



Broadcasting Regulatory Policy CRTC 2021-185 and Broadcasting Order CRTC 2021-186

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Reference: 2020-324

Revised exemption order for still image and low-motion programming services

The Commission amends the Exemption order respecting still image programming service undertakings, set out in the appendix to Public Notice 2000-10, in order to include low-motion programming services, to allow, in addition to background music, sounds that are related to the broadcast images and to allow spoken words that are promotional in nature.

Background

1. In order to meet the objectives of the *Broadcasting Act* (the Act) and provide Canadians with a diversity of programs made by Canadians, the Commission can employ a number of tools. Among other things, the Commission has the ability, pursuant to section 9(1)(b) of the Act, to issue licences subject to such conditions as it deems appropriate for the implementation of the Canadian broadcasting policy set out in section 3(1) of the Act and, pursuant to section 10(1) of the Act, to make regulations. In regard to discretionary services, for example, the Commission, pursuant to section 3(1)(e) of the Act, imposes regulations and conditions of licence, such as requirements relating to expenditures, the broadcast of Canadian programs and accessibility, on licenced television services in order to ensure that they participate significantly in the creation and presentation of Canadian programs.
2. The Commission can also make use of exemption orders pursuant to section 9(4) of the Act, which states that the Commission shall exempt persons who carry on broadcasting undertakings of any class specified in the order from any or all of the requirements of Part II or of a regulation made under this Part where the Commission is satisfied that compliance with those requirements will not contribute in a material manner to the implementation of the Canadian broadcasting policy set out in section 3(1).
3. Among these orders, the Exemption order respecting still image programming service undertakings, set out in Public Notice 2000-10, applies to “television undertakings [whose purpose] is to provide distribution undertakings with programming consisting of still images, (including graphic images) with or without an audio component, and with or without a fee being charged to any distribution undertaking receiving the service.” Since the publication of this order, many changes relating to technology, the

Commission's regulations and the production and consumption of programs have occurred.

4. For this reason, the Commission published Broadcasting Notice of Consultation 2020-324, in which it called for comments on how best to deal with low-motion programming. In that notice, the Commission sought to determine whether changes to the regulatory regime for low-motion programming were required and whether it should expand the scope of the existing exemption order for still image programming services to include low-motion programming and the services offering such programming.
5. In that same notice, the Commission also called for comments on its proposed definition of low-motion programming and on the regulatory protections that should be offered to services offering such programming.
6. The Commission received four interventions in reply to Broadcasting Notice of Consultation 2020-324, specifically, those submitted by BCE Inc. (BCE), Stingray Group Inc. (Stingray), Rogers Communications Canada Inc. (Rogers) and Shaw Communications Inc. (Shaw).

Issues

7. After examining the record for this proceeding in light of applicable regulations and policies, the Commission considers that the issues it must address are the following:
 - the amendment to the Exemption order respecting still image programming service undertakings;
 - the definition of low-motion programming;
 - regulatory protection currently offered to independent discretionary services pursuant to section 19(3) of the *Broadcasting Distribution Regulations* (the Regulations); and
 - regulatory protection offered pursuant to section 19(5) of the Regulations.

Amendment to the Exemption order respecting still image programming service undertakings

8. All interveners were of the view that limited programming is offered by low-motion programming services, and they considered it appropriate to amend the Exemption order respecting still image programming service undertakings to include low-motion programming.
9. The Commission considers that still image and low-motion programming services offer relatively similar programming, the only difference being that, for the latter, the image is not necessarily static. Further, their contribution to the broadcasting system is limited since the programming that they offer does not require significant

participation from Canadian artists and their production costs are minimal. Accordingly, services that offer similar types of programming should be subject to the same regulatory conditions.

10. In light of the above, the Commission amends the Exemption order respecting still image programming service undertakings to include low-motion programming services.

Definition of low-motion programming

11. In Broadcasting Notice of Consultation 2020-324, the Commission proposed the following definition for low-motion programming: “A program that features extended coverage of an ordinary event or scene with no or limited video editing or camera movement.”
12. BCE, Rogers and Shaw considered the definition proposed by the Commission to be appropriate.
13. Stingray requested that the definition of low-motion programming be clarified to ensure that it includes situations where the camera is still but placed on an object in motion (e.g., a camera on a train). Stingray therefore proposed to delete “or camera movement” from the definition proposed by the Commission.
14. In addition, in order to take the proposed definition into account, Rogers, Shaw and Stingray proposed to amend the programming description, set out in criterion 4 of the exemption order, so as to add low-motion programming.
15. Stingray proposed to delete the words “exclusively” and “entirely” from criterion 4 of the current order so as not to limit a licensee’s ability to distribute its service, which could be distributed, among other means, on digital platforms, and so as to allow the licensee to combine certain types of programming, such as still image and low-motion programming. Stingray proposed the following definition:

The undertaking’s programming is provided to distribution undertakings, and consists of still images with or without alpha-numeric text and/or low-motion programming, and with or without an audio component (...)

16. Stingray also proposed to amend criteria 4a) and 4e) of the order so that the programming offered by the services can be accompanied by sounds and spoken words as well as music, and so that the words that accompany the images can be promotional in nature. The proposed changes are in bold:

4a) Background music **and/or sounds that relate to what is presented by the still images or low-motion programming content.**

4e) spoken words, **including spoken words that are promotional in nature,** that relate to what is represented by the still images **or low-motion programming content.**

17. In reply to the interventions, Rogers and Shaw supported Stingray's proposed amendment to the exemption order to include background noise. Rogers also supported Stingray's proposal to add spoken words that are promotional in nature to the programming.
18. Then, in its reply, Stingray requested that the exemption order allow, in addition to spoken words that are promotional in nature, the broadcast of commercial messages not directly related to the broadcast image.

Commission's analysis and decision

19. The Commission considers that Stingray's proposed amendment to the definition of low-motion programming in order to include situations where the camera is still but placed on an object that is moving is not necessary. Specifically, the Commission is of the view that the expression "with no or limited video editing or camera movement" in its proposed definition indicates that some camera movement is possible. In Stingray's example, the camera does not move. Rather, it is located on an object that moves. In the Commission's view, the use of the word "limited" allows for this type of situation to be included in the definition of low-motion programming.

20. Therefore, the Commission defines low-motion programming as

A program that features extended coverage of an ordinary event or scene with no or limited video editing or camera movement.

21. In regard to the amendments proposed by the interveners relating to the description of the programming set out in criterion 4, the Commission considers that Stingray's rationale for deleting the word "exclusively" is valid, given the evolution of the broadcasting system whereby more and more linear services are migrating to digital platforms.
22. As for the deletion of the word "entirely," the Commission considers that even without that word, the definition of low-motion programming service is precise enough to ensure that the programming offered does not overstep the objectives of the exemption order.
23. The amendments to criterion 4 as approved by the Commission are set out in the appendix to this regulatory policy.
24. In regard to Stingray's request to allow the broadcast of commercial messages, the Commission notes that, pursuant to the Exemption Order Respecting Teleshopping Programming Service Undertakings (Broadcasting Order 2020-193), services offering programs that aim to sell or promote goods and services are exempt. Further, the Exemption order respecting still image programming undertakings allows for teleshopping and still-image services to be combined on a single channel. Therefore, the Commission's regulations allow for justified approval of Stingray's proposal. The Commission considers that the fact that commercial messages shall accompany the broadcast images, and not the contrary, is sufficient to prevent abuse. It is also of the

view that this could help services compensate for the loss of regulatory protections described below and from which, as discretionary services, they currently benefit.

25. However, in regard to Stingray's proposal to broadcast commercial messages not directly related to the broadcast image, the Commission notes that, since Stingray made this request in its reply, the other interveners did not have a chance to comment on this matter. Accordingly, the evidence on the record of this proceeding is not sufficient to assess Stingray's proposal.

Regulatory protection currently offered to independent discretionary services pursuant to section 19(3) of the *Broadcasting Distribution Regulations*

26. In Broadcasting Regulatory Policy 2015-96, the Commission indicated that independent services (i.e., services not related to a broadcasting distribution undertaking [BDU]) are an important source of diversity in the system as they often offer niche programming targeted at narrower audiences. They must also make significant contributions to the production of Canadian programs. In return, pursuant to the Regulations, independent discretionary services benefit from certain protections.
27. Pursuant to section 19(3) of the Regulations, a vertically integrated BDU is required to offer one English- or French-language discretionary service of an independent programming undertaking for each English- or French-language discretionary service of a related programming undertaking that the BDU distributes (1:1 ratio). For example, a BDU that distributes five English-language discretionary services offered by related programming undertakings must offer its subscribers five English-language independent discretionary services. This measure aims to ensure that a diversity of voices is offered to Canadians.
28. Amending the exemption order for still image programming services to include low-motion programming services will result in the latter no longer being considered discretionary services. Accordingly, they will automatically be excluded from the 1:1 ratio provided by section 19(3) of the Regulations.
29. In its intervention, Stingray requested that the Commission amend the Regulations to allow low-motion programming services to continue benefiting from the protection provided by the 1:1 ratio once they are exempt. It added that its service Naturescape is a "good independent Canadian programming service" because it employs Canadian artists to create its audio and visual programming. Rogers and Shaw opposed this request because they consider that these services do not contribute significantly to the broadcasting system.
30. The Commission considers that the reasons for which it created the protection provided by section 19(3) of the Regulations, that is, to provide access to a wide range of services that offer a diversity of voices and contribute to the Canadian broadcasting system, are still valid and relevant. Therefore, amending the Regulations to extend that protection to low-motion programming services seems unjustified.

31. In light of the above, the Commission considers that low-motion programming services should not benefit from the protection of the 1:1 ratio provided by section 19(3) of the Regulations.

Regulatory protection offered pursuant to section 19(5) of the *Broadcasting Distribution Regulations*

32. The Commission also put in place a ratio for exempt services. The objective of this ratio is to ensure a diversity of voices for Canadians. Section 19(5) of the Regulations states the following:

A licensee that distributes one or more programming services of related exempt programming undertakings in a licensed area shall also distribute an equal number of programming services of unrelated exempt programming undertakings in the licensed area.

33. As such, if a BDU distributes one of its own exempt services, it is required to distribute an exempt service that it does not own.

34. Rogers and Shaw indicated that it would be appropriate to exclude low-motion programming services from protection under section 19(5) of the Regulations. For its part, Stingray submitted that this protection should be amended to require that a BDU offer, for each exempt low-motion programming service that it owns and distributes, and rather than any other unrelated exempt independent service, an independent low-motion programming service.

35. Should the amendment proposed by Rogers and Shaw be approved, BDUs would be able to distribute their own low-motion programming service without being subject to any counterbalancing requirement. However, should the amendment proposed by Stingray be approved, only exempt independent low-motion programming services would be able to benefit from protection under section 19(5) of the Regulations when a BDU distributes one of its own services.

36. The Commission considers that, as it is, section 19(5) of the Regulations allows for a balance that facilitates a greater diversity of voices. BDUs can distribute their own exempt services and, in exchange, they must offer unrelated exempt services, which are thus provided with opportunities for distribution.

37. Consequently, the Commission finds that no amendments to section 19(5) of the Regulations are necessary at this time.

Conclusion

38. In light of all of the above, the Commission amends the Exemption order respecting still image programming service undertakings to include low-motion programming services, to allow, in addition to background music, sounds that are related to the broadcast images, and to allow spoken words that are promotional in nature.

39. Further, the Commission defines low-motion programming as follows:

A program that features extended coverage of an ordinary event or scene with no or limited video editing or camera movement.

40. The Commission also amends criterion 4 so that it reads as follows:

The undertaking's programming is provided to distribution undertakings, and consists of still images with or without alpha-numeric text and/or low-motion programming, and with or without an audio component (...)

41. The Commission **denies** Stingray's request for low-motion programming services to be permitted to broadcast commercial messages not directly related to the broadcast image.

42. Finally, the Commission **denies** Stingray's request to amend section 19(3) of the Regulations as well as the requests made by Rogers, Shaw and Stingray to amend section 19(5) of the Regulations.

Secretary General

Related documents

- *Call for comments on low-motion programming*, Broadcasting Notice of Consultation CRTC 2020-324, 4 September 2020
- *Revised Exemption Order Respecting Teleshopping Programming Service Undertakings*, Broadcasting Regulatory Policy CRTC 2020-192 and Broadcasting Order CRTC 2020-193, 15 June 2020
- *Let's Talk TV – A roadmap to maximize choice for TV viewers and to foster a healthy, dynamic TV market*, Broadcasting Regulatory Policy CRTC 2015-96, 19 March 2015
- *Final revisions to certain exemption orders*, Public Notice CRTC 2000-10, 24 January 2000

Appendix to Broadcasting Regulatory Policy CRTC 2021-185 Broadcasting Order CRTC 2021-186

Exemption order respecting still image and low-motion programming service undertakings

The Commission, pursuant to section 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 television undertakings is to provide distribution undertakings with programming consisting of still images, (including graphic images) and/or low motion programming, with or without an audio component, and with or without a fee being charged to any distribution undertaking receiving the service.

Description

1. The Commission would not be prohibited from licensing the undertaking by virtue of any direction to the Commission by the Governor in Council.
2. The undertaking meets all technical requirements of the Department of Industry and has acquired all authorizations or certificates prescribed by the latter.
3. The undertaking does not broadcast programming that is religious or political in nature.
4. The undertaking's programming is provided to distribution undertakings, and consists of still images with or without alpha-numeric text and/or low motion programming, and with or without an audio component consisting of one of the following:
 - a) Background music and/or sounds that relate to what is presented by the still images and/or low-motion programming content.
 - b) the programming service of any licensed or exempted AM or FM station other than an educational radio or programming service, the operation of which is the responsibility of an educational authority;
 - c) the programming service of a licensed or exempted national audio programming undertaking; or
 - d) spoken words, including spoken words that are promotional in nature, that relate to what is represented by the still images and/or low-motion programming content.

The service of the undertaking may be combined with the service of an undertaking exempted under the Exemption Order Respecting Teleshopping Programming Service Undertakings set out in the appendix to *Revised Exemption Order Respecting Teleshopping Programming Service Undertakings*, Broadcasting Regulatory Policy CRTC 2020-192 and Broadcasting Order CRTC 2020-193, 15 June 2020, on a single channel of a distribution undertaking.

Definitions

Low-motion programming: A program that features extended coverage of an ordinary event or scene with no or limited video editing or camera movement.

Still image programming: A program that consists entirely of still images with or without alpha-numeric text, and with or without an audio component.