



Broadcasting Order CRTC 2009-544

Route reference: Broadcasting Public Notice 2008-100

Additional references: 2009-173, 2009-173-1

Ottawa, 31 August 2009

Exemption order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers

The Commission sets out a new exemption order for terrestrial broadcasting distribution undertakings (BDUs) that serve fewer than 20,000 subscribers. Taking into consideration the comments received in response to Broadcasting Notice of Consultation 2009-173, the Commission has made several amendments to the proposed exemption order set out in that notice.

Effective today, the new exemption order supersedes the two previous exemption orders for small BDUs. Those BDUs that are not currently exempt under one of the previous orders but may be eligible for exemption under the new order may apply to the Commission for revocation of their licences. Regional licensees may apply to carve out a smaller service area or areas from their broadcasting licence if they meet the criteria described in this Broadcasting Order. The Commission encourages licensees that wish to request a revocation or carve-out of their licence to apply on or before 30 October 2009.

Introduction

1. The Commission has previously issued two exemption orders for small terrestrial broadcasting distribution undertakings (BDUs) under section 9(4) of the *Broadcasting Act* (the Act). In 2001, the Commission issued the first of these orders exempting BDUs that serve fewer than 2,000 subscribers. In 2004, it issued a second exemption order for BDUs serving between 2,000 and 6,000 subscribers.¹
2. In Broadcasting Public Notice 2008-100, the Commission decided to expand the scope of its exemption orders to include terrestrial BDUs serving fewer than 20,000 subscribers under a single order. In this determination, the Commission set out four principles as to eligibility for exemption:
 - terrestrial BDUs that serve fewer than 20,000 subscribers in a market will be eligible for exemption;
 - terrestrial BDUs that serve 20,000 or more subscribers or that compete in a market with another BDU that serves 20,000 or more subscribers will continue to have to be licensed;

¹ Both exemption orders have been updated and amended several times. The most recent versions can be found in Broadcasting Public Notices 2002-74 and 2007-125.

- exempt BDUs will not be subject to licensing should a licensed BDU from an adjacent area extend its service area and thereby enter into the small market of the exempt BDU in order to compete with that exempt BDU; and
 - BDUs that operate in both small and large markets under a single regional licence will be permitted to determine whether there would be greater benefits to continuing to operate in all markets as a single undertaking under a single licence, or to conduct their operations in smaller markets in such a way that those operations would constitute a discrete operation that would be eligible for exemption.
3. With respect to the last of these principles, the Commission noted that BDUs operating under regional licences would be able to apply to remove certain service areas from their licences so that they could operate as exempt undertakings in those areas. To be eligible for such a “carve out”, all or part of the service area removed from the regional licence would also have to be already served by a competing exempt BDU.
 4. The Commission indicated that it would issue for comment a proposed exemption order that would set out what it considered to be the minimum necessary terms and conditions for BDUs with fewer than 20,000 subscribers including a requirement that exempt BDUs file certain minimal information annually. In light of the fourth principle above, the Commission also indicated that it would seek comment on the specific criteria to be used in determining what would constitute a “discrete operation” for the purpose of these carve outs.
 5. In Broadcasting Notice of Consultation 2009-173, the Commission called for comment on a proposed exemption order and on what would constitute a discrete operation. The Commission has carefully considered all the comments received as part of this proceeding. The public record for this proceeding is available on the Commission’s website at www.crtc.gc.ca under “Public Proceedings.”
 6. The following sections of this document provide the Commission’s analysis and determinations with respect to the final exemption order, taking into account the comments received in the proceeding.

Eligibility for exemption

Issues

7. The Canadian Association of Broadcasters (CAB) argued that exempting all BDUs serving up to 20,000 subscribers would make the exemption order too broad. In its view and in the view of Bell Canada (Bell), Astral Media Inc. (Astral) and Pelmorex Communications Inc. (Pelmorex), systems owned and operated by the “Big 4” multi-system operators (MSOs) – i.e., Rogers Cable Communications Inc. (Rogers), Shaw Communications Inc. (Shaw), Videotron Ltd. (Videotron) and Cogeco Inc. - should be ineligible for exemption. The intervening parties submitted that BDUs owned

by the Big 4 MSOs have different operational circumstances than small independent cable systems including access to much larger resources, greater regulatory expertise and greater market power.

8. Shaw, Rogers and Bragg Communications Inc. (Bragg) opposed excluding Big 4 MSO systems from eligibility under the new exemption order. These parties submitted that systems serving smaller markets, whether owned by the Big 4 MSOs or by independent operators, face the same challenges. Bragg added that amongst its 800+ systems, which are spread across ten provinces, there are few, if any, horizontal or vertical efficiencies.
9. Shaw and Bragg also proposed that, once exempt, a BDU should be permitted to grow to 22,000 subscribers without requiring re-licensing, rather than the 21,000 level proposed in Broadcasting Notice of Consultation 2009-173. In the view of these parties, a 10% margin, or 2,000 subscribers, as has been used in previous exemption orders, would be a more appropriate level.

Commission's determinations

10. In the regulatory review proceeding that culminated in Broadcasting Public Notice 2008-100, the Commission heard arguments and examined the possibility of excluding systems owned by the Big 4 MSOs from eligibility for exemption under the new exemption order. The Commission rejected that notion and determined that all terrestrial BDUs serving fewer than 20,000 subscribers could be exempted from regulation and licensing "without detracting in a material manner from the implementation of Canadian broadcasting policy." In the Commission's view, there is little evidence of significant synergies that would warrant excluding systems owned by the Big 4 MSOs from exemption. The Commission is satisfied that its determinations on this matter in Broadcasting Public Notice 2008-100 continue to be correct and, therefore, finds that BDUs owned or operated by one of the Big 4 MSOs should be eligible for exemption under the new order.
11. With respect to the request by Shaw and Bragg to increase to 22,000 the maximum number of subscribers that could be served by a BDU once it is exempt, the Commission notes that it has used a 10% margin of this type in the past so as to prevent the need for re-licensing exempt BDUs as a result of normal subscriber churn. However, under previous exemption orders, this 10% margin resulted in a "cushion" of 200 subscribers for exempt BDUs serving fewer than 2,000 subscribers and a cushion of 600 subscribers for exempt BDUs serving 2,000 to 6,000 subscribers. Given the much higher subscriber threshold of the new exemption order, the Commission is concerned that a 10% threshold or an additional 2,000 subscribers may be excessive. Accordingly, the Commission has maintained the proposed threshold of 1,000 subscribers proposed in Broadcasting Notice of Consultation 2009-173.
12. The Commission also notes that it has amended paragraph 4 of the exemption order by replacing the phrase "three consecutive quarters" with the phrase "any two consecutive broadcasting years." This would mean that, once exempt, a BDU must exceed 21,000 subscribers as of 31 August of two consecutive years before it would need to be

re-licensed. Since exempt BDUs will submit annual subscriber numbers as of this date as part of the reporting requirements of the new exemption order, the Commission considers that it would be simpler and more effective for it to use this data in monitoring compliance with the exemption order.

Grandfathering obligations for existing exempt and licensed undertakings

Issues

13. The Canadian Cable Systems Alliance (CCSA) proposed amendments that it submitted would “grandfather” certain rights and obligations set out in the two current exemption orders and in the *Broadcasting Distribution Regulations* (the Regulations). Among other things, the CCSA proposed that the order contain a “grandfathering” provision to ensure that it does not impose any new regulatory obligations on either licensed or previously exempted systems that apply and qualify for exemption. According to the CCSA, its proposed amendments would ensure that currently exempt BDUs would not be impacted by the new exemption order and that “Part III” BDUs² could be exempted without any new regulatory obligations. Bragg generally supported these proposals.

Commission’s determinations

14. The Commission notes that, for BDUs with fewer than 2,000 subscribers, the provisions of the proposed exemption order closely reflect those that applied under the previous exemption order for such systems. As for previously exempt BDUs serving 2,000 to 6,000 subscribers, the obligations set out in the proposed exemption order are considerably less onerous, in almost all respects, than the licensing requirements of Class 1 or Class 2 BDUs and the current exemption order for BDUs serving 2,000 to 6,000 subscribers.
15. The Commission agrees with the CAB that the grandfathering clauses proposed by the CCSA are vague and may result in unintended consequences. In addition, the proposed provisions would incorporate by reference a combination of sections found in the two previous exemption orders and parts of the Regulations that will be removed on or before 31 August 2011. In the Commission’s view, it would be complex to monitor and enforce such provisions, as well as being confusing for both subscribers and programming services seeking to determine the regulatory obligations of an exempt BDU.
16. With respect to the impact on Part III systems, the Commission notes that there was no evidence presented in this proceeding to indicate that the new exemption order would impose unreasonably burdensome requirements on these BDUs. Accordingly, the Commission sees no reason why exempt former Part III BDUs should not be subject to the same regulatory requirements as other exempt BDUs that operate in communities of a similar size.

² Part III refers to the section of the *Cable Television Regulations, 1986*, which preceded the current Regulations. Certain BDUs were designated Part III BDUs because they operated in an area in which no more than one television station, aside from a Canadian Broadcasting Corporation station, could be received over the air. These BDUs were considered “remote” systems and are currently licensed as Class 3 BDUs under the Regulations, regardless of the number of subscribers these systems serve.

17. In light of the above, the Commission has not included the grandfathering provisions proposed by the CCSA in the new exemption order.

Access rules

Issues

18. Astral, Pelmorex, the CAB and the Canadian Film and Television Production Association (CFTPA) each argued that some form of access rules should be included in the exemption order to ensure that subscribers are able to access Canadian programming services and that programming services continue to receive the revenues needed to meet their regulatory obligations.

Commission's determinations

19. The Commission notes that many BDUs that will be operating under the exemption order already offer a full range of Canadian pay and specialty services to their subscribers. The Commission agrees with the CCSA that it is unlikely that such BDUs will significantly reduce distribution of Canadian pay and specialty services, even in the absence of access rules, given the competitive pressures these BDUs face, particularly from direct-to-home (DTH) BDUs. Moreover, the Commission is satisfied that the requirement under the exemption order that exempt BDUs offer a preponderance of Canadian programming services to each subscriber will substantially protect Canadian pay and specialty services and ensure that subscribers are offered a wide range of such services. Accordingly, the Commission has not added an access rule to the new exemption order.

Distribution of 9(1)(h) services

Issues

20. Bragg and the CCSA expressed concerns regarding proposed provisions requiring that exempt BDUs with more than 2,000 subscribers offer programming services that the Commission has designated for mandatory distribution under section 9(1)(h) of the Act.

Commission's determinations

21. The Commission notes that exempt BDUs with 2,000 to 6,000 subscribers are already obliged to carry certain services mandated under section 9(1)(h) of the Act, as are all the currently-licensed Class 1 BDUs. The requirements reflected in the Commission's proposed exemption order merely updates the list of 9(1)(h) services that must be carried by exempt undertakings serving more than 2,000 subscribers to include services more recently granted distribution rights under that section of the Act. The Commission recognizes that certain exempt BDUs, including Part III systems, may be required to distribute one or more additional services as a result of these requirements. The Commission notes, however, that these services have been granted 9(1)(h) status because they have been found to serve the national public interest and due to the importance of their role in the Canadian broadcasting system. Further, the Commission notes that the

requirement to distribute these services is contingent on the service paying the costs associated with making its signal available to exempt BDUs by satellite. Finally, the smallest BDUs with the greatest resource constraints, i.e., those with 2,000 subscribers or less, are not obliged to distribute these services. Accordingly, the Commission concludes that its proposed provision, i.e., that systems with more than 2,000 subscribers distribute these services, strikes the appropriate balance. Accordingly, the Commission has retained these requirements, as proposed, in the new exemption order.

22. Since the publication of Broadcasting Notice of Consultation 2009-173, the Commission has issued new mandatory distribution orders under section 9(1)(h) of the Act for the Weather Network/Météomedia service³ and for La Magnétothèque. The Commission has amended the exemption order to include these services among those that must be distributed on a digital basis by exempt systems with digital offerings.

Transport costs

Issues

23. The CCSA, supported by Bragg, submitted that exempt BDUs should only be required to distribute 9(1)(h) or other mandatory services if the program service pays for all the costs of delivery of its signal, regardless of the technology used to deliver the signal, to the exempt undertaking.

Commission's determinations

24. The Commission agrees with the Canadian Broadcasting Corporation (CBC) and the operators of the various 9(1)(h) services that the stipulation proposed by the CCSA is vague and could very well compel a 9(1)(h) service to transport its programming using multiple technologies. Mandating that a programming service make its signal available by a variety of transport methods, including by satellite, would unfairly increase the broadcaster's costs.
25. The rule set out in the new exemption order requires a 9(1)(h) service to pay for the satellite uplink and transponder costs associated with the delivery of its programming service. This rule is identical to a requirement imposed on 9(1)(h) services in many of the various mandatory distribution orders the Commission has issued for these services. The Commission notes that many BDUs already receive these services by satellite. Further, the proposed rule does not limit the ability of exempt BDUs to receive signals by means other than satellite, where it is more efficient and/or cost-effective for the BDU and the programming service to so arrange.
26. In light of the above, the Commission has retained in the new exemption order the proposed rule set out in Broadcasting Notice of Consultation 2009-173.

³ As set out in Broadcasting Order 2009-340, the mandatory distribution order for The Weather Network and MétéoMédia will be effective 1 September 2010 and expire 31 August 2015.

Contributions to the production of Canadian programming

Issues

27. Astral, Aboriginal Peoples Television Network Incorporated and the CAB submitted that the new exemption order should require exempt BDUs serving more than 2,000 subscribers to contribute 5% of gross annual broadcasting revenues, less community programming expenses, to Canadian programming. Astral and the CAB further argued that exempt BDUs should also be required to contribute to the Local Programming Improvement Fund (LPIF), once it is implemented.
28. Telus Communications Company proposed that the revenues of exempt undertakings owned by the Big 4 MSOs and by Bragg be included in the total contribution payments made by those companies.

Commission's determinations

29. Consistent with what was proposed in Broadcasting Notice of Consultation 2009-73, the Commission has not included a contribution requirement as a condition of the final exemption order. The Commission notes that licensed and exempt BDUs serving fewer than 20,000 subscribers have, since 2003, been permitted to direct all of their required 5% contribution to Canadian programming to their own community channels or community programming. As noted by the CCSA, virtually all BDUs serving fewer than 20,000 subscribers take advantage of this flexibility and, therefore, do not make contributions to the Canadian Media Fund (CMF) or other production funds. In fact, the Commission's analysis of BDU annual returns indicates that BDUs with less than 20,000 subscribers collectively contribute only a small amount to independent production funds, including the CMF, in a given year. Accordingly, the Commission is satisfied that its decision will not have a material negative impact on independent production funds.
30. With respect to the proposal that exempt BDUs contribute to the LPIF, the Commission already determined in Broadcasting Public Notice 2008-100 that only licensed undertakings will be required to contribute to this fund.
31. With regard to the proposal that the Big 4 MSOs and Bragg be required to include the revenues of exempt undertakings in their calculation of contribution to Canadian programming, the Commission considers that differential treatment of these undertakings would not be consistent with its determinations above in relation to the eligibility for exemption of BDUs owned by the Big 4 MSOs. Further, since BDUs with less than 20,000 subscribers are not currently contributing to independent production funds, a requirement that the larger BDUs owned by these MSOs include the revenues of exempt BDUs in their contribution calculation would impose a substantial new burden. In view of these factors, the Commission has not adopted this proposal.

Simultaneous substitution

Issues

32. The CAB submitted that exempt BDUs with more than 6,000 subscribers should have the same substitution obligations as currently licensed Class 1 cable systems; that is, they should be obliged to perform simultaneous substitution for local and regional stations, as is currently the case with respect to Class 1 licensed BDUs, rather than just for local stations, as proposed by the Commission.
33. Télé-Inter-Rives ltée (Télé-Inter-Rives) requested that exempt BDUs with less than 2,000 subscribers be required to distribute substituted signals if the local station is prepared to perform the substitution from its local studio and provide the substituted feed to the exempt BDU for distribution.
34. Conversely, Shaw, Bragg and the CCSA argued that the simultaneous substitution requirements in the proposed exemption order should be reduced so as to limit these requirements to apply to only private stations rather than both private and public (i.e., CBC) stations.

Commission's determinations

35. With respect to the simultaneous substitution rules applicable to BDUs with 6,000 to 20,000 subscribers, the Commission notes that parties did not present any evidence as to which, if any, television stations would be affected by the proposed rule, nor did they present evidence to support their claims of financial harm. Accordingly, the Commission is not persuaded that there is a need to add additional requirements to the exemption order as proposed.
36. In regard to Télé-Inter-Rives' request, the Commission notes that, at present, neither Class 3 licensed BDUs nor exempt BDUs with fewer than 2,000 subscribers have any obligations whatsoever with respect to simultaneous substitution. The Commission does not consider it appropriate to impose this as a new requirement on these small BDUs.
37. The Commission recognizes that the proposed requirement to provide simultaneous substitution for all local stations, including the CBC, is slightly more onerous for already exempt BDUs serving between 2,000 and 6,000 subscribers. However, it has been the CBC's practice to only rarely offer programming that is identical and simultaneously broadcast with that of other Canadian and non-Canadian television stations. Consequently, this addition should have only a small impact, if any, on exempt BDUs. Moreover, BDUs that serve between 6,000 and 20,000 subscribers are already required to provide simultaneous substitution for CBC stations. Accordingly, the Commission has adopted, without change, the simultaneous substitution requirements proposed in Broadcasting Notice of Consultation 2009-173.

Targeted advertisements / Local Availabilities

Issues

38. Astral, CAB, CFTPA and Pelmorex submitted that permitting exempt BDUs to offer targeted advertisements was premature since it raises issues that fall within the scope of other proceedings currently before the Commission. Once these issues have been resolved, the Commission could amend the exemption order to reflect its decisions.
39. Conversely, Bragg and the CCSA maintained that exempt undertakings should not be limited to inserting “targeted” advertisements only, but should be permitted to sell and insert commercial messages into the local availabilities of U.S. services.

Commission’s determinations

40. In Broadcasting Public Notice 2008-100, the Commission stated that it would amend the Regulations to permit BDUs and programmers to work cooperatively to manage and exploit the possibilities of new forms of advertising, such as targeted advertising. The Commission noted that new forms of digitally based advertising were regarded as a significant new revenue opportunity for all sectors in the Canadian broadcasting system.
41. The Commission also announced that it would investigate issues surrounding the insertion of advertising by BDUs into programming services in proceedings related to video-on-demand (VOD) (Broadcasting Public Notice 2008-101) and local availabilities in non-Canadian services (Broadcasting Public Notice 2008-102). In the Commission’s view, there is no need to wait until the proceedings announced in these notices are completed before permitting exempt BDUs and Canadian linear programming services to explore potential opportunities with respect to targeted advertising. Accordingly, the Commission has retained an authorization related to targeted advertising in the new exemption order.
42. The Commission is concerned, however, that the wording of the proposed rule, as set out in Broadcasting Notice of Consultation 2009-173, could be interpreted as authorizing exempt BDUs to insert commercial messages into local availabilities and/or VOD programming. Such an authorization would be premature, given that the Commission has not yet published its determinations regarding the issues raised in Broadcasting Public Notices 2008-101 and 2008-102. The Commission has therefore amended the wording of paragraph 11(g) of the new exemption order to limit BDUs to inserting commercial messages into the programs of Canadian programming services, excluding VOD services.

Accessibility

43. In Broadcasting Public Notice 2006-6, the Commission determined that Class 2, Class 3 and exempt BDUs should be relieved of the requirement to pass through to subscribers described video programming related to the programming services distributed on an analog basis. The Commission has implemented this determination through the inclusion

of paragraph 11(f) of the new exemption order. The Commission notes that exempt BDUs are required to pass through described video associated with programming services distributed on a digital basis, and to pass through as well all closed captioning with respect to services offered on either an analog or a digital basis.

44. The Commission recently published its determinations with respect to the accessibility of telecommunications and broadcasting services to persons with disabilities in Broadcasting and Telecom Regulatory Policy 2009-430. In that document, the Commission made a number of determinations with respect to BDUs in regard to issues such as the pass-through of closed captioning and described video programming and customer service. Although the Commission has not imposed specific obligations on exempt undertakings, other than those described above, exempt BDUs are encouraged to make every effort to provide reasonable accommodations and improve services for persons with disabilities in a manner consistent with the Commission's findings in Broadcasting and Telecom Regulatory Policy 2009-430. As noted in that policy, while the Commission does not intend to impose further requirements on exempt BDUs at this time, it will monitor complaints to determine if future requirements may be appropriate.

Second set of U.S. 4+1 signals

Issues

45. The CAB noted that Commission policy generally limits licensed BDUs to the distribution of no more than two sets of U.S. 4+1 signals.⁴ In the CAB's view, the text of paragraph 13, as set out in Broadcasting Notice of Consultation 2009-173, would permit an exempt BDU to distribute as many sets of U.S. 4+1 signals as it wishes, which could compromise the ability of Canadian pay and specialty services to gain access to distribution. In response to the CAB, Shaw maintained that, under the existing exemption orders, exempt systems are subject to the same limits on distribution as licensed systems, including the distribution of U.S. 4+1 signals.

Commission's determinations

46. Paragraph 13(a) of the new exemption order provides exempt BDUs with a general authorization to distribute any service authorized for distribution anywhere in Canada. In the Commission's view, this authorization is not limited by the conditions usually attached to the distribution of programming services – such as U.S. 4+1 services – by licensed systems, unless such conditions are explicitly incorporated into the exemption order. As a result, exempt BDUs would not be limited to distributing only two sets of U.S. 4+1 services to their subscribers, unless this condition is included in the exemption order.
47. In this regard, the CAB is correct that the Commission's policy has generally been to limit BDUs to distributing no more than two sets of U.S. 4+1 signals. In Broadcasting Public Notice 2008-100, the Commission determined to maintain this policy and,

⁴ The four U.S. commercial networks (CBS, NBC, ABC, FOX) and the non-commercial PBS network.

moreover, to link the distribution of a second set of U.S. 4+1 signals to the distribution of distant Canadian signals from the same time zone as that second set. Given capacity constraints, the Commission considers it unlikely that many exempt BDUs would distribute more than two sets of U.S. 4+1 signals to their subscribers. Nonetheless, in order to ensure consistency with its general approach, the Commission has added a new paragraph 13(b) to the exemption order to limit exempt BDUs from distributing more than two sets of U.S. 4+1 signals to any of their subscribers, with the exception of signals receivable by the system over the air.

Distant Canadian signals on the basic service

Issues

48. RNC Média inc. (RNC) and Télé Inter-Rives submitted that the consent of a local station should be required before an exempt BDU is permitted to distribute distant signals in the local station's market.

Commission's determinations

49. The Commission notes that the provision proposed by RNC and Télé Inter-Rives was not part of the previous exemption orders and could impose a significant additional burden on currently exempt undertakings. Further, in Broadcasting Public Notice 2008-100, the Commission clearly stated that exempt BDUs will not require consent from the broadcaster with respect to the distribution of distant signals. The Commission therefore has not included the provision proposed by RNC and Télé Inter-Rives in the new exemption order.

Standard Authorizations

Issues

50. Bragg noted that, in Broadcasting Public Notice 2008-100, the Commission indicated it would issue a list of "standard authorizations" for all BDUs, including exempt BDUs, as a convenient mechanism to authorize certain activities without the need to amend the licence of each individual BDU. Bragg proposed that the exemption order contain a provision indicating that exempt BDUs would be eligible for such authorizations.

Commission's determinations

51. In Broadcasting Regulatory Policy 2009-547, issued today, the Commission has published general conditions of licence for BDUs that include the following condition of licence necessary for it to implement the "standard authorizations" mechanism approved in Broadcasting Public Notice 2008-100:

The licensee is authorized to distribute any service and to undertake any activity authorized in the regulatory policy entitled *General authorizations for broadcasting distribution undertakings*, as amended from time to time, under the terms and conditions set out in that regulatory policy.

Further, in Broadcasting Regulatory Policy 2009-546, the Commission has published three authorizations that it considers appropriate to include via this mechanism at this time in the conditions of licence of licensed BDUs.

52. The Commission continues to be of the view that these authorizations should also be available to exempt BDUs. Since exempt BDUs are already permitted, under paragraph 13(a) of the order, to distribute any programming service otherwise authorized for distribution in Canada, it is only necessary to permit exempt BDUs to undertake activities other than the distribution of programming services that may be authorized by way of the *General authorizations for broadcasting distribution undertakings*. Accordingly, a new paragraph 13(c) has been added to the exemption order, as follows:

The undertaking is authorized to undertake any activity authorized in the regulatory policy entitled *General authorizations for broadcasting distribution undertakings*, as amended from time to time, under the terms and conditions set out in that regulatory policy.

Reporting requirements

Issues

53. Rogers and Saskatchewan Telecommunications (SaskTel) submitted that exempt BDUs should only be required to provide the basic information set out in paragraph 15 of the proposed exemption order (paragraph 20 of the appendix to this order). Bragg and Shaw took the position that exempt BDUs should not have any annual reporting requirements.
54. Bragg maintained that the proposed requirement to respond to requests for information by the Commission (paragraph 22 of the appendix to this order) should be limited to an obligation on the part of the relevant exempt BDU to file a letter confirming that it is in compliance with the relevant provisions of the exemption order.
55. Bragg, Rogers and MTS Allstream Inc. (MTS) submitted that, before finalizing the proposed simplified annual return that will apply to exempt undertakings, the Commission should make it available for public comment. In any case, Bragg and Rogers argued that the Commission should allow exempt BDUs to file all the required information for all relevant systems owned by a BDU in a single document, as opposed to being required to file individual forms on a system-by-system basis.
56. The CAB suggested that a new obligation be added to the exemption order requiring that the operators or individuals responsible for exempt BDUs file an annual attestation that they have examined the requirements of the exemption order and certify that the operation of the exempt undertaking complies in all respects. The CAB also proposed that exempt BDUs be required to file, at least annually, basic identification as to location and ownership of the exempt undertaking, a map of the serving area and a detailed channel line-up (specifying basic service/discretionary and analog/digital mode of distribution).

Commission's determinations

57. Paragraph 20 of the appendix requires BDUs to provide, on an annual basis, basic information regarding each exempt undertaking. The Commission considers that, for the most part, this type of information is likely already kept by BDUs, is general in nature, and in any event, is not difficult for any BDU to gather and maintain. In the Commission's view, filing this information would not present a significant burden for exempt BDUs. Moreover, the Commission agrees with the proposal by Bragg and Rogers that this information could be submitted in a single document containing all of the relevant information for each exempt BDU owned or operated by a particular party.
58. Paragraph 21 of the appendix requires exempt BDUs with more than 2,000 subscribers to submit the information required in a simplified annual return. The Commission notes that this simplified annual return will be designed to meet the information requirements of both the Commission and Statistics Canada. In the past, when the Commission determined to exempt a BDU, the Commission ceased collecting any information with respect to that BDU. This required Statistics Canada to expand the information it requested from exempt BDUs. The net result was that exempt BDUs were still required to provide detailed information on their operations, but to Statistics Canada directly rather than to the Commission. In the case of the new exemption order, the Commission, in co-operation with Statistics Canada, will develop a simplified annual return that will meet the information requirements of both organizations. The Commission will ensure that this form requires exempt BDUs to provide only the minimum information necessary to meet these requirements. Exempt BDUs with more than 2,000 subscribers will be required to submit this form by 30 November of each year, beginning 30 November 2009.
59. Paragraph 22 of the appendix requires exempt BDUs to submit any information requested by the Commission in order to ascertain the undertaking's compliance with the terms of the exemption order. The Commission considers that this provision is necessary to allow it to ensure exempt BDUs' compliance with the requirements of the exemption order and, in particular, in order to address complaints by the public, programming services or other BDUs.
60. The Commission is of the view, however, that requiring the filing of additional information, beyond that set out in paragraphs 20 to 22 of the appendix, would unnecessarily burden exempt BDUs and would not provide significant benefits for the Commission, the public or other licensees.

Other amendments

61. The Commission has also made a number of minor amendments to the new exemption order. These are:
 - corrections of grammar or inconsistencies in the text;

- as suggested by Bell, the preponderance requirement in paragraph 7 has been amended to include the qualifier “other than the programming distributed on program repeat channels”;
- the exception to the prohibition on alteration and deletion related to emergency alerts found in paragraph 11(c) has been amended to use the same text as is found in section 7(d) of the Regulations; and
- the order of certain paragraphs has been changed so as to reorganize them.

Carve out of discrete operations

Issues

62. In Broadcasting Public Notice 2008-100, the Commission indicated that it would be willing, in certain circumstances, to permit BDUs operating under regional licences to remove a service area from that licence and operate in that area as a “discrete operation” that would be eligible for exemption under the new order. In Broadcasting Notice of Consultation 2009-173, the Commission requested proposals as to the appropriate criteria for determining what would constitute a “discrete operation” for exemption purposes and, in particular, whether any of the following factors could be used for this purpose:
- the existence of a separate business office and/or a distinct customer service operation;
 - the distribution of unique priority (local and/or regional) signals or separate community channel programming;
 - the existence of a separate head end or independent signal-processing capability; and/or
 - whether and to what extent the BDU is interconnected to another BDU.
63. Shaw and Rogers submitted that each of the criteria suggested by the Commission would be of assistance in indicating a discrete operation, with Rogers adding that not all of the factors need to exist in order for a discrete operation to be present.
64. Noting that digital subscriber line (DSL)-based and cable BDUs employ different technology to distribute programming services, SaskTel requested that the Commission ensure that its approach to this issue would be technologically neutral.
65. MTS Allstream Inc. (MTS), supported by SaskTel, stated that the determination on what constitutes a discrete undertaking should be based on the number of potential subscribers in the community and whether or not it is already served by an exempt BDU. MTS also supported using the distribution of unique local priority signals originating from a

community or unique community programming, but maintained that there should be no requirement for exempt BDUs to provide community programming in order to qualify for the exemption.

66. SaskTel and MTS generally opposed the “separate head end” criterion, submitting that installing a separate head end for each new serving area would be highly inefficient. Rogers and Bragg generally agreed that the criteria used should not penalize efficient operations.
67. Bell supported the use of the first three criteria proposed by the Commission for determining what constitutes a “discrete operation”, i.e., all but the requirement that an exempt BDU not be fully connected to another BDU.
68. L’Association des Compagnies de Téléphone du Québec (ACTQ) submitted that small incumbent local exchange carriers (SILECs) should be allowed to qualify for exemption, even where their territory forms part of the serving area of a licensed BDU that serves a larger market.
69. The CAB and the CFTPA submitted that the Commission should reject BDU proposals for minimal criteria, as this would broaden the scope of the proposed exemption order well beyond that originally contemplated by the Commission.

Commission’s determinations

70. The Commission generally agrees with the various BDUs that submitted that the “discrete operation” criteria should be technologically neutral and should not promote inefficient operations. In particular, the criteria should not provide an incentive for BDUs to make inefficient or undesirable changes to their operations solely for the purpose of becoming exempt. In this regard, the Commission recognizes that separate business offices and/or distinct customer service operations in the specific service area may provide some indication that a BDU runs a “discrete” operation in a given community. However, in the Commission’s view, adopting this as a criterion could create an artificial incentive for BDUs to establish or maintain these separate facilities resulting in a less cost effective means of operating than combining these operations with those of other service areas, as argued by a number of BDUs. The Commission also considers that this criterion could be difficult to apply on an on-going basis.
71. For many BDUs, and in particular for smaller ones, interconnection of facilities is extremely important to efficient economic and technical operations. As such, the Commission is unwilling to adopt any criteria that would preclude BDUs from availing themselves of such efficiencies in order to be eligible for exemption. Therefore, the Commission will not require that a BDU have separate head end facilities in a service area (i.e., that it be not fully interconnected) in order to be eligible for a carve-out of that area from a regional licence. However, the Commission recognizes that a number of incumbent BDUs may already have separate facilities in various licensed areas. Where such is the case, the Commission will consider separate head end facilities as a basis for carving out the area as a discrete operation.

72. For BDUs that do not have separate facilities, including DSL-based BDUs, the Commission will use an alternative test to determine if a carve-out of a service area is appropriate. In this regard, most intervening parties supported the distribution of unique priority (local and/or regional) signals or separate community channel programming either as one of the criteria or as a necessary criterion to indicate a discrete operation. In the Commission's view, the distribution of priority programming services or community channel programming specific to a particular service area is a simple and transparent basis to demonstrate that a BDU could reasonably be treated as a discrete operation in that area.
73. Specifically, with respect to the application of the new exemption order to BDUs that do not have separate facilities, the Commission will consider an application to carve-out a service area from a regional licence if the BDU either:
- (a) distributes one or more unique priority (local and/or regional) television stations⁵ as part of its basic service in that area that are not offered as part of the basic service in other service areas in which the BDU operates under the same regional licence; or
 - (b) offers substantial community programming to its subscribers that is specific to that service area.
74. In the Commission's view, the "unique local programming" test described above is a simple test that clearly demonstrates to customers, programming services and to the Commission that a BDU is carrying on a discrete operation within that service area.
75. With respect to item (b) of the test, the provision of a community channel specific to a particular service area would be sufficient to meet this criterion. However, in the case of BDUs that operate VOD-based community "channels" or that have adopted a "zone-based" approach to the provision of community programming⁶, a specific measure is necessary to determine whether a BDU has met this element of the test. In the Commission's view, if such a BDU wishes to carve out a service area from its licence and it does not distribute a unique priority signal in that area, it must demonstrate in its application that it produces substantial community programming specific to that service area offered on its VOD- or zoned-based community channel. Specifically, a BDU of this type will have to demonstrate that it spends 5% or more of the gross broadcasting revenues derived from the service area on community programming specific to that area.
76. A service area that has been carved out of a regional licence as a discrete operation must remain discrete in order to continue to be eligible for exemption. This would mean that such a service area must continue to either have separate head end facilities, distribute a unique priority signal or offer community programming specific to that system to remain a discrete operation. In the Commission's view, this will be most difficult to monitor and enforce in the case of BDUs that are relying on criterion (b) above to qualify as discrete

⁵ Such a station must offer at least some unique local/regional programming (e.g., news, advertising, etc.).

⁶ See, for example, Broadcasting Decision 2006-459.

operations and offer VOD- or zoned-based community channels. Accordingly, the Commission has amended paragraph 20(d) of the new exemption order to include a requirement for such BDUs to provide information that will permit the Commission to verify that 5% of gross broadcasting revenues derived from the area has been spent on community programming specific to that area in the past broadcasting year.

77. The Commission's policy has been to impose the same regulatory requirements on both an incumbent and a new competitor in a particular market to ensure a level playing field. Normally, a new competitor will begin to compete in a particular service area with few or no subscribers, even in the largest markets, and might, consequently, be otherwise eligible for exemption. In cases such as this, the Commission's previous exemption orders as well as this new order preclude new competitors from being eligible for exemption if they compete directly in the same service area with a larger BDU that is ineligible for exemption. In the same way, the Commission will only consider applications by competitors to carve-out a service area from a regional licence if the incumbent BDU in that service area is exempt or eligible for exemption.
78. For similar reasons, the Commission rejects the proposal by ACTQ that SILECs should be allowed to qualify for exemption, even where their territory forms part of the serving area of a licensed BDU that serves a larger market. In the Commission's view, this type of regulatory inequity between direct competitors within a serving area would be inappropriate. Nevertheless, a BDU operated by a SILEC may be eligible for "carve out" if it meets one of the criteria noted above.

Implementation

79. The final exemption order set out in the appendix to this document comes into effect immediately and supersedes the two previous exemption orders for BDUs set out in Broadcasting Public Notices 2007-125 and 2002-74. As of today, BDUs that operated under one of the previous exemption orders, are to operate under the terms and condition of the new exemption order set out in the appendix to this document. Since the new order contains provisions that differ in some respects from those in previous orders, currently exempt BDUs should ensure that their operations comply with the new order.
80. Licensed BDUs or their representatives that consider their operations to be eligible for exemption under the new order may submit applications for revocation of their licence(s). Similarly, BDUs with regional licences that wish to carve out small markets or service areas from their licence(s) that would be eligible for exemption and that meet the criteria discussed earlier in this document may also submit applications to do so. Both types of BDUs are encouraged to submit these applications as soon as possible. The Commission will target rendering its determinations on or before 1 February 2010, for any such applications submitted on or before 30 October 2009.
81. The CCSA, supported by Bragg, made a number of suggestions with respect to the implementation of the new exemption order, including a "passive approval" type of system for revoking the licences of BDUs that consider themselves eligible for

exemption. The Commission's normal procedure, in the case of previous exemption orders, has been to require BDUs that consider themselves eligible for exemption to apply for revocation of their licences. If the Commission agrees that the BDU appears to be eligible, the Commission's general approach is then to issue a decision revoking the BDU's licence. In the Commission's view, this process is more consistent with the requirements of the Act and provides an important safeguard for the public and for other licensees - BDUs and programming services - all of whom may be affected by the change in status. In the absence of revocation of licence, a licensee would remain a licensee with all attendant obligations and requirements.

82. The CCSA further suggested that it could act on behalf of those members that may be eligible for exemption under the new order by submitting an application(s) requesting revocation of their licences and providing information to support that application. The Commission considers that such an approach would be an efficient means of processing requests for licence revocation and encourages the CCSA to act on its members' behalf in this manner.
83. Finally, the CCSA also requested that the Commission publish a list of all BDUs that operate under the new exemption order. The Commission notes that, at present, no such list exists. In particular, while the Commission is aware of those BDUs that have applied to have their licences revoked, it is not aware, for example, of new BDUs that may have commenced operations under either of the previous exemption orders; nor is it necessarily aware of BDUs that may have ceased operating since their licences were revoked.
84. Once BDUs begin submitting information under the reporting requirements discussed above, it will be possible to compile a list of exempt BDUs. Accordingly, once such information is filed and compiled, the Commission will publish on its website a list of exempt BDUs that provide information pursuant to those requirements. The list will include the name of the operator, its location and its contact information.

Secretary General

Related documents

- *General conditions of licence for terrestrial (cable, digital subscriber line, multipoint distribution system) and direct-to-home (DTH) satellite broadcasting distribution undertakings*, Broadcasting Regulatory Policy CRTC 2009-547, 31 August 2009
- *General authorizations for broadcasting distribution undertakings*, Broadcasting Regulatory Policy 2009-546, 31 August 2009
- *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009

- *Mandatory distribution order for The Weather Network and Météomédia*, Broadcasting Order CRTC 2009-340, 11 June 2009
- *Call for comments on a proposed exemption order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers*, Broadcasting Notice of consultation CRTC 2009-173, 1 April 2009
- *Call for comments on a proposed framework for the sale of commercial advertising in the local availabilities of non-Canadian satellite services* – Notice of consultation – Broadcasting Public Notice CRTC 2008-102, 30 October 2008
- *Call for comments on a proposed regulatory framework for video-on-demand undertakings* – Notice of consultation – Broadcasting Public Notice CRTC 2008-101, 30 October 2008
- *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*, Broadcasting Public Notice CRTC 2007-125, 14 November 2007
- *Class 1 regional licence for broadcasting distribution undertakings in New Brunswick and in Newfoundland and Labrador*, Broadcasting Decision CRTC 2006-459, 31 August 2006
- *Digital migration framework*, Broadcasting Public Notice CRTC 2006-23, 27 February 2006
- *Distribution of video description by Class 2, Class 3 and exempt cable distribution undertakings (BDUs) and by multipoint distribution system BDUs*, Broadcasting Public Notice CRTC 2006-6, 19 January 2006
- *Amendments to the Exemption order for small cable undertakings*, Broadcasting Public Notice CRTC 2002-74, 19 November 2002
- *Small cable systems - Digital migration policy*, Public Notice CRTC 2001-130, 21 December 2001

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 Order CRTC 2009-544

Terms and conditions of the exemption order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers

Description

The purpose of these broadcasting distribution undertakings is to provide programming services to fewer than 20,000 subscribers, using co-axial cable fibre, digital subscriber line or multi-point distribution system technology.

A. Definition of terms

1. For the purpose of this order, the terms “affiliate”, “anglophone market”, “broadcast year”, “Canadian programming service”, “community channel”, “comparable”, “Corporation”, “educational television programming service”, “francophone market”, “licensed”, “licensed area”, “local television station”, “pay television service”, “programming service”, “regional television station”, “radiocommunication distribution undertaking”, “relay distribution undertaking”, “specialty service”, “station” and “subscriber” have the same meaning as that set out in the *Broadcasting Distribution Regulations*; “basic service” means the package of programming services provided to all subscribers for a single fee; “gross revenues derived from broadcasting activities” has the same meaning as that set out in *Guidelines respecting financial contributions by the licensees of broadcasting distribution undertakings to the creation and presentation of Canadian programming*, Circular No. 426, 22 December 1997; “local head end” means (a) in respect of an undertaking other than a radiocommunication distribution undertaking, the specific location at which the undertaking receives the majority of the programming services that are transmitted by local television stations or, if there are no such stations, by regional television stations, and that are distributed by the exempt undertaking in the service area, and (b) in respect of a radiocommunication distribution undertaking, the undertaking’s transmitter site; “service area” means the area in which an exempt undertaking carries on a broadcasting distribution undertaking; and an undertaking that “serves more than 2,000 subscribers” means an undertaking whose subscriber base at the time it becomes exempt exceeds 2,000, or an undertaking whose subscriber base at the time it becomes exempt did not exceed 2,000 but has subsequently exceeded 2,200 for at least two consecutive broadcasting years as reported pursuant to paragraph 20, below.

B. Provisions applicable to exempt distribution undertakings

General provisions

2. 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.
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. In total, the number of subscribers served by the individual undertaking is fewer than 20,000, and the undertaking either (a) does not serve all or part of the licensed area of a licensed terrestrial broadcasting distribution undertaking (BDU) that serves 20,000 or more subscribers within that licensed area, or (b) serves all or part of the licensed area of a licensed terrestrial BDU that serves 20,000 or more subscribers only by virtue of the fact that the licensed BDU expanded to operate within the service area of the undertaking at some time following the time at which the undertaking came into being. Once exempt, the undertaking does not have more than 21,000 subscribers in any two consecutive broadcasting years as reported pursuant to paragraph 20 or 21, below.

Distribution of the basic service

5. The undertaking does not provide a subscriber with any programming services, other than licensed pay-per-view services, licensed video-on-demand services or the programming services of exempt programming undertakings, without also providing the basic service.

Distribution of conventional television stations

6. In regard to the provision of a basic service:
- (a) The undertaking distributes as part of its basic service all services of local television stations, with no degradation of the signal received.
 - (b) If the undertaking serves more than 2,000 subscribers, it distributes as part of its basic service all services of regional television stations, other than affiliates or members of the same network of which a local television station distributed pursuant to paragraph 6(a), above, is also an affiliate or member. These stations are distributed with no degradation of the signal received. If the programming services of the two or more regional television stations that are affiliates or members of the same network are received at the local head end or equivalent, the undertaking is required to distribute only one of them.
 - (c) If not otherwise distributed as a local or regional television station, the undertaking distributes at least one television station owned and operated by the Corporation, in each of the official languages, where the Corporation makes its signals available and pays the costs associated with the transport and reception of its signals to the undertaking's local head end or equivalent.
 - (d) If the undertaking receives television stations that are identical, the undertaking is required to distribute only one of them under this section.
 - (e) If the undertaking serves more than 2,000 subscribers, it distributes as part of its basic service, and with no degradation of the signal received, educational television programming services the operation of which is the responsibility of an educational authority designated by the province in which the service area of the undertaking is located.

Majority of Canadian programming services

7. A majority of each of the video and audio channels received by each subscriber, other than the programming distributed on program repeat channels, are devoted to the distribution of Canadian programming services. For the purposes of this section, each pay television service, television pay-per-view service, and video-on-demand service is counted as a single video channel.

Programming services in the language of the minority

8. If the undertaking delivers any programming service on a digital basis, it distributes:
 - (a) at least one French-language Canadian pay or specialty service, excluding the services that the undertaking may be required to distribute under paragraphs 14 and 15, below, for every ten English-language programming services distributed by the undertaking, if the undertaking is operating in an anglophone market; and
 - (b) at least one English-language Canadian pay or specialty service, excluding the services that the undertaking may be required to distribute under paragraphs 14 and 15, below, for every ten French-language programming services distributed by the undertaking, if the undertaking is operating in a francophone market.

Distribution of adult programming services

9. The undertaking does not package an adult programming service in such a way that subscribers are obliged to purchase the service in order to purchase any other programming service. The undertaking takes measures to fully block the reception of both the audio and video portions of any adult programming service to subscribers who request that it not be receivable in their home (in either unscrambled or scrambled mode).

Distribution of single point-of-view religious services

10. The undertaking distributes a single or limited point-of-view religious pay or specialty service only on a “stand-alone basis” or in a package with other single or limited point-of-view religious services, and all such services are distributed only on a discretionary basis.

Alteration or deletion of a programming service

11. The undertaking does not alter or delete a programming service in the course of its distribution except:
 - (a) for the purpose of complying with section 328(1) of the *Canada Elections Act*;
 - (b) 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;

- (c) for the purpose of altering a programming service to insert a warning to the public announcing:
 - (i) any danger to life or property if the insertion is provided for in an agreement entered into by the undertaking with the operator of the service or the network responsible for the service; or
 - (ii) an imminent or unfolding danger to life if there is no agreement with the operator of the service or the network responsible for the service;
- (d) 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;
- (e) for the purpose of deleting a subsidiary signal, unless the signal is, itself, a programming service or is related to the service being distributed;
- (f) for the purpose of deleting the described video programming of a service distributed on an analog basis; or
- (g) for the purpose of inserting a commercial message in a Canadian programming service, excluding a video-on-demand service, if the insertion is in accordance with an agreement between the undertaking and the operator of the service or the network responsible for the service and that pertains to commercial messages that are directed to a target market of consumers.

Prohibited programming content

12. The undertaking does 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.

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

Other services distributed

13. (a) No service received over-the-air or by any other means is distributed over the undertaking, other than a service that the Commission, by regulation or otherwise, has authorized. If the Commission has authorized a service for distribution subject to terms and conditions intended to address the concerns addressed in paragraph 12, above, the undertaking distributes the service subject to those terms and conditions.
- (b) The undertaking distributes no more than two sets of U.S. 4+1 signals, with the exception of signals receivable by the undertaking over the air, to its subscribers.
- (c) The undertaking is authorized to undertake any activity authorized in the regulatory policy entitled *General authorizations for broadcasting distribution undertakings*, as amended from time to time, under the terms and conditions set out in that regulatory policy.

Distribution of services subject to orders under section 9(1)(h) of the *Broadcasting Act*

14. If the undertaking serves more than 2,000 subscribers, it distributes, as part of the basic service,
- (a) the Aboriginal Peoples Television Network programming service;
- (b) the programming service of TVA Group Inc. (CFTM-TV Montréal or the programming service of one of its affiliates);
- (c) 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 federal parliamentary 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;
- (d) if the undertaking is operating in an anglophone market, the licensed public affairs programming service of CPAC and the federal parliamentary 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;
- (e) if the undertaking is operating in a francophone market, a second version of the licensed public affairs programming service of CPAC and the federal parliamentary 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, which may be distributed as part of the basic service or on a discretionary basis;

- (f) if the undertaking is operating in an anglophone market, a second version of the licensed public affairs programming service of CPAC and the federal parliamentary 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 French language, which may be distributed as part of the basic service or on a discretionary basis;
- (g) 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;
- (h) if the undertaking is operating in an anglophone market and distributes the Corporation's Newsworld programming service on an analog basis, the programming service of the National Broadcast Reading Service (VoicePrint) as the secondary audio program of the former service; and
- (i) if the undertaking does not distribute the Corporation's Newsworld programming service on an analog basis, the programming service of the National Broadcast Reading Service (VoicePrint) on an audio channel;

15. If the undertaking serves more than 2,000 subscribers and delivers any programming service on a digital basis, it distributes to all digital subscribers:

- (a) The Accessible Channel;
- (b) if it operates in a francophone market, CBC Newsworld, La Magnétothèque and, from 1 September 2010 until 31 August 2015, Météomedia;
- (c) if it operates in an anglophone market, le Réseau de l'information and, from 1 September 2010 until 31 August 2015, The Weather Network; and
- (d) if it operates in the province of Quebec, Avis de Recherche.

16. An exempt undertaking is not required to distribute any of the programming services noted in paragraphs 14 and 15, above, with the exception of VoicePrint and La Magnétothèque, unless the licensee or operator of the programming service or a third party pays for the satellite uplink and transponder costs associated with the delivery of its programming service to the exempt undertaking.

Dispute resolution

17. In regard to the resolution of disputes:

- (a) If a dispute concerning the terms and conditions under which programming services are distributed arises between the exempt undertaking and a programming undertaking, whether operating by licence or by exemption order, the undertaking submits to such mediation and/or dispute resolution process or processes as may be required by the Commission and to any decision that may ultimately result therefrom.
- (b) If a dispute concerning the terms and conditions under which programming services are provided to the undertaking arises between the undertaking and a relay distribution undertaking, whether operating by licence or by exemption order, the undertaking submits to such mediation and/or dispute resolution process or processes as may be required by the Commission and to any decision that may ultimately result therefrom.

Programming service substitution

18. If the undertaking serves more than 2,000 subscribers, the undertaking deletes the programming service of a television station and substitutes the programming service of a local television station or, with the agreement of the broadcaster operating the local television station, has that broadcaster carry out the deletion and substitution, if
- (a) the main studio of the 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) in a case where the broadcaster operating the 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 local television station a written request for the deletion and substitution; and
 - (d) if a substitution is requested by more than one broadcaster, the undertaking gives priority, in the following order, to (i) if the studios of the stations are located in the same province as the service area of the undertaking or in the National Capital Region, as described in the schedule to the *National Capital Act*, the programming service of the station whose main studio is closest to the local head end, or equivalent, of the service area; (ii) in any other case, the programming service of the station that has a studio located in the same province as the service area.

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.

Community channel

19. If the undertaking serves more than 2,000 subscribers and elects to offer a community channel, the community channel offers programming that meets the following requirements:
- (a) the programming offered consists of at least:
 - (i) 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;
 - (ii) 30% access programming consisting of programs produced by members of the community served by the undertaking;
 - (b) alternatively,
 - (i) 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;
 - (ii) 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;
 - (c) 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
 - (d) the programming offered adheres to:
 - (i) the *Cable television community channel standards*, as amended from time to time; and
 - (ii) the *CAB Violence Code*, as amended from time to time.

Information requirements

20. The undertaking or its representative submits the following information to the Commission by 30 November of each year:
 - (a) the name and contact information of the operator of the undertaking;
 - (b) the location of the undertaking and the communities served by the undertaking;
 - (c) the total number of basic subscribers served by the undertaking as of 31 August of that year;
 - (d) if the undertaking offers community programming exclusively through a video-on-demand service or provides community programming under a “zone-based” approach, and does not operate separate head-end facilities or distribute a distinct local or regional television station, a statement as to its gross revenues derived from broadcasting activities in the past broadcast year and the amount and percentage of those revenues that have been contributed to community programming as described in paragraph 19(a); and
 - (e) whether any programming services are provided on a digital basis.
21. If the exempt undertaking serves more than 2,000 subscribers, the undertaking submits the simplified annual return for exempt broadcasting distribution undertakings by 30 November of each year.
22. The undertaking submits any information requested by the Commission in order to ascertain the undertaking’s compliance with the terms of this order.