.S. 4+1 services³) into either SRDU licences or an SRDU exemption order:

³ This refers to the set of signals that provides the programming of the four U.S. commercial networks (CBS, NBC, ABC, FOX) and the non-commercial PBS network.

- Should the transport of Canadian pay and specialty services and non-Canadian services (other than the U.S. 4+1 services) be included either in the SRDU licences or in an SRDU exemption order?
- What impact would incorporating the transport of Canadian pay and specialty services into either SRDU licences or an SRDU exemption order have on:
 - other players involved in the broadcasting system, especially smaller BDUs and Canadian pay and specialty services?
 - the negotiation process between SRDUs and Canadian pay and specialty services?

Procedure

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."

The Commission invites comments on the above-noted issues. In the event that these two proposals were to be adopted, the Commission also calls for comments on the specific terms, conditions and wording of the proposed exemption order set out in the appendix to the present notice.

The Commission will accept interventions that it receives on or before **11 July 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.

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.

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

Submissions longer than five pages should include a summary.

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 altered during electronic transmission.

Important notice

All information that parties provide as part of this public process, except information designated confidential, 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.

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.

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.

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.

The Commission encourages parties and interested persons to monitor the record of the proceeding, available on the Commission's website, for additional information that they may find useful when preparing their submissions.

Examination of documents

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.

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

- *Direct-to-home satellite distribution undertaking and satellite relay distribution undertaking*, Broadcasting Decision CRTC 2010-61, 8 February 2010
- *Amendments to the requirements set out in the lists of eligible satellite services*, Broadcasting Regulatory Policy CRTC 2009-639, 9 October 2009
- *Amendments to the Exemption order respecting terrestrial relay distribution network undertakings*, Broadcasting Order CRTC 2009-638, 9 October 2009
- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services – Regulatory policy*, Broadcasting Public Notice CRTC 2008-100, 30 October 2008
- *Canadian Satellite Communications Inc. – Contribution Regime*, Telecom Decision CRTC 2002-57, 13 September 2002

Appendix to Broadcasting Notice of Consultation 2011-350

Proposed exemption order

Exemption order respecting satellite relay distribution undertakings

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

Purpose

The purpose of these satellite relay distribution undertakings is to receive the programming services of programming undertakings, including Canadian conventional television stations, Canadian pay and specialty services, and non-Canadian services, and distribute those programming services, unaltered, to distribution undertakings, with or without a fee.

General provisions

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 (the Department) and has acquired all authorizations or certificates prescribed by the Department.
3. A majority of the programming services that the undertaking is distributing are Canadian programming services.
4. No service received over-the-air or by any other means is distributed by the undertaking, other than a service that the Commission, by regulation or otherwise, has authorized.
5. The undertaking must provide its service to any distribution undertakings whose operators are willing to enter into affiliation agreements with it.
6. The undertaking shall not delete, curtail or alter the programming services which it distributes to broadcasting distribution undertakings in any manner from the form in which they are transmitted for public reception by the originating broadcasters, except such alterations as are incidental to the transmission of the services using digital video compression technology and except as may be authorized or required by the Commission in writing.

7. The undertaking is required to contribute a minimum of 5% of its annual gross revenues derived from broadcasting activities to the creation and presentation of Canadian programming.
8. The undertaking shall not give an undue preference to any person, including itself, or subject any person to an undue disadvantage.
9. If a dispute concerning the terms and conditions under which programming services are or may be provided or distributed arises between the undertaking and a distribution undertaking or a programming undertaking, whether operating by licence or by exemption order, the undertaking submits to such dispute resolution process or processes as may be required by the Commission and to any decision resulting therefrom.
10. 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. revenues derived from broadcasting activities for the previous broadcast year; and
 - c. the contribution made to the production of Canadian programming for the previous broadcast year.