



Broadcasting Public Notice CRTC 2007-125

Ottawa, 14 November 2007

Amendments to *Exemption Order respecting cable broadcasting distribution undertakings that serve between 2,000 and 6,000 subscribers*, with respect to the Commission's community channel policy

In this public notice, the Commission amends the cable exemption order set out in Broadcasting Public Notice 2006-5 so as to update provisions of that order related to community channel programming.

Introduction

1. In Broadcasting Public Notice 2006-5, the Commission set out the most recent version of its exemption order respecting cable broadcasting distribution undertakings (BDUs) that serve between 2,000 and 6,000 subscribers (the cable exemption order). In Broadcasting Public Notice 2007-90, the Commission proposed amendments that would update provisions of that order relating to community channel programming. These amendments would permit exempted cable BDUs to offer community channel programming on the same basis as licensed cable BDUs that are either affiliated with the exempted cable BDU, or are operating in the same province or territory. Specifically, the Commission proposed to add the following provisions to the cable exemption order:

Alternatively,

- a) where an undertaking is an affiliate of a licensed cable system, and the Commission has prescribed specific conditions of licence governing the offering of a community channel by that licensed system, the undertaking may offer its community channel on the same basis as that approved for the licensed system;
- b) where an undertaking is not an affiliate of a licensed cable system, 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.

2. In Broadcasting Public Notice 2007-90, the Commission noted that through these proposed amendments, it intended to address certain issues raised as a result of recent licensing decisions. Specifically, Cogeco Cable Canada Inc. (Cogeco Canada), Cogeco Cable Quebec Inc. (Cogeco Quebec), various licensees operating under the business name Eastlink (collectively, Eastlink) and Rogers Cable Communications Inc. (Rogers) had recently been granted conditions of licence permitting them to offer “regional” or “zone-based” programming in addition to local programming.¹ Since a number of the cable BDUs operated by the above-mentioned companies are exempted cable BDUs, amendments to the cable exemption order were required in order to permit these companies to operate their community channels on exempted cable BDUs in the same manner as on licensed BDUs.
3. In response to Broadcasting Public Notice 2007-90, the Commission received comments from Câble-Axion Digitel inc. (Câble Axion), the Canadian Cable Systems Alliance Inc. (CCSA), the C.M.E.S. Community Media Education Society (C.M.E.S.), Eastlink, and the Fédération des télévisions communautaires autonomes du Québec (FTCAQ). These comments are available on the Commission’s Web site at www.crtc.gc.ca under “Public Proceedings.”

Commission’s analysis and determinations

4. The Commission considers that the following issues arose from the comments:
 - What impact would the proposed amendments to the cable exemption order have on the Commission’s community channel policy?
 - Should the Commission remove from the cable exemption order the provisions relating to the content of the community channel and to contributions to the production of Canadian programming, as an alternative to the proposed amendments?

What impact would the proposed amendments to the cable exemption order have on the Commission’s community channel policy?

5. The FTCAQ disagreed with the proposed amendments, arguing that they are inappropriate and would amount to a change to the Commission’s overarching community channel policy for all distributors.

¹ See Broadcasting Decisions 2007-264, 2007-263, 2006-691, 2006-679 and 2006-459.

6. The Commission considers that the proposed amendments would not alter the fundamental community channel policy. The Commission acknowledges that it has authorized a departure from the community channel policy for three large groups of licensed cable BDUs, namely, Cogeco (Cogeco Canada and Cogeco Quebec), Eastlink and Rogers. The objective of these amendments is only to permit these distributors to operate community channels on their exempt BDUs on the same basis as on their licensed BDUs and to permit exempt BDUs that operate in the same provinces as licensed BDUs to offer community programming in the same way as those licensed BDUs.

Should the Commission remove from the cable exemption order the provisions relating to the content of the community channel and to contributions to the production of Canadian programming, as an alternative to the proposed amendments?

7. The CCSA considered the proposed amendments to be too complex, and argued that it would be simpler and more consistent with the “Commission’s mandate to reduce regulation and allow market forces to play a greater role” to remove from the cable exemption order provisions related to the content of community channels, as well as those requiring that licensees contribute 5% of their annual gross revenues to the production of Canadian programming. The CCSA suggested that these provisions may be altered in any case as a result of the proceeding initiated by Broadcasting Notice of Public Hearing 2007-10, and argued that removing these provisions would be less likely to conflict with decisions taken further to that proceeding.
8. The Commission considers that the CCSA proposal to remove the community channel and contribution provisions from the cable exemption order lies considerably beyond the scope of the amendments proposed by the Commission in Broadcasting Public Notice 2007-90. As noted above, the proposed amendments are intended to address particular issues that have arisen as a result of recent Commission decisions. Further amendments to the cable exemption order may take place following the review of the *Broadcasting Distribution Regulations* initiated by Broadcasting Notice of Public Hearing 2007-10. In the Commission’s view, that proceeding would be the appropriate forum for the CCSA to raise its concerns with respect to these provisions.

Conclusion

9. In light of the above, the Commission amends the cable exemption order set out in Broadcasting Public Notice 2006-5 so as to update provisions of that order related to community channel programming, as originally proposed in Broadcasting Public Notice 2007-90. The amended cable exemption order is set out in the appendix to this public notice.

Secretary General

Related documents

- *Class 3 regional licence for broadcasting distribution undertakings in Ontario*, Broadcasting Decision CRTC 2007-264, 30 July 2007, as amended by *Erratum*, Broadcasting Decision CRTC 2007-264-1, 12 October 2007
- *Class 1 regional licence for broadcasting distribution undertakings in Ontario*, Broadcasting Decision CRTC 2007-263, 30 July 2007, as amended by *Erratum*, Broadcasting Decision CRTC 2007-263-1, 12 October 2007
- *Call for comments – Update to Exemption Order respecting cable broadcasting distribution undertakings that serve between 2,000 and 6,000 subscribers*, Broadcasting Public Notice CRTC 2007-90, 31 July 2007
- *Review of the regulatory frameworks for broadcasting distribution undertakings and discretionary programming services*, Broadcasting Notice of Public Hearing CRTC 2007-10, 5 July 2007, as amended by *Review of the regulatory frameworks for broadcasting distribution undertakings and discretionary programming services*, Broadcasting Notice of Public Hearing CRTC 2007-10-1, 12 September 2007, and *Review of the regulatory frameworks for broadcasting distribution undertakings and discretionary programming services*, Broadcasting Notice of Public Hearing CRTC 2007-10-2, 26 September 2007
- *Amendment of Class 1, 2 and 3 regional licences in Quebec*, Broadcasting Decision CRTC 2006-691, 21 December 2006
- *Programming distributed on community channels in Nova Scotia and Prince Edward Island – Licence amendment*, Broadcasting Decision CRTC 2006-679, 19 December 2006
- *Class 1 regional licence for broadcasting distribution undertakings in New Brunswick and in Newfoundland and Labrador*, Broadcasting Decision CRTC 2006-459, 31 August 2006
- *Changes to the distribution of the Cable Public Affairs Channel and the parliamentary programming service in response to a Direction from the Governor in Council*, Broadcasting Public Notice CRTC 2006-5, 19 January 2006

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 2007-125

Exemption order respecting cable broadcasting distribution undertakings that serve between 2,000 and 6,000 subscribers

This order replaces *Exemption order respecting cable broadcasting distribution undertakings that serve between 2,000 and 6,000 subscribers*, set out in Appendix II to *Changes to the distribution of the Cable Public Affairs Channel and the parliamentary programming service in response to a Direction from the Governor in Council*, Broadcasting Public Notice CRTC 2006-5, 19 January 2006.

Pursuant to section 9(4) of the *Broadcasting Act* (the Act), the Commission, by this order, exempts from the requirements of Part II of the Act and any regulations made thereunder, those persons carrying on broadcasting distribution undertakings of the class defined by the criteria outlined below.

Purpose

The purpose of these broadcasting distribution undertakings is to serve small and rural communities, and serve between 2,000 and 6,000 subscribers.

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. In total, the number of subscribers served by the individual undertaking is 2,000 or more, but not more than 6,000. The undertaking operates its own head end. The undertaking did not, as of 19 May 1995, serve all or part of the same service area as that of a cable undertaking that is a Class 1 licensee, as defined in the *Broadcasting Distribution Regulations*, or did not otherwise, at the time the undertaking first qualified for exemption, serve all or part of the same service area as that of a cable undertaking that is a Class 1 licensee. Once exempt, the undertaking shall at no time have more than 6,600 subscribers.
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. For the purpose of this order,

(1) the terms “basic band,” “basic service,” “Canadian production fund,” “Category 1 service,” “Category 2 service,” “community channel,” “community programming,” “comparable,” “contribution to local expression,” “Corporation,” “educational television programming service,” “extra-regional television station,” “independent production fund,” “licensed,” “local television station,” “official contour,” “pay television service,” “privately owned local television station,” “programming service,” “related programming undertaking,” “regional television station,” “specialty service” and “station” have the same meaning as in the *Broadcasting Distribution Regulations*; and “service area” shall mean the area in which an exempt undertaking carries on a broadcasting distribution undertaking;

(2) the term “affiliate” has the same meaning as in section 21(2) of the *Broadcasting Distribution Regulations*; and

(3) a licensee is operating in an “anglophone market” or in a “francophone market” within the meaning in section 18(4) of the *Broadcasting Distribution Regulations*.

5. (1) All services of Canadian local television stations, regional television stations, educational television programming services designated by the province in which the undertaking is located, and extra-regional television stations other than affiliates or members of a network of which a local television station is an affiliate or member, are distributed over the undertaking. If not otherwise included in the list above, the undertaking must distribute the programming service of at least one television station owned and operated by the Corporation, in each of the official languages.

(2) In each case, the programming services referred to in 5(1) must be distributed with no degradation of the received signal. In addition, the undertaking shall distribute these services as part of its basic service on channels beginning with the basic band.

(3) If the undertaking receives programming services that are identical, the undertaking is required to distribute only one of them under 5(1).

(4) If the programming services of two or more regional television stations that are affiliates or members of the same network are received at the local head end, the undertaking is required to distribute only one of them.

(5) If the undertaking was not required to distribute a programming service described in 5(1), including an educational programming service, as part of its basic service at the time it first qualified for exemption, the undertaking is not required to distribute that service under 5(1), but may distribute it as part of the basic service.

6. The undertaking must distribute, as part of the basic service,
 - (1) the Aboriginal Peoples Television Network programming service;
 - (2) the programming service of TVA Group Inc. (CFTM-TV Montréal or the programming service of one of its affiliates);
 - (3) subject to subsection 6(5), 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 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;
 - (4) subject to subsection 6(5), if the undertaking is operating in an anglophone market, 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, including the main audio channel of those services in the English language and an auxiliary audio channel of those services in the French language;
 - (5) 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; and
 - (6) if the undertaking is operating in an anglophone market and distributes the Corporation's Newsworld programming service, the programming service of the National Broadcast Reading Service (VoicePrint) as the secondary audio program of the former service.
7. The undertaking must distribute,
 - (1) if the undertaking is operating in a francophone market, 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, including the main audio channel of those services in the English language; and
 - (2) if the undertaking is operating in an anglophone market, 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, including the main audio channel of those services in the French language.

8. An undertaking that has a nominal capacity of 750 MHz or more and that delivers any programming service on a digital basis shall also distribute:
 - (1) at least one pay television service in each official language; and
 - (2) all French-language and English-language Canadian specialty services, other than Category 2 services.
9. An undertaking that has a nominal capacity of less than 750 MHz and that delivers any programming service on a digital basis shall distribute:
 - (1) at least one French-language Canadian specialty service, excluding the services that the undertaking may be required to distribute under 5 or 6 above, for every ten English-language programming services distributed by the undertaking, if the undertaking is operating in an anglophone market;
 - (2) at least one English-language Canadian specialty service, excluding the services that the undertaking may be required to distribute under 5 or 6 above, for every ten French-language programming services distributed by the undertaking, if the undertaking is operating in a francophone market;
 - (3) if the undertaking is operating in an anglophone market, each English-language Category 1 service that the operator of which is authorized to provide to all or part of the service area of the undertaking; and
 - (4) if the undertaking is operating in a francophone market, each French-language Category 1 service that the operator of which is authorized to provide to all or part of the service area of the undertaking.
10. An undertaking operating in an anglophone market shall distribute on an analog basis at least the same number of French-language Canadian programming services as it distributed on an analog basis on 10 March 2000.
11. The undertaking must not provide a subscriber with any programming services, other than those licensed to carry on pay-per-view services, video-on-demand services or exempt programming services, without also providing the basic service described in 5.
12. The undertaking must not alter or delete a programming service in the course of its distribution except:
 - (1) for the purpose of complying with section 329 of the *Canada Elections Act*;
 - (2) 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;

(3) for the purpose of altering a programming service to insert an emergency alert message in accordance with an agreement entered into with the operator of the service or the network responsible for the service;

(4) 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; or

(5) for the purpose of deleting a subsidiary signal, unless the signal is, itself, a programming service or is related to the service being distributed.

13. (1) The undertaking shall delete the programming service of a television station and substitute the programming service of a Canadian privately owned local television station or, with the agreement of the broadcaster operating the privately owned local television station, shall have that broadcaster carry out the deletion and substitution, if

(a) the main studio of the privately owned 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) the privately owned local television station has a higher priority under 5; and

(d) in a case where the broadcaster operating the privately owned 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 privately owned local television station a written request for the deletion and substitution.

(2) If a substitution is requested by more than one broadcaster, the undertaking shall give preference to the programming service of the television station that has the highest priority under 5.

(3) 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.

14. (1) The undertaking must 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.

(2) For the purpose of 14(1)(b), sexual orientation does not include the orientation towards a sexual act or activity that would constitute an offence under the Criminal Code.

15. No service received over-the-air or by satellite or microwave or by optical fibre transmission is distributed over the undertaking, other than a service that the Commission, by regulation or otherwise, has authorized.
16. In respect of each of analog and digital technology, the undertaking shall ensure that a majority of the video and audio channels received by a subscriber are devoted to the distribution of Canadian programming services. Each pay television service, television pay-per-view service, and video-on-demand service shall be counted as a single video channel.
17. If an undertaking that operates in a francophone market distributes the service of ARTV, that undertaking must distribute that service as part of the discretionary package of services that is received by the highest number of subscribers. The fee payable to the service provider shall be \$0.55 per subscriber per month.
18. The undertaking may only distribute non-Canadian-originated services received by satellite in a package with Canadian pay television and/or Canadian specialty services, and such a package must be distributed on a discretionary basis, subject to the following requirements:
 - (1) a Canadian pay television service may be linked in a given discretionary package of services with no more than five channels containing non-Canadian programming services. In no case can an undertaking distribute more than five channels of non-Canadian-originated services received by satellite linked with Canadian pay television services, regardless of the number of Canadian pay television services distributed by the undertaking;

(2) (a) each Canadian specialty service may be linked in a given discretionary package of services with no more than one channel containing non-Canadian-originated services;

(b) an undertaking may designate one U.S. superstation and distribute the signal of that superstation within a given discretionary package of services that may include one or more Canadian specialty and/or pay television services, provided that the superstation is included in a package of services that is distributed on a digital basis only;

(c) an undertaking is not permitted to link non-Canadian-originated services received by satellite with a Canadian specialty service distributed on the basic service;

(3) any Canadian programming service may be linked with a second set of U.S. network signals offered on a digital basis as part of a discretionary package of services; and

(4) an undertaking is not permitted to offer a tier containing only non-Canadian services.

19. (1) Where an undertaking distributes a Category 1 service, the undertaking will not be permitted to distribute that service on a stand-alone basis unless the Category 1 service is also distributed as part of a package.

(2) An undertaking is not permitted to package an Adult Category 2 programming service in such a way that subscribers are obligated to purchase the service in order to purchase any other programming service. Undertakings are required to take measures to fully block the reception of both the audio and video portions of any Adult Category 2 programming service to subscribers who request that it not be receivable in their home (in either unscrambled or scrambled mode).

20. The undertaking may only distribute a single or limited point of view religious pay or specialty service in a package with other Canadian single or limited point of view religious pay or specialty services, and with any non-Canadian-originated religious services, and all such services must be distributed on a discretionary basis, subject to the following requirements:

(1) each Canadian single or limited point of view religious pay service may be linked in a single discretionary package of services with no more than five channels containing non-Canadian-originated religious services, but in no case can a single discretionary package of services, whose Canadian component consists only of single or limited point of view religious pay services, contain more than five channels containing non-Canadian religious satellite services, regardless of the number of Canadian single or limited point of view religious pay services included in that package of services; and

(2) each Canadian single or limited point of view religious specialty service may be linked, within a discretionary package of services that may include one or more Canadian single or limited point of view religious services, with no more than one channel containing non-Canadian-originated religious services.

21. The undertaking must 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:
 - (1) a contribution to the Canadian production fund of at least 80% of the undertaking's total required contribution; and
 - (2) to one or more independent production funds, the remainder of its total required contribution.

22. Where an undertaking elects to offer a community channel as part of its contribution to local expression, the community channel must offer community programming that meets the following requirements:
 - (1) the programming offered must consist of at least:
 - (a) 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;
 - (b) 30% access programming consisting of programs produced by members of the community served by the undertaking;
 - (2) alternatively,
 - (a) 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;
 - (b) 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;
 - (3) 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; and

(4) the programming offered adheres to:

(a) the *Cable television community channel standards*, as amended; and

(b) the Canadian Association of Broadcasters' *Voluntary code regarding violence in television programming*, as amended.