

13 May 2005

Ms. Diane Rhéaume
Secretary-General
Canadian Radio-Television &
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Re: Broadcasting Public Notice CRTC 2005-29- Item 1, Application by Bell ExpressVu (Application No. 2004-1571-2) for a condition of licence to authorize distribution of unique local programming on partial or omnibus channels.

Dear Ms. Rhéaume:

Introduction

1. The Canadian Broadcasting Corporation/Radio-Canada (“CBC/Radio-Canada”) is pleased to provide the following comments in response to the application by Bell ExpressVu Limited Partnership (“ExpressVu”) for a condition of license authorizing it to distribute the unique local programming of conventional Canadian television stations via partial or omnibus channels.

Partial and omnibus channels are not a long-term solution for Canadians to receive television signals

2. As previously acknowledged by the Commission in *Introductory statement to Broadcasting Decisions CRTC 2004-129 and 2004-130, which renew the licences of the ExpressVu and Star Choice direct-to-home satellite distribution undertakings, Broadcasting Public Notice CRTC 2004-19, 31 March 2004* (“Public Notice 2004-19”), CBC/Radio-Canada does not consider omnibus or partial channels as suitable alternatives to the provision of its regional stations. CBC/Radio-Canada remains of the view that DTH licensees should be required to distribute all regional CBC/Radio-Canada stations, in both French and English, so that all Canadians can receive their local CBC/Radio-Canada services.

3. One of the underpinnings of the Commission's 2004 DTH licence renewal decisions was the Commission's acceptance of the arguments put forth by the DTH industry respecting current capacity constraints. CBC/Radio-Canada recognizes ExpressVu's current capacity constraints and that as a result, the Commission may be inclined to approve ExpressVu's application. Approval would permit ExpressVu to distribute additional local programming and at the same time, conserve satellite capacity for other Canadian programming services, including high definition television programming. This approach must however, be considered a temporary measure only, intended to address current capacity limitations and should not be seen as a permanent replacement for full-channel carriage.

CBC/Radio-Canada's concerns with ExpressVu's proposal

4. ExpressVu already distributes programming from a compilation of broadcasters, including CBC/Radio-Canada, on channel 197 and CJOH-TV local news on a partial basis, on channel 196. As set out in Public Notice 2004-19, DTH licensees require Commission approval before they may distribute partial or omnibus channels. ExpressVu's stated objective in applying for blanket authorization is that it "would be a streamlined regulatory process that enables ExpressVu to be more responsive to the marketplace by speeding delivery of local programming to its customers".
5. CBC/Radio-Canada would like to raise the following two concerns with ExpressVu's proposal:
 - The Commission must insist that ExpressVu meet its regulatory obligations before granting the licensee any additional flexibility. Specifically, ExpressVu should be required to carry all CBC/Radio-Canada's conventional television stations that must be distributed, as required by condition of licence.
 - CBC/Radio-Canada wishes to draw the CRTC's attention to the possibility that the blanket authorization as proposed by ExpressVu is ambiguous with respect to CBC/Radio Canada's conventional television stations that are currently being distributed by the licensee. If approved, the condition of licence should be clarified to permit ExpressVu to distribute via partial or omnibus channels, *additional* unique local programming of stations whose signals are not already distributed in their entirety. This approach would be consistent with the applicant's position that its proposal will not diminish existing carriage arrangements.
6. These concerns are addressed below in greater detail.

ExpressVu must meet its existing regulatory distribution obligations before consideration of its current request

7. In Public Notice 2004-19 the Commission set out its general policy with respect to the distribution of CBC/Radio-Canada's owned and operated stations by DTH licensees. These are reflected in the conditions of licence imposed on ExpressVu in *ExpressVu - Licence Renewal*, Broadcasting Decision CRTC 2004-129 (Decision 2004-129).
8. By condition of licence, ExpressVu is required to distribute the signals of at least as many CBC/Radio-Canada owned and operated English-language conventional television stations as it does the signals of any of the private ownership groups that operate English-language conventional television stations¹. Similarly, ExpressVu is required to distribute the signals of at least as many CBC/Radio-Canada owned and operated French-language conventional television stations as it does the signals of any of the private ownership groups that operate French-language conventional television stations².
9. CBC/Radio-Canada submits that all conventional television stations that are distributed from each broadcast group should be included in determining compliance with this condition of licence. For example, ExpressVu currently distributes 10 conventional owned and operated CanWest Global television stations³. As a result, the Commission should ensure that ExpressVu is in compliance with its regulatory requirement to carry no less than 10 CBC/Radio-Canada owned and operated English-language conventional television stations before it considers ExpressVu's current application.

The condition of licence should be revised to accurately reflect the applicant's intentions

10. In Public Notice 2005-29, the Commission characterized ExpressVu's proposal as an application for authority to distribute on partial or omnibus channels "*the unique local programming of Canadian television stations **that it does not already distribute in their entirety.**" (emphasis added)*

¹ Broadcasting Decision CRTC 2004-129, condition of licence 4.

² Broadcasting Decision CRTC 2004-129, condition of licence 5.

³ The CanWest Global owned and operated television stations distributed by ExpressVu are: CIHF, CJNT, CIII, CHCH, CKND, CFSK, CICT, CITV, CHAN and CHEK.

11. This description would appear to be inconsistent with the wording proposed by ExpressVu for a condition of licence authorizing it to distribute partial or omnibus channels:

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

12. The Commission's description of ExpressVu's intent, however, is wholly consistent with ExpressVu's response to a CRTC deficiency question:

*In addition to its current full-time carriage of conventional stations, it is ExpressVu's intention to distribute, with the prior written consent of the broadcasters in question, as many **additional conventional stations** on a part-time basis as can reasonably be accommodated given capacity constraints. Should choices need to be made between multiple stations seeking such carriage, the Company will be guided by geographical and ownership group diversity in order to respect equitable distribution as called for by the Commission in Broadcasting Decision CRTC 2004-129 (see Appendix B in the Decision). (emphasis added)*

13. In order to accurately reflect ExpressVu's intentions and the Commission's preamble in Public Notice 2005-29, CBC/Radio-Canada submits that in the event ExpressVu's application is approved in whole or in part, the condition of licence should be clarified to permit ExpressVu to distribute *additional* unique local programming via partial or omnibus channels of stations that are not already distributed in their entirety. In addition, the condition of licence should reflect ExpressVu's undertaking not to remove conventional television stations that it is currently distributing.

ExpressVu must maintain the integrity of the broadcaster's signal

14. In the event the Commission approves ExpressVu's application to distribute partial or omnibus channels, ExpressVu should be required to ensure adequate signal quality on those channels. The signals of the partial or omnibus channels distributed by ExpressVu should be, at minimum, of the same technical quality as the off-air signals of the originating stations. Furthermore, when the signal is in high definition, the bit rate of the signal distributed by ExpressVu should be the same as the bit rate of the signal sent by the conventional television station, without degradation.

15. Any authorization must also include the requirement that the broadcaster's signal be distributed in its entirety by the DTH licensee, without any alteration or deletion in accordance with section 7 of the *Broadcasting Distribution Regulations*. The signal of the local program sent by the television station includes advertising and promotional material, as well as any additional signals inserted in the basic signal for the purpose of closed captioning, videodescription, audience measurement devices, etc. These features must be present in all programming distributed on any partial or omnibus channel.

16. CBC/Radio-Canada appreciates this opportunity to provide its comments to the Commission in response to the above-referenced proceeding.

Yours truly,



Bev Kirshenblatt

Senior Director, Regulatory Affairs

cc: Bell ExpressVu, Chris Frank: chris.frank@bell.ca

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