



Broadcasting Decision CRTC 2012-608

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Route reference: 2011-732

Ottawa, 31 October 2012

Bell ExpressVu Inc. (the general partner), and Bell Canada (the limited partner), carrying on business as Bell ExpressVu Limited Partnership Across Canada

Application 2011-0952-0, received 15 June 2011

Bell TV – Licence renewal

*The Commission **renews** the broadcasting licence for the Bell TV direct-to-home broadcasting distribution undertaking from 1 November 2012 to 31 August 2019.*

Introduction

1. The Commission received an application by Bell ExpressVu Inc. (the general partner), and Bell Canada (the limited partner), carry on business as Bell ExpressVu Limited Partnership (Bell) to renew the broadcasting licence for the Bell TV direct-to-home broadcasting distribution undertaking (DTH BDU), which expires on 31 October 2012.¹
2. The applicant proposed to add, amend and delete certain conditions of licence, as discussed throughout this decision.
3. The Commission received interventions in support and commenting on this application. The public record of this proceeding is available on the Commission's website at www.crtc.gc.ca, under "Public Proceedings."
4. After examining the application and the interventions in light of applicable regulations and policies, the Commission considers that the issues to be addressed are as follows:
 - distribution of additional local stations;
 - compensation relating to non-simultaneous deletion;

¹ The Commission renewed this licence administratively from 1 September 2010 to 31 August 2011 in Broadcasting Decision 2010-170, to 29 February 2012 in Broadcasting Decision 2011-420, to 31 August 2012 in Broadcasting Decision 2012-100, and to 31 October 2012 in Broadcasting Decision 2012-417.

- suspension of provisions set out in the *Broadcasting Distribution Regulations* (the Regulations) concerning signal deletion;
- uplink fees charged to Category A pay and specialty services;
- other changes to conditions of licence; and
- accessibility of services.

Distribution of additional local stations

Background

5. In Broadcasting Decision 2011-163, the Commission determined that Bell TV was to distribute at least 43 additional television services that meet the following criteria in standard definition and to make these services available as part of the basic package in the appropriate local markets:
 - local stations eligible for the local programming improvement fund (LPIF);
 - non-branded community-based television services;
 - non-LPIF-eligible local stations that meet the five-hour (French-language) and seven-hour (English-language) minimum local programming commitment; and
 - existing independent television stations that were required to convert to digital transmission.
6. In its application, Bell proposed a condition of licence reflecting the above requirements.

Interventions

7. Several parties submitted that the distribution of additional local stations should not be predicated on those stations being eligible for LPIF funds.
8. Others proposed that signal distribution requirements be increased to include the services providing the proceedings of the Legislative Assemblies of Nunavut and the Northwest Territories and certain independent stations beyond their local markets.

Commission's analysis and decisions

9. In light of the Commission's determination set out in Broadcasting Regulatory Policy 2012-385 to phase out the LPIF, the Commission agrees that it is no longer appropriate to link criteria for carriage to eligibility for LPIF funds. The Commission will therefore replace references to the LPIF with the criteria that made the stations eligible for LPIF funds in 2011.

10. With respect to comments advocating that Bell TV carry additional stations, the Commission determines that it would not be appropriate to add to distribution requirements at this time given the number of new programming services that Bell TV is required to distribute as a result of recent public proceedings.
11. A revised **condition of licence** incorporating these determinations appears as condition of licence 1 in the appendix to this decision.

Compensation relating to non-simultaneous deletion

Background

12. Bell currently has a condition of licence relieving it from the provisions of the Regulations related to having to perform non-simultaneous program deletion provided that it:
 - pays of \$0.25 per subscriber per month for each subscriber that receives a second set of U.S. 4+1 signals²;
 - distributes a number of independently owned television stations; and
 - does not distribute to subscribers who received independently owned television stations the programming services of Canadian television stations located within the same time zone and that are affiliated with the same network as those stations.
13. In its licence renewal application, Bell proposed to delete this condition of licence. Bell was of the view that the distant signal provisions set out in sections 49 and 50 of the Regulations replaced the provisions of the condition of licence.

Interventions

14. The Independent Broadcasters Group (IBG) submitted that the current condition of licence set out above should be maintained. The IBG was of the view that DTH BDUs should continue to compensate independent broadcasters for the right to distribute a second set of U.S. 4+1 signals in their service areas. They argued that, while major broadcasters would benefit from the new regime for distant signals, independent broadcasters likely would not.

Commission's analysis and decisions

15. The provisions set out in sections 49 and 50 of the Regulations were intended to replace the provisions set out in the conditions of licence. While independent broadcasters may not benefit as much from the distant signal regime as other broadcasters, independent broadcasters will continue to benefit from the following:

² This refers to the set of signals that provide the programming of the four U.S. commercial networks (CBS, NBC, ABC, FOX) and the non-commercial PBS network.

- independent local television broadcasters that broadcast a minimum number of hours of local programming will be distributed by DTH BDUs; and
- 0.4% of the DTH BDU revenues will continue to be allocated to the Small Market Local Production Fund.

16. The Commission further notes that this condition of licence has not been imposed on new licences or during the renewal of the licences of terrestrial BDUs.

17. The Commission therefore **approves** Bell TV's proposal to delete the condition of licence related to compensation in lieu of having to perform non-simultaneous program deletion.

Suspension of provisions set out in the Regulations concerning signal deletion

Background

18. Section 51(1)(b) of the Regulations provides that DTH BDUs must “delete, in respect of subscribers located within the Grade B official contour or noise-limited bounding official contour of the Canadian television programming undertaking, a programming service that is comparable to that of the Canadian television programming undertaking and that would otherwise be received simultaneously by those subscribers.”

19. Bell proposed a condition of licence that would suspend the application of section 51(1)(b) for each broadcaster until the date by which a negotiated agreement with each broadcaster is put into effect related to distant signals and the compensation regime for local signals.

Interventions

20. The Canadian Broadcasting Corporation (CBC) objected that its services would not be made exceptions to the proposed condition of licence since its rights to program deletion would become contingent on the implementation of a compensation regime for local signals from which it has expressly been excluded.

21. In reply, Bell submitted that it would be premature and impractical to put a technical process for deletion in place for only one broadcaster.

Commission's analysis and decisions

22. The Commission notes that the condition proposed would suspend the signal deletion provisions of the Regulations until Bell TV has negotiated compensation with broadcasters for permission to distribute their distant signals. The Commission is of the view that this would provide Bell with a significant advantage as broadcasters would have no lever to prompt Bell to negotiate compensation, where applicable, for the carriage of their distant signals. The Commission considers that Bell has not

provided sufficient evidence to justify the necessity of such an advantage, or the corresponding condition of licence. Accordingly, the Commission **denies** the applicant's proposal.

Uplink fees charged to Category A pay and specialty services

Background

23. In its affiliation agreements, Bell TV requires Canadian Category A specialty and pay television services to pay an uplink fee even where a programming service is uplinked by a satellite relay distribution undertaking (SRDU) other than the one operated by Bell.
24. Bell noted that this equalization fee was part of its affiliation agreement negotiated with each of the pay and specialty television services. Bell submitted that this fee was reasonable and necessary to compensate it for competitive inequities resulting from the current BDU and SRDU market structure.

Interventions

25. The IBG proposed that Bell TV be subject to a condition of licence that would prohibit it from charging any programming service an uplink fee or other similar charges in connection with the carriage of that programming service by Bell TV. The IBG submitted that the charging of an uplink fee was unfair and imposed unnecessary additional costs on Canadian programming services.

Commission analysis and decisions

26. In past proceedings, the Commission has concluded that its dispute resolution process is the best forum in which to address Bell's uplink fees, given that such fees are established through individual affiliation agreements between Bell and pay and specialty services. No new arguments or evidence were presented in this proceeding to cause the Commission to conclude differently. Accordingly, the Commission remains of the view that its dispute resolution process is the best forum in which to address uplink fees for specialty services.

Other changes to conditions of licence

Bulk billing

27. Bell proposed to add a condition of licence specifying that it may, at its option, engage in bulk billing in multiple unit dwellings (MUDs). No interventions were submitted with respect to this proposal.
28. The Commission authorized Bell TV to engage in bulk billing in MUDs in Broadcasting Decision 2004-129. This authorization is still in effect and the Commission is of the view that no condition of licence is necessary for Bell TV to engage in bulk billing in MUDs. Accordingly, the Commission **denies** the applicant's proposal.

Conditions of licence now covered by the Regulations

29. Bell proposed to amend one of its conditions of licence setting out services that Bell TV may distribute by deleting references to specific non-Canadian television services. No interventions were received on this matter.
30. The Commission notes that the distribution of non-Canadian programming services is now addressed in section 48 of the Regulations and a condition of licence addressing this matter is no longer necessary. Accordingly, the Commission **approves** the licensee's proposal. The revised condition of licence appears as condition of licence 2 in the appendix.
31. Bell also proposed to delete other conditions of licence whose provisions are now entirely covered by the Regulations. The Commission **approves** this proposal and the conditions of licence are amended accordingly.

Implementation of the Commission's determinations regarding accessibility of services

32. In Broadcasting and Telecom Regulatory Policy 2009-430 (the Accessibility Policy), the Commission stated its intention to impose on BDUs a number of requirements and expectations pertaining to customer service, access to described video and accessibility of programming. Conditions of licence, requirements, expectations and an encouragement to improve accessibility are set out in the appendix to this decision.
33. The Commission notes that it may impose further conditions of licence respecting accessibility matters five years into the licence term, if deemed appropriate.

Conclusion

34. In light of the above, the Commission **renews** the broadcasting licence for the Bell TV direct-to-home broadcasting distribution undertaking from 1 November 2012 to 31 August 2019. The terms and conditions of licence are set out in the appendix to this decision.

Employment equity

35. Because this licensee is subject to the *Employment Equity Act* and files reports concerning employment equity with the Department of Human Resources and Skills Development, its employment equity practices are not examined by the Commission.

Secretary General

Related documents

- *Administrative renewals*, Broadcasting Decision CRTC 2012-417, 1 August 2012
- *Review of the Local Programming Improvement Fund*, Broadcasting Regulatory Policy CRTC 2012-385, 18 July 2012
- *Administrative renewals*, Broadcasting Decision CRTC 2012-100, 16 February 2012
- *Administrative renewals*, Broadcasting Decision CRTC 2011-420, 13 July 2011
- *Direct-to-home satellite distribution policy – Distribution of local conventional television stations and simultaneous substitution*, Broadcasting Regulatory Policy CRTC 2011-295, 4 May 2011
- *Change in effective control of CTVglobemedia Inc.'s licensed broadcasting subsidiaries*, Broadcasting Decision CRTC 2011-163, 7 March 2011
- *Administrative renewals*, Broadcasting Decision CRTC 2010-170, 22 March 2010
- *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009
- *ExpressVu – Licence renewal*, Broadcasting Decision CRTC 2004-129, 31 March 2004

**This decision is to be appended to the licence.*

Appendix to Broadcasting Decision CRTC 2012-608

Conditions of licence, requirements expectations and encouragement for the Bell TV direct-to-home broadcasting distribution undertaking

Conditions of licence

1. The licensee shall distribute at least 43 additional television stations that meet the following criteria in standard definition by 1 November 2012, and as part of the basic package in the appropriate local markets:
 - (a) the following local stations:
 - English-and French-language conventional stations serving markets in which the population with a knowledge of the official language of the station is less than one million (non-metropolitan areas);
 - in instances where local programming levels have been harmonized, English- and French-language stations that broadcast a minimum of seven and five hours, respectively, per broadcast week of local programming including news; and
 - in instances where local programming levels have not been harmonized, conventional stations in non-metropolitan markets that are meeting their current obligations relating to local programming.
 - (b) non-branded community-based television services;
 - (c) local stations, other than those subject to (a) above that meet the five-hour (French-language) and seven-hour (English-language) per broadcast week minimum local programming commitment; and
 - (d) existing independent television stations that currently operate in markets that were required to convert to digital transmission on 31 August 2011.
2. In addition to those services identified in section 48 of the *Broadcasting Distribution Regulations*, the licensee is authorized to distribute 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.
3. The licensee is relieved from the requirements of section 7 of the *Broadcasting Distribution Regulations* solely for the purpose of distributing, on a part-time basis, via partial and/or omnibus channels, the local and regional news, weather, sports and other unique local or regional programming exhibited by those licensed over-the-air, i.e., conventional, television stations not distributed by the licensee in their entirety.

Distribution of programming on a part-time basis is subject to the following requirements:

- a) Distribution of part-time programming may only take place on a partial channel with the prior written consent of the television station originating the programming. In addition, the further prior written consent of the television station is necessary in order to distribute this part-time programming on an omnibus channel, or at a time that is not simultaneous with its original broadcast on the television station.
 - b) Prior notification must be given to the Commission before the programming of a television station to be distributed on a part-time basis is added to the licensee's channel line-up.
 - c) The licensee shall provide equitable distribution of participating television stations distributed in the manner described above, according to the principles set out in the Schedule to Appendix 1 of *ExpressVu – Licence renewal*, Broadcasting Decision CRTC 2004-129, 31 March 2004.
4. 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.

Requirements

The licensee is required to promote information on all of its disability-specific services and products, in the accessible manner(s) of its choice.

The licensee is required to incorporate an easy-to-find home page link to the special needs/disability sections of its website, if its website includes such sections.

The licensee is required to make the information on its website accessible to the point of providing reasonable accommodation for persons with disabilities (examples of what the Commission considers to be reasonable accommodations are listed in paragraph 66 of *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009).

Where customer service functions on its website are not accessible, the licensee is required to ensure that persons with disabilities will not incur a charge or otherwise be disadvantaged if they use an alternate avenue of customer service.

The licensee is required to make accessible any customer service functions that are available solely over its website.

The licensee is required to make its general call centers accessible to the point of providing reasonable accommodation to persons with disabilities by:

- a) training customer service representatives in handling enquiries from persons with disabilities and familiarizing them with the service provider's products and services for persons with disabilities; and
- b) making its Interactive Voice Response systems accessible.

Expectations

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

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.

Encouragement

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