



Broadcasting Decision CRTC 2006-610

Ottawa, 26 October 2006

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 Across Canada

Application 2006-0718-7

Broadcasting Public Notice CRTC 2006-80

28 June 2006

Licence amendment to replace the condition of licence relating to the use of local availabilities in non-Canadian satellite services

*In this decision, the Commission **approves** an application by Bell ExpressVu Limited Partnership to amend the broadcasting licence for its national direct-to-home satellite distribution undertaking in order to replace the existing condition of licence relating to the use of local availabilities.*

The application

1. The Commission received an 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 (Bell ExpressVu), to amend the broadcasting licence for the national direct-to-home (DTH) satellite distribution undertaking in order to replace the existing condition of licence relating to the use of local availabilities, which reads:

The licensee may, at its option, insert certain promotional material as a substitute for the “local availabilities” (i.e., non-Canadian advertising material) of non-Canadian satellite services. At least 75% of these local availabilities must be made available for use by licensed Canadian programming services for the promotion of their respective services, for the promotion of the community channel and for unpaid Canadian public service announcements. A maximum of 25% of the commercial availabilities may be made available for the promotion of discretionary programming services and packages, customer service information, and channel realignments.

with the following condition of licence:

The licensee may, at its option, insert certain promotional material as a substitute for the “local availabilities” (i.e., non-Canadian advertising material) of non-Canadian satellite services. At least 75% of these local availabilities must be made available for use by licensed Canadian programming services for the promotion of their respective services, for the promotion of the community channel and for unpaid Canadian public service announcements. A maximum of 25% of the **local** availabilities may be made available for the promotion of discretionary programming services and packages, customer service information, channel realignments **and non-programming services, including Internet and telephone services.** [emphasis added]

2. Bell ExpressVu submitted that this proposal is consistent with the Commission’s new policy for the use of local availabilities as set out in *Promotion of non-programming services using local availabilities*, Broadcasting Public Notice CRTC 2006-69, 2 June 2006 (Public Notice 2006-69). Bell ExpressVu noted that the Commission’s approval would provide parity with the incumbent Class 1 cable broadcasting distribution undertakings (BDUs). It also noted that the use of local availabilities by Bell ExpressVu to promote cross-platform packages including both programming and non-programming services could lead to higher penetration of licensed broadcasting services, which is consistent with the objectives of the *Broadcasting Act*.

Intervention

3. The Commission received an intervention in opposition to this application by the Canadian Cable Systems Alliance Inc. (CCSA).
4. The CCSA stated that while it supported the right of all BDUs to use the local availabilities on U.S. Specialty services to promote the full range of their services to their own customers, it had concerns with this particular application since Bell ExpressVu also holds a satellite relay distribution undertaking (SRDU) licence.
5. The CCSA noted that, since Bell ExpressVu provides the same feeds to the cable affiliates served under its SRDU licence as it provides to its DTH subscribers, the advertising contained in the local availabilities from its DTH services is also included in the SRDU signals transported to cable head-ends. SRDU services have, however, never been authorized to insert advertising in the signals they provide to cable BDUs.
6. The CCSA argued further that larger cable BDUs that use SRDU services can insert their own advertising over that in the SRDU signals, but that smaller cable BDUs cannot afford advertising insertion equipment for all of the U.S. Specialty services they carry. Consequently, the CCSA was of the view that it is unfair that smaller cable BDUs be forced to pay for SRDU signals that promote the services of their DTH competitors. The CCSA submitted that Bell ExpressVu should either a) be required to offer separate feeds

of non-Canadian programming services containing local availabilities to SRDU customers, or b) be prohibited from using the local availabilities on the U.S. Specialty services to promote affiliated services that compete directly with those of the cable BDUs that purchase services from the SRDU.

Bell ExpressVu's reply

7. In reply to the CCSA, Bell ExpressVu noted that the CCSA's intervention focused on issues related to its SRDU licence, while the current application relates to its DTH licence. Consequently, Bell ExpressVu submitted that it would be inappropriate for the Commission to place conditions of licence on an SRDU within the context of the present application.
8. Bell ExpressVu also stated that the economics of the CCSA proposal make it impractical. On the one hand, if Bell ExpressVu was required to offer separate feeds of U.S. Specialty services that are free of advertising, these feeds would occupy the equivalent of an entire satellite transponder or more, which would be prohibitively expensive to operate. On the other hand, Bell ExpressVu's DTH undertaking might have to drop discretionary revenue-producing services in order to make room for duplicate signals.
9. In addition, Bell ExpressVu argued that very few CCSA members use its SRDU services, and that the services Bell ExpressVu would promote using local availabilities are, in many cases, not competitive with those offered by CCSA members. Bell ExpressVu also noted that CCSA members have alternate means of receiving these services: many receive the U.S. Specialty services directly from a U.S. satellite in the same way that Bell ExpressVu receives them, with only a modest capital outlay required.
10. Finally, Bell ExpressVu noted that its application would affect only 25% of the local availabilities, and that only a portion of these would be used to promote non-programming services. Furthermore, Bell ExpressVu stated that some of the non-programming services that it would promote are not even available in the licensed service areas of the CCSA members.

Commission's analysis and determinations

11. The use of local availabilities, as proposed by Bell ExpressVu, was addressed in detail in Public Notice 2006-69. In that notice, the Commission set out its conclusion that it is appropriate to update its policy with respect to the use of local availabilities to permit BDUs to use these availabilities to promote non-programming services, subject to certain conditions.
12. With respect to the issues raised by the CCSA, the Commission notes Bell ExpressVu's arguments in reply that: (a) CCSA members have alternate means of receiving these services, with many of them receiving the signals directly from a U.S. satellite; (b) very few CCSA members obtain these signals from Bell ExpressVu; (c) the application relates to only 25% of the local availabilities, with only a part of that 25% used to promote non-programming services; and (d) the services Bell ExpressVu would promote using local

availabilities are, in many cases, not available in the licensed territories of CCSA members and would therefore not be competitive with services offered by CCSA members.

13. In light of the above, the Commission concludes that approval of the application would not have a significant impact on CCSA members. The Commission is therefore not persuaded that denial of the application is warranted, or that the circumstances are such that it should impose a requirement that separate feeds of U.S. Specialty services be provided. Accordingly, and consistent with the policy established in Public Notice 2006-69, 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, and amends the broadcasting licence for the national direct-to-home satellite distribution undertaking, by replacing the existing condition of licence relating to the use of local availabilities with the following **condition of licence**:

The licensee may, at its option, insert certain promotional material as a substitute for the “local availabilities” (i.e., non-Canadian advertising material) of non-Canadian satellite services. At least 75% of these local availabilities must be made available for use by licensed Canadian programming services for the promotion of their respective services, for the promotion of the community channel and for unpaid Canadian public service announcements. A maximum of 25% of the local availabilities may be used to provide subscribers with information regarding customer service and channel realignments, and for the promotion of discretionary programming services and packages and non-programming services, including Internet and telephone services.

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>