



Broadcasting Regulatory Policy CRTC 2015-543 and Broadcasting Order CRTC 2015-544

PDF version

References: 2015-258 and 2015-96

Ottawa, 9 December 2015

Revised exemption order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers

The Commission announces a revised exemption order for terrestrial broadcasting distribution undertakings (BDUs) serving fewer than 20,000 subscribers. The revised order, set out in the appendix to this regulatory policy, takes effect immediately.

Through this revised order, BDUs eligible for exemption will not be required to obtain a broadcasting licence to compete in markets served by licensed BDUs. The Commission's intention is to provide Canadians with a greater choice of television service providers. Certain amendments will harmonize the BDU exemption order with distribution orders issued under section 9(1)(h) of the Broadcasting Act. Among other things, exempt BDUs serving more than 2,000 subscribers must now distribute the programming services TV5 and UNIS (collectively, TV5/UNIS), AMI-tv Français and ARTV, which will ensure that more Canadians, including those located in official language minority communities and those who are blind and visually impaired, have access to high-quality French-language programming. Finally, amendments to the BDU exemption order will harmonize the regimes of both exempt and licensed BDUs for contributions to Canadian programming.

Background

1. Section 9(4) of the *Broadcasting Act* (the Act) sets out the following in regard to the exemption of broadcasting undertakings from licensing requirements:

The Commission shall, by order, on such terms and conditions as it deems appropriate, exempt persons who carry on broadcasting undertakings of any class specified in the order from any or all of the requirements of this Part 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 broadcasting policy set out in subsection 3(1).

2. Pursuant to section 9(4) of the Act, the Commission issued Public Notice 2001-121, in which it exempted from licensing requirements terrestrial BDUs serving small and rural communities in with it fewer than 2,000 subscribers, and Broadcasting Public Notice 2004-39, in which it exempted from licensing requirements terrestrial BDUs serving between 2,000 and 6,000 subscribers. In Broadcasting Order 2009-544, the Commission expanded the scope of the above orders to include, under a single exemption order, terrestrial BDUs serving fewer than 20,000 subscribers. Pursuant to

that order, terrestrial BDUs serving fewer than 20,000 subscribers but competing in a market with a BDU that serves 20,000 or more subscribers continued to be subject to licensing requirements. Broadcasting Order 2009-544 was amended by Broadcasting Orders 2011-753 and 2012-408, and, most recently, by Broadcasting Order 2014-445 (the BDU exemption order), set out in Appendix 2 to Broadcasting Regulatory Policy 2014-444.

Call for comments

3. In Broadcasting Notice of Consultation 2015-258 (the Notice), the Commission called for comments on its proposal to expand the BDU exemption order. The proposed changes arose from recent policy proceedings, specifically, the proceeding that led to the issuance of Broadcasting Regulatory Policy 2013-372 (relating to the mandatory distribution of programming services pursuant to section 9(1)(h) of the Act), and the Let's Talk TV proceeding, which led to the issuance of Broadcasting Regulatory Policies 2015-25 (the simultaneous substitution of television channels), 2015-86 (creating compelling and diverse Canadian programming) and 2015-96 (maximizing choice for television viewers in Canada).
4. In the Notice, the Commission stated that expanding the BDU exemption order through the proposed amendments would allow exempt BDUs to compete in markets served by licensed BDUs, thereby providing Canadians with greater choice of television service providers. It further stated that the proposed amendments would harmonize the BDU exemption order with the distribution orders issued under section 9(1)(h) of the Act as a result of Broadcasting Regulatory Policy 2013-372. One result of this would be that exempt BDUs serving more than 2,000 subscribers would be required to distribute the programming services TV5 and UNIS (collectively, TV5/UNIS), AMI-tv Français and ARTV, which would ensure that more Canadians, including those located in official language minority communities and those who are blind and visually impaired, have access to high-quality French-language programming. Finally, the proposed amendments would harmonize the regimes of both exempt and licensed BDUs for contributions to Canadian programming and allow the Commission to make various minor revisions to the BDU exemption order.
5. The Commission received comments from the following parties: Blue Ant Media Inc., Bragg Communications Incorporated (Eastlink), the Canadian Cable Systems Alliance Inc. (CCSA), the Canadian Network Operators Consortium Inc. (CNOOC), Cogeco Cable Inc. (Cogeco), the Fédération culturelle canadienne-française, the Fédération des communautés francophones et acadienne du Canada, the Fédération des francophones de Terre-Neuve et du Labrador, the Fédération des télévisions communautaires autonomes du Québec, Quebecor Media Inc. (Quebecor), on behalf of Videotron G.P., Rogers Communications Inc. (Rogers), Saskatchewan Telecommunications (SaskTel), Shaw Communications Inc. (Shaw), TekSavvy Solutions Inc. (TekSavvy) and TV5 Québec Canada. The public record for this proceeding can be found on the Commission's website at www.crtc.gc.ca.

Commission's analysis and decisions

6. After examining the public record of this proceeding in light of applicable policies and regulations, the Commission considers that the issues to be addressed are the following:
 - broadening the BDU exemption order;
 - the offer of flexible packaging options;
 - the distribution of U.S. 4+1 signals;
 - information requirements;
 - a list of registered exempt BDUs;
 - a preponderance of Canadian programming services;
 - the mandatory distribution of certain French-language services pursuant to section 9(1)(h) of the Act;
 - contributions to Canadian programming;
 - other issues raised by parties; and
 - various minor revisions and corrections to the BDU exemption order.

Broadening the BDU exemption order

7. In Broadcasting Regulatory Policy 2015-96, the Commission stated that it would initiate a follow-up process to broaden the BDU exemption order in order to allow terrestrial BDUs serving fewer than 20,000 subscribers to enter and compete in markets with licensed BDUs without first having to obtain a licence. Accordingly, in the Notice, the Commission proposed to delete the following from paragraph 4 of the BDU exemption order (proposed deletion in **bold**):

4. In total, the number of subscribers served by the individual undertaking is fewer than 20,000, **and the undertaking either (a) does not serve all or part of the licensed area of a licensed terrestrial broadcasting distribution undertaking (BDU) that serves 20,000 or more subscribers within that licensed area, or (b) serves all or part of the licensed area of a licensed terrestrial BDU that serves 20,000 or more subscribers only by virtue of the fact that the licensed BDU expanded to operate within the service area of the undertaking at some time following the time at which the undertaking came into being.** Once exempt, the undertaking does not have more than 21,000 subscribers in any two consecutive broadcast years as reported pursuant to paragraph 25 below.

8. Consistent with Broadcasting Regulatory Policy 2015-96, this amendment would facilitate the entry of exempt terrestrial BDUs into markets already served by a licensed BDU, which could result in additional BDU options for consumers. Moreover, it would shorten the period to obtain the Commission's authorization to launch such services by approximately eight to ten months. This is consistent with section 5(2)(g)¹ of the Act in that it would eliminate the administrative burden placed on new entrant BDUs. Accordingly, the Commission has amended paragraph 4 of the BDU exemption order as proposed.

Offer of flexible packaging options

9. During the Let's Talk TV proceeding, the offer of flexible packaging options was a source of considerable discussion. In Broadcasting Regulatory Policy 2015-96, the Commission stated that BDUs should continue to have the ability to provide Canadian and non-Canadian discretionary programming services in pre-assembled packages, as well as offer more flexible and customizable options. It noted that this would give existing programming services and BDUs time to transition to a new regime characterized by greater consumer choice and flexibility.

Interventions

10. In regard to the offer of flexible packaging options by exempt BDUs that compete in markets with licensed BDUs, Cogeco submitted that "all exempt terrestrial BDUs offering programming services on a digital basis should be required to offer the discretionary programming services that they distribute on a standalone and on a build-your-own package basis." It submitted that this would ensure that all Canadians have access to the same flexible options. Cogeco added that further amendments to the exemption order should be considered when the proposed amendments to the *Broadcasting Distribution Regulations* (the Regulations) relating to flexible packaging options are issued.²

Commission's analysis and decision

11. As noted in Broadcasting Regulatory Policy 2015-96, the requirement to offer all discretionary services either on a pick-and-pay basis or in small, reasonably priced packages would not apply to exempt BDUs. Such a requirement would be too financially and administratively burdensome for operators of such undertakings, many of which may not have the means to offer services on this basis. The Commission considers, however, that market forces should be sufficient to motivate exempt BDUs to offer flexible packaging options, without any additional regulation. It therefore anticipates that exempt BDUs, in response to market forces, will

¹ "The Canadian broadcasting system should be regulated and supervised in a flexible manner that is sensitive to the administrative burden that, as a consequence of such regulation and supervision, may be imposed on persons carrying on broadcasting undertakings."

² These amendments are set out in Broadcasting Regulatory Policy 2015-514.

implement such options in order to be competitive with licensed BDUs in the market, who will be required to offer more flexible packaging options in 2016.

12. In September 2015, the Commission announced the new Wholesale Code, which governs certain aspects of the commercial arrangements between BDUs, programming undertakings, and exempt digital media undertakings (see Broadcasting Regulatory Policy 2015-438). This code, to take effect 22 January 2016, will be made applicable to all licensed undertakings (other than radio programming undertakings) by means of an order issued pursuant to section 9(1)(h) of the Act. It will also eventually be made applicable to all licensed undertakings by means of a condition of licence. For exempt BDUs (along with exempt programming undertakings, exempt digital media undertakings and non-Canadian programming services distributed in Canada), the Wholesale Code will serve as a set of guidelines. In their dealings with any exempt BDUs, licensed programmers will therefore be required to adhere to the Wholesale Code. In regard to the present issue, although exempt BDUs will not be required to offer their subscribers flexible packaging options, licensed programmers will be required to allow their services to be offered to the subscribers of those BDUs on a pick-and-pay basis or in small, reasonably priced packages.³

Distribution of U.S. 4+1 signals

13. Pursuant to the Regulations, licensed BDUs may not offer more than two sets of U.S. 4+1 signals. The Commission typically grants conditions of licence allowing one of those sets to be offered as part of the basic service, while the other must be distributed on a discretionary basis. Exempt BDUs as well may not offer more than two sets of U.S. 4+1 signals, with the exception of signals receivable over the air (OTA). However, there is no restriction for these undertakings as to whether those sets of signals are distributed as part of the basic service or on a discretionary basis.
14. In the Notice, the Commission set out the preliminary view that exempt BDUs should also be limited to the distribution of one set of U.S. 4+1 signals on the basic service, given that they will be able to compete in markets with licensed BDUs.

Interventions

15. Eastlink submitted that the rule limiting the distribution of U.S. 4+1 signals to one set on the basic service should not apply to exempt BDUs that do not compete directly with a licensed BDU (or that only do so because the licensed BDU expanded into the service area of the exempt BDU), but only to exempt BDUs entering a market served by a licensed BDU. It noted, for example, that if the exemption order were amended

³ As part of this proceeding, the CNOC proposed that the Commission set out a requirement for programming services to negotiate upon request with exempt BDUs. TekSavvy proposed that programming services be subject to a Commission expectation to negotiate in good faith with exempt BDUs. Given that licensed programmers will be required to adhere to the Wholesale Code either through an order pursuant to section 9(1)(h) of the Act or through the imposition of conditions of licence, the Commission does not consider it necessary to set out a condition in the BDU exemption order requiring programming services to negotiate in good faith with exempt BDUs.

as proposed, it would be required to remove one of the two sets of U.S. 4+1 signals currently offered on the basic service by more than 40 of its exempt BDUs, the majority of which operate in very small communities. As an alternative, it proposed that the Commission grandfather exempt BDUs that were distributing more than one set of U.S. 4+1 signals as part of the basic service as of the implementation date of the amended exemption order.

16. Rogers proposed that where an exempt BDU distributes a first set of U.S. 4+1 signals on the basic service, these signals should be sourced from the same time zone in which the local head end is located, or in an adjacent time zone should no such set of signals originate from the same time zone, consistent with the proposed amendments to the Regulations.⁴ Where an exempt BDU distributes a second set of U.S. 4+1 signals, Rogers proposed that the BDU also carry the programming services of at least one television station from each English major ownership group originating in the same time zone to ensure that conventional television services would not be harmed by the expansion of the exemption order. According to Rogers, these additional rules would preserve competitive equity between licensed and exempt BDUs that operate in the same markets and ensure that Canadian television stations can maximize their opportunities for simultaneous substitution.

Commission's analysis and decision

17. The Commission acknowledges that having the option of distributing two sets of U.S. 4+1 signals as part of the basic service could be seen as a competitive advantage for an exempt BDU that is operating within the same service area as a licensed BDU. Although the proposed amendment was intended to ensure competitive equity in this respect, the Commission recognizes that the proposed amendment would result in subscribers in some smaller markets losing a set of U.S. 4+1 signals that they have become accustomed to receiving as part of the basic service, which was not the intention of the proposed approach.
18. Further, the Commission is not convinced that any competitive advantage that might be gained by these exempt BDUs through the unrestricted distribution of U.S. 4+1 signals on the basic service would be significant enough to cause any material harm to incumbent licensed BDUs. If these exempt BDUs reach 20,000 subscribers and obtain a licence, they will be subject to the same rules as licensed BDUs. Therefore, exempt BDUs operating in a market with licensed BDUs should be mindful of offering subscribers services in a manner that would not be permitted as a licensed BDU.
19. In light of the above, the Commission has not imposed any additional restrictions on the distribution of the U.S. 4+1 signals for exempt BDUs beyond the general requirement to offer not more than two sets of such signals. In regard to the sourcing of U.S. 4+1 signals, similar to flexible packaging options, the Commission anticipates that exempt BDUs will respond to market forces by offering services that are most

⁴ See Broadcasting Notice of Consultation 2015-304.

relevant to their subscribers in order to be competitive with licensed BDUs in the market.

Information requirements

20. In the Notice, the Commission proposed to require any new terrestrial BDU that is operating within the service area of a licensed BDU and that qualifies for exemption to register and submit the following general information to the Commission by no later than three months prior to commencing operations in a new service area:

- contact information;
- type of undertaking (i.e., cable or Internet Protocol Television);
- main undertaking location and secondary locations;
- basic technical information to ascertain how the service is delivered;
- the geographical coordinates of the head end;
- whether a community channel will be offered;
- a website address where the distribution grid (i.e., channel lineup) for the service area is listed;⁵
- a launch date; and
- confirmation that the undertaking will operate under the terms and conditions of the BDU exemption order.

Interventions

21. Rogers submitted that registration requirements should be limited to the information needed to identify each exempt BDU and where it is operating. It stated that the proposed requirements are sufficient to achieve this goal.

⁵ Prior to the issuance of Broadcasting Information Bulletin 2009-384, BDUs were required to file a distribution grid or grids (i.e., a channel lineup) when submitting an application for either a new broadcasting licence or licence renewal. In that information bulletin, the Commission noted that making programming information available online would be useful to monitor compliance and for customers wanting to know which programming services are available, and would also reduce the amount of information filed by BDUs. It therefore required instead that BDUs provide with their licence renewal applications a website address where their grids are listed. Applicants for new broadcasting licences were required to file proposed distribution grids, and provide a website address where their grids are posted at the same time that they inform the Commission that they are ready to commence operations. For proposed exempt BDUs operating within the service area of a licensed BDU, the Commission considers that it would be appropriate to require those exempt BDUs to provide only a website address where their grids are listed.

22. TekSavvy and the CNOC, on the other hand, stated that further clarity was needed for some of the information requirements. Cogeco submitted that sections 23 and 24 of the proposed revised exemption order should include effective ownership and control information to ensure that the condition of exemption in paragraph 2 is met, and to determine whether a BDU is subject to the requirements that apply to vertically integrated entities.

Commission's analysis and decision

23. In regard to further clarity on some of the information requirements, a registration form has been made available on the Commission's website with the publication of the revised exemption order (see paragraph 49). It contains a series of questions related to the information requirements above, which are designed to identify the operators and to assess their eligibility for exemption (e.g., technical information to ensure that they are not digital media broadcasting undertakings).

24. In Broadcasting Order 2009-544, the Commission determined that requesting ownership information would unnecessarily burden exempt BDUs and would not provide significant benefits. The Commission considers that this remains the case. It notes, however, that it has the flexibility to request such information from an undertaking if there are any concerns.

25. Given that the basic information requirements should be limited to what is needed to identify an exempt BDU and to assess its eligibility for exemption, proposed exempt BDUs that wish to operate in markets with licensed BDUs will be required to file the information set out in the appended exemption order.

List of registered exempt BDUs

26. In the Notice, the Commission proposed that, upon launch of a service, the name of the BDU and the service area would be added to a list of registered exempt BDUs to be posted on the Commission's website.

Interventions

27. TekSavvy proposed the creation of a "proposed BDU list," which would also be posted on the Commission's website, as a way of assisting new entrants that are seeking to enter into negotiations with content providers (a process similar to that for competitive local exchange carriers). Once the entrant has informed the Commission that it is prepared to launch the undertaking, the undertaking would be moved to the exempt BDU list.

28. TekSavvy further proposed, along with the CCSA, that the launch of a new BDU be allowed to take place within a 24-month time frame (the same time frame as for prospective licensees), as opposed to the proposed three months. The CNOC proposed revising the launch date component to accommodate BDUs that are unable to meet the specified deadline (for example, as an anticipated launch date only, similar to telecom providers).

Commission's analysis and decision

29. Providing notice before the launch of an exempt BDU that will operate within the service area of a licensed BDU would give incumbent, licensed BDUs time to tie up subscribers to long-term contracts. As a result, exempt BDUs would be at a disadvantage when trying to attract new subscribers to their services. This could lead to less competition between licensed and exempt BDUs, contrary to the Commission's intent to provide Canadians with a greater choice of television service providers.
30. In regard to TekSavvy's proposal for a "proposed BDU list," the operator of a proposed BDU will be notified once the Commission has accepted the registration of the undertaking. In the Commission's view, this notification should provide content providers with sufficient proof that the proposed BDU qualifies under the exemption order.
31. Although sufficient time (i.e., three months) is needed to process the registration, the Commission will expect BDUs to register only when the undertaking is close to commencing operations.
32. In light of the above, the Commission will proceed with its proposed approach. Exempt BDUs wishing to operate within the service area of a licensed BDU are required to register by no later than three months prior to commencing operations. Upon launch of the service, the name of the BDU and the service area will be posted on the Commission's website.

Preponderance of Canadian programming services

33. Beginning March 2016, licensed terrestrial and direct-to-home (DTH) BDUs will be required to offer more Canadian than non-Canadian programming services.⁶ However, as noted in Broadcasting Regulatory Policy 2015-96, it will be subscribers who ultimately choose how many and what Canadian or non-Canadian programming services they wish to receive beyond the entry-level service offering.
34. In the Notice, the Commission proposed to apply this requirement to exempt terrestrial BDUs as of the same date. The only party to comment on this proposal, the CNOC, expressed its support.
35. Given that the proposal is consistent with the approach to be applied to licensed BDUs, the Commission considers it appropriate to adopt this proposal for exempt BDUs as well. Accordingly, a condition to this effect is set out in the appended exemption order.

⁶ See Broadcasting Regulatory Policies 2015-96 and 2015-514.

Mandatory distribution of certain French-language services pursuant to section 9(1)(h) of the *Broadcasting Act*

36. In Broadcasting Regulatory Policy 2013-372, the Commission approved applications for the mandatory distribution of TV5/UNIS and AMI-tv Français on the digital basic service. It also approved an application for a distribution order for the national, French-language specialty Category A service ARTV, giving this service access rights to the digital service of terrestrial BDUs in anglophone markets, although not necessarily as part of the basic service. The Commission also stated its intent to address the BDU exemption order so as to reflect these decisions and to harmonize the exemption order with the distribution orders for those services.
37. The proposed revised BDU exemption order sets out that if the undertaking serves more than 2,000 subscribers, it distributes all services that must be distributed pursuant to mandatory distribution orders under section 9(1)(h) of the Act.⁷ This paragraph differs from the corresponding paragraph in the current BDU exemption order, which included a service-by-service list. Further, the proposed revised BDU exemption order does not include paragraph 16 of the current BDU exemption order, which reads as follows:

An exempt undertaking is not required to distribute any of the programming services noted in paragraphs 14 and 15, above, with the exception of AMI-audio and Canal M, unless the licensee or operator of the programming service or a third party pays for the satellite uplink and transponder costs associated with the delivery of its programming service to the exempt undertaking.⁸

Interventions

38. TV5 Québec Canada, the Fédération culturelle canadienne-française, the Fédération des francophones de Terre-Neuve et du Labrador, and the Fédération des communautés francophones et acadienne du Canada supported the proposal.
39. Eastlink, on the other hand, expressed concern that the proposal precludes the Commission from requiring only licensed BDUs to distribute a service that has been granted mandatory distribution under an order issued pursuant to section 9(1)(h) of the Act. It argued that in some cases, there may be valid reasons for not mandating carriage of a programming service by exempt BDUs (for example, the increased cost of distributing a service to a limited number of customers, monies which could be used instead to improve services or infrastructure). Eastlink also stated that

⁷ As noted by TV5 Québec Canada in its intervention, in the summary of the French-language version of the Notice, the Commission indicated that exempt services serving fewer than (i.e., moins de) 2,000 subscribers would be subject to this requirement. This error has been corrected in the French-language version of the revised exemption order.

⁸ Even if the licensees or operators of AMI-audio and Canal M do not pay for the satellite uplink and transponder costs associated with the delivery of their programming services to the exempt undertaking, exempt undertakings must distribute the services.

paragraph 16, which requires the service operator or a third party to pay for the satellite uplink and transponder costs, should not be deleted. It argued that its deletion would result in exempt BDUs being required to incur those costs, whereas larger, licensed BDUs would not.

40. Eastlink, Shaw and Rogers stated that the BDU exemption order should continue to identify the specific mandatory distribution requirements for each affected service. As an alternative, Shaw proposed that the phrase “under the terms and conditions of each mandatory distribution order” be added to this paragraph.

Commission’s analysis and decisions

41. To harmonize the BDU exemption order with distribution orders, to avoid the need to amend the exemption order each time it issues a new distribution order pursuant to section 9(1)(h) of the Act or amends such an order, and to avoid delays in the implementation of such an order, the Commission has removed the service-by-service list from paragraph 14 of Broadcasting Order 2014-445 and replaced it with the requirement to distribute “all services that must be distributed pursuant to mandatory distribution orders under section 9(1)(h) of the Act.”
42. If the distribution of a service by exempt BDUs is not required, the distribution order for that service would set this out. As such, Shaw’s proposed addition of the phrase “under the terms and conditions of each mandatory distribution order” would adequately capture important information that was set out in the service-by-service list. It would also address the concern expressed by Eastlink regarding the possibility that the Commission may not want to impose on exempt BDUs all distribution orders issued pursuant to section 9(1)(h) of the Act. To ensure that distribution orders are made applicable to exempt BDUs in a timely manner and that the conditions for distribution are consistent with those applicable to licensed BDUs where appropriate, the Commission has therefore amended the proposed condition in paragraph 15 of the BDU exemption order as follows (change in **bold**):

If the undertaking serves more than 2,000 subscribers, it distributes all programming services that must be distributed pursuant to mandatory distribution orders under section 9(1)(h) of the *Broadcasting Act* **under the terms and conditions of each mandatory distribution order.**

43. In regard to Eastlink’s concerns regarding satellite uplink and transponder costs, all distribution orders or related decisions, excluding those relating to AMI-audio and Canal M, specify that the operator of the programming service or a third party must ensure the transmission and bear the cost of this transmission.

Contributions to Canadian programming

44. Licensed BDUs are permitted under sections 36 and 37 of the Regulations to estimate their required contributions to Canadian programming⁹ for each broadcast year based on the previous year's broadcasting revenues and then "true up" that amount at the end of the calendar year if they underpaid or receive a credit toward the next year if they overpaid. In the Notice, the Commission proposed the addition of the following paragraphs to the BDU exemption order, so as to grant this same flexibility to exempt BDUs:

20.1 If an undertaking is required to make a contribution to Canadian programming in a broadcast year under paragraph 20, it may calculate the required contribution on the basis of its gross revenues derived from broadcasting activities in the previous broadcast year.

20.2 If as a result of the calculation in paragraph 20.1 the contribution to Canadian programming is greater than the amount required under paragraph 20, the licensee¹⁰ may deduct the excess from the amount of that contribution that is required for the subsequent broadcast year; however, if it is less than the amount required, the licensee shall make the balance of the contribution by 31 December of the subsequent broadcast year.

Interventions

45. Cogeco submitted that contributions should be calculated and paid based on the revenues from broadcasting activities, as reported for the previous broadcast year, to eliminate adjustments and alleviate the regulatory burden. Quebecor stated that the proposed amendment should also apply to local expression.

Commission's analysis and decision

46. In order to provide exempt BDUs with the same flexibility as licensed BDUs in regard to their contributions to Canadian programming, the Commission finds it appropriate to include paragraphs 20.1 and 20.2 above in the BDU exemption order.

47. In regard to the comments provided by Cogeco and Quebecor on this issue, their requests would require policy changes that are beyond the scope of the present proceeding.

Other issues raised by parties

Revocation of broadcasting licences for eligible undertakings

⁹ This amounts to 5% of the undertaking's gross revenues derived from broadcasting activities in each broadcast year less any contribution to local expression.

¹⁰ In the Notice, the term "licensee" was used in proposed paragraph 20.2, whereas it should have read "undertaking." This has been corrected in the paragraph set out in the appended exemption order.

48. The CNOC proposed that the Commission establish separate processes to deal with licensed BDUs that wish to revoke their broadcasting licences, and to withdraw applications submitted by BDUs that are eligible for exemption.
49. While licensees are free to apply for revocation at any time, for administrative efficiency, the Commission considers it appropriate to establish a process to revoke any broadcasting licences for BDUs that become eligible for exemption under the revised BDU exemption order. Accordingly, licensees of terrestrial BDUs that are eligible for exemption may complete and submit the [registration form](#) in this regard. If they choose to do so, the information must be submitted by no later than **15 January 2016**. Once the information required in the registration form has been submitted to the Commission and once the decision revoking the broadcasting licence has been issued, the undertaking may continue to operate under the BDU exemption order without respecting the above-noted three-month period in effect for registering new exempt BDUs. The Commission intends to issue a single decision setting out the broadcasting licences revoked.
50. In regard to applications that have already been submitted for broadcasting licences to operate BDUs eligible for exemption, the Commission notes that such applications submitted prior to the issuance of the Notice were denied,¹¹ and that applications submitted afterwards have been returned to the applicants.

Discrete operations

51. SaskTel submitted that the Commission should eliminate the criteria for BDUs holding regional licences to remove (i.e., carve out) a service area and operate the undertaking eligible for exemption as a discrete exempt BDU. It argued that carve-outs would create a competitive disadvantage if not all BDUs were required to meet the criteria. It also requested clarification to the effect that for BDUs that were authorized to carve out and operate under the exemption order, the obligation to maintain discrete operations is no longer applicable, and proposed that the information requirement demonstrating annual compliance with the applicable criteria set out in Broadcasting Order 2009-544 be eliminated.
52. In Broadcasting Public Notice 2008-100, the Commission stated that it would be willing to permit BDUs operating under regional licences to remove a service area and operate in that area as a discrete exempt BDU. Eligible undertakings would have to have a separate head end, and offer unique priority programming or substantial community programming. In regard to SaskTel's proposal specifically, the Commission notes that it would require a policy change and, as such, lies outside the scope of the present proceeding.

¹¹ See Broadcasting Decisions 2015-269, 2015-327 and 2015-371.

Over-the-air stations included as part of the basic service

53. In Broadcasting Regulatory Policy 2015-96, the Commission proposed to amend the Regulations to allow licensed terrestrial BDUs to include non-local or non-regional Canadian OTA television stations as part of the basic service, up to a maximum of ten. Rogers proposed that the Commission amend the BDU exemption order in order to grant exempt BDUs the same authority to distribute non-local or non-regional OTA television stations on the basic service.

54. As set out in that regulatory policy, all licensed terrestrial and DTH distributors will be required to provide to their subscribers a small entry-level service by March 2016.¹² The requirement to offer a small basic service will not be imposed on exempt BDUs. Those undertakings are required to distribute all services set out under paragraph 6 of the revised exemption order. Once this obligation is fulfilled, nothing prevents an exempt BDU from offering additional programming services on the basic service provided that it enters into an agreement with the programming service. Consequently, it is not necessary to amend the BDU exemption order as proposed by Rogers.

Distribution of programming produced by community television corporations

55. The Fédération des télévisions communautaires autonomes du Québec proposed that the Commission require exempt BDUs operating in markets with licensed BDUs to distribute the programming produced by community television corporations¹³ (TVC), where such services are available, on the basic service, without any additional fees, and to contribute 5% of their gross revenues to TVCs.

56. The Commission notes that this proposal would require substantive policy changes and, therefore, lies outside the scope of the present proceeding.

Exempt discretionary services

57. Rogers noted that, pursuant to paragraph 5 of the proposed BDU exemption order, exempt BDUs may provide the programming services of “exempt programming undertakings” without also providing the basic service. It further noted that since the

¹² By 1 March 2016, licensed BDUs will be required to provide to their subscribers an entry-level service, priced at not more than \$25 per month, that prioritizes Canadian services, including local and regional Canadian television stations, the provincial educational channels, services designated by the Commission under section 9(1)(h) of the Act for mandatory distribution on the basic service and, if offered, the community channel and the provincial legislature channel. The entry-level service may also include other Canadian television stations, where less than ten local and/or regional stations are available (up to a maximum of ten), educational channels of another province or territory, in each official language, if no educational channel is offered, local AM and FM radio stations, and one set of U.S. 4+1 signals.

¹³ As set out in the Regulations, “community television corporation” means a not-for-profit corporation that resides within a licensed area, that is incorporated by or under the laws of Canada or of a province and of which (a) the primary activity is to produce local community television programming or to operate a community channel that is reflective of the community it represents; (b) board members are drawn from the community; and (c) all board members are entitled to participate and vote at an annual meeting.

Regulations will include the term “exempt discretionary service,” the Commission should indicate that the authority excludes this type of service.

58. The Commission finds that Rogers’ proposal is appropriate. Accordingly, it has amended paragraph 5 of the BDU exemption order to read as follows (change in **bold**):

5. The undertaking does not provide a subscriber with any programming services, other than licensed pay-per-view services, licensed video-on-demand services or the programming services of exempt programming undertakings, **other than exempt discretionary services**, without also providing the basic service.

59. Further, the Commission has added the term “exempt discretionary service” to the definitions section of the exemption order.

Definition of “basic service”

60. In Broadcasting Order 2014-445, the Commission defined “basic service” as “the package of programming services provided to all subscribers for a single fee.” In the Notice, the Commission proposed instead to refer to the definition of this term as set out in the Regulations: “the service distributed in a licensed area by a licensee as a package consisting of the programming services whose distribution is required under section 17 or 46 or a condition of its licence, and any other services that are included in the package for a single fee.” Rogers, Shaw and Eastlink argued that this change in definition would increase the obligations of exempt BDUs.

61. The Commission acknowledges the above concerns and notes that this was not the intent of the proposed change in definition. Accordingly, it has replaced the proposed definition with the following: “‘basic service’ means the package of programming services at paragraph 6 that is distributed by an undertaking for a single fee.”

Transition from exempt to non-exempt status

62. As noted above, as currently set out in the BDU exemption order, once an undertaking has exempt status (i.e., the number of subscribers served by the individual undertaking is less than 20,000), it can remain exempt if it does not have more than 21,000 subscribers in any two consecutive broadcast years.

63. The CNOC proposed that when the number of subscribers of an exempt BDU exceeds 21,000 in any two consecutive broadcast years, the Commission should provide the operator of that undertaking with a grace period of 120 days following the completion of the second broadcast year to apply for a broadcasting licence. Further, it requested that the Commission allow that exempt BDU to continue to operate as such until a decision on the licence application has been issued.

64. As noted in Broadcasting Order 2009-544, the Commission introduced the 5% margin over a period of two consecutive broadcast years as a way of avoiding the need to re-licence an exempt BDU as a result of normal subscriber churn. In regard to the

transition from exempt to non-exempt status, the Commission determines that once an exempt BDU exceeds 21,000 subscribers for two consecutive broadcast years, and when the operator of an exempt BDU submits an application for a broadcasting licence to operate that undertaking, the BDU will be permitted to continue operating under the exemption order until a decision on the operator's licence application has been issued.

Various corrections and modifications to the text of the BDU exemption order

65. The Commission has made a number of corrections and other editorial modifications to the text of the exemption order. Specifically, it has:

- deleted the reference to “multi-point distribution system” in the “Description” section of the exemption order, given that as of 1 September 2011, the Commission no longer issues broadcasting licences for such systems;¹⁴
- reinserted the term “technology” in the text under “Description,” which was inadvertently deleted. Accordingly, this text now reads as follows: “The purpose of these broadcasting distribution undertakings is to provide programming services to fewer than 20,000 subscribers, using co-axial cable, fibre or digital subscriber line technology.”
- revised paragraph 8 of the French-language version so that the introductory phrase includes “sur une base numérique” rather than “au service numérique de base,” to correspond to “on a digital basis” in the English-language version, and so that parts a. and b. of that paragraph cross reference paragraph 15 only of the exemption order, rather than paragraphs 14 and 15;
- revised paragraph 12.2 to delete the reference to the implementation deadline of 31 March 2015 for implementation of the public alerting system, given that this deadline has passed; and
- replaced the reference to Broadcasting and Telecom Information Bulletin 2009-38 in paragraph 16 of the exemption order with a reference to Broadcasting and Telecom Information Bulletin 2013-637, in which the Commission set out revised procedures that apply to staff-assisted mediation, final offer arbitration and expedited hearings.

Conclusion

66. In light of all of the above and consistent with Broadcasting Regulatory Policies 2013-372, 2015-25 and 2015-96, the Commission replaces Broadcasting Order 2014-445 with the revised exemption order for terrestrial BDUs serving fewer than 20,000 subscribers set out in the appendix to this regulatory policy. The new exemption order takes effect immediately.

¹⁴ See Broadcasting Information Bulletin 2011-479.

Secretary General

Related documents

- *Amendments to the Broadcasting Distribution Regulations to implement determinations in the Let's Talk TV proceeding*, Broadcasting Regulatory Policy CRTC 2015-514, 19 November 2015
- *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015
- *Regional broadcasting licences for terrestrial broadcasting distribution undertakings to serve various locations in Ontario and Quebec*, Broadcasting Decision CRTC 2015-371, 13 August 2015
- *Regional broadcasting licences for terrestrial broadcasting distribution undertakings to serve various locations in British Columbia*, Broadcasting Decision CRTC 2015-327, 22 July 2015
- *Call for comments on amendments to the Broadcasting Distribution Regulations to implement determinations in the Let's Talk TV proceeding*, Broadcasting Notice of Consultation CRTC 2015-304, 9 July 2015
- *Regional broadcasting licences for terrestrial broadcasting distribution undertakings to serve various locations in British Columbia, the Prairies, Ontario, Quebec and the Atlantic Provinces*, Broadcasting Decision CRTC 2015-269, 22 June 2015
- *Call for comments on proposed amendments to the exemption order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers*, Broadcasting Notice of Consultation CRTC 2015-258, 17 June 2015
- *Let's Talk TV: A World of Choice – 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
- *Let's Talk TV: The way forward – Creating compelling and diverse Canadian programming*, Broadcasting Regulatory Policy CRTC 2015-86, 12 March 2015
- *Measures to address issues relating to simultaneous substitution*, Broadcasting Regulatory Policy CRTC 2015-25, 29 January 2015
- *Amendments to various regulations, the standard conditions of licence for video-on-demand undertakings and certain exemption orders – Provisions requiring the mandatory distribution of emergency alert messages*, Broadcasting Regulatory Policy CRTC 2014-444 and Broadcasting Orders CRTC 2014-445, 2014-446, 2014-447 and 2014-448, 29 August 2014

- *Practices and procedures for staff-assisted mediation, final offer arbitration and expedited hearings*, Broadcasting and Telecom Information Bulletin CRTC 2013-637, 28 November 2013
- *Applications for mandatory distribution on cable and satellite under section 9(1)(h) of the Broadcasting Act*, Broadcasting Regulatory Policy CRTC 2013-372, 8 August 2013
- *Amended exemption order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers – Implementation of the regulatory framework relating to vertical integration and other amendments*, Broadcasting Order CRTC 2012-408, 26 July 2012
- *Amended exemption order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers – provision of community television channels*, Broadcasting Order CRTC 2011-753, 7 December 2011
- *Multipoint distribution systems (MDS) – New licensing regime*, Broadcasting Information Bulletin CRTC 2011-479, 9 August 2011
- *Exemption order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers*, Broadcasting Order CRTC 2009-544, 31 August 2009
- *Streamlining of certain filing requirements for broadcasting distribution undertakings*, Broadcasting Information Bulletin CRTC 2009-384, 26 June 2009
- *Practices and procedures for staff-assisted mediation, final offer arbitration, and expedited hearings*, Broadcasting and Telecom Information Bulletin CRTC 2009-38, 29 January 2009
- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services – Regulatory policy*, Broadcasting Public Notice CRTC 2008-100, 30 October 2008
- *Exemption order respecting cable broadcasting distribution undertakings that serve between 2,000 and 6,000 subscribers; and Amendment to the Broadcasting Distribution Regulations*, Broadcasting Public Notice CRTC 2004-39, 14 June 2004
- *Exemption order respecting cable systems having fewer than 2,000 subscribers*, Public Notice CRTC 2001-121, 7 December 2001

Appendix to Broadcasting Regulatory Policy CRTC 2015-543

Broadcasting Order CRTC 2015-544

Terms and conditions of the exemption order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers

Pursuant to section 9(4) of the *Broadcasting Act* (the Act), the Commission, by this order, exempts from the requirements of Part II of the Act and any regulations made thereunder, those persons carrying on broadcasting distribution undertakings of the class defined by the criteria and operating under the terms and conditions outlined below.

Description

The purpose of these broadcasting distribution undertakings is to provide programming services to fewer than 20,000 subscribers, using co-axial cable, fibre or digital subscriber line technology.

A. Definition of terms

1. For the purpose of this order, the terms “affiliate,” “anglophone market,” “broadcast year,” “Canadian production fund,” “Canadian programming service,” “community access television,” “community channel,” “comparable,” “contribution to local expression,” “Corporation,” “discretionary service,” “educational television programming service,” “English major ownership group,” “exempt discretionary service,” “francophone market,” “independent production fund,” “issuing authority,” “licensed,” “licensed area,” “local television station,” “National Alert Aggregation and Dissemination System,” “new programming service,” “pay television service,” “programming service,” “regional television station,” “radiocommunication distribution undertaking,” “relay distribution undertaking,” “station” and “subscriber” have the same meanings as set out in the *Broadcasting Distribution Regulations*;

“basic service” means the package of programming services at paragraph 6 that is distributed by an undertaking for a single fee;

“gross revenues derived from broadcasting activities” has the same meaning as that set out in *Guidelines respecting financial contributions by the licensees of broadcasting distribution undertakings to the creation and presentation of Canadian programming*, Circular No. 426, 22 December 1997;

“local head end” means (a) in respect of an undertaking other than a radiocommunication distribution undertaking, the specific location at which the undertaking receives the majority of the programming services that are transmitted by local television stations or, if there are no such stations, by regional television stations, and that are distributed by the exempt undertaking in the service area, and (b) in respect of a radiocommunication distribution undertaking, the undertaking’s transmitter site;

“service area” means the area in which an exempt undertaking carries on a broadcasting distribution undertaking; and

an undertaking that “serves more than 2,000 subscribers” means an undertaking whose subscriber base at the time it becomes exempt exceeds 2,000, or an undertaking whose subscriber base at the time it becomes exempt did not exceed 2,000 but has subsequently exceeded 2,200 for at least two consecutive broadcast years as reported pursuant to paragraph 24 below.

B. Conditions applicable to exempt distribution undertakings

General conditions

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 meets all the technical requirements of the Department of Industry (the Department) and has acquired all authorizations or certificates prescribed by the Department.
4. In total, the number of subscribers served by the individual undertaking is fewer than 20,000. Once exempt, the undertaking does not have more than 21,000 subscribers in any two consecutive broadcast years as reported pursuant to paragraph 24 below.

Distribution of the basic service

5. The undertaking does not provide a subscriber with any programming services, other than licensed pay-per-view services, licensed video-on-demand services or the programming services of exempt programming undertakings, other than exempt discretionary services, without also providing the basic service.

Distribution of conventional television stations

6. In regard to the provision of a basic service:
 - a. The undertaking distributes as part of its basic service all services of local television stations, with no degradation of the signal received.
 - b. If the undertaking serves more than 2,000 subscribers, it distributes as part of its basic service all services of regional television stations, other than affiliates or members of the same network of which a local television station distributed pursuant to paragraph 6.a. is also an affiliate or member. These stations are distributed with no degradation of the signal received. If the programming services of two or more regional television stations that are affiliates or members of the same network are received at the local head end or equivalent, the undertaking is required to distribute only one of them.

- c. If not otherwise distributed as a local or regional television station, the undertaking distributes at least one television station owned and operated by the Corporation, in each of the official languages, where the Corporation makes its signals available and pays the costs associated with the transport and reception of its signals to the undertaking's local head end or equivalent.
- d. If the undertaking receives television stations that are identical, the undertaking is required to distribute only one of them under this section.
- e. If the undertaking serves more than 2,000 subscribers, it distributes as part of its basic service, and with no degradation of the signal received, educational television programming services the operation of which is the responsibility of an educational authority designated by the province in which the service area of the undertaking is located.

Majority of Canadian programming services

- 7. A majority of each of the programming services and audio channels received by each subscriber, other than the programming distributed on program repeat channels, are devoted to the distribution of Canadian programming services until 29 February 2016. As of 1 March 2016, a majority of each of the programming services and audio channels offered to each subscriber, other than the programming distributed on program repeat channels, are devoted to the distribution of Canadian programming services. For the purposes of this paragraph, each pay television service and on-demand service is counted as a single service.

Programming services in the language of the minority

- 8. If the undertaking delivers any programming service on a digital basis, it distributes:
 - a. at least one French-language Canadian discretionary service, excluding the services that the undertaking may be required to distribute under paragraph 15 below, for every ten English-language programming services distributed by the undertaking, if the undertaking is operating in an anglophone market; and
 - b. at least one English-language Canadian discretionary service, excluding the services that the undertaking may be required to distribute under paragraph 15 below, for every ten French-language programming services distributed by the undertaking, if the undertaking is operating in a francophone market.

Distribution of adult programming services

- 9. The undertaking does not package an adult programming service in such a way that subscribers are obliged to purchase the service in order to purchase any other programming service. The undertaking takes measures to fully block the reception of both the audio and video portions of any adult programming service to subscribers who request that it not be receivable in their home (in either unscrambled or scrambled mode).

Distribution of single or limited point-of-view religious services

10. The undertaking distributes a single or limited point-of-view religious discretionary service only on a “stand-alone basis” or in a package with other single or limited point-of-view religious services, and all such services are distributed only on a discretionary basis.

Alteration or deletion of a programming service

11. Subject to 12.1 and 12.2, the undertaking does not alter the content or format of a programming service or delete a programming service in the course of its distribution except:

- a. for the purpose of complying with section 328(1) of the *Canada Elections Act*;
- b. for the purpose of deleting a programming service to comply with an order of a court prohibiting the distribution of the service to any part of the service area;
- c. for the purpose of altering a programming service to insert a warning to the public announcing:
 - i. any danger to life or property if the insertion is provided for in an agreement entered into by the undertaking with the operator of the service or the network responsible for the service; or
 - ii. an imminent or unfolding danger to life if there is no agreement with the operator of the service or the network responsible for the service;
- d. for the purpose of preventing the breach of programming or underlying rights of a third party, in accordance with an agreement entered into with the operator of the service or the network responsible for the service;
- e. for the purpose of deleting a subsidiary signal, unless the signal is, itself, a programming service or is related to the service being distributed;
- f. for the purpose of deleting the described video programming of a service distributed on an analog basis; or
- g. for the purpose of inserting a commercial message in a Canadian programming service, excluding a video-on-demand service, if the insertion is in accordance with an agreement between the undertaking and the operator of the service or the network responsible for the service and that pertains to commercial messages that are directed to a target market of consumers.

12.1 An undertaking

- a. that serves more than 2,000 subscribers and that alters the audio content or audio format of a programming service under paragraph 11.g. shall ensure that every commercial message 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.
- b. that serves more than 2,000 subscribers and that distributes an authorized non-Canadian programming service shall ensure that every commercial message 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.

12.2 An undertaking that serves more than 2,000 subscribers and that delivers any programming service on a digital basis shall

- a. implement a public alerting system that alters without delay a programming service being distributed by the undertaking in its service area to insert any alert that it receives – in a form including both text and audio content – from the National Alert Aggregation and Dissemination System, that
 - i. announces an imminent or unfolding danger to life; and
 - ii. is designated by the applicable issuing authority for immediate broadcast or distribution in the undertaking's service area.
- b. insert the alert in all programming services that it is distributing to subscribers whose residence or other premises are located in an area that is targeted by the alert.
- c. take all reasonable measures to ensure that the alerts are in conformity with the specifications and recommended practices set out in the document entitled *National Public Alerting System: Common Look and Feel Guidance*, produced at the request of the Federal/Provincial/Territorial Public Alerting Working Group of Senior Officials Responsible for Emergency Management with the support of Defence Research and Development Canada, Centre for Security Science, Canadian Safety and Security Program, and in consultation with the public-private Common Look and Feel Working Group, as that document is amended from time to time.

Prohibited programming content

13. The undertaking does not distribute a programming service that the undertaking originates and that contains:

- 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 13.b., sexual orientation does not include the orientation towards a sexual act or activity that would constitute an offence under the *Criminal Code*.

For the purpose of 13.c., material is obscene if it has as a dominant characteristic the undue exploitation of sex or the combination of sexual content with one or more of the following subjects, namely, crime, horror, cruelty and violence.

Other services distributed

14. In regard to other services distributed:

- a. No service received over the air or by any other means is distributed over the undertaking, other than a service that the Commission, by regulation or otherwise, has authorized. If the Commission has authorized a service for distribution subject to terms and conditions intended to address the concerns addressed in paragraph 13 above, the undertaking distributes the service subject to those terms and conditions.
- b. The undertaking distributes not more than two sets of U.S. 4+1 signals, with the exception of signals receivable by the undertaking over the air, to its subscribers.
- c. The undertaking is authorized to undertake any activity authorized in the regulatory policy entitled *General authorizations for broadcasting distribution undertakings*, as amended from time to time, under the terms and conditions set out in that regulatory policy.

Distribution of services subject to orders under section 9(1)(h) of the Broadcasting Act

15. If the undertaking serves more than 2,000 subscribers, it distributes all programming services that must be distributed pursuant to mandatory distribution orders under section 9(1)(h) of the *Broadcasting Act*, under the terms and conditions of each mandatory distribution order.

Dispute resolution

16. In regard to the resolution of disputes:

- a. If a dispute concerning the terms and conditions under which programming services are distributed arises between the exempt undertaking and a programming undertaking, whether operating by licence or by exemption order, the undertaking submits to such mediation and/or dispute resolution process or processes as may be required by the Commission and to any decision that may ultimately result therefrom.
- b. If a dispute, within the meaning of paragraph 16.a., arises with respect to a programming undertaking's programming services being distributed in the absence of a commercial agreement and the matter proceeds before the Commission for dispute resolution, the undertaking submits to having the dispute resolved as provided for in Broadcasting and Telecom Information Bulletin CRTC 2013-637, as amended from time to time, and further submits to the rates, terms and conditions established by the Commission as of the date on which the programming was first made available to the relevant undertaking in the absence of a commercial agreement.
- c. If a dispute, within the meaning of paragraph 16.a., arises with respect to a programming undertaking's new programming service that is being distributed in the absence of a commercial agreement and the matter proceeds before the Commission for dispute resolution, the undertaking further submits to the rates, terms and conditions established by the Commission for the duration of the contractual term established by the Commission.
- d. If a dispute concerning the terms and conditions under which programming services are provided to the undertaking arises between the undertaking and a relay distribution undertaking, whether operating by licence or by exemption order, the undertaking submits to such mediation and/or dispute resolution process or processes as may be required by the Commission and to any decision that may ultimately result therefrom.
- e. For greater certainty, nothing in paragraphs 16.a. through 16.d. prevents parties from reaching an agreement with respect to rates, terms or conditions that differ from those established by the Commission.

- f. If the Commission accepts a referral of a matter for dispute resolution, the undertaking submits to produce and file such additional information as may be requested by the Commission or any individual named by the Commission to act as mediator in a given dispute.

Obligation during dispute

17. In regard to obligation during dispute:

- a. During any dispute between the undertaking and a person licensed to carry on a programming undertaking or the operator of an exempt programming undertaking concerning the carriage or terms of carriage of programming services or concerning any right or obligation under the Act, the undertaking shall continue to distribute those programming services subject to the dispute, at the same rates and on the same terms and conditions as it did before the dispute.
- b. For the purposes of paragraph 17.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 when the Commission renders a decision concerning any unresolved matter, whichever is first.
- c. An undertaking that distributes a new programming service with respect to which it has no commercial agreement shall abide by the rates, terms and conditions established by the operator of the concerned programming undertaking until such time as a commercial agreement is reached between the parties or the Commission renders a decision concerning any unresolved matter.

Programming service substitution

18. If the undertaking serves more than 2,000 subscribers, the undertaking deletes the programming service of a television station and substitutes the programming service of a local television station or, with the agreement of the broadcaster operating the local television station, has that broadcaster carry out the deletion and substitution, if

- a. the main studio of the local television station (i) is located within the service area of the undertaking, and (ii) is used to produce locally originated programming;
- b. the programming service to be deleted and the programming service to be substituted are comparable and simultaneously broadcast;
- c. in a case where the broadcaster operating the local television station is not to carry out the deletion and substitution under an agreement with the undertaking, the undertaking has, at least four days before the date on which

the programming service is broadcast, received from the broadcaster operating the local television station a written request for the deletion and substitution; and

- d. if a substitution is requested by more than one broadcaster, the undertaking gives priority, in the following order, to (i) if the studios of the stations are located in the same province as the service area of the undertaking or in the National Capital Region, as described in the schedule to the *National Capital Act*, the programming service of the station whose main studio is closest to the local head end, or equivalent, of the service area; (ii) in any other case, the programming service of the station that has a studio located in the same province as the service area.
19. An undertaking may discontinue a deletion and substitution if the programming services in respect of which the deletion and substitution are made are not, or are no longer, comparable and broadcast simultaneously.

Community channel

20. If the undertaking serves more than 2,000 subscribers, it shall make a contribution to Canadian programming in each broadcast year of an amount not less than 5% of that undertaking's gross revenues derived from broadcasting activities in the year, less any contribution to local expression made by the undertaking in that year. Contributions to Canadian programming shall consist of:
- a. a contribution to the Canadian production fund of at least 80% of the undertaking's total required contribution; and
 - b. to one or more independent production funds, the remainder of its total required contribution.
- 20.1 If an undertaking is required to make a contribution to Canadian programming in a broadcast year under paragraph 20, it may calculate the required contribution on the basis of its gross revenues derived from broadcasting activities in the previous broadcast year.
- 20.2 If as a result of the calculation in paragraph 20.1 the contribution to Canadian programming is greater than the amount required under paragraph 20, the undertaking may deduct the excess from the amount of that contribution that is required for the subsequent broadcast year; however, if it is less than the amount required, the undertaking shall make the balance of the contribution by 31 December of the subsequent broadcast year.
21. The undertaking is authorized to offer a zone-based community channel (where two or more exempt broadcasting distribution undertaking service areas are combined to share local and community access television programming) under the following condition:

Exempt systems that make up a zone must be part of a community of interest. A community of interest would be determined by the following criteria:

A community of interest is one where its members share one or more of the following attributes:

- common social and economic interests;
- common heritage, culture or history;
- the same geographic or politically recognized boundary;
- access to the same local/regional media.

22. If the undertaking serves more than 2,000 subscribers and elects to offer a community channel or a zone-based community channel, the community channel offers programming that meets the following requirements:

- a. the programming offered consists of at least:
 - i. 60% local community television programs that are reflective of the community and produced in the undertaking's service area by the undertaking or by other members of the community served by the undertaking;
 - ii. 30% access programming consisting of programs produced by members of the community served by the undertaking;
- b. alternatively,
 - i. where an undertaking is an affiliate of a licensed terrestrial broadcasting distribution undertaking, and the Commission has prescribed specific conditions of licence governing the offering of a community channel by that licensed undertaking, the undertaking may offer its community channel on the same basis as that approved for the licensed undertaking;
 - ii. where an undertaking is not an affiliate of a licensed terrestrial broadcasting distribution undertaking, it may offer a community channel on the same basis as approved by condition of licence for any licensed undertaking that has a licensed area that includes any part of the same province or territory in which the undertaking operates;
- c. the programming includes not more than two minutes per hour of promotional messages and at least 75% of this promotional time is made available for the promotion of the community channel, non-related Canadian programming undertakings and for unpaid Canadian public service announcements;

- d. reasonable efforts are made to ensure that all the communities included within a zone-based community channel are proportionately represented;
- e. the programming offered adheres to:
 - i. the *Cable television community channel standards*, as amended from time to time; and
 - ii. the Canadian Association of Broadcasters' *CAB Violence Code*, as amended from time to time and approved by the Commission; and
- f. commercial messages or promotional messages on the community channel comply 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.

Information requirements

23. The undertaking or its representative submits the following information to the Commission by 30 November of each year:
- a. the name and contact information of the operator of the undertaking;
 - b. the location of the undertaking and the communities served by the undertaking;
 - c. the total number of basic subscribers served by the undertaking as of 31 August of that year;
 - d. if the undertaking offers community programming exclusively through a video-on-demand service or provides community programming under a "zone-based" approach, and does not operate separate head-end facilities or distribute a distinct local or regional television station, a statement as to its gross revenues derived from broadcasting activities in the past broadcast year and the amount and percentage of those revenues that have been contributed to community programming as described in paragraph 20.a.; and
 - e. whether any programming services are provided on a digital basis.
24. If the undertaking serves more than 2,000 subscribers, the undertaking submits the simplified annual return for exempt broadcasting distribution undertakings by 30 November of each year.
25. For an undertaking operating in a market with one or more licensed broadcasting distribution undertakings, that undertaking or its representative submits the following

information to the Commission by completing the [registration form](#), no later than three months prior to commencing operations in a new service area:

- a. contact information;
- b. type of undertaking;
- c. main undertaking location and secondary locations;
- d. basic technical information to ascertain how the service is delivered;
- e. the geographical coordinates of the head end;
- f. whether a community channel will be offered;
- g. a website address where the distribution grid (i.e., channel lineup) for the service area is listed;
- h. a launch date; and
- i. confirmation that the undertaking will operate under the terms and conditions of this order.

26. The undertaking submits any information requested by the Commission in order to ascertain the undertaking's compliance with the terms of this order.