



Broadcasting Order CRTC 2015-88

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Route references: 2014-190, 2014-190-1, 2014-190-2, 2014-190-3, 2014-190-4 and 2015-86

Ottawa, 12 March 2015

Exemption order respecting discretionary television programming undertakings serving fewer than 200,000 subscribers

Pursuant to its policy determinations set out in Broadcasting Regulatory Policy 2015-86, also issued today, the Commission issues a new exemption order for all specialty and pay services that serve fewer than 200,000 subscribers. As a result, the regulatory burden will be reduced for discretionary services with few subscribers and for the Commission. The new exemption order is set out in the appendix to this document.

Introduction

1. In *Let's Talk TV: The way forward – Creating compelling and diverse Canadian programming*, Broadcasting Regulatory Policy 2015-86 (the Create policy), also issued today, the Commission expressed its intent to explore ways to simplify the current licensing system. This streamlined approach included the expansion of the current exemption orders regarding discretionary services. As set out in the Create policy, discretionary services consist of all pay and specialty services, including those services, other than conventional television stations, granted mandatory distribution on the basic service.
2. Subsection 9(4) of the *Broadcasting Act* (the Act) requires the Commission to exempt broadcasting undertakings from the licensing requirements in the Act if the Commission is satisfied that compliance by these undertakings with these requirements will not contribute in a material manner to the implementation of the broadcasting policy for Canada. In accordance with subsection 9(4) of the Act, the Commission determined in the Create policy that the *Exemption order respecting certain programming undertakings that would otherwise be eligible to operate as Category B services* and the *Exemption order respecting certain third-language television undertakings* set out in Appendices 1 and 2 to Broadcasting Order 2012-689 should be merged and expanded to include all discretionary services with fewer than 200,000 subscribers.
3. In the Commission's view, the purpose of merging and expanding the exemption orders in this way is not to add new obligations to exempt services but to permit a greater number of services to operate under an exemption order, thereby reducing the regulatory burden for broadcasters and the Commission. Accordingly, consistent with the elimination of genre protection, obligations relating to adherence to a declared

nature of service will be eliminated, reducing the regulatory burden on exempt services. The new exemption order will also maintain the current exhibition and accessibility requirements for third-language services rather than impose the same levels as those for English- and French-language services, but will otherwise establish a common set of obligations on all exempt services. Moreover, on a going-forward basis, all services that serve fewer than 200,000 subscribers and that are otherwise eligible under the exemption order's criteria will operate as exempt undertakings. However, the exemption order will not apply to national news and mainstream sports services (former Category C services), given the particular requirements unique to these services, such as their high exhibition requirements and the additional criteria for national news services set out in the Create policy.

4. In the Create policy, the Commission also noted that in the past, services that preferred to operate under a specialty or pay service broadcasting licence rather than as exempt undertakings were sometimes granted licences, despite being eligible to operate under one of the aforementioned exemption orders. The Commission announced in that policy and reiterates here that once the new exemption order comes into force it will no longer grant licences to discretionary (specialty and pay) services eligible to operate under the new expanded exemption order.

Commission's analysis and decision

5. In light of all of the above, the Commission hereby issues a new exemption order for discretionary television services serving fewer than 200,000 subscribers, as set out in the appendix to this document. This new exemption order will come into force once the *Broadcasting Distribution Regulations* are amended to include a reference to this exemption order. At that time, it will replace the *Exemption order respecting certain programming undertakings that would otherwise be eligible to operate as Category B services* and the *Exemption order respecting certain third-language television undertakings*. All undertakings operating under either of those exemption orders will then be subject to the new order appended below. In addition, on or before **30 April 2015**, undertakings currently exempt under the above orders must file with the Commission any necessary updates to the information required in paragraph 4(a) of the exemption order set out below, including a brief, one sentence description of the programming offered by the service. No other action on the part of these currently exempt undertakings is necessary. The Commission will update the list of registered exempt undertakings on its website to reflect these changes.

Secretary General

Related documents

- *Let's Talk TV: The way forward – Creating compelling and diverse Canadian programming*, Broadcasting Regulatory Policy CRTC 2015-86, 12 March 2015
- *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 Order CRTC 2015-88

Exemption order respecting discretionary television programming undertakings serving fewer than 200,000 subscribers

By this order, pursuant to subsection 9(4) of the *Broadcasting Act* (the Act), the Commission exempts from the requirements of Part II of the Act and any regulations made thereunder, those persons carrying on broadcasting undertakings of the class defined by the criteria set out below.

Purpose

The purpose of these undertakings is to provide television programming services for distribution on a discretionary basis by broadcasting distribution undertakings.

Description

1. For the purpose of this order, the terms “broadcast year” and “evening broadcast period” have the same meaning as that set out in the *Television Broadcasting Regulations, 1987*. The terms “advertising material,” “Canadian program,” “program” and “program delivery agreement” have the same meaning as that set out in the *Specialty Services Regulations, 1990*.
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 provides its programming service only to broadcasting distribution undertakings (BDUs) that distribute the service to subscribers. The total number of such subscribers served by the undertaking, collectively by all BDUs, does not exceed 200,000. Once exempt, the undertaking does not have more than 210,000 subscribers for a period of more than three consecutive months.
4. In regard to the filing of information with the Commission:
 - (a) The undertaking files information with the Commission specifying: the name of the service provider, its owner(s) and the person(s) who exercise(s) effective control over the service (if different from the owner(s)), how control is exercised, the name under which the service operates, the service’s contact information, including mailing address, telephone number, fax number, email address and website, the name of any broadcasting distribution undertaking to which the service is related and the operating language(s) of the service. The undertaking also files a brief, one sentence description of the programming offered by the service. In the case of a new undertaking, all of the above information is filed with the Commission at least 30 days before the service is first distributed.

- (b) The undertaking updates with the Commission the information required under (a) above prior to making any change.
 - (c) By 30 November of each year, the undertaking submits to the Commission all information required as part of the simplified annual return for such undertakings.
- 5. In regard to Canadian content:
 - (a) In the case of an undertaking broadcasting at least 90% of its programming in English or French, not less than 35% of all programs broadcast in each broadcast year and in the evening broadcast period qualify as Canadian programs.
 - (b) In the case of an undertaking broadcasting at least 90% of its programming over the broadcast week in one or more languages other than English or French, or an undertaking that is in its first year of operation, notwithstanding (a) above, it devotes not less than 15% of the broadcast year and of the evening broadcast period to the broadcast of Canadian programs.
 - (c) In the case of an undertaking broadcasting at least 90% of its programming in English or French that is in its second year of operation, notwithstanding (a) above, it devotes not less than 25% of the broadcast year and of the evening broadcast period to the broadcast of Canadian programs.
- 6. The undertaking does not broadcast more than 12 minutes of advertising material during each clock hour. In the case of an undertaking that broadcasts at least 90% of its programming in a language other than English or French, no more than 6 minutes of advertising per clock hour may consist of local advertising.
- 7. The undertaking's programming complies with sections 3, 3.1 and 6 of the *Specialty Services Regulations, 1990*.
- 8. The undertaking's programming complies with section D.3 (Adult programming) of the *Industry code of programming standards and practices governing pay, pay-per-view and video-on-demand services*, as well as with the *Equitable Portrayal Code*, the *Broadcast code for advertising to children* and the *Violence Code*, as amended from time to time and approved by the Commission.
- 9. The undertaking captions 100% of the English- and French-language programs broadcast over the broadcast day, consistent with the approach set out in *A new policy with respect to closed captioning*, Broadcasting Public Notice CRTC 2007-54, 17 May 2007.
- 10. Consistent with *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009, as amended from time to time, the undertaking:

- (a) ensures that advertising, sponsorship messages and promos in the English and French languages are closed captioned by no later than the fourth year of operation under the present or past exemption orders;
 - (b) adheres to the quality standards on closed captioning developed by television industry working groups, as amended from time to time and approved by the Commission; and
 - (c) implements a monitoring system ensuring that, for any signal containing programming in the English and French languages that is closed captioned, the correct signal is captioned, the captioning is included in its broadcast signal and this captioning reaches the distributor of that signal in its original form. “Original form” means, at a minimum, that the captioning provided by the undertaking reaches the distributor unaltered, whether it is passed through in analog or in digital, including in high definition.
11. The undertaking provides audio description for all the key elements of Canadian information programs, including news programming. For the purposes of this provision, “audio description” refers to announcers reading aloud the key textual and graphic information that is displayed on the screen during information programs.
12. The undertaking does not give an undue preference to any person, including itself, or subject any person to an undue disadvantage. In any proceeding before the Commission, the burden of establishing that any preference or disadvantage is not undue is on the party that gives the preference or subjects the person to the disadvantage.
13. Once ready to launch, the undertaking makes itself available for distribution by all licensed broadcasting distribution undertakings or operators of exempt distribution undertakings, despite the absence of a commercial agreement.
14. If there is a dispute between the undertaking and the licensee of a licensed broadcasting distribution undertaking or the operator of an exempt distribution undertaking, concerning the carriage or terms of carriage of programming originated by the undertaking, one or both of the parties to the dispute may refer the matter to the Commission for dispute resolution as provided for in *Practices and procedures for staff-assisted mediation, final offer arbitration, and expedited hearings*, Broadcasting and Telecom Information Bulletin CRTC 2009-38, 29 January 2009, as amended from time to time.
15. In regard to a dispute, pursuant to paragraph 14 above:
- (a) During any dispute between the undertaking and a person licensed to carry on a broadcasting distribution undertaking or the operator of an exempt distribution undertaking concerning the carriage or terms of carriage of programming originated by the undertaking or concerning any right or obligation under the *Broadcasting Act*, the undertaking continues to provide

its programming services to the distribution undertaking at the same rates and on the same terms and conditions as it did before the dispute.

- (b) For the purposes of subsection (a), a dispute exists from the moment that written notice of the dispute is provided to the Commission and served on the other undertaking that is party to the dispute and ends when an agreement settling the dispute is reached by the concerned undertakings or, if no such agreement is reached, when the Commission renders a decision concerning any unresolved matter.
16. The undertaking ensures that every commercial message that it broadcasts complies with the technical requirements set out in *ATSC Recommended Practice A/85: Techniques for Establishing and Maintaining Audio Loudness for Digital Television*, published by the Advanced Television Systems Committee Inc., as amended from time to time.
 17. The undertaking retains a clear and intelligible audio-visual recording of all of its programming for a period of four weeks following the date of broadcast, and provides this to the Commission on such terms as the Commission may request.
 18. At the request of the Commission, the undertaking provides the Commission with a response to any inquiry that relates to the undertaking.