



Broadcasting Public Notice CRTC 2004-92

Ottawa, 26 November 2004

Exemption order respecting a class of low-power radio programming undertakings

In this public notice, the Commission exempts from licensing requirements and associated regulations, those low-power radio programming undertakings that provide live or pre-recorded messages about traffic, weather conditions, highway construction and closures, conditions on bridges and in mountain passes, and information, broadcast without consideration, relating to attractions of interest to tourists, and that meet certain other criteria set out in the exemption order appended to this notice.

Background

1. Section 9(4) of the *Broadcasting Act* (the Act) states:

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. In *Call for comments on a proposed exemption order for certain low-power radio undertakings*, Broadcasting Public Notice CRTC 2004-8, 20 February 2004 (Public Notice 2004-8), the Commission sought comment on a proposed exemption order for low-power radio programming undertakings that provide recorded messages about traffic, weather conditions, highway construction and closures, conditions on bridges and in mountain passes, and information, broadcast without consideration, relating to attractions of interest to tourists.
3. In this notice, the Commission sets out its determination on issues concerning the comments received in response to Public Notice 2004-8.

Positions of parties

4. The Commission received comments from four parties. Mr. Scott Jackson supported the proposed exemption order. Mr. Wayne Plunkett, and Mr. Jack McGaw and Mr. Cameron Bell, in a joint submission, and the Yukon Government all supported the proposed exemption order and offered suggestions for modifications with respect to specific issues.

5. Mr. Wayne Plunkett submitted that undertakings operating under this exemption order should be permitted to sell advertising. He argued that not permitting these undertakings to broadcast advertising would be discriminatory and added that market forces should determine the value and the importance of such broadcast revenue.
6. Similarly, Mr. Jack McGaw and Mr. Cameron Bell, in a joint submission, stated that the proposed exemption order should be amended to allow sponsor identification or promotion with sponsor mention in order to finance operations and maintain programming integrity.
7. Mr. McGaw and Mr. Bell also argued that undertakings operating under this exemption order should be required to provide a facility for direct and immediate access to the service by police, fire and emergency measures organizations. They added that these undertakings should be required to demonstrate that direct public service or emergency messaging is provided to local emergency response organizations and transportation authorities.
8. Mr. McGaw and Mr. Bell, as well as the Yukon Government, submitted that the exemption order should allow undertakings to broadcast incidental or complementary music. The Yukon Government pointed out that while the exemption order respecting low-power radio programming undertakings providing tourist and traffic information in national and provincial parks and on historic trails¹ allows the broadcast of music, the proposed exemption order does not.
9. The Yukon Government also suggested that the proposed exemption order should allow live announcements in addition to recorded messages.
10. Finally, the Yukon Government expressed some concern with respect to specific wording used in the proposed order. It noted that the term “broadcast without consideration” could be misinterpreted and asked that the Commission clarify the term. It also suggested that the term “drivers of motor vehicles” stated in paragraph 4 be changed to “travelling public,” as it was stated in the purpose of the exemption order, in order that it include bus passengers, boaters and others.

The Commission’s analysis and determination

11. The parties have raised four main issues: advertising and sponsor promotion, emergency services, music and live announcements, as well as concerns with the specific wording used in the proposed order.

¹ *Exemption orders respecting certain classes of low-power and very low-power programming undertakings*, Broadcasting Public Notice CRTC 2003-35, 10 July 2003

Advertising and sponsor promotion

12. In *Policy regarding the use of exemption orders*, Public Notice CRTC 1996-59, 26 April 1996, the Commission stated that it would “exempt classes of programming undertakings only where it is evident that undertakings operating under the exemption order will not have an undue impact on the ability of licensed undertakings to fulfil their regulatory requirements.” The Commission is of the view that allowing advertising on those undertakings operating under this exemption order could take away advertising revenue from licensed undertakings and, consequently, have an undue impact on their ability to fulfil their regulatory requirements. The Commission therefore determines that it would not be appropriate to allow advertising, sponsorship identification or promotion with sponsor mention on undertakings operating under this exemption order.
13. The Commission notes, however, that it has licensed a number of similar low-power programming undertakings with the ability to sell advertising and invites undertakings that require advertising as part of their business plan to apply for a licence.

Emergency services

14. In *Exemption order respecting public emergency radio undertakings*, Public Notice CRTC 2000-11, 24 January 2000 (Public Notice 2000-11), the Commission exempted from licensing requirements and associated regulations, radio programming undertakings that provide information related to public emergencies to those immediately affected. These undertakings must be operated by “a member, in their capacity as such, of a police department, fire department or any organization designated by a federal, provincial or municipal government as being responsible for the coordination of emergency relief.” Given that public emergency radio undertakings are exempted under Public Notice 2000-11, the Commission considers that including police, fire and emergency measures organizations as part of this exemption order would duplicate the existing order and is therefore unnecessary.
15. Nevertheless, the Commission notes that, in times of emergency, operators of the undertakings exempted under the proposed order could temporarily cede control of their transmission facilities to those federal, provincial or municipal officials responsible for co-ordinating emergency relief in order to allow the broadcasting of necessary emergency information. The Commission encourages operators to co-operate with emergency relief officials in this regard.

Music

16. With respect to the Yukon Government’s comment on the provision of music on low-power radio programming undertakings in national and provincial parks and on historic trails, the Commission notes that exempt undertakings in these remote locations do not normally compete with licensed undertakings. Undertakings operating under the proposed exemption order, however, could be located within the contours of licensed undertakings operating in large or small markets and thus could reach a significant portion of the audience of those stations and compete with licensed undertakings.

Furthermore, the Commission is of the view that the broadcast of music has no relevance to the purpose of this exemption order. In light of the above, the Commission determines that it would be inappropriate to amend the proposed order to allow incidental or complementary music.

Live announcements

17. The Commission agrees that this exemption order should allow live or pre-recorded messages given that rapidly changing conditions could necessitate live announcements.

Other amendments

18. The term “without consideration” is used in the law of contract to indicate that the information must be broadcast without advertising, sponsorship identification or promotion with sponsor mention.
19. The Commission agrees with the Yukon Government’s proposal to use the phrase “travelling public” in paragraph 4 of the order.

Conclusion

20. The Commission concludes that it is appropriate to modify the proposed exemption order to reflect the determinations set out above. The amended exemption order is set out in the appendix to this notice.

Secretary General

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

Appendix to Broadcasting Public Notice CRTC 2004-92

Exemption order for low-power radio programming undertakings providing information about traffic, weather conditions, highway construction and closures, conditions on bridges and in mountain passes, and information, broadcast without consideration, relating to attractions of interest to tourists

The Commission pursuant to subsection 9(4) of the *Broadcasting Act* (the Act), by this order, exempts from the requirement of Part II of the Act and any regulations, those persons carrying on broadcasting undertakings of the class defined by the following criteria:

Purpose

The purpose of these radio programming undertakings is to provide the travelling public with live or pre-recorded messages about traffic, weather conditions, highway construction and closures, conditions on bridges and in mountain passes, and information, broadcast without consideration, relating to attractions of interest to tourists.

Description

1. The undertaking meets all technical requirements of the Department of Industry (the Department) and has acquired all authorizations or certificates prescribed by that Department.
2. The low-power undertaking operates between 525 kHz and 1705 kHz in the AM frequency band or between 88 MHz and 107.5 MHz in the FM frequency band. The undertaking broadcasts with a transmitter power of less than 100 watts in the AM band, and with a maximum effective radiated power of 50 watts with a maximum transmitting antenna height of 60 metres in the FM band as defined by the Department in Parts II and III of its *Broadcasting Procedures and Rules*.
3. The Commission would not be prohibited from licensing the undertaking by virtue of any Act of Parliament, of the Direction to the CRTC (Eligible Canadian Corporations) or of any direction to the Commission by the Governor in Council.
4. The programming provided by the undertaking consists of live or pre-recorded messages which provide the travelling public with information about traffic, weather conditions, highway construction and closures, conditions on bridges and in mountain passes, and information, broadcast without consideration, relating to attractions of interest to tourists.

5. The undertaking does not rebroadcast the programming service of any licensed or exempted radio or television undertaking.
6. The programming provided by the undertaking contains no music or advertising material.
7. The undertaking does not broadcast programming that is religious or political in nature.
8. The undertaking's programming complies with the guidelines on gender portrayal set out in the Canadian Association of Broadcasters' (CAB) *Sex-role portrayal code for television and radio programming*, as amended from time to time and approved by the Commission.