



## Broadcasting Public Notice CRTC 2006-151

Ottawa, 22 November 2006

### **Call for comments on a proposed exemption order respecting certain third-language television undertakings**

*In this public notice, the Commission invites comments on a proposed exemption order respecting certain third-language television undertakings. The undertakings that would be exempted under the proposed order are of a class that are currently licensed as third-language ethnic Category 2 pay and specialty undertakings. The proposal to exempt this class from licensing requirements is based on the Commission's preliminary view that the compliance of these undertakings with licensing requirements will not contribute in a material manner to the implementation of the broadcasting policy set out in section 3(1) of the Broadcasting Act.*

*The Commission considers that this approach would encourage and expedite the entry of new Canadian third-language services and contribute to greater diversity in the broadcasting system.*

### **Existing approach for consideration of applications proposing third-language ethnic Category 2 pay and specialty services**

1. In *Revised approach for the consideration of broadcasting licence applications proposing new third-language ethnic Category 2 pay and specialty services*, Broadcasting Public Notice CRTC 2005-104, 23 November 2005 (Public Notice 2005-104), the Commission announced that it would pursue a new approach when considering applications proposing third-language ethnic Category 2 pay and specialty services. In designing that approach, the Commission's overall objective was to maximize the availability of such Canadian services within the Canadian broadcasting system, and thereby improve the diversity and choice of programming available to underserved cultural and linguistic communities. To that end, the Commission determined that a framework that would encourage and expedite the entry of new third-language ethnic Category 2 services would be appropriate. Specifically, the Commission announced an open-entry approach to third-language services, defined as those services that devote at least 90% of their program schedules to programming in languages other than English or French.
2. To ensure that this new approach would not have an undue negative impact on the existing analog ethnic specialty services (the analog services) and on their ability to meet their more stringent Canadian program exhibition and spending requirements, the Commission determined that a third-language ethnic Category 2 service that is a general interest service, and that proposes to broadcast 40% or more of its program schedule in the language of any of the analog services (i.e., Cantonese, Greek, Hindi, Italian, Mandarin, or Spanish), would be subject to a buy-through requirement. This means that a

broadcasting distribution undertaking (BDU) wishing to distribute such a Category 2 service would only be authorized to do so to subscribers who also subscribe to the corresponding analog service. The Commission defined a general interest service as one that, unlike a niche service, offers programming from a broad spectrum of program genres and categories.

### **Proposed exemption order respecting certain third-language television programming undertakings**

3. The new framework for third-language Category 2 services has created a standardized approach that, in the Commission's view, lessens the need for application of the full requirements under Part II of the *Broadcasting Act* (the Act). Specifically, the Commission is satisfied that it would be appropriate to exercise its power under section 9(4) of the Act to exempt from licensing requirements the class of undertakings that meet the criteria of the proposed exemption order on the grounds that the compliance of these undertakings with licensing requirements will not contribute in a material manner to the implementation of the broadcasting policy set out in section 3(1) of the Act. The Commission considers that this approach would, in fact, encourage and expedite the entry of new Canadian third-language services and contribute to greater diversity in the broadcasting system.
4. The Commission sets out the proposed terms for the exemption of third-language television programming undertakings in the Appendix to this public notice. Parties wishing to operate a Category 2 service that does not fall under the proposed exemption order would be required to apply for a broadcasting licence to operate the service, and such proposals would be considered under the appropriate framework. Specifically, applications for licences for third-language ethnic Category 2 services that do not meet the criteria of the proposed exemption order would be considered in accordance with the approach announced in Public Notice 2005-104. All other applications for Category 2 services would be considered in light of *Licensing framework policy for new digital pay and specialty services*, Public Notice CRTC 2000-6, 13 January 2000, and *Revised procedures for processing applications for new digital Category 2 pay and specialty television services*, Broadcasting Public Notice CRTC 2004-24, 8 April 2004.

### **Details of the proposed approach**

5. The operators of third-language television programming undertakings that meet the exemption criteria would be obliged, in the first instance, to conform to all applicable rules respecting the ownership of such services. Specifically, the service must otherwise be licensable under the *Direction to the CRTC (Ineligibility of Non-Canadians)* and *Direction to the CRTC (Ineligibility to Hold Broadcasting Licences)*.
6. With respect to programming content, the Commission is of the view that exempt third-language television programming undertakings should operate under the same terms and conditions that generally apply to third-language Category 2 specialty services. The proposed order accordingly includes exemption criteria specifying that an undertaking must broadcast minimum levels of Canadian and third-language programming, and must

adhere to industry codes and standards. As another matter, while third-language Category 2 services have been licensed as either pay or specialty services, the Commission is of the view that it would serve no purpose to retain this distinction in the case of exempt undertakings.

7. Further, to ensure that an exempt service does not have an undue impact on any analog ethnic specialty service, the proposed order would exempt only those third-language undertakings that offer less than 40% of their programming in Cantonese, Greek, Hindi, Italian, Mandarin or Spanish.
8. The proposed order also includes a requirement that exempt undertakings broadcast self-identifying notices. These notices would be for the purpose of assisting viewers and other interested parties who might wish to contact the service or the Commission regarding any concern about the service. The notices would be provided during peak viewing periods, typically between 7 p.m. and 11 p.m.
9. Further, under the proposed exemption order, exempt undertakings would be required to adhere to programming requirements measured on a weekly basis, and would be required to retain a clear and intelligible audio-visual recording of all programming for a period of four weeks following the date of broadcast. This would enable the Commission, should it find it necessary to monitor and assess the compliance of a service with programming requirements, to do so based on a tape or a program schedule covering one week. The Commission considers this approach to be less cumbersome than would be the case were programming requirements to be met, and logs retained, for periods of any longer duration.
10. Exempt undertakings would be required to file with the Commission the name of the service provider, the name under which the service operates, the BDU(s) that carry the service, the service's contact information, including mailing address, telephone number, fax number, email address, and website, and the operating language(s) of the service. In the case of a new undertaking, the above information would be filed with the Commission when the undertaking is ready to commence operations. Exempt undertakings would also be expected to advise the Commission promptly of any changes to this information. The Commission will publish a list of exempt services and make it, together with the above information, available to the public on its website.
11. With respect to the distribution by BDUs of the services of exempt undertakings, the Commission is of the view that, in general, such distribution should continue to be subject to the distribution rules that currently apply to licensed Category 2 services. In particular, the programming undertakings that the Commission proposes to exempt would be permitted to provide their services only to BDUs that would distribute them solely on a digital basis. The Commission proposes to amend the *Broadcasting Distribution Regulations* to specify that exempt third-language programming undertakings will be counted for the purposes of the requirement of section 18(14) of these regulations. Section 18(14) currently specifies that BDUs must distribute five unrelated Category 2 services for every related Category 2 that they distribute.

12. With respect to the linkage rules, the Commission is of the view that the requirements imposed on BDUs choosing to offer third-language general-interest non-Canadian services under paragraphs 16 and 27 of the *Distribution and linkage requirements for Class 1 and Class 2 licensees*, Broadcasting Public Notice CRTC 2005-119, 14 December 2005 and paragraph 9 of *Linkage requirements for direct-to-home (DTH) satellite distribution* undertakings, Broadcasting Public Notice CRTC 2005-120, 14 December 2005, should apply as well to their distribution of the services of exempt third-language television programming undertakings. However, an exempt undertaking would have to demonstrate that it falls within the parameters of those rules, for example, by providing the BDU with a current program schedule. The Commission proposes to make such changes to the distribution and linkage rules as are necessary to give effect to this requirement.
13. The Commission notes that it would refer to the *Specialty Services Regulations, 1990* or the *Broadcasting Distribution Regulations* to assist in its interpretation of any matter arising from any ambiguity with respect to the exemption order, its application, or its definitions.

#### **Call for comments**

14. The Commission invites comments on the proposed exemption order set out in the Appendix to this notice and the issues raised in this public notice. The Commission will accept comments that it receives on or before **5 January 2007**.
15. The Commission will not formally acknowledge comments. It will, however, fully consider all comments and they will form part of the public record of the proceeding, provided that the procedures for filing set out below have been followed.

#### **Procedures for filing comments**

16. Interested parties can file their comments to the Secretary General of the Commission:
  - **by using the**  
[Broadcasting Intervention/Comments Form](#)
  - OR
  - **by mail to**  
CRTC, Ottawa, Ontario K1A 0N2
  - OR
  - **by fax at**  
819-994-0218
17. Submissions longer than five pages should include a summary.

18. Please number each paragraph of your submission. In addition, please enter the line \*\*\*End of document\*\*\* following the last paragraph. This will help the Commission verify that the document has not been damaged during transmission.

**Important notice**

19. Note that all information that you provide as part of this public process, except information granted confidentiality, whether sent by postal mail, facsimile, e-mail or through the Commission's web site at [www.crtc.gc.ca](http://www.crtc.gc.ca), becomes part of a publicly accessible file and will be posted on the Commission's web site. This information includes your personal information, such as your full name, e-mail address, postal/street address, telephone and facsimile number(s), and any other personal information you provide.
20. Documents received electronically or otherwise will be put on the Commission's web site in their entirety exactly as you send them, 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.
21. The personal information you 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.
22. The Commission encourages interested parties to monitor the public examination file and the Commission's web site for additional information that they may find useful when preparing their comments.

**Examination of public comments and related documents at the following Commission offices during normal business hours**

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

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

Central Building  
Les Terrasses de la Chaudière  
1 Promenade du Portage, Room 206  
Gatineau, Quebec K1A 0N2  
Tel: 819-997-2429  
Fax: 819-994-0218

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  
TDD: 204-983-8274  
Fax: 204-983-6317

Cornwall Professional Building  
2125 - 11<sup>th</sup> Avenue  
Room 103  
Regina, Saskatchewan S4P 3X3  
Tel: 306-780-3422

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

530-580 Hornby Street  
Vancouver, British Columbia V6C 3B6  
Tel: 604-666-2111  
TDD: 604-666-0778  
Fax: 604-666-8322

Secretary General

*This document 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>*

## **Appendix to Broadcasting Public Notice CRTC 2006-151**

### **Exemption order respecting third-language television programming undertakings**

By this order, pursuant to subsection 9(4) of the *Broadcasting 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 criteria set out below.

#### **Purpose**

The purpose of these television programming undertakings is to provide programming services in third-languages to broadcasting distribution undertakings for distribution on a digital basis.

#### **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 technical requirements of the Department of Industry (the Department) and has acquired all authorizations or certificates prescribed by the Department.
3. The undertaking files information with the Commission specifying: the name of the service provider, the name under which the service operates, the broadcasting distribution undertaking(s) that distribute the service, the service's contact information, including mailing address, telephone number, fax number, email address, and website, and the operating language(s) of the service. In the case of a new undertaking, the above information is filed with the Commission when the undertaking is ready to commence operations.
4. The undertaking provides its programming service only to broadcasting distribution undertakings that distribute the service to subscribers solely on a digital basis.
5. Of the programming broadcast by the undertaking in each calendar week:

- (a) at least 90% is in languages other than English, French or a language of the Aboriginal peoples of Canada;
  - (b) less than 40% is in any of the languages of Cantonese, Greek, Hindi, Italian, Mandarin or Spanish; and
  - (c) not less than 15% of all programs qualify as a Canadian program in accordance with the criteria established by the Commission in *Certification for Canadian programs – A revised approach*, Public Notice CRTC 2000-42, 17 March 2000, as amended from time to time.
- 6. The undertaking broadcasts at least one self-identifying notice per day, during a period of peak viewing, providing the name of the service and information on how viewers or other interested parties may contact its operator.
- 7. The undertaking does not broadcast more than twelve (12) minutes of advertising material during each clock hour, of which no more than six (6) minutes may consist of local advertising.
- 8. The undertaking's programming complies with sections 3, 3.1 and 6 of the *Specialty Services Regulations, 1990*.
- 9. The undertaking's programming complies with section D.3 (Adult programming) of the *Industry code of programming standards and practices governing pay, pay-per-view and video on demand services*, the Canadian Association of Broadcasters' (CAB) *Sex-role portrayal code for television and radio programming*, the CAB's *Broadcast code for advertising to children*, and the CAB's *Voluntary code regarding violence in television programming* as amended from time to time and approved by the Commission.
- 10. The undertaking retains a clear and intelligible audio-visual recording of all of its programming for a period of four weeks following the date of broadcast, and shall provide this to the Commission on such terms as the Commission may request.
- 11. At the request of the Commission, the undertaking provides the Commission with a response to any inquiry that relates to the undertaking.