



Broadcasting Decision CRTC 2004-129

Ottawa, 31 March 2004

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 2001-1314-2
Public Hearing in the National Capital Region
20 October 2003

ExpressVu – Licence renewal

*In this decision, the Commission **renews** the broadcasting licence for the national direct-to-home satellite distribution undertaking operated by the partners of the Bell ExpressVu Limited Partnership, from 1 April 2004 to 31 August 2010.*

The application

1. At the 20 October 2003 public hearing in the National Capital Region, the Commission considered an application by Bell ExpressVu Inc., (the general partner), and BCE Inc. and 4119649 Canada Inc. (the partners in BCE Holdings G.P., a general partnership that is the limited partner), carrying on business as Bell ExpressVu Limited Partnership (ExpressVu), and an application by Star Choice Television Network Incorporated (Star Choice) for the renewal of the broadcasting licences for their respective national direct-to-home (DTH) satellite distribution undertakings (the DTH undertakings).
2. The Commission's general analysis and findings with respect to the issues that are common to both these applications are set out in *Introductory statement to Broadcasting Decisions CRTC 2004-129 and 2004-130, which renew the licences of the ExpressVu and Star Choice direct-to-home satellite distribution undertakings*, Broadcasting Public Notice CRTC 2004-19, 31 March 2004 (Public Notice 2004-19). The present decision addresses the particulars of ExpressVu's application. Appendix I to this decision contains the conditions of licence resulting from the Commission's findings set out in Public Notice 2004-19, as well as those resulting from the Commission's findings set out in this decision.

Interventions

3. The Commission received three interventions in support of ExpressVu's application and two interventions in opposition. As well, a number of interveners commented on various aspects of the application. The concerns of opposing interveners and those who commented on various aspects of the application are discussed in Public Notice 2004-19 and in the following sections of this decision.

Distribution of audio services

4. In its application, ExpressVu made two requests relating to the distribution of audio services. First, it noted that section 39(a) of the *Broadcasting Distribution Regulations* (the Regulations) provides that a DTH licensee may distribute the programming service of any licensed programming undertaking, other than a television pay-per-view service. ExpressVu noted, however, that section 39 of the Regulations appears under the heading "Television Programming Services that May be Distributed." ExpressVu therefore asked the Commission to clarify whether section 39(a) of the Regulations permits DTH undertakings to distribute the programming of licensed audio programming services.
5. ExpressVu also noted that, while section 23 of the Regulations grants Class 1 and Class 2 cable licensees authority to distribute specific types of audio programming services, there was no similar clause in Part 4 of the Regulations, which sets out the requirements for DTH undertakings. Accordingly, ExpressVu requested that it be granted a condition of licence with respect to the carriage of audio programming services similar to the provisions of section 23(1) of the Regulations, which permits Class 1 and Class 2 broadcasting distribution undertakings (BDUs) to distribute:
 - any audio Canadian programming service;
 - any audio non-Canadian programming service that is received at the local head end, unless the service solicits advertising in Canada, or consists of programming that has predominantly religious content;
 - any international radio service operated or funded by a national government or its agent; and
 - any audio programming service authorized under a condition of licence.
6. No intervener commented on this proposal.
7. The Commission notes that sections 19 and 23 of the Regulations, which, respectively, set out the television programming services and the audio programming services that may be distributed by Class 1 and Class 2 cable licensees, are structured in a way that is different from section 39 of the Regulations, which sets out the services that DTH licensees may distribute. While sections 19 and 23 make specific reference to the types of services that may be distributed, section 39(a) provides a general authorization that permits DTH licensees to provide the programming service of any licensed programming undertaking, other than a television pay-per-view service. The Commission further notes that in *A regional approach to licensing cable distribution undertakings – Adoption of*

related amendments to the Broadcasting Distribution Regulations, Broadcasting Public Notice CRTC 2003-48, 17 September 2003, the Commission announced that the heading before section 39 of the Regulations had been amended to read “Programming Services That May Be Distributed.” The Commission therefore considers that it would be redundant to establish a condition of licence similar to section 23 of the Regulations insofar as it addresses the distribution of licensed Canadian audio programming services by ExpressVu.

8. With respect to the distribution of non-Canadian audio programming services, the Commission notes that its current process related to non-Canadian services that are not already authorized for distribution requires that a BDU apply for authorization to carry the services either by condition of licence or by adding the services to the Commission’s lists of eligible satellite services. In the case of Star Choice, the Commission has authorized the distribution of specific non-Canadian audio programming services by condition of licence. The Commission considers that this continues to be the most appropriate way to authorize the distribution of non-Canadian audio services by DTH undertakings.

Bundling of broadcasting and telecommunications services

9. Cogeco Inc. (Cogeco), supported by Rogers Cable Inc. and Quebecor Media Inc. (Quebecor), argued that the Commission should impose restrictions on promotions under which ExpressVu includes its broadcasting services in combinations, or bundles, with telecommunications services provided by BCE Inc. and affiliated companies for a single, discounted price. Cogeco was of the view that BCE Inc. operates as a monopoly provider of local telephone services and that combining telecommunications services with ExpressVu’s broadcasting services creates a bundle that other BDUs are unable to match. Cogeco alleged that the primary motive of the aggressive pricing for these bundles is to inhibit the cable industry from providing Internet Protocol (IP) telephony service.
10. ExpressVu was of the view that a proceeding to renew a broadcasting licence was not the appropriate forum to consider issues associated with the bundling of broadcasting and telecommunications services. It further argued that the promotions referred to by Cogeco complied with the Commission’s decisions with respect to the bundling of services. ExpressVu further noted that cable BDUs offer bundles of broadcasting and telecommunications services that include cable, Internet, mobile telephone and, in some cases, local telephone services.
11. The Commission notes that rules related to bundling have been established under the *Telecommunications Act* and considers that concerns related to bundling should be addressed in an application under that Act.

Contribution to the small market production fund

12. Section 44 of the Regulations requires a DTH licensee to contribute not less than 5 percent of its annual gross revenues derived from broadcasting activities to Canadian programming, of which at least 80 percent must be contributed to the Canadian Television Fund and the balance, pursuant to section 44(1)(b), to other independent Canadian independent production funds. In *Licence amendment for ExpressVu – relief from requirements for simultaneous and non-simultaneous program deletion*, Broadcasting Decision CRTC 2003-257, 16 July 2003 (Decision 2003-257), the Commission set out, as one of the conditions of licence under which ExpressVu would obtain relief from the requirement to carry out program deletion, the obligation to contribute 0.4 percent of annual gross revenues derived from broadcasting activities to a new independent production fund to assist independently-owned television stations that operate in small markets (the small market fund).
13. The Commission received an intervention from the Bell Broadcast and New Media Fund (the Bell Fund) noting that it had previously been the recipient of 1 percent of ExpressVu's annual gross revenues derived from broadcasting activities, but as the result of the requirement to pay 0.4 percent to the small market fund, ExpressVu had elected to reduce its payments to the Bell Fund to 0.6 percent of its gross revenues from broadcasting activities.
14. The Bell Fund submitted that it is the only fund in Canada that supports new media and multimedia productions, and that its ability to support such projects would be diminished as a result of the reductions in funding from ExpressVu. The Bell Fund asked if the funding formula set out in Decision 2003-257 could be altered so that it could continue to receive the stable funding that it had enjoyed in the past.
15. The Commission considers it important that funding not be diverted from the Canadian Television Fund or the small market fund. The Commission also notes that the requirement to devote 5 percent of annual gross revenues derived from broadcasting activities to Canadian programming is a minimum requirement, and that ExpressVu may continue to support the Bell Fund at the level that was in effect previous to the issuance of Decision 2003-257, if it so chooses.

Distribution of a second set of U.S. 4+1 signals

16. In Decision CRTC 98-501, 23 November 1998, the Commission authorized ExpressVu to distribute a second set of U.S. 4+1 signals¹ as part of a discretionary package of signals. Decision 2003-257 included a provision that limits ExpressVu to offering no more than two sets of U.S. 4+1 signals to any customer.

¹ U.S. 4+1 signals are the signals of television stations of the American commercial television networks CBS, NBC, ABC and FOX, and the non-commercial PBS network.

17. ExpressVu requested that its authority to distribute a second set of U.S. 4+1 signals be clarified in a condition of licence that would read as follows:

Notwithstanding the provisions of sections 39 and 40 of the Regulations, ExpressVu is authorized, by condition of licence, to distribute a package consisting of a set of non-Canadian television stations that are affiliated with a different network, with or without a second set of non-Canadian stations that are each affiliated with the same set of different networks.

18. The Commission finds the authorization requested by ExpressVu to be vague and overly broad. Accordingly, the Commission has set out, in Appendix I, a **condition of licence** authorizing ExpressVu to offer two sets of U.S. 4+1 signals, one from Boston and another from Seattle. The Commission is also appending to Appendix I of this decision the schedule that was attached to Decision 2003-257, which limits ExpressVu to offering a maximum of two sets of U.S. 4+1 signals to any subscriber.

Interactive television

19. Pelmorex Communications Inc. (Pelmorex) is the licensee of the national English- and French-language specialty service known as The Weather Network/MétéoMédia. Pelmorex submitted an intervention expressing concern that ExpressVu is not providing it with the means to provide an interactive capability that would permit subscribers to access the local weather information as provided by The Weather Network/MétéoMédia. At the same time, Pelmorex alleged that ExpressVu is operating its own local weather information service that provides a service similar to that offered by The Weather Network/MétéoMédia and distributed by other BDUs. Pelmorex further noted that ExpressVu offers an interactive service called TSN Extra which is provided by The Sports Network Inc., a company that is affiliated to ExpressVu. In light of the above, Pelmorex requested that the Commission take steps to ensure that ExpressVu provides The Weather Network/MétéoMédia with fair and equitable access to interactive capabilities that are comparable to those that ExpressVu provides to its own interactive services and to the services of companies affiliated to it.
20. Pelmorex further noted that, in *Fact finding inquiry on interactivity*, Public Notice CRTC 2001-113, 2 November 2001, and in *Call for comments on program-related Interactive television (ITV) services*, Broadcasting Public Notice CRTC 2002-63, 22 October 2002, the Commission has initiated a proceeding to deal with interactive television services (the ITV proceeding). Pelmorex requested that the Commission prohibit ExpressVu from providing the ExpressVu interactive weather service to any additional subscribers until the Commission has issued determinations setting out how the DTH licensees are to provide the programming services that they distribute with an interactive capability.
21. In response to Pelmorex's concerns, ExpressVu argued that it had not refused to carry the interactive information of The Weather Network/MétéoMédia, but had been unsuccessful in negotiating reasonable commercial terms for the distribution of this information. ExpressVu indicated that such negotiations had been concluded successfully

with other unaffiliated producers of interactive television. ExpressVu acknowledged that it offers its own weather service, and submitted that this service fills a gap for its subscribers with respect to the provision of local weather information.

22. The Commission notes that, on 30 May 2003, Pelmorex submitted a complaint to the Commission (the Pelmorex complaint) alleging that ExpressVu had granted itself an undue preference and had subjected The Weather Network/MétéoMédia to an undue disadvantage by refusing to provide The Weather Network/MétéoMédia with an interactive capability comparable to the interactive capability that ExpressVu provides to its own unlicensed weather service. The Commission has informed Pelmorex and ExpressVu that it will consider the Pelmorex complaint once the ITV proceeding is concluded.
23. The Commission considers that Pelmorex's concerns with respect to the distribution of the interactive content of The Weather Network/MétéoMédia are most appropriately addressed in the context of the Pelmorex complaint following the issuance of its determinations in the ITV proceeding. However, the Commission considers that it would be inappropriate for ExpressVu to expand its weather service until the Commission has had an opportunity to deal with these matters. The Commission therefore expects ExpressVu not to add additional subscribers to its own weather service until the results of the ITV proceeding are announced and the dispute with Pelmorex is resolved. ExpressVu is requested to provide the Commission, by 16 April 2004, with the number of subscribers to its weather service as of the date of this decision.

Length of the licence term

24. ExpressVu requested that its licence be renewed for a full term.
25. Telesat Canada (Telesat) supported ExpressVu's request for a full-term licence renewal. In Telesat's view, ExpressVu needs the longest licence term possible to provide the licensee with an "environment of certainty" that would enable it to invest in satellite capacity.
26. Cogeco and Quebecor recommended that ExpressVu be granted a short-term renewal to ensure that it meets the terms of certain conditions of licence that the interveners had proposed relating to signal theft.
27. The Commission notes that ExpressVu has met or exceeded its regulatory requirements over the licence term. Further, as indicated in Public Notice 2004-19, the Commission has decided not to impose conditions of licence relating to signal theft on the DTH licensees, considering, among other things, that this issue is best addressed on an industry-wide basis.

28. In light of the above, the Commission **renews** the broadcasting licence held by Bell ExpressVu Inc., (the general partner), and BCE Inc. and 4119649 Canada Inc. (partners in BCE Holdings G.P., a general partnership that is the limited partner), carrying on business as Bell ExpressVu Limited Partnership, for its national direct-to-home satellite distribution undertaking, from 1 April 2004 to 31 August 2010.² The licence will be subject to the **conditions** specified therein and to the **conditions** set out in Appendix I to this decision. The Commission notes that provisions of certain conditions of ExpressVu's previous licence have been incorporated into the Regulations. These provisions have therefore not been included in the conditions set out in Appendix I.

Service to multiple unit dwellings

29. In *ExpressVu Inc.*, Decision CRTC 2000-395, 26 September 2000, the Commission authorized ExpressVu to distribute its service to subscribers in multiple unit dwellings (MUDs) using a variety of technologies, including terrestrial distribution techniques (land lines) that may cross property lines, public streets or highways. This authorization enables the licensee to locate reception equipment on one site, and to connect subscribers in MUDs on other sites. ExpressVu will retain this authorization during the next licence term.
30. In addition, ExpressVu has requested authority to engage in bulk billing in MUDs. The Commission notes that Star Choice was granted such authority in *Star Choice Television Network Incorporated – Licence amendment*, Broadcasting Decision CRTC 2003-124, 25 April 2003. The Commission considers that it is appropriate to grant the same flexibility to ExpressVu. The Commission therefore **approves** ExpressVu's request to amend its licence in order to permit it to engage in bulk billing in MUDs.

Employment equity

31. Because this licensee is subject to the *Employment Equity Act* and files reports with Human Resources Development Canada, its employment equity practices are not examined by the Commission.

Secretary General

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

² The Commission renewed ExpressVu's licence administratively in *One-year administrative renewal*, Broadcasting Decision CRTC 2002-162, 2 July 2002, *Administrative renewal*, Broadcasting Decision CRTC 2003-159, 20 May 2003, and *Administrative renewal*, Broadcasting Decision CRTC 2004-85, 18 February 2004.

Appendix I to Broadcasting Decision CRTC 2004-129

Conditions of licence

1. Unless otherwise authorized by the Commission, in addition to those services identified in section 39 of the *Broadcasting Distribution Regulations* (the Regulations), the licensee is authorized to distribute:
 - (a) the Electronic Program Guide, one English- and one French-language marketing channel for its own service and one English- and one French-language marketing service for its pay-per-view service.
 - (b) the following non-Canadian programming services:

WHDH-TV Boston, Massachusetts/ KING-TV Seattle, Washington (NBC)
WGBH-TV Boston / KCTS-TV Seattle (PBS)
WBZ-TV Boston / KIRO-TV Seattle (CBS)
WCVB-TV Boston / KOMO-TV Seattle (ABC)
WFXT Boston / KCPQ Tacoma/Seattle (FOX)
2. The application of sections 42(1)(b) and 43(1) of the Regulations is suspended until 12 August 2006, so long as the licensee:
 - (a) fulfils all of the measures set out in the Schedule that is appended to these conditions of licence.
 - (b) contributes the amount set out below to a new, independently administered fund to assist small market, independently owned broadcasters in meeting their commitments to local programming as set out in *Contributions to Canadian Programming by Broadcasting Distribution Undertakings*, Broadcasting Public Notice CRTC 2003-38, 16 July 2003, when such a fund is established and, before such time, places the required contribution in trust in an interest-bearing account, to be conveyed with interest to such fund when it is established:
 - i) in the broadcast years ending 31 August 2004 and 31 August 2005, an amount not less than 0.4% of its gross revenues derived from broadcasting activities in each year; and
 - (ii) in the period ending 12 August 2006, an amount not less than 0.4% of its gross revenues derived from broadcasting activities in the period beginning 1 September 2005 and ending 12 August 2006.

3. 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 percent 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 percent of the commercial availabilities may be made available for the promotion of discretionary programming services and packages, customer service information and channel realignments.
4. Effective 1 September 2004, the licensee shall distribute a minimum of five (5) Canadian Broadcasting Corporation (CBC) English-language conventional television stations, owned and operated by the CBC, including at least one from each time zone. Further, the licensee shall not, at any time, distribute a number of English-language conventional television stations owned and operated by the CBC that is less than the number of English-language conventional television stations owned or operated by any other individual broadcasting group, including the groups listed in Appendix B to the schedule attached to these conditions, that are distributed by the undertaking.
5. Effective 1 September 2004, the licensee shall distribute a minimum of five (5) French-language Société Radio Canada conventional television stations, owned and operated by the CBC, including at least one from each time zone. Further, the licensee shall not, at any time, distribute a number of French-language conventional television stations owned and operated by the CBC that is less than the number of French-language conventional television stations owned or operated by any other individual broadcasting group, including the groups listed in Appendix B to the schedule attached to these conditions, that are distributed by the undertaking.

Schedule to Appendix I of Broadcasting Decision CRTC 2004-129

Definitions

“Broadcast year” means the period beginning on September 1 in a calendar year and ending on August 31 of the following calendar year.

“CAB” means the Canadian Association of Broadcasters.

“CBC” means the Canadian Broadcasting Corporation.

“Larger broadcast groups” means those television groups listed in Appendix B to this Schedule.

“Second set of U.S. commercial network television signals” means the signals of each of the CBS, NBC, ABC and Fox networks originating from a U.S. city in a different time zone than that of the first set of U.S. commercial network signals.

“Small market, independently owned television stations” means those television stations listed in Appendix A to this Schedule.

“SRC” means La Société Radio-Canada.

“Subscriber” means a subscriber of the licensee.

Distribution of small market, independently owned television stations

1. (a) Subject to sections 5 and 7, the licensee shall distribute the programming services of two (2) television stations for each of the ownership groups listed in Appendix A, except that, in the case of an ownership group for which Appendix A lists a single television station, the licensee shall distribute the programming of that station. Each station required to be distributed pursuant to this section shall be distributed to those subscribers who reside within the Grade B contour of that television station.

- (b) The licensee shall not distribute to subscribers who reside within the Grade B contours of the television stations referred to in (a) above, the programming services of licensed Canadian television stations that are located within the same time zone and are affiliated with the same network as those stations whose programming services are distributed pursuant to (a). This prohibition shall not apply with respect to the programming services of television stations owned and operated by the CBC, SRC or CTV during periods in which the programming of those stations is not comparable to the programming transmitted simultaneously by a local small market, independently owned station affiliated with the CBC, SRC or CTV.

Distribution of television stations owned by larger broadcast groups

- 2. Subject to section 5, the licensee shall provide equitable distribution for the television stations of the broadcast groups listed in Appendix B (the larger broadcast groups).

Input from broadcast ownership groups

- 3. The licensee shall give reasonable commercial consideration to input from affected broadcast ownership groups respecting the programming services to be distributed pursuant to sections 1 and 2.

Distribution of a second set of U.S. commercial network television signals

- 4. a) The licensee shall not distribute to any subscriber more than two sets of U.S. commercial network television signals.
- b) The licensee shall provide notification to the CAB 90 days prior to any change in the location of the source of any U.S. commercial network television signals it distributes.

Satellite capacity and transmission

- 5. The licensee shall utilize up to a maximum of two (2) additional transponders in order to meet the distribution requirements set out in sections 1 and 2. The licensee shall be responsible for all transmission costs including backhaul costs associated with the distribution of television signals referred to in sections 1 and 2. Where the licensee is able to meet all distribution requirements set out in sections 1 and 2, and where there remains excess bandwidth within the limits of the two (2) additional transponders, the licensee shall use such additional capacity solely for the carriage of Canadian local or regional television stations.

Compensation for the carriage of a second set of U.S. network television signals

6. a) The licensee shall pay to the CAB \$0.25 per month for each subscriber who purchases a second set of U.S. network television signals.
- b) The licensee shall provide to a third party independent auditor who has been chosen by the CAB in consultation with the licensee, and who has undertaken, in an agreement approved by the licensee prior to execution, to keep all information received pursuant to this section strictly confidential, on a semi-annual basis during the broadcast year starting 1 September 2002 and ending 31 August of the following year and of all subsequent broadcast years, all necessary relevant information as to the number of subscribers receiving a second set of U.S. network television signals in order to verify and facilitate the payment by the licensee to the CAB of the monies due pursuant to this section.

Change of control of small market, independently owned television stations

7. The distribution requirements set out in section 1 shall continue to apply independent of changes in the ownership of voting equity by the ownership groups listed in Appendix A, except where a change in voting equity results in a change in control of voting equity in accordance with Commission regulations, and also involves a change in the network affiliation and/or a material change in the programming of any subject station. In the case of a change in control that also involves a change in network affiliation and/or a material change in programming with respect to a station listed in Appendix A, the licensee's distribution requirements pursuant to section 1 shall cease with respect to that station upon notification of such a change from the CAB or an authorized representative of that station. Furthermore, any change in control of voting equity of any station listed in Appendix A shall not trigger any additional distribution of programming services of television stations operated by the larger broadcast ownership groups pursuant to section 2.

Appendix A to the Schedule

Small market, independently owned television stations by ownership group

Ownership group	Station
Jim Pattison Industries Ltd.	CHAT-TV Medicine Hat CFJC-TV Kamloops CKPG-TV Prince George
Mid West Television Ltd.	CKSA-TV Lloydminster CITL-TV Lloydminster
Norcom Telecommunications Limited	CJBN-TV Kenora
Radio Nord Communications inc.	CFGS-TV Gatineau CHOT-TV Gatineau CKRN-TV Rouyn-Noranda CFEM-TV Rouyn-Noranda CFVS-TV Val d'Or
Télé Inter-Rives ltée	CIMT-TV Rivière-du-Loup CFTF-TV Rivière-du-Loup CKRT-TV Rivière-du-Loup CHAU-TV Carleton
Standard Radio Inc.	CFTK-TV Terrace CJDC-TV Dawson Creek
Thunder Bay Electronics Limited	CKPR-TV Thunder Bay CHFD-TV Thunder Bay

Appendix B to the Schedule

Ownership Groups

Bell Globemedia Inc. (CTV)
CanWest Media Inc. (Global)
CHUM Limited
Cogeco Radio-Télévision inc. (TQS)
Quebecor Media Inc. (TVA)
Craig Media Inc.
Corus Entertainment Inc.
Rogers Media Inc.