



Broadcasting Order CRTC 2012-673

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Ottawa, 11 December 2012

Revised exemption order for radiocommunication distribution undertakings

The Commission amends the Exemption Order respecting radiocommunication distribution undertakings. The amended exemption order set out in the appendix to this document replaces the order set out in the appendix to Exemption order respecting radiocommunication distribution undertakings (RDUs), Broadcasting Public Notice CRTC 2002-45, 12 August 2002.

Unless otherwise advised by the affected RDUs by 1 February 2013, the Commission will deem the consents to revoke their licences provided during this consultation process as still valid. The Commission will issue a decision shortly thereafter revoking the licences of all RDUs that provided such consent so that they may operate under the exemption order.

Introduction

1. In Broadcasting Public Notice 2002-45, the Commission established criteria under which radiocommunication distribution undertakings (RDUs) would qualify for exemption, pursuant to the order set out in the appendix to that notice. As part of its periodic review of its existing exemption orders, the Commission called for comments on proposed amendments to this order in Broadcasting Notice of Consultation 2011-290. Specifically, the Commission proposed the following amendments:
 - the amalgamation of criteria 3 and 4 relating to the curtailment or alteration of programming services;
 - the deletion of criteria 7, 8 and 9 relating to the RDU's service area restriction, its power limits and the use of digital multipoint distribution system (MDS) technology; and
 - the addition of a new criterion to better frame the purpose of an RDU to eliminate the potential for an exempt RDU start-up in a large- or medium-size market where there is a scarcity of radio frequencies.
2. The Commission also invited licensed RDUs to provide their prior consent for the revocation of their licences should it determine following this public process that it

would amend the exemption order as proposed in Broadcasting Notice of Consultation 2011-290.

Commission's analysis and decisions

3. The Commission received several interventions from licensed RDUs providing prior consent for the revocation of their licences should the Commission implement the proposed amendments. The Commission notes that there were no interventions in opposition to the amendments proposed, nor any comments regarding the addition of a new criterion. The public record for this proceeding is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."
4. Nevertheless, the Commission deems it appropriate to amend the current exemption order in a manner that will not have any negative impact on the broadcasting industry, while still lightening the administrative burden.

Curtailement or alteration of programming services

5. The Commission notes that the current criterion 3 addresses the curtailment and alteration of the programming services distributed, while the current criterion 4 addresses the alteration and deletion of programming services in the course of their distribution. For administrative purposes and to remove redundancy, the Commission considers it appropriate to amalgamate the current criteria 3 and 4 by deleting criterion 3 and amending criterion 4 to update the wording in the introductory sentence. The Commission also updates the wording in paragraph c) relating to emergency alert messages to coincide with that of the *Broadcasting Distribution Regulations* (the Regulations).

Framing of the purpose of an RDU and transmitter power limits

6. In Broadcasting Notice of Consultation 2011-290, the Commission proposed the deletion of the current criteria 7 and 8 relating to the RDU's service area restriction and power limits and their replacement by a criterion that would better frame the purpose of an RDU and provide an additional safeguard to ensure that an exempt RDU does not commence operations in a medium- or large-size market where there is a scarcity of radio frequencies.
7. With respect to this possible new criterion, the Commission has considered various options. The Commission considers that any new criterion should not negatively affect already exempt RDUs by being more restrictive than the current criteria and thus possibly requiring their re-licensing as they would no longer qualify under the exemption order. This would be contrary to one of the purposes of amending the order.
8. Furthermore, although the current criterion 7 makes reference to television programming undertakings, it has had the effect of providing a safeguard for licensed and future radio services against the possibility that an RDU be granted a protected radio frequency, particularly in markets with limited available radio spectrum,

without Commission knowledge. The current criterion 7 has also contributed to the framing of the purpose of an RDU.

9. Further, the Commission is of the view that the deletion of the current criterion 8 relating to the RDU's power limits would remove the Commission's ability to assess the programming and potential implications of the distribution by an RDU of a radio programming undertaking using a full-power frequency and whether this proposed frequency might be better utilized for a potential local radio programming service.
10. Given the concerns raised above, the Commission has determined that it remains appropriate to retain both of the current criteria 7 and 8. It is also seizing this opportunity to update the wording of current criterion 7 to encompass a reference to the current digital environment. These two criteria are now reflected as criteria 6 and 7 in the amended exemption order set out in the appendix to this document.

Use of digital MDS technology

11. The Commission imposed the current criterion 9 to exclude the digital MDS undertakings from the RDU exemption order. The Commission determines that it is now appropriate to delete this criterion given that MDS equipment is no longer readily available and that it is difficult to locate replacement parts. In Broadcasting Information Bulletin 2011-479, the Commission stated that a licensed MDS undertaking will either cease operating on 31 August 2013 or will be required to apply for a broadcasting distribution undertaking licence.

Addition of a new criterion

12. In Public Notice 1996-59, the Commission stated that in determining if a class of undertakings should operate under an exemption order, the test is whether it is necessary for the class to comply with Part II of the *Broadcasting Act* (the Act) or relevant regulations in order to further the implementation of the policy set out in the Act.
13. In this case, the Commission notes that the currently licensed RDUs have already been assessed and assigned full-power frequencies or, in some cases, assessed against their entry in a given market where there are more than two television programming undertakings and deemed acceptable and therefore authorized. Therefore, in the circumstances of the present case, where the majority of these RDUs have few employees and limited resources, requiring these currently licensed RDUs to continue operating under a licence will not further the implementation of the Act's objectives.
14. In light of the above and given the retention of the current criteria 7 and 8, the Commission deems it appropriate to establish a new criterion in order to exempt the currently licensed RDUs operating within specific parameters, thus lightening the administrative burden. Specifically, the new criterion will permit currently licensed RDUs to operate under the exemption order so long as they continue to operate in accordance with the specific frequencies, contours, effective radiated powers and effective height of antenna above average terrain authorized by the Department of

Industry as of 1 November 2012. This new criterion will apply following the necessary licensee consent and licence revocation discussed below.

15. The Commission notes that this new criterion is reflected as criterion 8 in the amended exemption order set out in the appendix to this document.

Conclusion

16. In light of the above, the Commission amends the *Exemption Order respecting radiocommunication distribution undertakings* in the manner determined above. The amended exemption order set out in the appendix to this document replaces that set out in the appendix to Public Notice 2002-45.

Consent to have licence revoked

17. As noted above, in Broadcasting Notice of Consultation 2011-290, the Commission invited licensed RDUs to provide prior consent for the revocation of their licences should it determine following this public process that it would amend the exemption order as proposed in Broadcasting Notice of Consultation 2011-290. This was to eliminate the need for licensed RDUs to subsequently submit an application for revocation of their licences. The Commission notes that it is implementing some amendments to the exemption order that differ from what was initially proposed. Accordingly, unless otherwise advised by these RDUs by **1 February 2013**, the Commission will deem the consents provided during the consultation process as still valid. The Commission will issue a decision shortly thereafter revoking the licences of all RDUs that provided such consent so that they may operate under the exemption order.
18. The Commission notes that in light of the new criterion 8 set out in the appendix, all remaining licensed RDUs should qualify to operate under the amended exemption order. With the exception of Radio-Soleil-Estrie in Sherbrooke, Quebec, all have provided their consent for licence revocation. The Commission invites Radio-Soleil-Estrie to apply to have its licence revoked so that it may also operate under the exemption order.

Secretary General

Related documents

- *Multipoint Distribution System (MDS) – New licensing regime*, Broadcasting Information Bulletin CRTC 2011-479, 9 August 2011
- *Call for comments on amendments to the Exemption order respecting radiocommunication distribution undertakings*, Broadcasting Notice of Consultation CRTC 2011-290, 3 May 2011
- *Exemption order respecting radiocommunication distribution undertakings (RDUs)*, Broadcasting Public Notice CRTC 2002-45, 12 August 2002

- *Policy regarding the use of exemption orders*, Public Notice CRTC 1996-59, 26 April 1996

Appendix to Broadcasting Order CRTC 2012-673

Exemption order for radiocommunication distribution undertakings

Pursuant to subsection 9(4) of the *Broadcasting Act* (the Act), the Commission by this order exempts from the requirements of Part II of the Act and any regulations made thereunder those persons carrying on radiocommunication distribution undertakings (RDUs) defined by the following criteria.

Purpose

The purpose of these RDUs is to serve small, rural and/or often remote communities having small populations by distributing the services of one or more programming undertakings, as authorized by the Commission.

Criteria

1. 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.
2. The undertaking meets all the technical requirements of the Department of Industry and has acquired all authorization or certificates prescribed by that department.
3. The undertaking does not alter the content or format of a programming service or delete a programming service in the course of its distribution except:
 - a) for the purpose of complying with subsection 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 licensed 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 licensee 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; or
 - 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.

4. The undertaking originates no programming itself.
5. The undertaking distributes services by means of radiocommunication and distributes no service of a programming undertaking other than one which the Commission has authorized by regulation or otherwise.
6. The undertaking operates in an area covered by the local service contour (official Grade A contour or official digital urban contour) of no more than two licensed television programming undertakings.
7. Each channel used by the undertaking to distribute radio and or television signals does not exceed the power limits for low and very low power transmitters, as defined in the Department of Industry's *Broadcast Procedures and Rules* (Parts II, III and IV).
8. Any undertaking licensed by the Commission as a radiocommunication distribution undertaking as of 1 November 2012 shall be deemed to meet the requirements of this exemption order so long as it continues to operate in accordance with the specific frequencies, contours, effective radiated powers and effective height of antenna above average terrain authorized by the Department of Industry for the undertaking as of 1 November 2012.