



2024 04 25

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Secretary General
CRTC
Ottawa, ON K1A 0N2

Filed online

Dear Secretary General,

Re: Part 1 Broadcasting Application 2024-0125-6, Bell ExpressVu Part 1 Application to Amend Certain Conditions of Licence Applicable to Bell ExpressVu's Satellite Relay Distribution Undertaking (SRDU) Licence – Supplementary Brief – Letter and Supplementary Brief (18 March 2024) – FRPC – intervention

1 On 18 March 2024 Bell ExpressVu (Bell) filed an application under Part 1 of the [Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure](#)¹ concerning the broadcasting licence Bell currently holds for a satellite-relay distribution undertaking (SRDU). The CRTC published this application on 26 March 2024. The Commission granted interested parties 20 working days to intervene: the intervention deadline is 25 April 2024.

2 For readers' convenience FRPC's intervention in opposition to Bell's application is organized as follows:

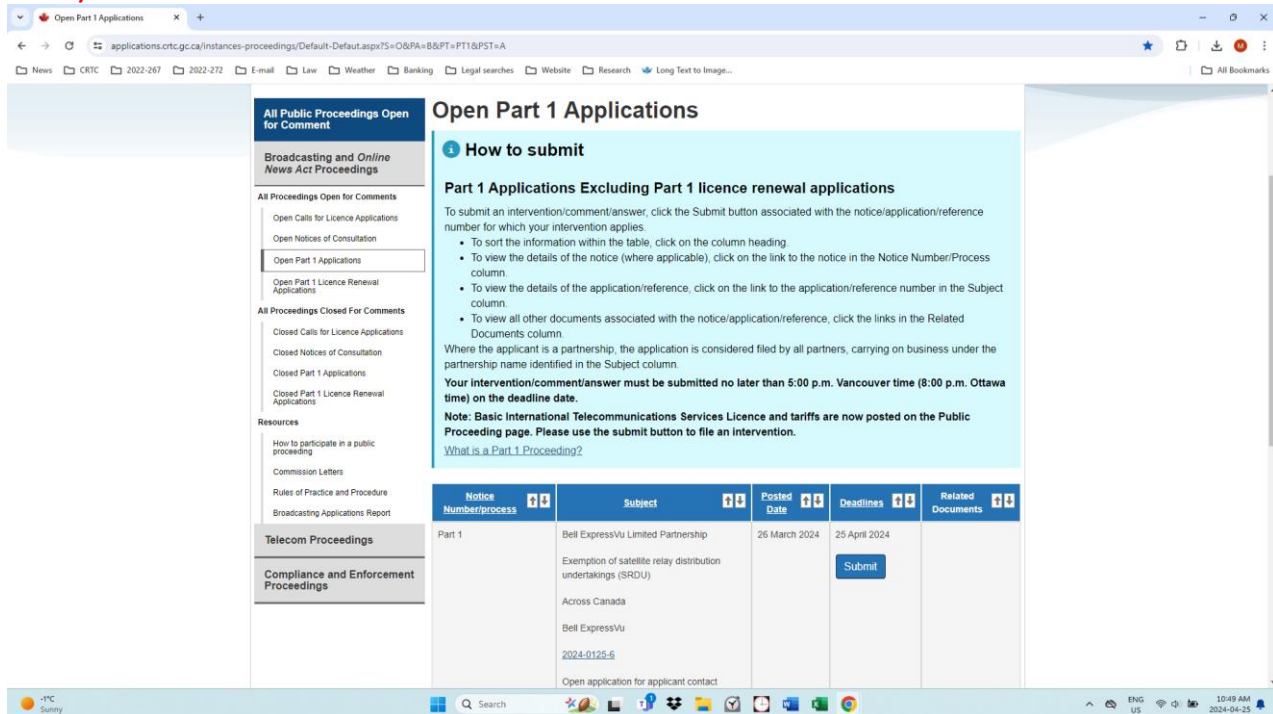
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¹ SOR/2010-277, am. 2021 04 08.

I Procedural issue re disclosure

- 3 On Thursday, 18 April 2024 FRPC asked the CRTC to require Bell to disclose information in paragraph 18 of its 18 March 2024 Application about the amount its SRDU expended in 2023 and also in paragraph 23 about Bell's suspicion with respect to a single large exempt BDU. FRPC provided Bell with a copy of its request.
- 4 FRPC asked that the information be disclosed by 8 PM ET 24 April 2024 (one working day before today's filing deadline).
- 5 On Friday, 19 April Bell replied to FRPC's request. The company agreed to disclose the redacted text concerning its suspicion in paragraph 23 (but did not provide the unredacted text), and declined to disclose the requested information set out in paragraph 18.
- 6 On Sunday, 21 April FRPC submitted its response to Bell to the CRTC, and also provided Bell with a copy.
- 7 As of today's intervention deadline, the CRTC has not acknowledged receipt of FRPC's documents, and has not posted either FRPC's procedural request, Bell's reply or FRPC's response on the Commission's Open Part 1 Applications page by 7:30 PM ET today: Figure 1.

Figure 1: CRTC's "Open Part 1 Applications" page re Bell Application 2024-0125-6 (10:49 AM ET – unchanged at 7:30 PM ET)



The screenshot shows the CRTC's 'Open Part 1 Applications' page. The page title is 'Open Part 1 Applications'. On the left, there is a navigation menu with categories like 'All Public Proceedings Open for Comment', 'Broadcasting and Online News Act Proceedings', 'All Proceedings Open for Comments', 'All Proceedings Closed For Comments', 'Resources', 'Telecom Proceedings', and 'Compliance and Enforcement Proceedings'. The main content area is titled 'How to submit' and includes instructions for submitting an intervention. Below the instructions is a table with the following data:

Notice Number/process	Subject	Posted Date	Deadlines	Related Documents
Part 1	Bell ExpressVu Limited Partnership Exemption of satellite relay distribution undertakings (SRDU) Across Canada Bell ExpressVu 2024-0125-6 Open application for applicant contact	26 March 2024	25 April 2024 <input type="button" value="Submit"/>	



8 The CRTC last updated its regulations governing the submission of confidential information in broadcasting matters² in 2011.³ These *Rules of Practice and Procedure* do not offer guidance as to the CRTC's publication (posting) of such requests or the timing of any determinations it makes, stating only that the CRTC "may disclose or require the disclosure of information designated as confidential if it is in the opinion that the disclosure is in the public interest."⁴ Given Bell's willingness to disclose at least one of the two items for which FRPC requested disclosure the Commission's silence with respect to FRPC's procedural request is disappointing.

II Bell's application to eliminate SRDUs' financial support for Canadian program production

9 The Forum submits that Bell's application cannot be considered in isolation but rather must be understood within the century of changes required to ensure that the programming provided through and by Canada's broadcasting system was available to all people in Canada, from coast to coast to coast.

A Context

10 In April 1981 the CRTC licensed Canadian Satellite Communications Inc. to deliver by satellite "a basic package of attractive television and radio services to the more remote and underserved communities throughout Canada".⁵

11 Cancom, as the service came to be known, operated as a monopoly until the late 1990s: the Commission then licensed Star Choice Television Network Incorporated to provide a second

² [Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure](#), SOR/2010-277.

³ The CRTC announced its new procedural regulations in *Implementation of new Rules of Practice and Procedure, Broadcasting and Telecom Regulatory Policy CRTC 2010-958* (Ottawa, 23 December 2010); they entered into force on 1 April 2011. Section 90(3) of the 2023 *Broadcasting Act* provides that regulations made under the 1991 *Act* are deemed to have been made under the current *Act*.

⁴ [Rules of Practice and Procedure](#), s. 34(1).

⁵ CRTC notices, policies and decisions from before 1984 are unavailable on its website. See therefore *CRTC Response to the Report of the Task Force on Access to Television in Underserved Communities*, [Public Notice CRTC 1985-60](#) (Ottawa, 22 March 1985):

...
In a Public Announcement dated 8 January 1980, the Commission announced the formation of a committee chaired by Commissioner Réal Therrien, Vice Chairman of the CRTC, to study the problems related to the extension of broadcasting services to northern and remote communities and to submit recommendations as to the most effective means of providing service to these underserved communities.

Subsequently, consistent with the recommendations contained in the Therrien Report dated July 1980, the Commission issued a call for applications for a network for the satellite distribution of a variety of Canadian television services and, on 1 April 1981, licensed Canadian Satellite Communications Inc. (CANCOM) to deliver a basic package of attractive television and radio services to the more remote and underserved communities throughout Canada. Even though this service has now been extended to approximately 335 small and underserved communities, serious economic factors continue to impede the extension of additional broadcasting services to the 1.2 million Canadian households in small and rural communities who continue to receive over the air only two or less Canadian local services.

....

- SRDU licence in 1998,⁶ and granted Bell Satellite Services Inc. (operating as Bell ExpressVu) a third SRDU licence in 1999.⁷ Cancom and Star Choice merged shortly afterwards.⁸ For the past twenty-year years, therefore, Canada's SRDUs have operated within a duopoly operated by Bell and Shaw⁹ (whose broadcasting assets including Shaw's SRDU and terrestrial distribution undertakings [TRDUs] were acquired by Rogers in 2022).¹⁰
- 12 In 2008 the Commission said that SRDUs and terrestrial distribution undertakings (TRDUs) "generally function as wholesalers by transporting broadcasting services and making those services available to BDUs, which then offer them to subscribers."¹¹ It added that BDUs also "generally operate TRDUs".¹² Although it exempted TRDUs – some provided by terrestrial BDUs – from licensing and regulation, the CRTC declined to grant the same or a similar exemption to SRDUs from licensing, noting among other things that Shaw and Bell's SRDUs then provided "approximately \$900,000 annually to production funds [an] amount, in the Commission view, [that was] material to the attainment of the objectives of the Act."¹³
- 13 Four years later the CRTC again rejected the proposals by Shaw and Bell to exempt their SRDUs from licensing and to remove the requirement that they provide financial support to Canadian program production.¹⁴ The Commission re-affirmed its 2008 position that the two SRDUs' financial support for Canadian programming was material¹⁵ and that it would be "inappropriate to exempt SRDUs" from licensing and regulation.¹⁶
- 14 Since first authorizing Bell to provide an SRDU service the Commission has renewed Bell's SRDU licence eleven times, including eight instances when the Commission renewed the

⁶ *New national satellite relay distribution undertaking – Approved*, [Broadcasting Decision CRTC 98-172](#) (Ottawa, 23 June 1998) approved the application by Star Choice Television to compete with Cancom. (The Commission denied an SRDU applications by PrimeTime Canada, deeming it to be effectively controlled by a non-Canadian entity, in [Decision CRTC 98-173](#).)

⁷ *New national satellite relay distribution undertaking*, [Broadcasting Decision CRTC 99-87](#) (Ottawa, 19 April 1999).

⁸ *Amalgamation of Cancom and Star Choice*, [Decision CRTC 99-169](#) (Ottawa, 9 July 1999). In February 2000 Cancom acquired the Star Choice SRDU assets: *Intracorporate reorganization*, [Decision CRTC 2000-68](#) (Ottawa, 25 February 2000); in June the same year Shaw acquired effective control of Cancom ([Decision CRTC 2000-213](#) (Ottawa, 30 June 2000)) and it requested the revocation of the Cancom SRDU licence in 2001: *Revocation*, [Decision CRTC 2001-706](#) (Ottawa, 20 November 2001). See also *Amendments to conditions of licence relating to structural separation for Cancom and Star Choice*, [Broadcasting Decision CRTC 2002-84](#) (Ottawa, 12 April 2002).

⁹ *Shaw Communications Inc. – Change of ownership and effective control*, [Broadcasting Decision CRTC 2022-76](#) (Ottawa, 24 March 2022), at paragraphs 79-83

¹⁰ The CRTC issued another SRDU licence in 2010; FreeHD's service was not in operation by 2012: *Licensing and other issues relating to satellite relay distribution undertakings*, [Broadcasting Regulatory Policy CRTC 2012-94](#) (Ottawa, 14 February 2012), at paragraph 2.

¹¹ *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services*, [Broadcasting Public Notice CRTC 2008-100](#) (Ottawa, 30 October 2008), at paragraph 169.

¹² *Ibid.*, at paragraph 180.

¹³ *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services*, [Broadcasting Public Notice CRTC 2008-100](#) (Ottawa, 30 October 2008), at paragraph 175.

¹⁴ *Licensing and other issues relating to satellite relay distribution undertakings*, [Broadcasting Regulatory Policy CRTC 2012-94](#), (Ottawa, 14 February 2012).

¹⁵ *Ibid.*, paragraph 24 ("In the Commission's view, this conclusion is still valid").

¹⁶ *Bell ExpressVu Satellite Relay Distribution Undertaking - Licence renewal*, [Broadcasting Decision CRTC 2006-564](#) (Ottawa, 28 September 2006), at paragraph 25.



licence administratively: Table 1. In 2006 Bell appeared to ask – with “no explanation”¹⁷ – that it not be required to remit payments to support Canadian programming “within 45 days of each month’s end”: the CRTC denied this amendment. Bell did not propose any changes to its conditions of licence in 2012¹⁸ or in 2019 when it most recently applied for the renewal of its SRDU licence.¹⁹

Table 1: CRTC’s Licensing and renewal decisions for Bell’s SRDU, 1999-2019

Process	Outcome	Licence
Licensed	99-87 (19 Apr/99)	19 Apr/99 – 31 Aug/05
Administrative renewal	2005-439 (29 Aug/05) ²⁰	1 Sep/05 – 31 Dec/05
Administrative renewal	2005-574 (5 Dec/05) ²	1 Jan/06 – 31 Mar/06
Administrative renewal	2006-86 (22 Mar/06) ²	1 Apr/06 – 30 Sep/06
Renewal	2006-564 (28 Sept/06)	1 Oct/06 – 31 Aug/10
Administrative renewal	2010-170 (22 Mar/10)	1 Sep/10 – 31 Aug/11
Administrative renewal	2011-420 (13 Jul/11)	1 Sep/11 – 29 Feb/12
Administrative renewal	2012-100 (16 Feb/12)	1 Mar/12 – 31 Aug/12
Administrative renewal	2012-417 (1 Aug/12)	1 Sep/12 – 31 Oct/12
Renewal	2012-609 (31 Oct/12)	1 Nov/12 – 31 Aug/19
Administrative renewal	2019-267 (30 Jul/19) ²¹	1 Sep/19 – 30 Nov/19
Renewal	2019-385 (29 Nov/19)	1 Dec/19 – 31 Aug/26

B Bell’s application for its SRDU to stop supporting Canadian program production

15 Bell’s 18 March 2024 application asks the CRTC to amend its SRDU licence “by removing the existing condition of service (COS) requiring it to contribute five percent of its gross broadcasting revenues to Canadian programming”.²²

16 The company argues that the CRTC should grant its request because

- the significant challenges facing the traditional broadcasting industry in general and SRDU undertakings more specifically;
- the fact that our SRDU does not currently make a meaningful contribution to the objectives of the Broadcasting Act (the Act); and
- the fact that the COS in question is both unfair and inconsistent from a policy perspective because it does not apply to small broadcasting distribution undertakings (BDUs) and competitive terrestrial relay distribution undertakings (TRDUs), which operate under exemption orders.²³

¹⁷ *Ibid.*, at paragraph 72.

¹⁸ Instead it opposed the imposition of a confidentiality requirement prohibiting the sharing of information between Bell’s SRDU and its other broadcasting undertakings: *Bell ExpressVu satellite relay distribution undertaking – Licence renewal*, [Broadcasting Decision CRTC 2012-609](#) (Ottawa, 31 October 2012), at paragraphs 12-14.

¹⁹ *Satellite relay distribution undertaking – Licence renewal*, [Broadcasting Decision CRTC 2019-385](#) (Ottawa, 29 November 2019).

²⁰ Unavailable through CRTC’s search engine; referenced in footnote 1 to [Broadcasting Decision CRTC 2006-564](#).

²¹ Unavailable through CRTC’s search engine; referenced in footnote 1 to *Broadcasting Decision CRTC 2019-386*.

²² Part 1 Broadcasting Application 2024-0125-6, *Bell ExpressVu Part 1 Application to Amend Certain Conditions of Licence Applicable to Bell ExpressVu’s Satellite Relay Distribution Undertaking (SRDU) Licence – Supplementary Brief*, DM#4578670 (18 March 2024) [Bell April 2024 Part I application], paragraph 1.

²³ *Ibid.*, at paragraph 3.



- 17 Bell also argues that its SRDU payments in support of Canadian programming “now fall well below the revenue exemption threshold as established for other distribution undertakings.”²⁴
- 18 Bell appears therefore to be arguing that the CRTC should grant its request because
- its SRDU does not contribute materially to the Parliament’s broadcasting policy for Canada – a section 9(4) argument,
 - approval would grant its SRDU treatment that its equitable to the exempted status of TRDUs – a *Policy Direction* argument, and because
 - the broadcasting system and SRDUs face significant challenges – a policy review argument.

1 Immaterial contribution argument does not meet section 9(4) test

- 19 Bell states that the “relief” it seeks – being exempted from regulation – “is wholly consistent with Section 9(4) of the *Act*”.²⁵ Bell may consider its arguments consistent with section 9(4), but it has not met the key test of this section. Specifically, Bell’s *Supplementary Brief* does not set out clear public evidence showing that its SRDU’s financial support for Canadian programming is immaterial to the implementation of Parliament’s broadcasting policy for Canada – including figures describing the specific amount of its financial support.
- 20 Bell’s application described this amount as “*de minimus*”.²⁶ In its reply to FRPC’s procedural request, Bell acknowledged that its “SRDU’s broadcasting revenue is now below \$1.5M”.²⁷ Five percent of this figure amounts to \$75,000.
- 21 Bell has not explained why \$75,000 is an immaterial or *de minimus* amount in the context of support for Canadian program production. FRPC notes that four of BCE’s individual discretionary television programming services each earned less than \$1.5 million in the 2021/22 broadcast year – yet each provided financial support for Canadian programming:

Table 2: Financial support by other Bell broadcasting services earning less than \$1,500,000 in 2021/22 broadcast year

Service	Revenues in 2021/22	Total Canadian programming
MTV2	\$465,476	\$117,076 (25.15%)
ESPN Classic	\$256,797	\$233,680 (91%)
Northwestel On Demand	\$191,694	\$113,077 (58.99%)
Câblevision du Nord de Québec Inc.	\$60,833	\$203 (0.33%)

CRTC, *Individual Discretionary and On-Demand Services: Statistical and Financial Summaries, 2018-2022*, “Individuals”.

²⁴ *Ibid.*, at paragraph 5.

²⁵ *Ibid.*, at paragraph 4.

²⁶ *Ibid.*, at paragraph 15.

²⁷ *Ibid.*, at paragraph 5.



- 22 If the financial support provided by television programming services earning less than \$1.5 million²⁸ is material to the implementation of Parliament’s broadcasting policy, it is unclear why the financial support provided by SRDUs earning less than \$1.5 million is not also material. (FRPC also notes that if the CRTC accepts Bell’s arguments for regulatory symmetry, parity or equity, it would be reasonable to expect to receive a number of applications from programming and distribution undertakings that earn less than \$1.5 million for the same level of relief from their financial support for Canadian program production.)
- 23 Nor does Bell’s application appear to estimate the impact that eliminating its SRDU’s financial support for Canadian program production would have.
- 24 FRPC also notes that if the CRTC accepted Bell’s proposal that the Commission change its 2012 SRDU policy by eliminating a requirement for any SRDU to support Canadian program production financially – including Rogers’ SRDU – financial support for Canadian programming could drop by \$150,000 or more (assuming the \$75,000 amount estimated using Bell’s Reply also applies to Shaw/Rogers’ SRDU).

2 Unclear rationale for CRTC to treat SRDUs as small BDUs, TRDUs and DMBUs

- 25 Bell also appears to argue that the CRTC should exempt SRDUs from regulation as “a step towards establishing regulatory parity with small BDUs, TRDUs, and digital media broadcasting undertakings (DMBUs).²⁹ It says that “current licensing requirements for small SRDU wholesale businesses” are contrary to Cabinet’s 2023 *Order Issuing Directions to the CRTC (Sustainable and Equitable Broadcasting Regulatory Framework)*³⁰ because exempted BDUs with fewer than 20,000 subscribers do not have to pay Part 1 licence fees:³¹ requiring SRDUs to pay these licence fees, says Bell, “is not reasonable or equitable”.³²
- 26 The November 2023 *Policy Direction* directs the Commission to “minimize the regulatory burden on the Canadian broadcasting system” so as to “support flexibility and adaptability in its regulatory framework”.³³ It does not specifically direct the Commission to set the same requirements regarding support for Canadian programming production for each class of broadcasting undertaking.

²⁸ The only data published by the CRTC for individual broadcasting consists of information about individual discretionary television programming services. (The CRTC stopped publishing the annual returns of individual BDUs in the late 1990s when it authorized competition for the former BDU monopolies.)

²⁹ *Ibid.*, paragraphs 6, 15 and 23.

³⁰ P.C. 2023-1125, SOR/2023-239 (9 November 2023), *Canada Gazette*, Part II, Vol. 157, No. 24.

³¹ Bell April 2024 Part I application, paragraph 23.

³² *Ibid.*

³³ *Bell ExpressVu Satellite Relay Distribution Undertaking - Licence renewal*, Broadcasting Decision CRTC 2006-564 (Ottawa, 28 September 2006), paragraph 61.



- 27 Bell also argues that removing a requirement to provide financial support for Canadian program production is part of “the critical need to minimize the regulatory burden placed on the traditional broadcasting system”.³⁴
- 28 What Bell has not established is the actual scale of its ‘regulatory burden’. It did not, for example, state the percentage of its SRDU expenditures that it devotes purely to CRTC regulatory administration. (FRPC notes that ‘administrative and general’ expenses may include non-CRTC-regulatory expenditures.)
- 29 The scale of burden alleged by Bell matters because BCE’s administration and general expenses in the case of its cable/IPTV and DTH services appear to be significantly higher as a percentage of its total expenses than for the same class of undertaking for both Shaw (now Rogers) and total non-exempted BDUs in Canada: Table 3.

Table 3: Administration and general expenses as a percentage of total expenses – Canada vs BCE

2021/22 broadcast year	Administration and general	Total expenses	Administration and General as % of total expenses
Cable & IPTV			
Bell	\$416,070,000	\$1,324,665,000	31.4%
Shaw/Rogers	\$134,660,000	\$918,387,000	15
Canada	\$1,003,046,000	\$5,617,388,000	17.8%
DTH			
Bell	\$197,733,000	\$574,150,000	34.4%
Shaw/Rogers	\$77,693,000	\$397,482,000	19.5%
Canada	275,092,000	971,146,000	28.3%

Sources: BCE Inc, 2022 Aggregated Financial Summaries for [Cable/IPTV](#) and for [DTH](#); Shaw, 2022 Aggregated Financial Summaries for [Cable/IPTV](#) and [DTH](#); and CRTC, *Broadcasting Distribution – Cable, Internet Protocol Television (IPTV) and Direct-to-Home (DTH): Statistical and Financial Summaries, 2018-2022*, worksheets 2 and 3 [2019-2023 data not available on CRTC’s website]

- 30 If Bell’s administration and general expenses for its SRDUs are also higher than those of similar services (the Shaw/Rogers SRDU; non-Bell TRDUs), there may be reasonable doubt as to the burden imposed on Bell’s SRDU by the CRTC’s regulation of this undertaking. Rather than deregulate Bell’s SRDU to reduce an alleged administrative burden, the CRTC might reasonable expect Bell to first address its own expenditures.

C Inappropriate and untimely process to revise 2012 SRDU policy

- 31 Bell also extends its request from exemption with respect to financial support for implementing Parliament’s broadcasting policy, to the exemption of ‘all SRDUs’ – meaning both SRDUs – from regulation.³⁵

³⁴ Bell April 2024 Part I application, paragraph 6.

³⁵ *Bell April 2024 Part I application*, section 4.0 (“The Commission should Exempt all SRDUs from regulation”).



- 32 Bell has not clearly explained the rationale for asking the CRTC – presumably first to review and then – to rewrite its 2012 SRDU policy.
- 33 FRPC submits that this rationale is required for at least three reasons. First, the CRTC addressed its 2012 policy four years ago, when it renewed Shaw’s SRDU licence.³⁶ The Commission at that time found that Shaw’s SRDU conditions of licence were “generally consistent with the requirements of the policy framework for SRDUs set out in Public Notice [1998-60](#) and Broadcasting Regulatory Policy [2012-94](#).” In other words, revising the CRTC’s 2012 policy for SRDUs requires more than Bell’s demand for regulatory parity – it requires evaluation of the 2012 policy’s objectives to determine whether these have been met and (whether met or not) and also remain reasonable.
- 34 In applying in 2021 for the CRTC’s permission for Rogers to acquire Shaw, moreover, Rogers referred to the CRTC’s ‘active regulation’ of Shaw’s SRDU service through the Commission’s licensing process. Rogers commented that the (then) conditions of licence “were put in place to protect SBS’s BDU customers and to inhibit SBS’s ability to impose unreasonable or unfair conditions on the delivery of signals to those third-party BDUs. Following our acquisition of the SRDU, Rogers will be subject to the same regulatory obligations that exist today.”³⁷ Revising the 2012 policy may require the CRTC to revising the requirements it established previously for the Shaw/Rogers SRDU in 2019, so as to ensure compliance with the intent of Rogers’ 2022 acquisition of Sahw.
- 35 A clear and more detailed explanation is also needed because while Bell’s application describes Canada’s two SRDUs as “niche wholesale businesses”³⁸ and “small SRDU wholesale businesses”,³⁹ it does not clarify why these businesses are ‘niche’ or ‘small’. They may be niche businesses because just two SRDUs operate in Canada, for instance, and they may be ‘small’ because, unlike BDUs that serve millions of households and business, while SRDUs’ clients consist of the programming services they distribute (a significantly smaller number). Neither description, of course, justifies exemption of and by itself, but without any clarification at all it is unclear why the CRTC would pursue exemption of SRDUs.
- 36 Bell also argues that Canada’s two SRDUs today face competition sufficient (presumably) to take the place of regulation. In support of its Bell says that it and other Canadian telecom companies “have invested billions of dollars deploying advanced fibre networks across the country” and that these networks not only “now provide significant additional TRDU competition to SRDUs” but also “are now extensively available outside of urban areas”.⁴⁰

³⁶ *Satellite relay distribution undertaking – Licence renewal*, [Broadcasting Decision CRTC 2019-386](#) (Ottawa, 29 November 2019).

³⁷ Ted Woodhead, “Shaw Communications Inc. – Application for authority to change the ownership and control through the transfer of shares Application No: 2021-0228-4” (Ottawa, 29 July 2021 - Abridged), DM#4062331 – Response to CRTC Deficiency Questions of 14 July 2021, page 2, response to question 1.

³⁸ *Ibid.*, paragraph 26.

³⁹ P.C. 2023-1125, SOR/2023-239 (9 November 2023), *Canada Gazette*, Part II, Vol. 157, No. 24.

⁴⁰ Bell April 2024 Part I application, paragraphs 27 and 28; Bell did not clarify the link between its telecom expenditures and the CRTC’s broadcast regulatory policy for SRDUs.



- 37 Bell’s application does not provide any public, objective evidence to support its arguments, however, such as the numbers of TRDUs now in operation or the number of communities they serve. Bell also affirmed that, in fact, TRDUs continue not to serve some communities (whose number Bell neither provided nor estimated): “there will always be some isolated communities not served by TRDUs.”⁴¹ In 2006, however, the Commission was concerned about the distribution of programming to underserved communities: “it also remains a major goal of the Commission’s SRDU policy to ensure the delivery of signals to geographic regions of the country that cannot economically be served by other technologies.”⁴² Before exempting SRDUs, the CRTC should therefore consider whether its policy goal in this area has been met.
- 38 Bell also argues that even if it reviews its SRDU policy the CRTC should not “relinquish its role in protecting competition in the market”⁴³ because “there is no evidence of anti-competitive behavior in the market for the distribution of program signals”, given in part that “there has not been a complaint about [Bell’s] SRDU or TRDU services, including the prices of the services, in recent memory”.⁴⁴ Insofar as Bell’s description of the CRTC’s role is concerned, FRPC notes that Parliament established the CRTC’s role in section 5(1) of the *Broadcasting Act*. Parliament said that
- ... the Commission shall regulate and supervise all aspects of the Canadian broadcasting system with a view to implementing the broadcasting policy set out in subsection 3(1) and, in so doing, shall have regard to the regulatory policy set out in subsection (2).
- 39 Moreover, Parliament’s regulatory policy – that in any event specifically defers to Parliament’s section 3(1) broadcasting policy for Canada⁴⁵ - does not require the CRTC to promote competition but (among other things) to facilitate “the provision of broadcasting to Canadians” (section 5(2)(d)).
- 40 As for Bell’s argument that “there has not been a complaint” about any SRDU “in recent memory”, it is unclear how or whether the CRTC tracks such ‘complaints’ or if it makes each complaint received public.
- 41 Due to the obscurity of the CRTC’s alternative-dispute resolution processes it is also unclear whether SRDU customers have asked the CRTC for its assistance in resolving disputes with either or both SRDUs. The Forum, for example, asked the CRTC for information about its formal and informal dispute resolution cases in broadcasting for each of the 2016 to 2021

⁴¹ *Ibid.*, paragraph 28.

⁴² *Bell ExpressVu Satellite Relay Distribution Undertaking - Licence renewal*, [Broadcasting Decision CRTC 2006-564](#) (Ottawa, 28 September 2006), at paragraph 61.

⁴³ Bell April 2024 Part I application, paragraph 29.

⁴⁴ *Ibid.*, paragraph 30.

⁴⁵ Section 5(3): “The Commission shall give primary consideration to the objectives of the broadcasting policy set out in subsection 3(1) if, in any particular matter before the Commission, a conflict arises between those objectives and the objectives of the regulatory policy set out in subsection (2).”



calendar years. The Commission returned 43 pages of information that appeared to describe 210 cases opened by the Commission: only 25 cases included information about the cases and these referred to “undue preference applications”, “undue preference complaints”, requests to set terms of distribution or requests for final-offer arbitration. In other words, the CRTC may well have received complaints that it re-categorized under another name. FRPC also notes in this regard, however, that even if no complaints were made to the CRTC about SRDUs since Bell’s licence was renewed, this fact alone could also be interpreted as reflecting diminished belief in the utility or proper functioning of the CRTC’s alternative-dispute resolution processes with respect to fair treatment of programming services’.

42 Finally, the Forum is mindful of the number of proceedings that the CRTC’s *Regulatory Plan* for implementing Bill C-11 projected for 2024. It is difficult to understand how the Commission will also tuck in a review of its SRDU policy in the eight months that remain in 2024.

43 To conclude, FRPC opposes Bell’s Part 1 application on three grounds: first – the absence of evidence regarding the materiality of its SRDU’s financial support for Canadian program production which might justify exemption from this requirement; second – the lack of any clear legal or policy rationale for treating SRDUs as if they are small BDUs, TRDUs or DMBUs, and third – the absence of any clear rationale for the CRTC to review its policy at this time or in light of the number of proceedings it is apparently contemplating holding in 2024 so as to implement the new provisions of Parliament’s 2023 *Broadcasting Act*.

Sincerely yours,

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