



Broadcasting Decision CRTC 2012-609

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Route reference: 2012-214

Ottawa, 31 October 2012

Bell ExpressVu Inc. (the general partner) and Bell Canada (the limited partner), carrying on business as Bell ExpressVu Limited Partnership Across Canada

Application 2011-0950-5, received 16 June 2011

Bell ExpressVu satellite relay distribution undertaking –Licence renewal

*The Commission **renews** the broadcasting licence for the satellite relay distribution undertaking operated by Bell ExpressVu Inc. (the general partner) and Bell Canada (the limited partner), carrying on business as Bell ExpressVu Limited Partnership, from 1 November 2012 to 31 August 2019. The **conditions of licence** are set out in the appendix to this decision.*

The application

1. The Commission received an application by Bell ExpressVu Inc. (the general partner) and Bell Canada (the limited partner), carrying on business as Bell ExpressVu Limited Partnership (Bell), to renew the broadcasting licence for its satellite relay distribution undertaking (SRDU) serving communities throughout Canada. The licence expires 31 October 2012.¹
2. The licensee also proposed an amendment to the wording of a condition of licence authorizing the distribution of U.S. over-the-air television signals in order to reflect the amended *Broadcasting Distribution Regulations*.
3. Further, in Broadcasting Regulatory Policy 2012-94, the Commission announced that it would consider the following issues at the time of the renewal of SRDU licences:

¹ The licence for the undertaking was administratively renewed from 1 September 2010 to 31 August 2011, from 1 September 2011 to 29 February 2012, from 1 March to 31 August 2012 and from 1 September to 31 October 2012 in Broadcasting Decisions 2010-170, 2011-420, 2012-100 and 2012-417.

- the possibility of incorporating a reverse onus provision² in conditions of licence related to undue preference; and
 - whether a condition of licence that restricts sharing of information with an affiliated broadcasting distribution undertaking (BDU) should be incorporated into Bell's SRDU licence.
4. The Commission received an intervention in support of the application, as well as a number of interventions commenting on the application, to which the applicant replied. The public record for this application is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Reverse onus provision

Positions of parties

5. Bell opposed the imposition of a reverse onus provision, submitting that there was no proven need for this type of regulation with respect to SRDUs. Bell also noted it had filed applications for leave to appeal and judicial review with the Federal Court of Appeal regarding the Commission's application of a reverse onus in Broadcasting Decision 2011-765. Finally, Bell questioned the underlying logic supporting the reverse onus provision, namely that the party that is the subject of the complaint is always in possession of the relevant facts.
6. Bragg Communications Inc., carrying on business as Eastlink (Eastlink), the Independent Broadcast Group (IBG), the Ministère de la Culture, des Communications et de la Condition féminine, MTS Inc. (MTS), Rogers Broadcasting Limited (Rogers) and TELUS Communications Company (TELUS) all supported the imposition of a reverse onus provision on SRDUs.

Commission's analysis and decision

7. In Broadcasting Regulatory Policy 2011-601 relating to vertical integration, the Commission established that reverse onus provisions should be made applicable to all programming undertakings and BDUs with respect to undue preference complaints. The Commission concluded that it is the party conferring a preference or a disadvantage that will have the necessary information required for the Commission to determine the facts of the case in order to issue a ruling.
8. In Broadcasting Regulatory Policy 2012-94, the Commission expressed the view that that the above rationale may also be valid with respect to SRDUs. The Commission hereby confirms the view expressed in Broadcasting Regulatory Policy 2012-94.

² The concept of reverse onus applies to undue preference or disadvantage complaints in such a way that once a complainant has demonstrated the existence of a preference or disadvantage, the respondent then shoulders the burden of demonstrating that the preference or disadvantage is not undue.

9. Accordingly, the Commission has set out a **condition of licence** imposing a reverse onus provision in the appendix to this decision.

Information sharing

Positions of parties

10. Bell opposed the imposition of a condition of licence restricting information sharing, arguing again that there was no proven need for this type of regulation with respect to SRDUs. Bell also indicated that no issues had arisen regarding the inappropriate sharing of confidential information between an SRDU and its affiliate BDU.
11. Eastlink and MTS supported the imposition of an information-sharing restriction. TELUS and the IBG also supported such a condition, but argued that it should be strengthened by imposing non-disclosure agreements that would prevent SRDUs from sharing information with affiliated programming undertakings.

Commission's analysis and decision

12. The Commission notes that Shaw Satellite Services Inc. (Shaw) is already subject to a condition preventing information sharing and did not request its deletion as part of the renewal of its SRDU licence. Pursuant to this condition, the licensee must ensure that any confidential information obtained from a customer or potential customer of the licensee's SRDU or pertaining to product or service offerings of the SRDU remains confidential.
13. As stated in Broadcasting Regulatory Policy 2012-94, given that both operating SRDUs are part of vertically integrated entities (i.e. entities that own or control both programming and distribution undertakings), the Commission considers that an SRDU's sharing competitively sensitive information about a client BDU with an affiliated BDU may constitute an unfair competitive advantage.
14. The Commission is satisfied that the condition imposed on Shaw's SRDU would prevent Bell's SRDU from sharing information with any undertakings, including affiliated programming undertakings. Accordingly, in the appendix to this decision, the Commission has set out a **condition of licence** to this effect for Bell's SRDU.

Other matters

15. The direct-to-home (DTH) satellite distribution undertaking Bell TV currently charges an uplink fee to pay and specialty services for the transport of their signals to cable head-ends, whether or not such programming services actually need to use Bell's SRDU facilities. Quebecor Media Inc., Rogers and TELUS objected to the imposition of this charge by Bell TV and argued that these fees were unreasonable.
16. The Commission considers that this is a matter that should be addressed in the context of Bell's DTH licence renewal and not its SRDU renewal and has accordingly addressed the matter in Broadcasting Decision 2012-608, also issued today.

Conclusion

17. In light of all of the above, the Commission **renews** the broadcasting licence for the satellite relay distribution undertaking operated by Bell ExpressVu Inc. (the general partner) and Bell Canada (the limited partner), carrying on business as Bell ExpressVu Limited Partnership, from 1 November 2012 to 31 August 2019. The **conditions of licence** are set out in the appendix to this decision.

Secretary General

Related documents

- *Bell TV – Licence renewal*, Broadcasting Decision 2012-608, 31 October 2012
- *Administrative renewals*, Broadcasting Decision CRTC 2012-417, 1 August 2012
- *Administrative renewals*, Broadcasting Decision CRTC 2012-100, 16 February 2012
- *Licensing and other issues relating to satellite relay distribution undertakings*, Broadcasting Regulatory Policy CRTC 2012-94, 14 February 2012
- *Complaint by TELUS Communications Company against BCE Inc., Bell Canada or Bell Mobility Inc. alleging undue preference and disadvantage, contrary to the provisions of the New Media Exemption Order*, Broadcasting Decision CRTC 2011-765, 12 December 2011
- *Regulatory framework relating to vertical integration*, Broadcasting Regulatory Policy CRTC 2011-601, 21 September 2011
- *Administrative renewals*, Broadcasting Decision CRTC 2011-420, 13 July 2011
- *Administrative renewals*, Broadcasting Decision CRTC 2010-170, 22 March 2010

**This decision is to be appended to the licence.*

Appendix to Broadcasting Decision CRTC 2012-609

Conditions of licence

1. The licensee shall require all sales, marketing and customer service functions and staff to comply with written procedures established by the licensee designed to ensure that any confidential information obtained from a customer or potential customer of the licensee's satellite relay distribution undertaking or pertaining to product or service offerings of the satellite relay distribution undertaking remain confidential. The licensee will file a copy of such procedures and any subsequent amendments with the Commission for prior approval.
2. The licensee shall adhere to the provisions of section 4 of the *Broadcasting Distribution Regulations*, as amended from time to time, as regards any transfers of ownership or control.
3. Subject to the requirement that it ensure that a majority of the television signals it distributes are Canadian programming services, the licensee is authorized to distribute via satellite to its affiliates the following television services:
 - a) the signal of any licensed conventional television programming undertaking;
 - b) the signal of any educational television programming service, the operation of which is the responsibility of any educational authority designated by the province in which the licensed area of the undertaking is located;
 - c) the signal of any U.S. over-the-air television programming undertaking included on the *List of non-Canadian programming services authorized for distribution*;
 - d) CPAC, the Parliamentary programming service and the proceedings of any provincial or territorial Legislative assembly;
 - e) Radio-France outre mer (RF01) Saint-Pierre and Miquelon; and
 - f) Atlantic Satellite Network (ASN).

For the purpose of this condition, non-Canadian services of the same network affiliation will be counted as a single service.

4. The licensee is authorized to distribute to its affiliates via satellite the signal of any licensed conventional radio programming undertaking and any licensed pay audio undertaking.
5. The licensee must provide its service to all of the following undertakings whose operators are willing to enter into affiliation agreements with it:

- a) terrestrial broadcasting distribution undertakings (BDUs) that are licensed by the Commission or that are operating in accordance with an exemption order issued by the Commission; and
 - b) licensed direct-to-home (DTH) BDUs (for retransmission to DTH subscribers only).
- 6. Regarding alteration or deletion of programming, the licensee shall not alter or delete a programming service in the course of its distribution except as the Bell ExpressVu DTH broadcasting distribution undertaking is permitted under section 7 of the *Broadcasting Distribution Regulations*, as amended from time to time.
- 7. The licensee 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.

For the purpose of this condition, contributions directed to a production fund are required to be made on a monthly basis, within 45 days of each month's end. Funds allocated to subsidize the provision of decoder equipment are not eligible contributions.
- 8. The licensee shall not give an undue preference to any person, including itself, or subject any person to an undue disadvantage.
- 9. In any proceeding before the Commission, the burden of establishing that any preference or disadvantage is not undue is on the licensee that gives the preference or subjects the person to the disadvantage.
- 10. If there is a dispute between the licensee and a distribution undertaking, whether operating by licence or by exemption order, concerning the terms under which programming services are or may be provided, then the licensee shall submit to a dispute resolution process if the Commission so requires.