



Broadcasting Decision CRTC 2008-47

Ottawa, 27 February 2007

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 2007-1562-5, received 2 November 2007

Broadcasting Public Notice CRTC 2007-141

18 December 2007

Extension of authorization to distribute partial and omnibus channels

*The Commission **approves in part** an application by Bell ExpressVu Limited Partnership to extend a condition of licence of its direct-to-home (DTH) distribution undertaking that authorizes the distribution of the local programming of various Canadian television stations on partial and/or omnibus channels. The Commission extends the condition of licence until 90 days following the publication of the Commission's determinations in the proceeding initiated by Review of the regulatory frameworks for broadcasting distribution undertakings and discretionary programming services, *Broadcasting Notice of Public Hearing CRTC 2007-10-3, 5 November 2007*, unless a request for an extension of time is approved by the Commission before that date. The applicant had proposed that the condition of licence be extended until 31 August 2010.*

Introduction

1. The Commission received an application by Bell ExpressVu Limited Partnership (ExpressVu)¹ to extend a condition of licence of its direct-to-home (DTH) distribution undertaking. This condition authorizes ExpressVu to distribute the local programming of various Canadian television stations on partial and/or omnibus channels. The condition of licence, which was approved in Broadcasting Decision 2005-457, reads as follows:

The licensee is relieved from the requirements of section 7 of the *Broadcasting Distribution Regulations* solely for the purpose of distributing, on a part-time basis, via partial and/or omnibus channels, the local and regional news, weather, sports and other unique local or regional programming exhibited by those licensed over-the-air, i.e., conventional television stations not distributed by the licensee in their entirety. Distribution of programming on a part-time basis is subject to the following requirements:

¹ 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

- a) Distribution of part-time programming may only take place on a partial channel with the prior written consent of the television station originating the programming. In addition, the further prior written consent of the television station is necessary in order to distribute this part-time programming on an omnibus channel, or at a time that is not simultaneous with its original broadcast on the television station.
- b) Prior notification must be given to the Commission before the programming of a television station to be distributed on a part-time basis is added to the licensee's channel line-up.
- c) The licensee shall provide equitable distribution of participating television stations distributed in the manner described above, according to the principles set out in the Schedule to Appendix 1 of *ExpressVu – Licence renewal*, Broadcasting Decision CRTC 2004-129, 31 March 2004.
- d) This authorization remains in effect until 29 February 2008, unless a request for an extension of time is approved by the Commission before that date.

- 2. ExpressVu requested that clause d) of this condition of licence be amended so that it would expire on 31 August 2010, which coincides with the end of the current licence term of the ExpressVu DTH undertaking.
- 3. The Commission received interventions commenting on the application from the Canadian Association of Broadcasters (CAB), CTVglobemedia Inc. (CTVgm) and Quebecor Media Inc. (QMI). The interventions and the applicant's reply to them are available on the Commission's Web site at www.crtc.gc.ca under "Public Proceedings."

Positions of parties

The applicant

- 4. In support of its application to extend the condition of licence relating to the distribution of programming on partial and/or omnibus channels until 31 August 2010, ExpressVu submitted that the Commission has acknowledged that it must be sensitive to satellite capacity, now and in the future, so that it does not burden operators of DTH undertakings or create unreasonable expectations for broadcasters and the public. ExpressVu stated that, because of constraints on its satellite capacity, it does not expect to be able accommodate the carriage of additional local channels.
- 5. ExpressVu submitted that 31 August 2010 would be a more realistic termination date for its condition of licence relating to the distribution of programming on partial and/or omnibus channels in that it would allow for a clear evaluation of its available distribution capability and the capacity needed to distribute HD services. ExpressVu also stated that it would be willing to add further unique local content on partial and/or omnibus channels if such content were made available by broadcasters.

Interveners

6. The CAB, supported by CTVgm, was of the view that the condition of licence related to the distribution of programming on partial and/or omnibus channels should be extended only to 31 December 2008. In support of this position, the CAB noted that the current expiry date of 29 February 2008 reflected the Commission's intent to review the effect of the distribution of programming on partial and/or omnibus channels as part of the proceeding to address the distribution of high definition (HD) programming by DTH distributors. This review will take place as part of a public hearing that will begin on 7 April 2008. The CAB was of the view that an extension of the condition of licence to 31 December 2008 would allow the Commission to consider the results of the 7 April 2008 public hearing in its evaluation of the appropriateness of the distribution of programming on partial and/or omnibus channels.
7. QMI did not comment directly on the extension of the condition of licence, but used the opportunity to generally state its position that DTH undertakings should be subject to the same principles related to the distribution of priority signals that apply to cable distribution undertakings.

Commission's analysis and determinations

8. In Broadcasting Decision 2005-457, the Commission set an expiry date of 29 February 2008 for the condition of licence regarding the distribution of programming on partial and/or omnibus channels in the expectation that the authorization would not expire until the completion of the aforementioned proceeding with respect to the distribution of HD programming by DTH undertakings. As noted by the interveners, the distribution of HD programming by DTH undertakings will be considered as part of the proceeding dealing with the Commission's review of the regulatory framework for broadcasting distribution undertakings and discretionary programming services that will begin on 7 April 2008. The current condition of licence expires before the beginning of that hearing.
9. The Commission continues to be of the view that it is appropriate that ExpressVu's condition of licence remain in effect until the determinations on matters flowing from the 7 April 2008 hearing are announced and ExpressVu has had sufficient time to decide how to proceed in light of those determinations. The Commission considers that it would be appropriate and consistent with its reasoning in Broadcasting Decision 2005-457 to extend the condition of licence for a period ending 90 days following the publication of the Commission's determinations on the matters considered at the 7 April 2008 public hearing.
10. Accordingly, the Commission **approves in part** the application by ExpressVu to extend a condition of licence of its direct-to-home distribution undertaking that authorizes ExpressVu to distribute the local programming of various Canadian television stations on partial and/or omnibus channels. The Commission replaces paragraph d) of that condition of licence with the following:

d) This authorization remains in effect until 90 days following the publication of

the Commission's determinations in the proceeding initiated by *Review of the regulatory frameworks for broadcasting distribution undertakings and discretionary programming services*, Broadcasting Notice of Public Hearing CRTC 2007-10-3, 5 November 2007, unless a request for an extension of time is approved by the Commission before that date.

11. The Commission reminds ExpressVu that, under the provisions of clause b) of this condition of licence, it must notify the Commission before the programming of a television station to be distributed on a part-time basis is added to the licensee's channel line-up.

Other matters

12. The Commission is of the view that the comments of QMI are beyond the scope of this application and should be addressed in the context of the proceeding that is the subject of the 7 April 2008 public hearing.

Secretary General

Related documents

- *Review of the regulatory frameworks for broadcasting distribution undertakings and discretionary programming services*, Broadcasting Notice of Public Hearing CRTC 2007-10-3, 5 November 2007
- *Authorization to distribute partial or omnibus channels containing unique local and regional programming*, Broadcasting Decision CRTC 2005-457, 8 September 2005

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>