



Broadcasting Order CRTC 2011-60

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Route reference: 2010-703

Ottawa, 31 January 2011

Exemption order for small video-on-demand undertakings

The Commission sets out an exemption order for small video-on-demand (VOD) undertakings that are owned and operated by a party that does not hold a broadcasting distribution undertaking (BDU) licence, that is not an affiliate of a party that holds a BDU licence and that only provides VOD services using the facilities of exempt BDUs.

The exemption order set out in the appendix to this document comes into effect immediately. Licensed VOD undertakings that consider their operations to be eligible for exemption under the order should submit applications for the revocation of their licence.

Introduction

1. In Broadcasting Notice of Consultation 2010-703, the Commission called for comments on a proposed exemption order for small video-on-demand (VOD) undertakings. The Commission proposed to define an exempt VOD undertaking as one that is owned and operated by a party that does not hold a broadcasting distribution undertaking (BDU) licence and that is not an affiliate of a party that holds a BDU licence. In addition, the Commission stated that the exempt VOD undertaking could only provide VOD services using the facilities of exempt BDUs. The Commission proposed that exempt VOD undertakings be subject only to criteria respecting adherence to relevant broadcasting codes and prohibitions against certain types of programming content (e.g. abusive comment).
2. The Commission received comments by the Canadian Cable Systems Alliance (CCSA) and MTS Allstream (MTS). The CCSA supported the proposed order, as drafted. MTS did not oppose the proposed order, but suggested a broader definition of an exempt VOD undertaking. The public record for this proceeding is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Commission's analysis and determination

3. After having examined the comments received, the Commission considers that the issue to be addressed in its determination relates to the proposed definition of an exempt VOD undertaking.
4. MTS submitted as part of its comments that the exemption order should be open to smaller terrestrial BDUs that are not affiliated with one of the three largest cable undertakings (Rogers, Shaw and Videotron) or with Bell and that provide their VOD services using the facilities of an exempt BDU.

5. The Commission notes that many VOD undertakings in operation are owned by entities that also operate a combination of exempt and licensed cable systems. These parties do not hold separate VOD licences to correspond with each cable system, but possess a single VOD licence.
6. The Commission further notes that MTS's proposed definition could create a competitive imbalance in certain markets because under such a definition exempt VOD undertakings and licensed VOD undertakings would compete with each other.
7. The Commission therefore finds it appropriate to define an exempt VOD undertaking as proposed in Broadcasting Notice of Consultation 2010-703. The definition is set out in the appendix to this document. In addition, exempt VOD undertakings may provide VOD services using only the facilities of exempt BDUs. In this way, VOD undertakings in most need of regulatory relief will be captured, while those belonging to the largest cable undertakings will continue to fall under a single licence. Moreover, exempt BDUs that are not affiliated with licensed BDUs will not be required to apply for a VOD licence to provide a VOD service in accordance with this order.

Implementation

8. The exemption order set out in the appendix to this document comes into effect immediately. Licensed VOD undertakings that consider their operations to be eligible for exemption under the order should submit applications for the revocation of their licence.

Secretary General

Related documents

- *Proposed exemption order for small video-on-demand undertakings*, Broadcasting Notice of Consultation CRTC 2010-703, 23 September 2010
- *Regulatory framework for video-on-demand undertakings*, Broadcasting Regulatory Policy CRTC 2010-190, 29 March 2010

Appendix to Broadcasting Order CRTC 2011-60

Terms and conditions of the exemption order for small video-on-demand undertakings

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 television programming undertakings is to provide on-demand programming services for distribution by broadcasting distribution undertakings.

Description

1. 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.
2. The undertaking is owned and operated by a person that does not hold a broadcasting distribution licence and is not an affiliate of a person that holds a broadcasting distribution licence (licensee). An “affiliate” means a person who controls the licensee or who is controlled by the licensee or by a person who controls the licensee.
3. The undertaking provides video-on-demand services that are distributed using only the facilities of exempt broadcasting distribution undertakings operating pursuant to the exemption order set out in *Exemption order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers*, Broadcasting Order CRTC 2009-544, 31 August 2009, as may be amended from time to time.
4. The undertaking files information with the Commission specifying: the name of the service provider, the name under which the service operates, the broadcasting distribution undertaking(s) that distribute the service and the service’s contact information, including mailing address, telephone number, fax number, email address and website. In the case of a new undertaking, the above information is filed with the Commission when the undertaking is ready to commence operations. The undertaking will advise the Commission if there are any changes to this information.
5. The undertaking submits any information requested by the Commission to ascertain the undertaking’s compliance with the terms of this order.

6. The undertaking does not distribute programming that contains the following:
 - (a) anything that contravenes any law;
 - (b) any abusive comment or abusive pictorial representation that, when taken in context, tends to or is likely to expose an individual or group or class of individuals to hatred or contempt on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, age or mental or physical disability;
 - (c) any obscene or profane language or pictorial representation; or
 - (d) any false or misleading news.

For the purpose of section (b), sexual orientation does not include the orientation towards a sexual act or activity that would constitute an offence under the *Criminal Code*.

7. The undertaking shall adhere to the *Equitable Portrayal Code*, as amended from time to time and approved by the Commission.
8. The undertaking shall adhere to the *Pay television and pay-per-view programming code regarding violence*, as amended from time to time and approved by the Commission.
9. The undertaking shall adhere to the *Industry code of programming standards and practices governing pay, pay-per-view and video-on-demand services*, as amended from time to time and approved by the Commission.