



**Canadian
Association of
Broadcasters**

**L'Association
canadienne des
radiodiffuseurs**

January 22, 2008

Via E-pass

Mr. Robert A. Morin
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Dear M. Morin:

Re: Broadcasting Public Notice CRTC 2007- 141 – Application No. 2007-1562-5 by Bell ExpressVu Limited Partnership (ExpressVu) to extend its condition of licence re the distribution of partial or omnibus channels

1. The Canadian Association of Broadcasters (CAB) is the national voice of Canada's private broadcasters, representing the vast majority of Canadian programming services, including private radio and television stations, networks, specialty, pay and pay-per-view services. The goal of the CAB is to represent and advance the interests of Canada's private broadcasters in the social, cultural and economic fabric of the country.
2. The CAB is pleased to submit this intervention in relation to the above-noted application by ExpressVu to extend the condition of licence that authorizes its DTH undertaking to distribute partial or omnibus (P/O) channels to August 31, 2010, the expiry date of its current licence term.
3. The Commission approved ExpressVu's original application to distribute P/O channels for the provision of unique local programming provided by Canadian stations not already distributed on ExpressVu's DTH undertaking in Broadcasting Decision CRTC 2005-457 (Decision 2005-457). The Commission noted, however, that "an expiration date prior to the end of the applicant's current licence term would be prudent since it would permit the Commission to re-evaluate this authorization in order to

gauge the practical effect on Bell ExpressVu's distribution of television stations." Accordingly, the Commission's approval was effective for only a limited period of time, to February 28, 2008.

4. In making this determination, the Commission concluded that the expiration date of the authority to use P/O channels should follow the conclusion of the proceeding to deal with the distribution of HD programming by DTH distributors. At the time, it had been anticipated that this proceeding would take place sometime in 2007; it is now known that issues related to the distribution of HD programming by DTH distributors are part of the current proceeding to review the regulatory framework for discretionary services and the *Broadcasting Distribution Regulations*, and will be discussed further at a public hearing commencing on April 7, 2008.
5. The CAB had expressed a number of concerns in its intervention respecting ExpressVu's original application. A critical issue in the CAB's view was the fact that the distribution of P/O channels would do nothing to address the underlying issue of lack of DTH carriage of local television stations and might, in fact, work against the possibility of increased carriage of local stations in the future. While opposing the concept of P/O channels for this and other reasons stated in its intervention, the CAB advocated that, if the Commission were nevertheless to authorize the distribution of P/O channels, any such authorization should be subject to certain conditions.
6. One of the conditions recommended by the CAB was that the distribution of P/O channels should be treated as "an interim measure only, subject to review at an early date with respect to the satellite capacity available to carry additional local stations in their entirety." The Commission's decision to approve P/O channels to a date shortly after the conclusion of the proceeding to address the distribution of HD programming by DTH operators was entirely consistent with this recommendation.
7. The CAB is concerned that ExpressVu is now attempting to bypass the intent of Decision 2005-457 by seeking an extension of the current interim authorization to August 31, 2010 when its current licence expires. If approved, this would render meaningless the Commission's previous determination that an earlier expiration date, shortly after the completion of the HD distribution proceeding, was appropriate in order to fully evaluate the impact of P/O channels on the distribution of television stations in their entirety. The CAB notes that an assessment of DTH distribution capacity going forward is expected to be an important part of the current proceeding, and it respectfully submits that the Commission should not take any decision on the ExpressVu application that might limit its options coming out of that hearing with respect to the distribution of local television stations by DTH.
8. For these reasons, the CAB submits that, should the Commission grant an extension to the authorization for ExpressVu to distribute P/O channels, it do so only for a further interim period to allow for the completion of the current proceeding to review the

regulatory framework for discretionary services and the *Broadcasting Distribution Regulations*. More specifically, the CAB suggests that any extension be granted only until December 31, 2008.

9. The CAB is of the view that such an extension would be consistent with the original intent of Decision 2005-457 and would provide ExpressVu with an appropriate opportunity to take into account any relevant determinations flowing from the current policy review proceeding.
10. The CAB appreciates the opportunity to submit these comments.

Yours sincerely,

Original signed by:

Pierre-Louis Smith
Vice-President, Policy &
Chief Regulatory Officer

c.c. Bell ExpressVu Limited Partnership (Via email: nicole.godin@bell.ca)

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