



Broadcasting Regulatory Policy CRTC 2020-192 and Broadcasting Order 2020-193

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Reference: Public Notice 2003-11

Ottawa, 15 June 2020

Revised Exemption Order Respecting Teleshopping Programming Service Undertakings

The Commission amends the Exemption Order Respecting Teleshopping Programming Service Undertakings, set out in the appendix to Broadcasting Public Notice 2003-11, so as to authorize modified versions of U.S. home shopping programming undertakings to operate under that order.

Background

1. On 30 November 2018, Canada, the United States of America and the United Mexican States signed a Protocol for the new Canada-United States-Mexico agreement (CUSMA) to replace the North American Free Trade Agreement (NAFTA).
2. CUSMA makes certain pronouncements relating to areas that fall within the Commission's jurisdiction. One of those pronouncements relates to access by U.S. programming services specializing in home shopping (U.S. home shopping services) to the Canadian broadcasting system. Specifically, paragraph 4 of Annex 15-D to Chapter 15 of the Protocol sets out the following:

Home Shopping Programming Services

4. Canada shall ensure that U.S. programming services specializing in home shopping, including modified versions of these U.S. programming services for the Canadian market, are authorized for distribution in Canada and may negotiate affiliation agreements with Canadian cable, satellite, and [Internet Protocol Television] distributors.
3. CUSMA will enter into force on 1 July 2020. Legislation bringing the obligations set out in the agreement into domestic law received Royal Assent on 13 March 2020 and, pursuant to the *Order Fixing the Date of Entry into Force of the Agreement between Canada, the United States of America and the United Mexican States as the Day on Which that Act Comes into Force*,¹ will come into force on 1 July 2020 as well. Under this legislation, Parliament makes a consequential amendment to section 27 of the

¹ SI/2020-33

Broadcasting Act authorizing the Governor in Council to give directions to the Commission in respect of CUSMA. On 29 April 2020, the Governor in Council issued *Direction to the Canadian Radio-television and Telecommunications Commission Respecting the Implementation of the Canada–United States–Mexico Agreement*² (the Direction) directing the Commission to implement, by appropriate means, paragraph 4 of Annex 15-D of the agreement. The Direction comes into force on the same day as the legislation.

Authorization of U.S. home shopping services for distribution in Canada

4. To be authorized to broadcast in Canada, a broadcasting undertaking must have a licence or operate pursuant to an exemption. The Commission’s general approach in regard to the entry of non-Canadian English- and French-language programming services into Canada is to authorize the distribution of such services where they do not compete in whole or in part with Canadian discretionary services. If the service is approved, it is added to the *List of non-Canadian programming services and stations authorized for distribution* (the list). Such services do not require a licence but can only be distributed in Canada in an unmodified form.
5. If a foreign service is modified for the Canadian market (for example, it includes programming or advertisements specific to Canada), it is ineligible for addition to the list and requires a licence or other authority pursuant to an exemption.
6. In the case of home shopping services, Canadian home shopping programming undertakings operate under the Exemption Order Respecting Teleshopping Programming Service Undertakings (the Exemption Order), set out in the appendix to *Review of exemption orders respecting experimental video-on-demand programming undertakings, video games programming service undertakings and teleshopping programming service undertakings*, Broadcasting Public Notice CRTC 2003-11, 6 March 2003 (Broadcasting Public Notice 2003-11).³ The Exemption Order identifies the purpose of such undertakings as being to provide distribution undertakings with programming that is intended to sell or promote goods and services.
7. Criterion 1 of the Exemption Order sets out that a service is only eligible to operate under that order if “[t]he Commission would not be prohibited from licensing the undertaking by virtue of any Act of Parliament, of the *Direction to the CRTC (Ineligibility of Non-Canadians)* or of any other direction to the Commission by the Governor in Council.” In other words, for a home shopping programming undertaking to operate under the Exemption Order, the service must be licensable. Pursuant to the *Direction to the CRTC (Ineligibility of Non-Canadians)*, this means the service must be controlled by a Canadian or Canadians. Modified U.S. home shopping

² SOR/2020-77

³ In this regulatory policy and in the appended exemption order, the terms “teleshopping” and “home shopping” are used interchangeably.

programming undertakings are therefore not currently eligible to operate under the Exemption Order.

8. In light of the Direction, the Commission hereby amends the *Exemption Order Respecting Teleshopping Programming Service Undertakings*, set out in the appendix to Broadcasting Public Notice 2003-11, so as to authorize modified U.S. home shopping programming undertakings to operate in Canada pursuant to that order. In particular, the Commission amends Criterion 1 of the Exemption Order so that it reads as follows (changes in bold):

With the exception of a U.S. programming undertaking specializing in home shopping that is modified for the Canadian market, the Commission would not be prohibited from licensing the undertaking by virtue of any Act of Parliament, of the *Direction to the CRTC (Ineligibility of Non-Canadians)* or of any direction to the Commission by the Governor in Council.

9. These U.S. home shopping services will be subject to the same criteria as Canadian home shopping services operating pursuant to the Exemption Order.
10. The amended exemption order, which includes the above amendment to Criterion 1 as well as other, minor amendments to update wording and to reflect changes to Commission regulations since the issuance of the former exemption order, is set out in the appendix to this regulatory policy.
11. These amendments will take effect on the day on which the *Direction to the Canadian Radio-television and Telecommunications Commission Respecting the Implementation of the Canada–United States–Mexico Agreement* comes into force.

Secretary General

Appendix to Broadcasting Regulatory Policy CRTC 2020-192

Broadcasting Order CRTC 2020-193

Exemption Order Respecting Teleshopping Programming Service Undertakings

The Commission, pursuant to subsection 9(4) of the *Broadcasting Act* (the Act), by this order, exempts from the requirements of Part II of the Act and any regulations, those persons carrying on broadcasting undertakings of the class defined by the following criteria:

Purpose

The purpose of these programming undertakings is to provide distribution undertakings with programming that is intended to sell or promote goods and services.

Description

1. With the exception of a U.S. programming undertaking specializing in home shopping that is modified for the Canadian market, the Commission would not be prohibited from licensing the undertaking by virtue of any Act of Parliament, of the *Direction to the CRTC (Ineligibility of Non-Canadians)* or of any other direction to the Commission by the Governor in Council.
2. The undertaking meets all technical requirements of the Department of Industry (the Department) and has acquired all authorizations or certificates prescribed by the Department.
3. The undertaking does not broadcast programming that is religious or political in nature.
4. The undertaking provides a programming service consisting exclusively of programming intended to sell or promote goods and services. The undertaking's programming does not include programming as described under Item 6 of Schedule I to the *Discretionary Services Regulations*, with the exception of infomercials, as defined in *Amendment to the Television Broadcasting Regulations, 1987 to permit, by condition of licence, the airing of "infomercials" during the broadcast day*, Public Notice CRTC 1994-139, 7 November 1994.
5. The undertaking's programming complies with the guidelines on gender portrayal set out in the Canadian Association of Broadcasters' (CAB) *Equitable Portrayal Code*, the provisions of Advertising Standards Canada's *Broadcast Code for Advertising to Children*, and the guidelines on the depiction of violence in television programming set out in the *CAB Violence Code*, as amended from time to time and approved by the Commission.
6. The undertaking provides its programming without charge to any distribution undertaking receiving the service.

7. The undertaking's programming originates in Canada, and the undertaking makes predominant use of Canadian creative and other resources in the creation and presentation of its programming.
8. The undertaking's programming complies with sections 3, 7, 8 and 9 of the *Discretionary Services Regulations*, as amended from time to time.
9. The undertaking identifies its programming by including, once every 30 minutes, a clear and prominent written and oral announcement that the programming is intended to sell or promote goods and services.
10. The service of the undertaking is not combined on a single channel of a distribution undertaking with any other exempt services, except as allowed in *Exemption order respecting still image programming service undertakings*, as approved in *Final revisions to certain exemption orders*, Public Notice CRTC 2000-10, 24 January 2000.