



Broadcasting Decision CRTC 2003-275

Ottawa, 18 July 2003

Complaint by Novus Entertainment Inc. against Bell Express Vu Limited Partnership regarding access to a condominium multiple unit dwelling

In this decision, the Commission finds that Bell ExpressVu Limited Partnership has not contravened section 9 of the Broadcasting Distribution Regulations (undue preference or disadvantage) by entering into a building access agreement with the owners of Strata Plan #4050 that limits the number of broadcasting distribution undertakings that may serve this condominium multiple unit dwelling.

The complaint

1. On 10 October 2001, Novus Entertainment Inc. (Novus) filed a complaint against Bell ExpressVu Inc., the general partner, and BCE Inc. and 4119649 Canada Inc. (partners in BCE Holding G.P.), the limited partners, carrying on business as Bell ExpressVu Limited Partnership (ExpressVu), regarding a building access agreement related to Strata Plan #4050 (Strata Plan), a condominium multiple unit dwelling (MUD). Novus noted that ExpressVu's building access agreement with the owners of Strata Plan located at 501 Pacific Place, Vancouver, British Columbia (the Owners), states, among other things, that:

... the owner will not allow more than two (2) providers of television or audio service, including ExpressVu, to provide service within the [multiple unit dwelling].
2. Novus alleged that the access agreement created an environment in which ExpressVu was the sole alternative distributor that may provide service to the condominium.¹ Novus considered that the agreement contravened section 9 of the *Broadcasting Distribution Regulations* (the Regulations) which states:

No licensee shall give an undue preference to any person, including itself, or subject any person to an undue disadvantage.
3. Novus therefore requested that the Commission declare the provisions of the agreement between ExpressVu and the Owners to be unenforceable.
4. In its 26 October 2001 response, ExpressVu argued, among other things, that the strata council, in entering into the agreement, made an authorized decision on behalf of its membership, and hence, of end-users. ExpressVu characterized this complaint as “not a

¹ The incumbent cable operator providing service to this building is Shaw Cable, which succeeded Rogers Cable TV as distributors.

matter of end-user choice, but rather a contractual matter between the parties.” In its 2 November 2001 reply, Novus was generally of the view that the concept of end-user choice should be applied at the level of individual units, rather than at the level of the condominium board or strata council.

The Commission's determination on end-user choice in condominiums

5. In light of the issues raised by Novus and ExpressVu, the Commission, in *Call for comments on the application of the concept of “end-user choice” in the context of distribution services delivered to condominiums*, Broadcasting Public Notice CRTC 2002-11, 28 February 2002, called for comments on whether the concept of end-user choice, in the case of a condominium, should apply at the level of the occupant of each unit or at the level of the condominium board or strata council. The Commission suspended Novus’ complaint pending the outcome of this policy proceeding.
6. In *Application of the concept of end-user choice in multiple unit dwelling condominiums*, Broadcasting Public Notice CRTC 2003-18, 11 April 2003 (Public Notice 2003-18), the Commission determined that it is appropriate, in a condominium, for the choice as to which distribution undertaking or undertakings will provide services to the building to be made by the board or strata council. By way of Public Notice 2003-18, the Commission also provided Novus and ExpressVu with an opportunity to file additional comments on the Novus complaint, taking into account the Commission's determination on end-user choice in condominiums.

Comments from Novus and ExpressVu

7. In its 17 April 2003 comment, Novus stated that it supports the Commission’s determination as set out in Public Notice 2003-18, and noted that all of Novus’ access agreements for condominium MUDs are signed with the strata corporation for the condominium MUD. Among other things, Novus also stated that, “given the building owners do not wish to unduly restrict competition it would seem to be in the best interests of the viewing public for the Commission to ensure that agreements presented by BDUs to Strata Corporations and to building owners be non-restrictive.”
8. Novus, therefore, requested that the Commission declare that clauses restricting the number of service providers are unenforceable and allow other property owners to choose the number of service providers to whom they will provide access.
9. In its 22 April 2003 comment, ExpressVu stated that clauses in its contracts with MUDs that limit the number of BDUs operating on the premises are critical to its success and to the development of competition in the MUD market.
10. ExpressVu noted that, in Public Notice 2003-18, the Commission concluded that the Strata Council has the authority to make a decision on behalf of end-users. It argued that, with respect to the case in Novus’ complaint, the Owners made a decision and entered

into a contract with ExpressVu that limited the number of BDUs in the building, then later changed their minds and now wished Novus to serve the building. ExpressVu maintained that what remains to be resolved is a private matter between ExpressVu and the Owners. ExpressVu therefore requested that the Novus complaint be dismissed.

The Commission's determination

11. As set out above, in Public Notice 2003-18, the Commission determined that it is appropriate, in the case of a condominium building, to apply the concept of end-user choice at the level of the condominium board or strata council.
12. The Commission notes that, with respect to this complaint, ExpressVu has entered into a building access agreement with the Owners. In the Commission's view, entering into such an agreement is consistent with its interpretation of the appropriate application of the concept of end-user choice, as set out in Public Notice 2003-18. As a result, the Commission considers that ExpressVu has not conferred an undue preference on itself by entering into a building access agreement with the owners of this condominium building that limits the number of BDUs that may serve the building. The Commission therefore dismisses the complaint by Novus alleging that ExpressVu contravened section 9 of the Regulations.

Secretary General

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