



Broadcasting Order CRTC 2009-638

Route reference: 2009-83

Ottawa, 9 October 2009

Amendments to the *Exemption order respecting terrestrial relay distribution network undertakings*

The Commission amends the Exemption order respecting terrestrial relay distribution network undertakings in order to eliminate the requirements that undertakings operating under the order be local or regional and that they be affiliated with the broadcasting distribution undertakings to which they transport programming services. The amended exemption order appended to this document replaces the Exemption order respecting terrestrial relay distribution network undertakings set out in the appendix to Final revisions to certain exemption orders, Public Notice CRTC 2000-10, 24 January 2000.

Introduction

1. In Broadcasting Public Notice 2008-100, the Commission proposed to amend its *Exemption order respecting terrestrial relay distribution network undertakings*¹ in order to eliminate the requirements that undertakings operating under the order be local or regional and that they be affiliated with the broadcasting distribution undertakings (BDUs) to which they transport programming services, i.e., that an affiliation agreement be in place between the terrestrial relay distribution undertaking (TRDU), formerly referred to as a terrestrial relay distribution network undertaking, and the BDU. The Commission expressed the view that the removal of these restrictions would encourage greater competition in the signal transport sector. The Commission also stated that TRDUs would be subject to the Commission's dispute resolution processes. Finally, for clarification purposes, the Commission noted that BDUs or other parties may transport programming services to other BDUs under the TRDU exemption order.
2. Consistent with the above, the Commission also stated in Broadcasting Public Notice 2008-100 that it would remove the requirement that licensed BDUs receive certain services from a licensed satellite relay distribution undertaking (SRDU), currently imposed by way of conditions on the authorizations granted under the lists of eligible satellite services (the lists).
3. Accordingly, in Broadcasting Notices of Consultation 2009-83 and 2009-84, the Commission called for comments on a revised TRDU exemption order and on certain revisions to the lists to remove the above-noted requirements. Broadcasting Regulatory Policy 2009-639, also issued today, sets out the Commission's determinations with respect to the proposed revisions to the lists.

¹ See *Final revisions to certain exemption orders*, Public Notice CRTC 2000-10, 24 January 2000.

4. The Commission received several interventions in support of the proposed revisions to the exemption order. The Commission also received one intervention by Shaw Broadcast Services (SBS) opposing the proposal. Finally, the Commission considers that the remaining intervention by an individual fell outside of the scope of this proceeding. The interventions are available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Issues raised by parties

5. Canadian Cable Systems Alliance Inc. (CCSA) and Cable Cable Inc. (Cable Cable) both supported the proposed exemption order but expressed concern that the provision prohibiting TRDUs from originating any programming could be interpreted as prohibiting a cable system that acts as a TRDU from originating and offering community channel programming and video-on-demand (VOD) services. They submitted that many small cable companies that do not operate their own community channels might be deprived of access to community programming from a neighboring BDU that is also providing them with TRDU services.
6. For its part, SBS argued that this proposal, when combined with the proposed revisions to the lists set out in Broadcasting Notice of Consultation 2009-84, would create competitive inequities between two classes of licensees (i.e., TRDUs and SRDUs) performing the same function and differentiated only by technology. SBS stated that some measures of regulatory flexibility proposed for exempted TRDUs should only be introduced if SRDUs were also granted such flexibility by amendments to their licences. In particular, SBS noted the following:
 - Exempt TRDUs would have no requirement to provide service to any BDU that requests it, while SRDUs are subject to that requirement.
 - SRDUs are subject to a requirement precluding undue preference or undue disadvantage, while TRDUs would not be.
 - SRDUs are subject to a preponderance rule regarding Canadian programming, while TRDUs would not be.
 - SRDUs are limited to a list of authorized over-the-air (OTA) signals, while TRDUs would be allowed to distribute any radio and television signals.
 - SRDUs' Canadian programming contribution requirement is set at 5%, while TRDUs would have no such requirement.
7. SBS also argued that the inclusion in the order of a reference to "programming undertakings, Canadian or non-Canadian" rather than to "radio or television stations, foreign or domestic" (which according to SBS is what appears in the current TRDU exemption order) would extend the scope of TRDU activities to include the transport of pay and specialty services. SBS submitted that such an extension was inappropriate because the activity involved in distributing OTA signals and transporting specialty and pay services is significantly different. Specifically, SBS noted that a TRDU or SRDU can select the OTA signals that it wishes to distribute and receive and retransmit such signals to BDUs without the consent of the originating broadcaster, while the transport of

a pay or specialty service requires the broadcaster's consent. SBS further noted that it is the broadcaster that seeks to make use of the terrestrial or satellite services in order to deliver its service to BDUs. In this context, SBS argued that TRDUs and SRDUs are simply acting as telecommunications service providers and that since they are not engaged in broadcasting, the expansion of regulatory oversight of TRDUs to include their provision of all programming services is not appropriate. SBS also expressed concerns about the possibility that such an extension of scope for TRDUs would be reflected in the upcoming licence renewals for SRDUs.

Commission's analysis and determination

8. With respect to the concerns raised by CCSA and Cable Cable, the Commission notes that a TRDU, even when affiliated and sharing common facilities with a BDU, constitutes a distinct undertaking. A provision regarding TRDUs would not apply to the BDUs as such. Hence, prohibiting a TRDU from originating any programming would not prohibit a BDU from originating and offering a community channel; nor would it prohibit a BDU that is also functioning as a TRDU from providing community programming to a neighboring BDU that does not operate its own community channel. Similarly, with regards to VOD services, the Commission notes that these undertakings operate under a separate licence. Therefore, amendments to the TRDU exemption order would not have an impact on the originating and offering of VOD services.
9. As regards SBS's proposal that SRDUs be granted increased flexibility by amendments to their licences, the Commission notes that it informed SBS by letter dated 30 March 2009 that the amendments it sought appeared to be contingent upon the outcome of the proceedings initiated in Broadcasting Notices of Consultation 2009-83 and 2009-84 and that accordingly the Commission would not proceed with this request in the context of these proceedings. The Commission further notes that, in the proceeding leading to Broadcasting Public Notice 2008-100, SRDUs argued that regulation of SRDUs does not contribute materially to the objectives of the *Broadcasting Act* and that they should be exempted from licensing. In Broadcasting Public Notice 2008-100, the Commission concluded that, until more effective competition emerged in the SRDU sector, which is currently dominated by one undertaking, SBS, the exemption of SRDUs would not benefit the Canadian broadcasting system. However, the Commission stated in Broadcasting Public Notice 2008-100 that it would be prepared to review evidence at the next licence renewals for SRDUs and consider whether exemption or other measures such as modified conditions of licence would constitute an appropriate course of action at that time.
10. With respect to SBS's argument that the inclusion in the order of a reference to "programming undertakings, Canadian or non-Canadian" would extend the scope of TRDU activities, the Commission notes that this argument is based on an incorrect, out-of-date reference to a 1993 version of the order. The reference to "radio or television stations, foreign or domestic" was replaced in 2000 when the Commission issued a series of revised exemption orders. At that time, the Commission changed the wording of the TRDU exemption order to read "programming undertakings, foreign or domestic." The

only change in language proposed in Broadcasting Notice of Consultation 2009-83 is to substitute “Canadian or non-Canadian” for “foreign or domestic.”

11. The Commission further notes that in Telecom Decision 2002-57 it found that an SRDU’s uplinking activities constitute broadcasting by a broadcasting undertaking. As a result, it is within the Commission’s jurisdiction to include the transmission of pay and specialty services in the TRDU exemption order.
12. Finally, with respect to SBS’s suggestion that the Commission is pre-deciding the outcome of the upcoming SRDU licence renewal proceeding, the Commission notes that it has not pre-decided the outcome of that proceeding by issuing a revised TRDU exemption order. Different relay distribution undertakings can have different obligations, and the Commission will consider what should form part of the SRDU conditions of licence (or exemption order if it determines that they should be exempt) when that issue is before the Commission.
13. In light of the above, the Commission amends the *Exemption order respecting terrestrial relay distribution undertakings* in order to eliminate the requirements that undertakings operating under the order be local or regional and that they be affiliated with the BDUs to which they transport programming services. The amended exemption order set out in the appendix to this document replaces the *Exemption order respecting terrestrial relay distribution network undertakings* set out in the appendix to Public Notice 2000-10.

Secretary General

Related documents

- *Amendments to the requirements set out in the lists of eligible satellite services*, Broadcasting Regulatory Policy CRTC 2009-639, 9 October 2009
- *Call for comments on proposed revisions to the requirements set out in the lists of eligible satellite services*, Broadcasting Notice of Consultation CRTC 2009-84, 20 February 2009
- *Call for comments on proposed revisions to the Exemption order respecting terrestrial relay distribution network undertakings*, Broadcasting Notice of Consultation CRTC 2009-83, 20 February 2009
- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services* – Regulatory policy, Broadcasting Public Notice CRTC 2008-100, 30 October 2008

- *Canadian Satellite Communications Inc. – Contribution Regime*, Telecom Decision CRTC 2002-57, 13 September 2002
- *Final revisions to certain exemption orders*, Public Notice CRTC 2000-10, 24 January 2000

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 2009-638

Terms and conditions of the exemption order respecting terrestrial relay distribution undertakings

Pursuant to subsection 9(4) of the *Broadcasting Act* (the Act), the Commission exempts from the requirements of Part II of the Act and any regulations made thereunder those persons carrying on broadcasting undertakings of the class defined by the following criteria:

Purpose

The purpose of these terrestrial relay distribution undertakings is to receive the programming services of programming undertakings, Canadian or non-Canadian, and distribute those programming services, unaltered, to distribution undertakings, with or without a fee.

Description

1. The Commission would not be prohibited from licensing the undertaking by virtue of any direction to the Commission by the Governor in Council.
2. The undertaking meets all technical requirements of the Department of Industry and has acquired all authorizations or certificates prescribed by the Department.
3. The undertaking makes use of any technology other than satellite to distribute programming to distribution undertakings licensed or exempted from licensing by the Commission.
4. The undertaking neither originates any programming nor curtails any programming that it receives and distributes.
5. If a dispute concerning the terms and conditions under which programming services are or may be provided or distributed arises between the undertaking and a distribution undertaking or a programming undertaking, whether operating by licence or by exemption order, the undertaking submits to such dispute resolution process or processes as may be required by the Commission and to any decision resulting therefrom.