



Broadcasting Decision CRTC 2005-457

Ottawa, 8 September 2005

Bell ExpressVu Limited Partnership Across Canada

Application 2004-1571-2
Broadcasting Public Notice CRTC 2005-29
8 April 2005

Authorization to distribute partial or omnibus channels containing unique local and regional programming

*In this decision, the Commission **approves** an application by Bell ExpressVu Limited Partnership (Bell ExpressVu) for authority to distribute, on partial or omnibus channels, the local programming of various Canadian television stations not already distributed on Bell ExpressVu's direct-to-home satellite broadcasting distribution undertaking.*

The application

1. The Commission received an application by Bell ExpressVu Limited Partnership¹ (Bell ExpressVu), for a condition of licence granting its direct-to-home (DTH) satellite broadcasting distribution undertaking (BDU) authority to distribute, on partial or omnibus (P/O) channels, the unique local programming of Canadian television stations that it does not already distribute in their entirety. The licensee indicated that, if this application were to be approved, it would only distribute such programming where it had obtained the prior written consent of the television station broadcasting the programming.
2. In cases where it would use partial channels, Bell ExpressVu would devote a unique channel number to the broadcast of specific excerpts of the local programming of each particular station offered on this basis. Where omnibus channels are used, each omnibus channel would consist of compilations of the programming of several different stations. Bell ExpressVu suggested that the use of P/O channels would conserve satellite capacity, while ensuring distribution of the widest range of local programming without increasing program duplication.

¹ Bell ExpressVu Inc. (the general partner), and BCE Inc. and 4119649 Canada Inc. (partners in BCE Holdings G.P., a general partnership that is the limited partner), carrying on business as Bell ExpressVu Limited Partnership

3. Bell ExpressVu noted that, in *Introductory statement to Broadcasting Decisions CRTC 2004-129 and 2004-130, which renew the licences of the ExpressVu and Star Choice direct-to-home satellite distribution undertakings*, Broadcasting Public Notice CRTC 2004-19, 31 March 2004 (Public Notice 2004-19), the Commission encouraged DTH satellite services and broadcasters to explore the use of P/O channels for the distribution of additional local programming not already offered by these licensees.
4. Bell ExpressVu stated that approval of its application would permit it to “maximize the distribution of unique local content ... to deliver programming created specifically for the local communities to their intended audiences ... without curtailing the availability of national network programming.” The applicant indicated that its intention would be to offer, on P/O channels, the local programming of as many as possible of the conventional television stations that it does not already distribute. It further committed to “make reasonable commercial efforts” to distribute all local programming featured by the stations in question and, in particular, programming that stations are required to offer under conditions of their licences.
5. Bell ExpressVu stated that its preference would be to distribute the local programming of each television station on its own dedicated partial channel, rather than compiling local programming from more than one station on omnibus channels. However, it envisioned that capacity constraints may require the use of omnibus channels in some circumstances. The applicant indicated that, regardless of which method is used, subscribers would be informed of the source and content of all local programming on each channel through Bell ExpressVu’s electronic programming guide.
6. In addition, Bell ExpressVu stated that it intended to distribute local programming on P/O channels simultaneously with its broadcast on the originating stations. However, should capacity constraints make it necessary to do so, the applicant indicated that it could seek to tape-delay certain programming, but only with the written consent of the originating station.
7. Bell ExpressVu proposed to adhere to the following condition of licence:

The licensee is hereby authorized to distribute on a part-time basis via partial and/or omnibus channels the local news, weather, sports and other unique local programming exhibited by those licensed over-the-air, i.e., conventional television stations not distributed in their entirety on the licensee’s direct-to-home satellite broadcasting distribution undertaking. The distribution of such programming may be done only with the prior written consent of the broadcaster. Prior notification must be given to the Commission before such programming is added to the licensee’s channel line-up.

8. Supporting interventions were submitted by TVA-CHEM and the Community Media Education Society (CMES). Interventions in opposition to the application were submitted by the Canadian Association of Broadcasters (CAB), Global Television Network Inc. (Global) and Groupe TVA Inc. (TVA). Interventions offering general comments on the application were submitted by the Canadian Broadcasting Corporation (CBC), and Télé Inter-Rives ltée and Télévision MBS inc. (TIR).

General matters

9. Certain parties that submitted comments in this proceeding, in particular the CAB, Global and TVA, argued that, rather than authorizing P/O distribution, it would be more appropriate for Bell ExpressVu to be required to distribute all Canadian television stations on a full-time basis, or at least all television stations operating in each market from which it distributes one or more television stations (a “carry one, carry all” rule).
10. Bell ExpressVu contended that those options had been raised and addressed in Public Notice 2004-19 and in *ExpressVu – Licence renewal*, Broadcasting Decision CRTC 2004-129, 31 March 2004 (Decision 2004-129), its most recent licence renewal.

Commission’s analysis and determination

11. The Commission notes that Bell ExpressVu is correct in this matter. The feasibility of either a “carry one, carry all” requirement, or a requirement to carry specific television stations or all television stations were considered and rejected by the Commission in Public Notice 2004-19.
12. Further, although the distribution of a station in its entirety would provide benefits to the station and to subscribers that are not possible with P/O distribution, the Commission concludes that P/O distribution provides a reasonable means of ensuring access to the greatest possible range of unique local and regional programming for all of Bell ExpressVu’s subscribers, while minimizing the impact on its capacity. As is conceded by almost all parties, P/O distribution of unique programming provides clear benefits for subscribers and for Bell ExpressVu and also offers benefits for programming services that are not currently distributed.

Specific issues raised by parties

13. Parties in opposition to the application and those that provided comments on the application (CAB, Global, TVA, CBC, and TIR) raised the following issues specific to this application:

Authority should not result in removal of stations distributed in full

14. The CAB, Global, and the CBC expressed the opinion that any authority to distribute unique programming on a P/O basis should not permit Bell ExpressVu to remove stations it currently distributes in full, and place their local programming on P/O channels.

15. In response, the applicant stated that it “does not contemplate the distribution on a partial/omnibus channel of any unique local or regional programming originated from a station already carried in its entirety”.

Commission's analysis and determination

16. The Commission recognizes the interveners' concern that Bell ExpressVu might remove stations it currently distributes in full, and distribute only their local programming on P/O channels. Taking into account the licensee's stated intention not to do so, and the fact that there would be competitive disincentives for Bell ExpressVu to remove existing programming from its current channel line-up, the Commission is of the view that it is not necessary to specifically prohibit the applicant from doing so. The Commission further notes that, since broadcasters must consent to the distribution of programming on a P/O basis, those parties would be in a position to influence Bell ExpressVu's decisions in this regard.

Authority should be temporary

17. The CAB, Global, CBC, and TIR all expressed the opinion that any authority to distribute television stations on a P/O basis should be temporary. For example, the CAB and Global argued specifically that Bell ExpressVu's condition of licence suspending its requirements to perform program deletion expires in August 2006, and recommended that date also be used as an expiration date for any P/O authorization.
18. The applicant rejected the idea that its proposed authorization to distribute television stations on a P/O basis be temporary. With respect to the specific date proposed by the CAB and Global, Bell ExpressVu argued that there is no direct link between the suspension of its program deletion requirements and this application, except that both relate to the distribution of television stations. The applicant indicated that an expiration date would only provide an opportunity for renewed demands for distribution of more television stations. Bell ExpressVu added that, as the DTH industry adapts to the increasing demands of high-definition (HD) programming, it should not be required to distribute more “highly duplicative standard definition signals”.

Commission's analysis and determination

19. The Commission notes that the demands on DTH capacity will increase over the next several years, and that these demands will have an impact on the distribution of P/O channels, and particularly as the industry makes its transition to HD services. Given that this application represents the first instance in which the Commission has contemplated the approval of the general and on-going use of P/O channels, the Commission is of the view that an expiration date prior to the end of the applicant's current licence term would be prudent since it would permit the Commission to re-evaluate this authorization in order to gauge the practical effect on Bell ExpressVu's distribution of television stations.

20. At the same time, the Commission is not persuaded that there is a necessary link between the expiration of Bell ExpressVu's program deletion requirements in August 2006 and the proposed authorization to distribute P/O channels. The Commission is of the opinion that any expiration date for such an authority should provide a reasonable period upon which to base an evaluation of P/O distribution, and one that would permit Bell ExpressVu to continue P/O distribution through the first stages of the transition to HD. In *The regulatory framework for the distribution of digital television signals*, Broadcasting Public Notice CRTC 2003-61, 11 November 2003 (Public Notice 2003-61), the Commission announced that it would initiate a proceeding to deal directly with the distribution of HD programming by DTH distributors, following its proceeding on the framework for HD pay and specialty services. The Commission concludes that the expiration date for the authority to use P/O channels should follow the conclusion of that proceeding, expected sometime in 2007. To ensure that this condition of licence does not expire before the conclusion of that proceeding, the authority to use P/O channels will expire on 29 February 2008, the approximate mid-point of Bell ExpressVu's current licence term. The condition of licence proposed by Bell ExpressVu has been amended to this effect, as set out below.

Preference for partial channels

21. The CAB and Global indicated that, in their view, partial channels are preferable to omnibus channels, since the allocation of a dedicated partial channel number would provide television stations with greater opportunities for the promotion of programming, and for the development of a more consistent presence for subscribers.
22. In response, Bell ExpressVu reiterated its preference for using partial channels, although it also expressed its interest in retaining the flexibility to employ omnibus channels where dictated by capacity constraints.

Commission's analysis and determination

23. The Commission generally agrees that partial channels are preferable to omnibus channels, since they provide a television station with greater opportunities to promote its own programming and develop a more consistent presence for subscribers. The Commission notes that all parties, including the applicant, indicated a similar preference for the use of partial channels.
24. The Commission considers that partial channels should be used to the greatest extent possible, and is of the view that Bell ExpressVu should obtain prior written authorization from any television station to be distributed on a P/O basis. The condition of licence proposed by Bell ExpressVu has been amended to this effect, as set out below.

Distribution costs

25. In their interventions, the CAB and Global both indicated that the costs of distributing P/O channels should be borne by Bell ExpressVu.

26. Bell ExpressVu did not comment on the interveners' request that the costs of P/O distribution should be borne by the applicant.

Commission's analysis and determination

27. The Commission notes that it would expect Bell ExpressVu to assume the costs of reception and distribution of programming from any television station to be distributed on a P/O basis, in a manner consistent with regulatory requirements and general commercial practice related to the full-time distribution of a television station.

Simultaneous distribution

28. The CAB and Global both expressed the view that programming on P/O channels should be distributed simultaneously with its original broadcast.
29. In response, the applicant indicated that it planned to avoid tape-delaying programming, but wished to retain the flexibility to do so where necessary.

Commission's analysis and determination

30. The Commission is of the view that tape-delays in P/O programming should be kept to a minimum, and that, where necessary in exceptional circumstances, delayed distribution should only take place with the explicit written consent of the television stations distributed in this manner. The condition of licence proposed by Bell ExpressVu has been amended to this effect, as set out below.

Refusal of P/O distribution

31. Global suggested in its intervention that Bell ExpressVu should not be permitted to refuse P/O distribution of unique programming from any television station that it does not distribute and that wishes to be distributed in this manner.
32. The applicant disagreed with Global's suggestion and proposed instead that its selection of stations to be offered on a P/O basis would be guided by similar criteria to those with respect to the full distribution of private television stations, set out in the Schedule to Appendix 1 of Decision 2004-129.

Commission's analysis and determination

33. The Commission considers that requiring Bell ExpressVu to distribute any television station that requests P/O distribution could result in considerable and immediate financial and capacity burdens for the applicant. Such a requirement would also compromise Bell ExpressVu's ability to determine which television stations would be of greatest benefit and value to its subscribers, as discussed in Public Notice 2004-19. In the Commission's view, there are already competitive incentives for Bell ExpressVu to distribute as much unique programming as possible. The Commission is satisfied with the licensee's proposal that television stations to be distributed on a P/O basis would be selected in accordance

with the same criteria of equitable distribution as are used by Bell ExpressVu in selecting television stations for full distribution. The condition of licence proposed by Bell ExpressVu has been amended to this effect, as set out below.

Unique regional programming

34. Interveners noted that unique programming offered by television stations may be regional in nature, rather than local. Global suggested that any authorization granted to Bell ExpressVu should refer to the distribution of both unique local and unique regional programming on a P/O basis.
35. The applicant did not reply directly to this proposal.

Commission's analysis and determination

36. In the Commission's view, there is no reason to exclude unique regional programming broadcast on television stations from distribution on P/O channels. The condition of licence proposed by Bell ExpressVu has been amended to this effect, as set out below.

Quality and content of signal

37. The CBC requested that Bell ExpressVu should be required to maintain the same quality of signal and distribute such a signal in its entirety, including advertising and promotion and subsidiary signals.
38. In reply to that request, the applicant committed to distribute as much as possible of the unique programming that the television stations to be distributed on a P/O basis are required to broadcast under conditions of their licences.

Commission's analysis and determination

39. The Commission is of the view that subscribers are entitled to receive signals of a quality substantially similar to that provided by the originating station. The requirement under section 7 of the *Broadcasting Distribution Regulations* (the Regulations), that a distributor not alter a programming service in the course of its distribution, may generally be regarded as prohibiting the distribution of a signal in a manner that would result in a significant reduction in signal quality. Since by approving this application the Commission would be permitting Bell ExpressVu to depart from the requirement to alter or delete a given signal in order to deliver it on a P/O basis, the Commission reminds the licensee that the authorization granted herein does not authorize a departure from the usual requirements for other purposes, such as those that may result in a reduction to the quality of the signal passed on to subscribers.

40. Similarly, with respect to other elements of the signals to be distributed, such as closed captioning, described video, interactive programming, etc., the Commission also reminds the licensee that the general requirements of section 7 of the Regulations prohibiting alteration of a programming service would continue to apply to signals distributed on a P/O basis.
41. In regard to advertising content, the Commission expects the licensee to distribute all of the advertising content associated with programming distributed on a P/O basis, not only advertising within the programming, but also all of the advertising that immediately precedes and follows that programming.
42. Taking into account all the factors above, the Commission reiterates that any derogation from section 7 of the Regulations attributable to the authority granted in this decision is permissible only for the purpose of distributing the selected programming on a P/O basis, and that the relief from the requirements of section 7 of the Regulations is solely for that purpose. The condition of licence proposed by Bell ExpressVu has been amended to this effect, as set out below.

Compliance with conditions of licence

43. In its intervention, the CBC alleged that Bell ExpressVu was not in full compliance with its conditions of licence with respect to the distribution of CBC regional television stations. The CBC requested that any P/O authorization be contingent upon the applicant being in compliance with its existing conditions of licence.
44. In reply, Bell ExpressVu indicated that it has had several discussions with the CBC in relation to the CBC's distribution requirements, and that, to its knowledge, the CBC had, until this proceeding, agreed that the applicant was meeting those requirements.

Commission's analysis and determination

45. The Commission is not prepared to make a ruling with regard to the alleged non-compliance by Bell ExpressVu based on the record of this proceeding. It considers that, if the CBC is of the view that Bell ExpressVu is not in compliance, a more appropriate and expedient course of action would be for the CBC to address its concerns in the context of a complaint to the Commission. The Commission is not persuaded that any authorization for P/O distribution should be contingent upon compliance with other conditions of Bell ExpressVu's licence.

Conclusion

46. In the Commission's view, P/O distribution provides a reasonable means of ensuring the provision of the greatest possible range of unique local and regional programming to all of Bell ExpressVu's subscribers, while limiting the demand on Bell ExpressVu's distribution.

47. Accordingly, the Commission **approves** the application by Bell ExpressVu Inc. (the general partner), and BCE Inc. and 4119649 Canada Inc. (partners in BCE Holdings G.P., a general partnership that is the limited partner), carrying on business as Bell ExpressVu Limited Partnership, for a condition of licence granting its DTH satellite BDU authority to distribute, on partial and/or omnibus channels, the unique programming of Canadian television stations that it does not already distribute in their entirety.
48. At the same time, issues raised in the context of this proceeding have persuaded the Commission that, as discussed above, certain modifications to the condition of licence proposed by the applicant are necessary. The modified **condition of licence** is set out below.

The licensee is relieved from the requirements of section 7 of the *Broadcasting Distribution Regulations* solely for the purpose of distributing, on a part-time basis, via partial and/or omnibus channels, the local and regional news, weather, sports and other unique local or regional programming exhibited by those licensed over-the-air, i.e., conventional television stations not distributed by the licensee in their entirety. Distribution of programming on a part-time basis is subject to the following requirements:

- a) Distribution of part-time programming may only take place on a partial channel with the prior written consent of the television station originating the programming. In addition, the further prior written consent of the television station is necessary in order to distribute this part-time programming on an omnibus channel, or at a time that is not simultaneous with its original broadcast on the television station.
- b) Prior notification must be given to the Commission before the programming of a television station to be distributed on a part-time basis is added to the licensee's channel line-up.
- c) The licensee shall provide equitable distribution of participating television stations distributed in the manner described above, according to the principles set out in the Schedule to Appendix 1 of *ExpressVu – Licence renewal*, Broadcasting Decision CRTC 2004-129, 31 March 2004.

- d) This authorization remains in effect until 29 February 2008, unless a request for an extension of time is approved by the Commission before that date.

Secretary General

This decision is to be appended to the licence. It is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>