



Broadcasting Regulatory Policy CRTC 2013-292

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Route reference: 2012-705

Ottawa, 18 June 2013

Amendments to the *Broadcasting Distribution Regulations* to implement the exemption order applicable to Category B services that serve fewer than 200,000 subscribers and that operate under an approved nature of service

The Commission has amended the Broadcasting Distribution Regulations to implement the exemption order applicable to Category B services that serve fewer than 200,000 subscribers and that operate under an approved nature of service.

These amendments will be published in the Canada Gazette, Part II, and will come into effect on the date of their registration. The amendments are set out in the appendix to this regulatory policy.

Introduction

1. On 19 December 2012, the Commission published the Exemption order respecting certain programming undertakings that would otherwise be eligible to be operated as Category B services (the exemption order).¹ Once implemented, the exemption order will apply to Category B services that serve fewer than 200,000 subscribers and that operate under an approved nature of service. It will minimize the regulatory burden for broadcasters by exempting qualifying Category B services from the licensing process.
2. To implement the exemption order, the Commission must make certain amendments to the *Broadcasting Distribution Regulations* (the Regulations) to ensure that certain provisions governing the distribution of programming services by broadcasting distribution undertakings (BDUs) apply to exempt Category B services. Accordingly, on 21 December 2012, the Commission issued Broadcasting Notice of Consultation 2012-705 in which it proposed to amend the following sections of the Regulations:
 - section 1 – to include the definition of an “exempt Category B service”;
 - section 5 – to indicate that a BDU cannot provide any exempt Category B services to subscribers without also providing the basic service;

¹ See Broadcasting Order 2012-689.

- section 19 – to indicate that exempt Category B services affiliated with BDUs are subject to the same carriage rules as other specialty services; and
 - section 25 – to indicate that adult programming services that qualify for exemption are subject to the same regulatory requirements as those applicable to other non-exempt adult programming services.
3. In response to Broadcasting Notice of Consultation 2012-705, the Commission received comments from Bragg Communications Incorporated, carrying on business as Eastlink (Eastlink), Fairchild Television Ltd. (Fairchild), the Independent Broadcast Group, Odyssey Television Network Inc. (Odyssey), Rogers Communications Partnership (Rogers) and South Asian Television Network Inc. (South Asian Television). While supporting the amendments proposed by the Commission, the interveners proposed additional amendments to the Regulations, as follows:
- Eastlink submitted that section 18 should be amended to ensure that exempt Category B services also count toward meeting the regulatory obligations of BDUs to distribute services in official language minority communities;
 - Fairchild, the Independent Broadcast Group, Odyssey and South Asian Television requested that section 27 be amended to ensure that the buy-through requirement for general interest third-language Category B services also applies to exempt general interest third-language Category B services;
 - The Independent Broadcast Group further submitted that section 26 should include references to exempt religious Category B services to ensure that it applies to both licensed and exempt religious specialty services; and
 - Rogers requested that sections 5 and 19 be amended to ensure that they apply not only to exempt Category B services but also to exempt third-language services.

Commission's analysis and decisions

4. The Commission considers that most of the amendments proposed by the interveners are not necessary because the exemption order designates services that qualify for exemption as Category B services. As such, any reference to Category B services in the Regulations includes exempt Category B services.
5. Similarly, the Commission notes that the amendment to section 25 proposed in Broadcasting Notice of Consultation 2012-705 is not necessary since section 25 already refers to Category B services. However, the Commission finds that the amendment to section 26 proposed by the Independent Broadcast Group is required since that section does not presently refer to Category B services.

6. The Commission finds that Rogers' proposed amendments to sections 5 and 19 of the Regulations concerning third-language services raise policy questions that fall outside the scope of this proceeding.
7. However, to avoid confusion regarding what services are designated as Category B services in section 19, that section will be amended as follows (changes are in **bold**):

(2) **In addition to the meaning assigned by section 1**, for the purposes of subsections (3) and (3.1), a Category B service includes

Conclusion

8. In light of the foregoing, the Commission has adopted the amendments to the *Broadcasting Distribution Regulations* described above. The amended Regulations will come into effect on the date of their registration. A copy of the amendments to the Regulations is provided in the appendix to this regulatory policy and will be published in the *Canada Gazette*, Part II.

Implementation

9. As noted above, the amendments to the Regulations described in this regulatory policy are necessary to implement the exemption order. This new exemption order comes into effect today with the changes made to the Regulations.
10. Any licensee of an existing specialty Category 2 or Category B service that wishes to have its licence revoked may submit such an application beginning today using the "[My CRTC Account](#)" and Form 305 entitled "*Revocation and/or registration form for certain programming undertakings that would otherwise be eligible to be operated as Category B services (including existing, authorized, new or third-language services)*". When a licensee submits such an application, it will be required at the same time and using the same form to register its service as an exempt undertaking and provide the information required in sections 4a) and b) of the exemption order. That form may also be used to apply for the revocation of a licence and/or to register an existing exempt undertaking that is eligible to operate under the amended Exemption order respecting certain third-language television undertakings, set out in Appendix 2 to Broadcasting Order 2012-689. A service currently operating under a licence that files an application as described above will cease to operate under its licence and commence operating under the exemption order on the day that the Commission issues a decision revoking its licence.
11. Existing specialty Category 2 and Category B services operating under a licence that will expire on or before 31 August 2013, including those that have been published as part of a notice of consultation, will receive a letter from the Commission informing them that they have the option of requesting the revocation of their licence, registering their service and commencing operations under the exemption order as soon as a decision revoking their licence is issued.

12. Applicants that have submitted an application for a new category B service that the Commission has not yet published as part of a notice of consultation will also shortly receive a letter from the Commission informing them that they have the options of withdrawing their application, registering their service and commencing operations immediately, or as soon as they wish to do so, under the exemption order.
13. Also beginning today, any new undertaking (i.e., one that wishes to begin operating but is not currently licensed) that wishes to avail itself of the exemption order may also register its service using the “[My CRTC Account](#)” and Form 305, as described above. Before registering, undertakings should consult the [list of approved natures of service and related Commission decisions](#) available on the Commission’s website from the “[My CRTC Account](#)” page along with Form 305. Once registered, a new undertaking may commence operations immediately without any further process.
14. The Commission notes that any information submitted through the registration process, with the exception of the service’s subscriber numbers, may be posted on the Commission’s website. Further, simplified annual return data submitted by 30 November of each year pursuant to section 4d) of the exemption order will be held in confidence in the same manner as for annual returns submitted by licensed services.
15. The Commission will maintain a list on its website of all registered undertakings operating under the new exemption order. Pursuant to section 4 of the new exemption order, a service must be registered with the Commission to be eligible to operate under the exemption order. BDUs offering Category B services may only offer services that are licensed or that are exempt and appear on the list. Unlicensed undertakings that do not appear on the list will not be eligible for exemption and may not be distributed by BDUs.
16. Finally, the Commission reiterates that undertakings that have their licence revoked and/or register with the Commission must operate their service in a manner that is at all times consistent with each of the terms of the exemption order.

Secretary General

Related documents

- *Call for comments on proposed amendments to the Broadcasting Distribution Regulations – Provisions relating to the Exemption order respecting certain programming undertakings that would otherwise be eligible to be operated as Category B services, Broadcasting Notice of Consultation CRTC 2012-705, 21 December 2012*
- *New exemption order respecting certain programming undertakings that would otherwise be eligible to be operated as Category B services, and amendments to the Exemption order respecting certain third-language television undertakings, Broadcasting Order CRTC 2012-689, 19 December 2012*

Appendix to Broadcasting Regulatory Policy CRTC 2013-292

REGULATIONS AMENDING THE BROADCASTING DISTRIBUTION REGULATIONS

AMENDMENTS

1. Section 1 of the *Broadcasting Distribution Regulations*¹ is amended by adding the following in alphabetical order:

“exempt Category B service” means a programming service that is offered by an exempt programming undertaking of the class defined by the criteria that are set out in the order entitled *Exemption order respecting certain programming undertakings that would otherwise be eligible to be operated as Category B services*, made by the Commission under subsection 9(4) of the Act and set out in Appendix 1 to Broadcasting Order CRTC 2012-689, dated December 19, 2012. (*service de catégorie B exempté*)

2. Section 5 of the Regulations is replaced by the following:

5. Except as otherwise provided under a condition of its licence or these Regulations, no licensee shall provide a subscriber with any programming services, other than pay-per-view services, video-on-demand services or the programming services of exempt programming undertakings excluding exempt Category B services, without also providing the basic service of the licensee.

3. (1) The portion of subsection 19(2) of the Regulations before paragraph (a) is replaced by the following:

(2) In addition to the meaning assigned by section 1, for the purposes of subsections (3) and (3.1), a Category B service includes

(2) Section 19 of the Regulations is amended by adding the following after subsection (5):

(6) Subsection (5) does not apply in respect of the distribution of an exempt Category B service by a related exempt programming undertaking.

4. Subsections 26(1) and (2) of the Regulations are replaced by the following:

26. (1) Except as otherwise provided in subsection (3) or under a condition of its licence, a licensee may distribute, on a stand-alone basis, a single point-of-view religious pay television service, a limited point-of-view religious pay television service, a religious specialty service, a religious exempt Category B service or a religious authorized non-Canadian programming service.

(2) Except as otherwise provided in subsection (3) or under a condition of its licence, a licensee shall not distribute a single point-of-view religious pay television service, a limited point-of-view religious pay television service, a religious specialty service, a

religious exempt Category B service or a religious authorized non-Canadian programming service in a package of programming services unless the other services in the package are one or more of those types of services.

COMING INTO FORCE

5. These Regulations come into force on the day on which they are registered.

¹ SOR/97-555