



Broadcasting Order CRTC 2011-753

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Amended exemption order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers – provision of community television channels

The Commission amends the exemption order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers. The amendments implement the determinations related to the provision of a community television channel by exempt broadcasting distribution undertakings announced in Broadcasting Regulatory Policy 2010-622. The amended exemption order is set out in the appendix to this document.

The process

1. In Broadcasting Notice of Consultation 2011-251, the Commission sought comments regarding proposed amendments to the exemption order set out in Broadcasting Order 2009-544. The purpose of the proposed amendments was to implement the Commission's determinations relating to the provision of a community television channel by exempt broadcasting distribution undertakings (BDUs) set out in Broadcasting Regulatory Policy 2010-622.
2. First, the Commission announced its intention to amend the exemption order to reinstitute the obligation for exempt BDUs serving more than 2,000 subscribers to make a contribution to Canadian programming under the same terms and conditions set out in Broadcasting Public Notice 2007-125.
3. Second, the Commission indicated that it would establish general criteria and conditions whereby exempt BDUs would be authorized to form zone-based community television channels.¹ In particular, the Commission sought comments on whether exempt BDUs should be allowed to form zone-based community television channels within officially recognized communities of interest, such as a municipality, a regional county municipality, or a county. The Commission also indicated that it would expect that a reasonable effort be made to ensure that each of the individual communities is proportionately represented on the zone-based community channel.

¹ This would occur where two or more exempt BDU service areas share local and community access programming.

4. The Commission received several interventions. The complete record for this proceeding can be found on the Commission's website at www.crtc.gc.ca under "Public Proceedings."
5. The Commission notes that the purpose of this proceeding was to amend the exemption order to implement its determinations regarding community television made in Broadcasting Regulatory Policy 2010-622. Consequently, the Commission did not consider comments that fell outside the scope of the implementation of these determinations.
6. The Commission notes that the two issues in this proceeding are:
 - reinstatement of the requirement that exempt terrestrial BDUs serving more than 2,000 subscribers contribute to Canadian programming; and
 - establishment of criteria whereby exempt BDUs can form zone-based community channels.

Reinstatement of the requirement that exempt terrestrial BDUs serving more than 2,000 subscribers contribute to Canadian programming

Positions of parties

7. The majority of exempt BDUs that intervened argued that it was not necessary for the Commission to reinstate the obligation to contribute to Canadian programming since exempt BDUs would continue to contribute to community television regardless of whether they are required to do so by the exemption order.
8. Bragg Communications Inc. (Bragg) did not oppose the reinstatement but submitted that it would be unfair and administratively complex for exempt BDUs to reinstate the obligation on a retroactive basis or part way through a broadcast year. Bragg proposed that the effective date for reinstatement should be the start of the next broadcast year.

Commission analysis and decisions

9. The Commission remains of the view set out in Broadcasting Regulatory Policy 2010-622 that it is appropriate for exempt BDUs serving more than 2,000 subscribers to contribute to Canadian programming.
10. The Commission agrees with Bragg that reinstating the obligation on a retroactive basis could pose difficulties. However, the Commission does not consider that it would be administratively difficult to implement the obligation during a broadcast year.
11. The Commission is therefore amending the exemption order to reinstate the obligation for exempt BDUs with more than 2,000 subscribers to contribute to Canadian programming under the same terms and conditions set out in

Broadcasting Public Notice 2007-125. Beginning 1 April 2012, exempt BDUs will be required to make a contribution to Canadian programming of 5% of gross revenues from broadcasting activities. For the 2011-2012 broadcast year, this contribution will be payable on gross revenues from broadcasting activities earned between 1 April 2012 and 31 August 2012. For subsequent broadcast years, the contribution will be payable on gross revenues from broadcasting activities earned over the entire broadcast year.

Establishment of criteria whereby exempt BDUs can form zone-based community channels

Positions of parties

12. Several parties, including the Canadian Association of Community Television Users and Stations, the Canadian Conference for the Arts, the Canadian Media Guild, and la Fédération des télévisions communautaires autonomes du Québec, opposed the formation of zone-based community television stations by exempt BDUs. They submitted that such channels would not provide community programming that is of better quality and more relevant, but instead would result in community programming that is more diluted and less specific to the population within each licence area.
13. Exempt BDUs generally supported the inclusion of criteria in the exemption order that would allow exempt BDU systems to form zone-based community channels. They agreed, however, that the proposed criteria were too restrictive and submitted that the criteria should allow exempt BDUs to launch zone-based community channels within larger areas. These BDUs argued that they were in a better position to determine an appropriate community of interest, depending on each unique situation, where they would be authorized to provide a zone-based community channel.

Commission analysis and decisions

14. The Commission considers that the criteria whereby exempt BDUs would be authorized to distribute a zone-based community channel should provide the flexibility to form a zone-based community channel that includes enough BDU service areas to provide sufficient funding and volunteer participation. This would enable BDUs to produce the required amount of access and community programming that is of interest to the communities included in the zone. At the same time, such zone-based community channels should not be so large that the programming would no longer be reflective of the communities in question.
15. The Commission agrees with the parties that argued that the examples of a community of interest proposed in Broadcasting Notice of Consultation 2011-251 may be too restrictive in that they would, in many instances, not include more than one BDU service area. The Commission considers, however, that because zone-based community channels distributed by exempt BDUs will not be approved by the Commission on a case-by case basis, it is important to establish

guidelines to assist exempt BDUs in determining what would constitute a community of interest.

16. Since the Commission agrees that a community of interest cannot easily be defined by an officially recognized boundary alone, it determines that exempt BDUs should be authorized to distribute zone-based community channels in a self-determined community of interest that includes two or more service areas. In order to assist exempt BDUs in choosing an appropriate community of interest where they could offer a zone-based community channel, the Commission provides the following guidelines.

A community of interest is one where its members share one or more of the following attributes:

- common social and economic interests;
- common heritage, culture or history;
- the same geographic or politically recognized boundary;
- access to the same local or regional media.

17. Accordingly, the amended exemption order includes authorization for an exempt BDU to form a zone-based community channel under the terms and conditions noted above. The Commission notes that in the case of a complaint, exempt BDUs could be called to justify their choice of the community of interest for a particular zone-based community channel based on the above-noted guidelines.
18. Finally, the Commission determines that exempt BDUs must make reasonable efforts to ensure that all the communities within a zone are proportionately represented on the community channel.

Secretary General

Related documents

- *Call for comments on amendments to the Exemption order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers*, Broadcasting Notice of Consultation CRTC 2011-251, 15 April 2011
- *Community television policy*, Broadcasting Regulatory Policy CRTC 2010-622, 26 August 2010
- *Exemption order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers*, Broadcasting Order CRTC 2009-544, 31 August 2009
- *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

Appendix to Broadcasting Order CRTC 2011-753

Terms and conditions for the exemption order respecting 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 production fund," "Canadian programming service," "community access television," "community channel," "comparable," "contribution to local expression," "Corporation," "educational television programming service," "francophone market," "independent production fund," "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 23, 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 23, 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 paragraph, 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 (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 CBC News Network 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) the undertaking does not distribute the Corporation's CBC News Network 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 News Network, La Magnétothèque and, until 31 August 2015, Météomedia;
 - c) if it operates in an anglophone market, le Réseau de l'information and, 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. Subject to paragraph 20, if the undertaking serves more than 2,000 subscribers, it shall make a contribution to Canadian programming in each broadcast year of an amount not less than 5% of that undertaking's gross revenues derived from broadcasting activities in the year, less any contribution to local expression made by the undertaking in that year. Contributions to Canadian programming shall consist of:

- a) a contribution to the Canadian production fund of at least 80% of the undertaking's total required contribution; and
- b) to one or more independent production funds, the remainder of its total required contribution.

20. For the 2011-2012 broadcast year, the contribution to Canadian programming referred to in paragraph 19 above shall amount to not less than 5% of that undertaking's gross revenues derived from broadcasting during the period

between 1 April 2012 and 31 August 2012, less any contribution to local expression made by the undertaking during that same period.

21. The undertaking is authorized to offer a zone-based community channel (where two or more exempt BDU service areas are combined to share local and community access television programming) under the following condition:

Exempt systems that make up a zone must be part of a community of interest. A community of interest would be determined by the following criteria:

A community of interest is one where its members share one or more of the following attributes:

- a. common social and economic interests;
- b. common heritage, culture or history;
- c. the same geographic or politically recognized boundary;
- d. access to the same local/regional media.

22. If the undertaking serves more than 2,000 subscribers and elects to offer a community channel or a zone-based 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;
- d) reasonable efforts are made to ensure that all the communities included within a zone-based community channel are proportionately represented; and
- e) the programming offered adheres to:
 - i. the *Cable television community channel standards*, as amended from time to time; and
 - ii. the Canadian Association of Broadcasters' *Violence Code*, as amended from time to time and approved by the Commission.

Information requirements

23. 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.
24. 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.
25. The undertaking submits any information requested by the Commission in order to ascertain the undertaking's compliance with the terms of this order.