



## Broadcasting Decision CRTC 2010-61

Route reference: 2009-632

Additional reference: 2009-632-2

Ottawa, 8 February 2010

**FreeHD Canada Inc.**  
Across Canada

*Applications 2009-1094-4 and 2009-1095-2, received 28 July 2009  
Public Hearing in the National Capital Region  
14 December 2009*

### **Direct-to-home satellite distribution undertaking and satellite relay distribution undertaking**

*The Commission **approves in part** applications for broadcasting licences to operate a national direct-to-home (DTH) satellite distribution undertaking and a national satellite relay distribution undertaking (SRDU).*

*With respect to the applicant's proposal for the provision of a package of free conventional television signals to ensure continuity of service in those markets where broadcasters elect not to construct digital transmitters, the Commission is supportive of initiatives intended to ensure that Canadians do not lose access to free conventional television services as a result of decisions it has been called upon to make in managing the digital transition. To this end, the Commission clearly supports in principle the offering of a package of local conventional television signals at no monthly charge to the viewers, and is predisposed to take the necessary steps to permit this to occur. Further, as stated in Broadcasting Regulatory Policy 2009-406, the Commission recognizes the merits of satellite delivery models as mechanisms for the provision of such packages. However, the Commission notes that specific issues related to the digital transition, and, in particular, possible alternatives to free conventional television signals in those markets where broadcasters do not construct digital facilities, are under consideration in the policy proceeding announced in Broadcasting Notice of Consultation 2009-411. Accordingly, the Commission considers it premature to grant the applicant's specific requests pertaining to the provision of a free local program package, including its related request for relief from Local Programming Improvement Fund contributions.*

*For the same reasons, the Commission also considers it premature to grant the applicant's request for authorization to provide two large English- and French-language basic packages.*

*Once the relevant policy determinations are issued, the Commission encourages the applicant to apply, in respect of both undertakings, for whatever specific authorizations and related relief would be appropriate in light of those determinations.*

*The licences will be subject to the **conditions of licence** generally applicable to such undertakings as well as **conditions of licence** pertaining to the migration of the services to a Canadian satellite and, in the case of the DTH satellite distribution undertaking, accessibility of services for persons with disabilities.*

*Further, the Commission requires the applicant to file an application to amend the licence for the SRDU, as may be required, to address any determinations arising out of the next licence renewal processes for the two incumbent SRDUs pertaining to (a) applicable dispute resolution processes, or (b) the transport of Canadian pay and specialty services.*

## **Introduction**

1. The Commission received applications by FreeHD Canada Inc. (FreeHD) for broadcasting licences to operate a national direct-to-home (DTH) satellite distribution undertaking and a national satellite relay distribution undertaking (SRDU). FreeHD requested that the two applications be considered jointly, as are non-severable.
2. FreeHD is owned and controlled by Mr. David Lewis who holds 91% of the voting interests. The remaining 9% is held by Mrs. Krista Lewis.

## **The applications**

3. For its proposed DTH satellite distribution undertaking, FreeHD requested a condition of licence that would permit it to offer the majority of its programming services to subscribers in two large basic packages, one directed to anglophone customers and the other to francophone customers.<sup>1</sup> FreeHD submitted that this would benefit all stakeholders, stating, among other things, that the preponderance of services included in each package would be Canadian (90%) and that its approach would assure broadcasters of good penetration levels for their services. It also submitted that the two proposed language-focused basic packages would offer everything to the consumer for one low price.
4. FreeHD stated that the proposed DTH satellite distribution undertaking would distribute all conventional television stations that meet a certain threshold based on the number of hours per week of local programming. In particular, it proposed to distribute all television stations in English-language markets that originate at least 7 hours per week of local programming and all television stations in French-language markets that originate at least 5 hours per week of local programming. These signals would be provided in high definition (HD), as HD signals become available, and in standard definition prior to the availability of HD signals.

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<sup>1</sup> With the exception of adult and single-point-of-view religious services, as noted in the application.

5. As part of its application, FreeHD also proposed to offer a free local program package to consumers who acquire the necessary reception equipment. Consumers who purchased this equipment would receive local television stations at no further cost, and would not be obliged to purchase any other services from FreeHD. In order to recover a part of the costs of providing the free local program package, FreeHD requested that it be exempt from the requirement to contribute to the Local Programming Improvement Fund (LPIF) for the first five years of its licence term. It also requested that, to make up for the cost of providing the satellite capacity for free, conventional broadcasters provide their programming free for distribution into their local markets.
6. FreeHD stated that it would provide a program guide on its website showing the channel number and call sign of the conventional signals available. This would be available free of charge to consumers receiving its free local program package in each province. These consumers could also choose to access the electronic program guide used by FreeHD's subscribers, for a monthly cost of \$5.
7. As part of its SRDU application, the applicant proposed to offer a free local program package to broadcasting distribution undertakings (BDUs), provided that the BDUs pass on the services included in the package free of charge to their subscribers.
8. In support of its applications, FreeHD submitted that its platform would solve distribution issues and capacity bottlenecks for the Canadian broadcast industry by providing much needed satellite capacity. Among other things, it submitted that it would save conventional broadcasters the costs of upgrading their transmission facilities to digital and of maintaining transmitters in small markets; that it would provide a "lifeline" of local content and regional voices to Canadian consumers to avoid disruption of service; and that it would implement a unique plan to deliver all conventional signals, in HD, to their local markets.
9. As part of this process, the Commission received interventions in opposition to the application, interventions in support of the application as well as comments. The interventions and FreeHD's reply to the interventions can be found on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Public Proceedings."

### **Commission's analysis and determinations**

10. After examining the application in light of applicable regulations and policies and taking into account the interventions received and the applicant's reply to the interventions, the Commission considers that the issues to be addressed in its determinations are the following:
  - the applicant's proposed provision of a free local program package, and related requests;

- the applicant's proposed provision of all-inclusive English- and French-language basic program packages;
- structural separation of the proposed undertakings, and program substitution and deletion;
- the applicant's proposed use of a foreign satellite facility on an interim basis; and
- matters related to the accessibility of the services for persons with disabilities.

### **Free local program package and related requests**

#### *Interventions and reply*

11. In their interventions, some of the interveners pointed out that many of the issues raised in these proposals are under consideration in the policy proceeding on group-based licensing of television services and other issues relating to conventional television initiated by Broadcasting Notice of Consultation 2009-411 (the November 2009 policy proceeding). Shaw Communications Inc. (Shaw), on behalf of Shaw Broadcast Services and Shaw Direct, argued that, if the Commission were to grant licences to FreeHD on preferential terms while concurrently reconsidering regulatory matters affecting broadcasting distribution, it would not only confer an inappropriate competitive advantage on FreeHD, it would also sanction regulatory gaming,<sup>2</sup> secure FreeHD a preferential place within the distribution system and disadvantage other competitors.
12. For its part, TELUS Communications Company TELUS stated that there is simply no need for a freesat model in Canada and that FreeHD's proposed model provides no new tangible benefit to Canadian consumers.
13. Many interveners opposed FreeHD's requests to be exempt from the requirement to contribute to the LPIF for the first five years of its licence term and to be exempt from adhering to a signal compensation regime, should the Commission decide to put such a regime in place.
14. With respect to FreeHD's request for relief from LPIF contribution payments, Canwest Television Limited Partnership (Canwest) and CTVglobemedia Inc. (CTVgm) argued that contributions to the LPIF should apply to all licensed BDUs regardless of their stage of development. The Canadian Broadcasting Corporation (CBC) argued that it is counterproductive to put measures in place that support the maintenance of local service, but at the same time relieve a BDU of such requirements by condition of licence. CTVgm stated that it finds it ironic that FreeHD

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<sup>2</sup> Shaw stated in particular that the costs of backhauls to FreeHD's uplink centres could exceed the costs of installing a digital transmitter in numerous small markets, and that its proposals would inappropriately relieve pressure on conventional broadcasters to upgrade their facilities.

wants to help local television stations by offering their signals to Canadians free-of-charge, but does not want to contribute to the fund that is designed to help ensure the very survival of local television stations in small and medium markets across Canada. TELUS submitted that FreeHD's business case is predicated on a lesser contribution to the Canadian broadcasting system than its competitors in that a potentially significant number of subscribers could switch from an existing BDU, which is required to make LPIF contributions, to FreeHD, which proposes not to make these same contributions.

15. Similarly, many interveners opposed FreeHD's request that it be exempt from adhering to a signal compensation regime. Canwest argued that an outright upfront waiver from a regime that does not yet exist would be wholly inappropriate. CTVgm added that all BDUs, including FreeHD, should be required to negotiate a fair value for local signals with terms and conditions based upon the individual circumstances of each negotiation. CBC also opposed relieving FreeHD of any possible future requirements to negotiate compensation for the carriage of local conventional stations when these signals are included with other signals that are sold to subscribers. With respect to the SRDU proposal that FreeHD distribute signals to other BDUs on condition that there be no ongoing consumer charge for the local signals, Canwest supported the proposal but expected to negotiate such carriage with those BDUs as well.
16. In their interventions, Shaw, Rogers Cable Communications Inc. (Rogers) and Bell ExpressVu Limited Partnership (Bell TV) all argued that any rules with respect to contributions to the LPIF, or to a signal compensation regime (if one was to be implemented), should apply equally to all BDUs. CBC was of the view that other BDUs may apply for equivalent flexibility on the basis of competitive parity and that this would not be in the best interests of the Canadian broadcasting system. Bell TV further advanced that such an exemption should be based on profitability, and specifically that it should apply to all BDUs that are below some fixed level of profitability. Shaw indicated that it had to withdraw its proposed "freesat" proposal because of the cost and operational implications of many matters under consideration as part of the November 2009 policy proceeding, including amounts payable to LPIF and the possible introduction of a signal compensation regime.
17. Both Canwest and CTVgm indicated that they would support the applications were the Commission to deny the requested relief. Shaw opposed both applications but stated that it would support them if the same requirements that are applicable to its own DTH and SRDU licences were applied to FreeHD.
18. Bell TV also requested that, if the Commission grants a licence to the DTH satellite distribution undertaking, it should provide a comprehensive list of Canadian signals that must be distributed by the DTH licensee and the specific markets in which they must be distributed, stating that such a list would serve as a guide for all BDUs looking to provide a free distribution service.

19. In its reply to the interventions, FreeHD indicated that there had been a misunderstanding of the requests in its applications. It did not intend to request, nor did it expect, any special regulatory treatment or forbearance from any value-for-signal regime that may be imposed on all BDUs. Rather, it was simply requesting “regulatory authority” to provide its free local program package.
20. FreeHD also stated that there are timing issues involved, and that, in a perfect world, it would have waited until all the current proceedings had been held and all the Commission rules related to the digital transition were approved and published before applying for the DTH and SRDU licences. However, this would have resulted in FreeHD not being able to make satellite facilities available in 2011 to support and assist in the digital transition. FreeHD indicated that it is still seeking approval of the applications as they are currently on the record as it believes that its proposals and related requests have merit. However, FreeHD clarified its position in light of possible outcomes with respect to current proceedings, as follows:
  - If a value-for-signal regime is not approved, its proposal would remain intact.
  - If a value-for-signal regime that includes monetary compensation is approved, and broadcasters decline to charge for FreeHD’s distribution of signals in a free local program package, its proposal would similarly remain intact.
  - If such a regime is approved, and broadcasters choose not to waive their rights to monetary compensation with respect to distribution in the free local program package, then FreeHD’s offer of free distribution for these signals would be withdrawn. FreeHD would then seek to recover its satellite distribution costs in a two-way negotiation with broadcasters for the local signals. Further, if broadcasters were to provide compensation for signal distribution, its request to be relieved from the LPIF contributions would no longer be required, and would be removed. Moreover, it would still maintain its free local program package to consumers.
21. More generally, FreeHD stated that it would agree to adhere to all regulatory requirements pertaining to DTH satellite distribution. With respect to its proposed SRDU, FreeHD similarly stated that it would be willing to abide by all the conditions of licence that apply to the Bell TV SRDU.

*Commission’s determinations*

22. The Commission is supportive of initiatives intended to ensure that Canadians do not lose access to free conventional television services as a result of decisions it has been called upon to make in managing the digital transition. To this end, the Commission clearly supports in principle the offering of a package of local conventional television signals at no monthly charge, and is predisposed to take the necessary steps to permit this to occur. Further, as stated in Broadcasting Regulatory Policy 2009-406, the Commission recognizes the merits of satellite delivery models as mechanisms for the provision of such packages.

23. However, as noted by interveners, specific issues related to the digital transition, and, in particular, possible alternatives to free conventional television signals in those markets where broadcasters do not construct digital facilities, are under consideration in the policy proceeding announced in Broadcasting Notice of Consultation 2009-411. In the notice, the Commission specifically sought comments on matters such as the costs of offering such a service, whether an offset to LPIF contributions would be appropriate and what criteria should be used to determine which signals are provided to Canadians using such a model. Until such time as an overall approach to the above matters is adopted in the context of this broader policy proceeding (including any necessary follow-up proceedings), the Commission considers that it would be premature to grant the applicant's specific requests pertaining to the provision of a free local program package, including its requested relief from LPIF contributions.
24. The Commission encourages the applicant, once determinations in the November 2009 policy proceeding (including any necessary follow-up proceedings) are issued, to apply, in respect of both undertakings, for whatever authorizations and related relief would be appropriate in light of those determinations.

#### **Basic program packages**

##### *Interventions and reply*

25. In its intervention, Rogers stated that FreeHD's proposed basic package (in either language) does not comply with the Commission's current distribution and linkage (D & L) rules. It noted, as an example, that cable and DTH licensees are not permitted to offer purely discretionary Canadian programming services (such as pay television) or non-Canadian services from the Lists of eligible satellite services as part of the basic service. It further stated that, although the D & L rules will be streamlined after 31 August 2011, some restrictions will remain. Moreover, Rogers argued that FreeHD should be required to comply with the same rules, both current and futures, that apply to other licensed BDUs.
26. TELUS commented on FreeHD's proposed provision of services in all-inclusive packages, noting in particular that subscribers to the English-language package would be obliged to pay \$80 a month in order to receive services mandated under section 9(1)(h) of the *Broadcasting Act* (The Act) for distribution as part of the basic service. It noted that TELUS TV offers a "skinny" basic service at a mere \$28 a month, comprising the local conventional stations as well as those deemed to be of national importance (i.e., services designated pursuant to section 9(1) (h) of the Act). CBC stated that, in the context of the 7 December 2009 hearing (Broadcasting Notice of Consultation 2009-614), it had proposed the introduction of a small all-Canadian low-cost basic package to ensure an affordable entry point for consumers to the Canadian broadcasting system after August 2011.

27. In its intervention, Shaw submitted that FreeHD's proposed offer of an English-language pay-per-view (PPV) service only in the English-language basic program package and a French-language PPV service only in the French-language basic program package is contrary to the requirements of the *Broadcasting Distribution Regulations* (the Regulations), which require that both English-language and French-language PPV services be made available to all subscribers. As such, Shaw argued that it would be inappropriate to afford FreeHD such relief without also extending it to all DTH licensees.
28. As noted earlier, FreeHD stated in its reply that it is still seeking approval of the applications as they are currently on the record as it believes these proposals and regulatory requests have merit and would aid the Canadian broadcast industry during the digital transition. Nonetheless, FreeHD indicated that it would agree to adhere to all DTH regulatory requirements, as applicable.
29. In specific response to Shaw's concern regarding the distribution of PPV services, FreeHD confirmed that it would comply with the Regulations and provide English- and French-language PPV services in both its English- and French-language packages.

*Commission's determinations*

30. The Commission notes that the applicant's proposals for the distribution of virtually all services in two large basic program packages, one in the English language and another in the French language, would require a specific condition of licence, since current regulatory requirements specify that certain services can only be distributed on a discretionary basis. Pursuant to Broadcasting Public Notice 2008-100, most of these regulatory requirements are scheduled to be removed as of 1 September 2011, although rules pertaining to the distribution of adult services, as well as to single point-of-view religious services, will remain in place after that date.
31. The Commission notes, as well, that issues related to the appropriate size of the basic package have been raised in the November 2009 policy proceeding. The Commission therefore considers that it would be premature to grant the applicant's specific requests pertaining to the DTH undertaking's provision of the majority of its programming services in two all-inclusive packages. However, Commission notes that, even under the current rules, the applicant would have considerable flexibility to offer its services in large packages.
32. As to the concern raised by Shaw, the Commission notes FreeHD's confirmation that it would comply with the Regulations and provide English- and French-language PPV services in both its English- and French-language packages. The relevant provisions of the Regulations are sections 38(2)(c) and (d), which require all DTH licensees to distribute at least one English-language general interest DTH PPV service and at least one French-language general interest DTH PPV service. The operation of a DTH PPV service requires a separate licence. Prior to commencing operations, FreeHD will have to either apply for and be granted the appropriate licence(s), or make

arrangements with a PPV service that has already been licensed for the provision of the required PPV services. In addition, the Regulations do not require that PPV services be provided as part of the basic service.

### **Structural separation, program substitution and deletion**

#### *Interventions and reply*

33. In its intervention, Shaw noted that it is the only SRDU that is subject to a structural separation condition of licence and that its DTH satellite distribution undertaking has a similar condition. In Shaw's view, because the applicant proposes to distribute all local broadcast signals, it poses a greater competitive challenge to small cable companies than Shaw Direct poses, as Shaw Direct lacks sufficient capacity to carry all local broadcast signals into the markets of small cable companies. Thus, to the extent that structural separation conditions are maintained as part of the licences of its DTH satellite distribution undertaking, Shaw Direct, and its SRDU, Shaw Broadcast Services, similar conditions should be imposed in connection with any DTH and SRDU licences granted to the applicant.
34. Shaw also argued that, to ensure fair competition and as a matter of interest, the Commission should require FreeHD to explain how it would implement current regulatory requirements pertaining to substitution and deletion.

#### *Commission's determinations*

35. The Commission notes that structural separation conditions of licence were originally imposed in order to address concerns related to undue preference or disadvantage as a result of Shaw's dominant position in cable distribution and its vertically and horizontally integrated corporate structure. As a result of Broadcasting Decision 2002-84, the original structural separation conditions of licence were replaced with conditions requiring that the SRDU and DTH satellite distribution undertakings maintain separate sales, marketing and customer service functions and staff. Confidentiality procedures were also imposed.
36. In Broadcasting Decision 2002-84, the Commission noted the concerns expressed by the Canadian Cable Systems Alliance that Shaw Broadcast Services (then Canadian Satellite Communications Inc.) might share information with the related DTH satellite distribution undertaking concerning its affiliation agreements with cable systems, thus enabling Shaw Direct (then Star Choice) to improve its competitive position with respect to small cable operators.
37. In Broadcasting Public Notice 2008-100, the Commission considered that the SRDU sector remained dominated by Shaw Broadcast Services.
38. The Commission considers that any concerns related to the possible ongoing dominance of Shaw Broadcast Services in the SRDU market would not apply to FreeHD, which would be a new entrant in the market. Accordingly, the Commission

does not consider it necessary to impose conditions of licence such as those applicable to Shaw Direct and Shaw Broadcast Services.

39. The Commission notes that FreeHD did not specifically reply to Shaw's comments in regard to program substitution and deletion. However, as indicated earlier, FreeHD has noted its willingness to adhere to all regulations applicable to DTH satellite distribution undertakings, which would include those provisions of the Regulations related to simultaneous substitution and simultaneous and non-simultaneous program deletion.

#### **Interim use of a foreign satellite facility**

40. In its proposal, FreeHD requested authority for the interim use of a foreign satellite facility to address the immediate shortage of Canadian satellite capacity and enable it to offer a full-service HD distribution system in Canada by August 2011. This interim satellite would be used while it awaits the construction and successful launch of its own satellite that would operate with Canadian orbital spectrum licences. FreeHD stated that the construction and launch cycle of such a Canadian satellite is typically 36 months.

#### *Interventions and reply*

41. Both Bell TV and Shaw raised concerns with respect to FreeHD's proposal to use foreign satellite facilities pending construction and launch of a Canadian satellite.
42. FreeHD responded that there is an impending emergency arising from the potential impact of the 2011 digital transition on consumers, as well as a lack of available Canadian satellite capacity. FreeHD further indicated that it had received the required authority from Department of Industry (the Department) for the interim use of a foreign satellite and that the approval had been placed on the public record of this proceeding. It also committed to migrate to Canadian facilities as they become available.

#### *Commission's determinations*

43. The Commission notes that the authority to grant interim use of a foreign satellite facility rests with the Department. The Department has provided the necessary authorization, stating that it is satisfied that FreeHD's request to use non-Canadian facilities is compliant with the intent of provision (iii) of the annex to *Satellite-Use Policy to Accommodate Broadcasting Services to the Canadian Public*.<sup>3</sup> This provision states that "in the case of emergencies leading to lack of availability of Canadian satellite facilities for broadcasting undertakings, back-up arrangements with foreign satellite operators could be utilized, on an interim basis, with appropriate authorization."

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<sup>3</sup> <http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf08453.html>

44. In order to help ensure a smooth transition, the Commission is imposing a condition of licence on each undertaking requiring that it be notified when the licensee intends to migrate its service to Canadian satellite facilities and that the licensee provide the Commission with details as to its plans to transition customers, along with any related authorizations or other relevant documentation issued by the Department, at least 90 days prior to the intended date of the migration. **Conditions of licence** to that effect are set out in the appendices to this decision.

**Matters related to the accessibility of the services for persons with disabilities**

45. In Broadcasting and Telecom Regulatory Policy 2009-430 (the Accessibility Policy), the Commission set out its policy determinations regarding the accessibility of telecommunications and broadcasting services to persons with disabilities. Among other things, the Commission stated that it intends to require BDUs, by condition of licence, to provide one or more simple means of accessing described programming, whether in an open or embedded format, that requires little or no visual acuity. Therefore, in accordance with the Accessibility Policy, the Commission is imposing a **condition of licence** to that effect on the DTH satellite distribution undertaking, as set out in Appendix 1 to this decision.
46. The Commission also expects FreeHD, as it pertains to its DTH satellite distribution undertaking, to:
- ensure that subscribers are able to identify programming with described video in their electronic program guide;
  - promote disability-specific products and services;
  - make information available in alternative formats to subscribers regarding, among other things, the programming and services offered and the channel line-up; and
  - make its website and call centre accessible.
47. The Commission also encourages FreeHD to ensure that its set-top boxes are accessible to subscribers with vision and fine motor skill disabilities.
48. The Commission notes that it may impose further conditions of licence respecting accessibility matters five years into the licence term, if deemed appropriate.
49. Finally, the Commission reminds FreeHD Canada that both undertakings must pass through the described video of all programming services that they distribute, in accordance with Broadcasting Public Notice 2007-101.

## Conclusion

50. In light of policies in favour of competition and open entry in the broadcasting distribution and relay distribution sectors, the Commission **approves in part** the applications by FreeHD Canada Inc. for broadcasting licences to operate a national direct-to-home satellite distribution undertaking as well as a national satellite relay distribution undertaking. The licences will be subject to the **conditions** therein as well as the terms and **conditions of licence** set out in the appendices to this decision. The licence for the DTH satellite distribution undertaking will also be subject to the general conditions of licence set out in Appendix 2 to Broadcasting Regulatory Policy 2009-547. In light of the Commission's determinations with respect to the applicant's requests to provide a free local program package and two large basic packages, the conditions of licence in the appendices reflect the conditions of licence generally applicable to DTH and SRDU licensees, except as specified below.
51. With respect to the scope of the authorizations for the DTH satellite distribution undertaking, the Commission authorizes FreeHD to engage in bulk billing and to distribute its services to subscribers in multiple unit dwellings using a variety of technologies including terrestrial distribution techniques (land lines) that may cross property lines, public streets or highways, consistent with authorizations that have been granted to both Bell TV and Shaw Direct.<sup>4</sup>
52. The Commission notes that the applicant stated that its DTH satellite distribution undertaking did not intend to use a second set of U.S. 4+1 signals for time-shifting, but rather that it would use Canadian distant signals for time-shifting (subject to agreement with the conventional broadcasters used for the distant signal). Accordingly, the Commission has not at this time included an authorization for the DTH satellite distribution undertaking to offer its subscribers a second set of U.S. 4+1 signals. Consistent with authorizations granted to the other licensed DTH satellite distribution undertakings, the Commission has included, as a condition of licence, an authorization that will permit it to distribute one set of U.S. 4+1 signals as part of the basic service if it so desires.
53. The Commission also notes that the conditions of licence for both Bell TV and Shaw Direct include provisions setting out alternatives to obligations in the Regulations to perform simultaneous and non-simultaneous program deletion. However, these conditions of licence have expired. Accordingly, the Commission has not at this time included such provisions.
54. In light of FreeHD's interim use of a foreign satellite facility, the Commission is imposing conditions of licence to ensure that it is given appropriate notification of the migration of the DTH and SRDU services to a Canadian satellite. **Conditions of licence** to that effect are set out in the appendices to this decision.

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<sup>4</sup> See Decision 2000-395, Decision 2001-168, Broadcasting Public Notice 2002-7, Broadcasting Decision 2003-124 and Broadcasting Decision 2004-129.

55. The Commission reminds FreeHD that its DTH satellite distribution undertaking can also avail itself of the general authorizations for BDUs set out in Broadcasting Regulatory Policy 2009-546.
56. With respect to the SRDU, the Commission is imposing conditions of licence generally comparable to those of the Bell TV undertaking. However, the Commission is including an additional condition of licence in order to address dispute resolution and the transport of Canadian pay and specialty services, as noted below.
57. With respect to dispute resolution, the Commission is imposing the same provision as currently applies to the Bell TV SRDU. However, the Commission notes that this provision applies only to disputes between the SRDU and BDUs. In Broadcasting Order 2009-638, the Commission amended *Exemption order respecting terrestrial relay distribution network undertakings*. In the amended exemption order, the Commission included a provision that would make exempt terrestrial relay distribution undertakings (TRDUs) subject to its dispute resolution processes for disputes with Canadian programming services, as well as for disputes with BDUs. In Broadcasting Notice of Consultation 2009-83, the call for comments that initiated the above proceeding, the Commission had noted that, if it ultimately found the proposed TRDU dispute provision appropriate, it may, at the time of the SRDU licence renewals, consider similarly expanding the dispute resolution requirements applicable to SRDUs, either by way of a revised condition of licence or through the terms of an exemption order as the case may be.
58. With respect to the transport of Canadian pay and specialty services, in Broadcasting Public Notice 2008-100, the Commission noted that, currently, SRDU licences encompass the reception and delivery of conventional stations and non-Canadian programming services to BDUs, but not the transport of Canadian pay and specialty services. It added that, over time, the need for an efficient means of transporting these signals to distributors has resulted in them using the SRDU facilities in a way that is practically indistinguishable from conventional stations and non-Canadian programming services. In the notice, the Commission stated its intention, as part of the next renewals of SRDU licences, to consider whether incorporating the satellite transport of pay and specialty services into SRDU licences, or alternatively, an SRDU exemption order, would constitute an appropriate course of action at that time.
59. In light of the above, the Commission is imposing a condition of licence intended to ensure that, depending on the outcome of the renewal processes for the incumbent SRDUs, FreeHD's SRDU will be subject to the same conditions with respect to dispute resolution and the transport of Canadian pay and specialty services, unless FreeHD can demonstrate that such conditions would be inappropriate in its case. A **condition of licence** to that effect is set out in Appendix 2 to this decision.

## Employment equity

60. Because FreeHD is subject to the *Employment Equity Act* and files reports concerning employment equity with the Department of Human Resources and Social Development Canada, its employment equity practices are not examined by the Commission.

Secretary General

### Related documents

- *Amendments to the Exemption order respecting terrestrial relay distribution network undertakings*, Broadcasting Order CRTC 2009-638, 9 October 2009
- *Call for comments following a request by the Governor in Council to prepare a report on the implications and advisability of implementing a compensation regime for the value of local television signals*, Broadcasting Notice of Consultation CRTC 2009-614, 2 October 2009
- *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 CRTC 2009-546, 31 August 2009
- *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009
- *Policy proceeding on a group-based approach to the licensing of television services and on certain issues relating to conventional television*, Broadcasting Notice of Consultation CRTC 2009-411, 6 July 2009
- *Policy determinations resulting from the 27 April 2009 public hearing*, Broadcasting Regulatory Policy CRTC 2009-406, 6 July 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

- *Distribution of video description by Class 1 cable broadcasting distribution undertakings (BDU), direct-to-home BDUS and satellite relay distribution undertakings*, Broadcasting Public Notice CRTC 2007-101, 12 September 2007
- *ExpressVu - Licence renewal*, Broadcasting Decision CRTC 2004-129, 31 March 2004
- *Star Choice Television Network Incorporated - Licence amendment*, Broadcasting Decision CRTC 2003-124, 25 April 2003
- *Amendments to conditions of licence relating to structural separation for Cancom and Star Choice*, Broadcasting Decision CRTC 2002-84, 12 April 2002
- *Bulk billing by direct-to-home satellite distribution undertakings*, Broadcasting Public Notice CRTC 2002-7, 12 February 2002
- *Provision of service to MUDs*, Decision CRTC 2001-168, 8 March 2001
- *Bell ExpressVu Inc.*, Decision CRTC 2000-395, 26 September 2000

*This decision is to be appended to each 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>.*

# Appendix 1 to Broadcasting Decision CRTC 2010-61

## Terms, conditions of licence, expectations and encouragement for the national direct-to-home satellite distribution undertaking

### Terms

#### Issuance of the broadcasting licence to operate a national direct-to-home satellite distribution undertaking

The operation of this undertaking will be regulated pursuant to the *Broadcasting Distribution Regulations* and all related policies.

The licence will expire 31 August 2016.

A licence will be issued once the applicant has met the following requirements:

- the applicant has informed the Commission in writing that it is prepared to commence operations. The undertaking must be operational at the earliest possible date and in any event no later than 24 months from the date of this decision, unless a request for an extension of time is approved by the Commission before 8 February 2012. In order to ensure that such a request is processed in a timely manner, it should be submitted at least 60 days before that date; and
- the applicant has filed, at the same time it informs the Commission that it is ready to commence operations, a website address where its distribution grid is posted.

### Conditions of licence

1. The licensee shall notify the Commission of its intent to migrate its service to Canadian satellite facilities and provide the Commission with details as to its plans to transition customers, along with any related authorizations or other relevant documentation issued by the Department of Industry, at least 90 days prior to the intended date of the migration.
2. Unless otherwise authorized by the Commission, in addition to those services identified in section 39 of the *Broadcasting Distribution Regulations*, the licensee is authorized to distribute to its subscribers:
  - (a) the electronic program guide, one English- and one French-language marketing channel for its own service and one English- and one French-language marketing service for its pay-per-view service.
  - (b) a set of signals that provides the programming of the four U.S. commercial networks (CBS, NBC, ABC, FOX) and the non-commercial PBS network (collectively, the U.S. 4+1 signals).

3. Subject to any new or amended *Broadcasting Distribution Regulations* concerning the distribution of Canadian Broadcasting Corporation (CBC) television stations by direct-to-home satellite distribution undertakings, the licensee shall distribute a minimum of five (5) CBC English-language conventional television stations owned and operated by the CBC, including at least one from each time zone. Further, the licensee shall not at any time distribute a number of English-language conventional television stations owned and operated by the CBC that is less than the number of English-language conventional television stations owned or operated by any other individual broadcasting group.
4. Subject to any new or amended *Broadcasting Distribution Regulations* concerning the distribution of CBC television stations by direct-to-home satellite distribution undertakings, the licensee shall distribute a minimum of five (5) French-language CBC conventional television stations owned and operated by the CBC, including at least one from each time zone. Further, the licensee shall not at any time distribute a number of French-language conventional television stations owned and operated by the CBC that is less than the number of French-language conventional television stations owned or operated by any other individual broadcasting group.
5. The licensee shall provide one or more simple means of accessing described programming, whether in an open or embedded format, that requires little or no visual acuity.

### **Expectations**

The Commission expects the licensee to ensure that subscribers are able to identify programming with described video in their electronic program guide.

The Commission expects the licensee to promote disability-specific products and services.

The Commission expects the licensee to make information available in alternative formats to subscribers regarding, among other things, the programming and services offered and the channel line-up.

The Commission expects the licensee to make its website and call centre accessible.

### **Encouragement**

The Commission encourages the licensee to ensure that its set-top boxes are accessible to subscribers with vision and fine motor skill disabilities.

## Appendix 2 to Broadcasting Decision CRTC 2010-61

### Terms and conditions of licence for the national satellite relay distribution undertaking

#### Terms

##### Issuance of the broadcasting licence to operate a national satellite relay distribution undertaking

The operation of this undertaking will be regulated pursuant to the *Broadcasting Distribution Regulations* and all related policies.

The licence will expire 31 August 2016.

A licence will be issued once the applicant has met the following requirements:

- the applicant has informed the Commission in writing that it is prepared to commence operations. The undertaking must be operational at the earliest possible date and in any event no later than 24 months from the date of this decision, unless a request for an extension of time is approved by the Commission before 8 February 2012. In order to ensure that such a request is processed in a timely manner, it should be submitted at least 60 days before that date; and
- the applicant has filed, at the same time it informs the Commission that it is ready to commence operations, a website address where its distribution grid is posted.

#### Conditions of licence

1. The licensee shall notify the Commission of its intent to migrate its service to Canadian satellite facilities and provide the Commission with details as to its plans to transition broadcasting distribution undertakings, along with any related authorizations or other relevant documentation issued by the Department of Industry, at least 90 days prior to the intended date of the migration.
2. The licensee shall adhere to the provisions of section 4 of the *Broadcasting Distribution Regulations*, as amended from time to time, with respect to any transfers of ownership or control.
3. Subject to the requirement that it ensure that a majority of the television signals that it distributes are Canadian programming services, the licensee is authorized to distribute via satellite to its affiliates the following television services:
  - a) the signal of any licensed conventional television programming undertaking;
  - b) the signal of any educational television programming undertaking, the operation of which is the responsibility of any educational authority designated by the province in which the licensed area of the undertaking is located;

- c) the signal of any U.S. over-the-air television programming undertaking included on the Lists of Part 2, Part 3 or DTH Lists of eligible satellite services;
- d) CPAC, the parliamentary programming service and the proceedings of any provincial or territorial legislative assembly;
- e) Radio-France outre mer (RF01) Saint-Pierre and Miquelon; and
- f) “A” Atlantic (formerly, Atlantic Satellite Network (ASN)).

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

4. The licensee is authorized to distribute the signal of any licensed conventional radio programming undertaking and any licensed pay audio undertaking to its affiliates via satellite.
5. The licensee must provide its service to all of the following undertakings whose operators are willing to enter into affiliation agreements with it:
  - a) terrestrial broadcasting distribution undertakings that are licensed by the Commission or that are operating in accordance with an exemption order issued by the Commission; and
  - b) licensed direct-to-home satellite distribution undertakings (for retransmission to direct-to-home subscribers only).
6. Regarding alteration or deletion of programming services, the licensee shall not alter or delete a programming service in the course of its distribution except as the FreeHD Canada Inc. direct-to-home satellite distribution undertaking is permitted under section 7 of the *Broadcasting Distribution Regulations*, as amended from time to time.
7. The licensee is required to contribute a minimum of 5% of its annual gross revenues derived from broadcasting activities to the creation and presentation of Canadian programming. For the purpose of this condition, contributions directed to a production fund are required to be made on a monthly basis, within 45 days of each month’s end. Funds allocated to subsidize the provision of decoder equipment are not eligible contributions.
8. The licensee shall not give an undue preference to any person, including itself, or subject any person to an undue disadvantage.
9. If there is a dispute between the licensee and a distribution undertaking, whether operating by licence or by exemption order, concerning the terms under which programming services are or may be provided, then the licensee shall submit to a dispute resolution process, if the Commission so requires.

10. The licensee shall submit an application to amend the licence with respect to any conditions of licence that the Commission may impose on incumbent satellite relay distribution undertakings at the time of their next licence renewal pertaining to (a) applicable dispute resolution processes or (b) the transport of Canadian pay and specialty services, within 30 days of any such determinations or as the Commission might otherwise direct.