



## Broadcasting Decision CRTC 2008-99

Ottawa, 8 May 2008

**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 2007-1571-6, received 5 November 2007*

*Broadcasting Public Notice CRTC 2007-141*

*18 December 2007*

### **Direct-to-home satellite distribution undertaking – Licence amendment**

*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 of its direct-to-home satellite distribution undertaking to authorize it to distribute the signal of Aboriginal Peoples Television Network to households in northern communities without providing the basic service.*

### **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),<sup>1</sup> to amend the broadcasting licence of its direct-to-home (DTH) satellite distribution undertaking by adding a condition of licence authorizing it to distribute the signal of Aboriginal Peoples Television Network (APTN) to households in northern communities without providing the basic service, as required under section 5 of the *Broadcasting Distribution Regulations* (the Regulations).
2. ExpressVu stated that by using ExpressVu to distribute its signal, APTN would no longer have to sustain its network of low-power over-the-air analog transmitters, which has become too costly to maintain.
3. Under its agreement with APTN, ExpressVu (or its agents) would initially install satellite antennas (dishes) and provide satellite receivers (set-top boxes) to approximately 660 dwellings in 17 communities in the far north. The receivers would only be authorized to decode the signal of APTN North. The combination of dish and set-top box

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<sup>1</sup> At the time of the application, the licensee's name was Bell ExpressVu Inc. (the general partner) and BCE Inc. and 4119649 Canada Inc. (partners in BCE Holdings G.P., a general partnership that is the limited partner), carrying on business as Bell ExpressVu Limited Partnership. The licensee's name was subsequently modified pursuant to Broadcasting Decision 2007-432.

would replace the over-the-air antennas currently used by the residents of these northern communities and would allow APTN to discontinue over-the-air transmission. All households in the affected communities would be eligible to participate in the program. Those households wishing to take advantage of this opportunity would not be charged for the equipment or the APTN signal. ExpressVu stated that it was its understanding that APTN had secured funding for this project from the Department of Canadian Heritage (Canadian Heritage).

4. Assuming successful deployment in the initial phases and continued financial support to APTN from Canadian Heritage, ExpressVu and APTN intend to extend the program to a further 2,900 households in 19 communities in the medium term and to as many as 92 communities in the long term.

5. In order to provide flexibility, ExpressVu requested that the following condition of licence apply to any household located north of 60° north latitude, as follows:

The licensee is relieved of the requirement to provide the basic service to any household located north of 60° north latitude that receives only the signal of APTN.

6. To accommodate future changes in technology, ExpressVu further requested that this condition of licence also apply to the APTN-HD signal.
7. The Commission received an intervention in support of this application by APTN and an intervention in conditional support by Arctic Co-operatives Limited (Co-operatives), which operates exempt cable broadcasting distribution undertakings (BDUs) in 24 northern communities in Nunavut and the Northwest Territories.
8. After reviewing the application and the interventions, the Commission is of the view that there are three primary issues to be considered:
  - Does ExpressVu require a condition of licence to distribute the APTN signal to northern households in the manner described in its application, i.e. without providing the basic service?
  - If so, would granting the relief sought by ExpressVu be appropriate under the circumstances?
  - Should the Commission impose a condition of licence on ExpressVu prohibiting the use of equipment financed by Canadian Heritage in the communities served by Co-operatives' cable systems?

## **Requirement of a condition of licence to distribute the APTN signal without providing the basic service**

9. APTN argued that ExpressVu does not require a condition of licence to proceed with its plan because for the purposes of the proposed arrangement, ExpressVu would not be acting as a distribution undertaking but rather as a telecommunications service whereby APTN, as a licensed programming undertaking, would make its own signal available to residents in northern communities. In this respect, APTN cited Broadcasting Decision 2003-210, in which the Commission found that given that the proposed undertaking, a video-on-demand service, would not receive and retransmit programming, it did not fall within the definition of a distribution undertaking set out in the *Broadcasting Act* (the Act).
10. Further, should the Commission determine that specific regulatory authorization is required, APTN suggested that it would be more efficient from a regulatory process point of view if APTN were to apply for such a condition of licence and be authorized to distribute the APTN service on a stand-alone basis in the north other than by means of over-the-air transmission. APTN stated that its application would be in addition to ExpressVu's application.
11. The Commission considers that Broadcasting Decision 2003-210 does not support APTN's position. The Commission finds that in distributing the APTN signal in the manner proposed, ExpressVu would be operating as a distribution undertaking. Specifically, ExpressVu would be using the same satellite transmission facilities, providing the same subscriber equipment and receiving and retransmitting the same APTN programming as it does when acting as a DTH provider. Accordingly, those households that would receive the APTN service in the manner proposed would receive that service in essentially the same manner as DTH service subscribers.
12. As a licensed DTH distribution undertaking, ExpressVu is subject to the Regulations, including section 5, which states:

Except as otherwise provided under a condition of its licence or these Regulations, no licensee shall provide a subscriber with any programming services, other than pay-per-view services, video-on-demand services or the programming services of exempt programming undertakings, without also providing the basic service of the licensee.
13. In the Commission's view, ExpressVu's proposed distribution of the APTN service is clearly contrary to section 5 of the Regulations. As such, the Commission concludes that a condition of licence would be required to authorize ExpressVu to distribute the APTN signal and/or the APTN-HD signal without also providing the basic service.

## **Relief from the requirement to provide the basic service**

14. Citing Broadcasting Public Notice 2007-53, in which the Commission stated that analog transmitters could be retained in northern and other remote communities until such time as they reach the end of their useful life or viewers have switched to another form of distribution technology, APTN stated that its transmitters, which date from the early 1990s, are nearing the end of their useful life and will have to be replaced soon. It further stated that instead of maintaining its existing terrestrial network, it would prefer to replace it with current digital technology, the cost of which is estimated to be around \$9 million. APTN indicated that it does not have the resources to take on such replacement and that this application accordingly reflects its plan for a gradual replacement of its aging network of terrestrial analog transmitters in the north with alternate but equally accessible delivery systems.
15. APTN noted that under its agreement with ExpressVu, APTN would be responsible to pay installation and equipment costs in those communities for households that elect to receive APTN's northern service through ExpressVu and that do not currently have the necessary technology in place. APTN stated that funding for these costs would be provided through the Northern Distribution Program operated by Canadian Heritage and that Canadian Heritage has already expressed its support to APTN for this initiative. APTN further stated that no household would be required to accept APTN's alternate delivery mechanism (specific consent would be required) or to obtain further services from ExpressVu. However, should a household choose to obtain services other than APTN's northern service, it would be required to enter into the necessary subscriber agreement with ExpressVu and to pay the applicable charges.
16. As stated in Decision 99-42, which approved the application to operate a national Aboriginal programming network, the Commission considers it important that the APTN service be available to all Canadians, consistent with the objectives of the Canadian broadcasting policy set out in section 3 of the Act. Accordingly, in Distribution Order 1999-2 attached to Public Notice 1999-70, the Commission required the national distribution of APTN as part of the basic service of Class 1 and Class 2 BDUs and DTH licensees, pursuant to section 9(1)(h) of the Act.
17. In the present case, ExpressVu would be distributing APTN on a stand-alone basis rather than as part of the basic service, as set out in the Order. However, the Commission notes the exceptional circumstances surrounding ExpressVu's request. In the Commission's view, the present application represents an attractive alternative to aid APTN in replacing its network of over-the-air analog transmitters with digital technology. Given the state of APTN's current network and the high cost associated with its replacement, the Commission considers that the proposed arrangement would be beneficial to both APTN and the residents in the north as it would eliminate the issue of maintenance and would constitute a proactive means of ensuring that APTN continues to be available to these residents at no cost to them.

18. In light of all of the above, the Commission concludes that the circumstances warrant granting the relief sought by ExpressVu in order to allow it to distribute APTN to the northern communities in question.

### **Imposition of the condition of licence requested by Co-operatives**

19. While supporting the overall objectives of the application by ExpressVu, Co-operatives expressed concern with respect to how approval of the application would affect its exempt cable BDUs in Nunavut and the Northwest Territories. Co-operatives indicated that its facilities pass all the houses in the communities it serves, providing the signal of APTN to all households. In Co-operatives' view, since it already provides the APTN signal to residents in these communities, there is no need for the service proposed by ExpressVu.
20. While noting that ExpressVu's planned rollout does not include any of the communities it serves, Co-operatives indicated its concern with possible future developments. Specifically, it expressed concern that once ExpressVu implemented the proposed arrangement, it would take advantage of this position by offering its barker channel and soliciting customers to purchase other services, thereby competing with Co-operatives' cable BDUs. Co-operatives therefore requested that the Commission prohibit ExpressVu by condition of licence from using equipment financed by Canadian Heritage in the communities served by Co-operatives cable systems.
21. In reply, ExpressVu and APTN both indicated that future rollouts of the proposed program to other northern communities would be controlled by APTN and would be offered on a voluntary basis.
22. The Commission notes that since APTN would control the activity, APTN would seek to provide its signal to households and communities where it is not already being received and is therefore unlikely to extend the proposed program to households and communities in which its service is already available. The Commission further notes that if and when the program is extended to communities served by Co-operatives, APTN has indicated that these communities will have the option to choose not to participate in the program.
23. Finally, the Commission notes that since 1995 it has taken an open-entry approach to competition among BDUs and has made it very clear that such competition is both welcome and encouraged. Imposing a condition of licence restricting the use of equipment financed by Canadian Heritage in the markets served by Co-operatives would be inconsistent with this approach. In the Commission's view, increased competition could be beneficial to consumers in terms of choice and cost of services.
24. In light of the above, the Commission is of the view that imposing a condition of licence on ExpressVu prohibiting the use of equipment financed by Canadian Heritage in the communities already served by Co-operatives' cable BDUs or other cable BDUs is not warranted.

## Conclusion

25. 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 of its DTH satellite distribution undertaking by adding the following **condition of licence**:

The licensee is relieved of the requirement of section 5 of the *Broadcasting Distribution Regulations* to provide the basic service with respect to any household located north of 60° north latitude that receives only the signal of APTN.

26. To accommodate future changes in technology, the above condition shall also apply to the APTN-HD signal.

Secretary General

## Related documents

- *Corporate reorganization (Assets)*, Broadcasting Decision CRTC 2007-432, 21 December 2007
- *Determinations regarding certain aspects of the regulatory framework for over-the-air television*, Broadcasting Public Notice CRTC 2007-53, 17 May 2007
- *Video-on-demand service for CityPlace*, Broadcasting Decision CRTC 2003-210, 3 July 2003
- *Order respecting the distribution of the Aboriginal Peoples Television Network*, Public Notice CRTC 1999-70, 21 April 1999
- Decision CRTC 99-42, 22 February 1999

*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>.*