



April 25, 2024

Filed Electronically

Marc Morin  
Secretary General  
Canadian Radio-television and  
Telecommunications Commission  
Ottawa, Ontario  
K1A 0N2

Dear Mr. Morin:

**Re: Part 1 Application – 2024-0125-6 – Bell ExpressVu Limited Partnership: Exemption of satellite relay distribution undertakings (SRDU)**

1. The Writers Guild of Canada (WGC) is the national association representing approximately 2,500 professional screenwriters working in English-language film, television, radio, and digital media production in Canada. The WGC is actively involved in advocating for a strong and vibrant Canadian broadcasting system containing high-quality Canadian programming.
2. The applicant in this matter, Bell ExpressVu (ExpressVu) is filing this Part 1 Application to request that the Commission, “amend [its] satellite relay distribution undertaking (SRDU) licence by removing the existing condition of service (COS) requiring it to contribute five percent of its gross broadcasting revenues to Canadian programming.”<sup>1</sup>
3. The WGC **opposes** this application.
4. This application is the latest in a series of applications filed by broadcasters over the past year seeking to eliminate or reduce their regulatory obligations with respect to support of Canadian programming based on Bill C-11, the *Online Streaming Act*, and to do so on a piecemeal basis, outside of the context of a structural or policy hearing, and while the Commission is still in the middle of a consultation process designed precisely to implement that very same *Online Streaming Act*.<sup>2</sup> These applications are inappropriate and clear attempts by broadcasters to undermine the larger policy framework review by undercutting its foundations before it can even be built. These applications raise issues that are far more appropriately dealt with in the context of the very policy framework proceeding the

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<sup>1</sup> ExpressVu Supplementary Brief, 18 March 2024, para. 1.

<sup>2</sup> Other such applications include Bell Media Inc., Application No. 2023-0379-1, Corus Entertainment Inc., Application No. 2022-0946-0, and Rogers Media Inc., Application No. 2023-0373-3.

Commission has already embarked upon. The applications, if granted, would seriously hurt Canadian creators, deprive Canadian audiences of programming choice, and fail to further the objectives of the *Broadcasting Act* (the Act). The WGC has opposed these other applications on similar grounds, as we oppose this one.

5. Ironically, a member of ExpressVu’s own corporate family, Bell Canada, on behalf of Bell Satellite TV and Bell Fibe TV, recently found itself on the exact opposite side of this issue in relation to a Part 1 application by Accessible Media Inc. (AMI). In *that* instance, Bell Canada stated that it “oppos[ed] AMI’s request for [an] increase to its mandated wholesale rates until such time as a revised regulatory framework pursuant to the *Online Streaming Act* is in place”.<sup>3</sup> It seems, then, that Bell Canada proposes piecemeal applications when it benefits them, and opposes them when it doesn’t.
6. ExpressVu is part of BCE Inc., a multi-billion-dollar company. They presumably have an entire regulatory department dedicated to this issue, with multiple staff, including legal staff, who can prepare this application—and many more, no doubt—with which to fill the Commission’s Part 1 processes webpage. Together with other broadcasters, the traditional broadcasting sector could indeed deluge the space with duplicative processes, overwhelming the resources of organizations like the WGC to respond to repeated applications to rethink the regulatory framework multiple times in multiple places. One would hope that such is not their conscious strategy, but it would be the effect. Which is why it makes eminent sense to dismiss this application and instead consider these issues in a structural hearing, as the Commission is already doing, or in a policy proceeding to consider the regulatory requirements applicable to relay distribution undertakings—including SRDUs and terrestrial relay distribution undertakings (TRDUs)—as a whole.
7. ExpressVu’s own application essentially acknowledges that the issues it is raising are better suited to consideration within a broader policy review, because it proposes just such a review itself.<sup>4</sup> ExpressVu goes on to essentially make its case for why all SRDUs should be exempted from all regulation, as if this Part 1 application were that very policy review, citing other Commission policy reviews in the process.<sup>5</sup> Clearly, ExpressVu recognizes that this is properly a subject for a broader structural discussion. Such a discussion can only be truly effective in the context of considering the larger Canadian broadcasting system and all of the objectives of the Act, including the many that go to supporting Canadian programming.<sup>6</sup> This is not a policy proceeding, however—it remains a Part 1 application—and the WGC is not in the position to treat it as if it were a policy proceeding.
8. As for ExpressVu’s primary argument about its own service, it is impossible for interveners to meaningfully comment on because ExpressVu has claimed confidentiality with respect to key facts at issue. ExpressVu states that, “our SRDU no longer generates sufficient revenues to make a meaningful contribution to the objectives of the Act.”<sup>7</sup> But in support of that core argument, ExpressVu has redacted from the public record those very revenues that it is arguing are not “meaningful”. How can

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<sup>3</sup> Bell Canada Comments on AMI Application No. 2024-0082-8, para. 15.

<sup>4</sup> ExpressVu Supplementary Brief, 18 March 2024, para. 21.

<sup>5</sup> E.g. Broadcasting Public Notice CRTC 2008-100, *Regulatory Policy - Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services*, and Broadcasting Regulatory Policy 2012-94, *Licensing and other issues relating to satellite relay distribution undertakings*.

<sup>6</sup> *Broadcasting Act*, section 3(1).

<sup>7</sup> ExpressVu Supplementary Brief, 18 March 2024, para. 15.

interveners like the WGC comment on this central claim without access to the information it is based upon? What level of contribution would be meaningful, and why? Does ExpressVu's claim, for example, take into account the multiplier effect of funding through the likes of the Canada Media Fund (CMF)—also known as the funding leverage ratio—which for 2022-2023 meant that every dollar of CMF funding elicited \$4.85 in value in private and public financing?<sup>8</sup> We are unable to even begin to meaningfully engage with ExpressVu's central argument for lack of evidence on the public record.

9. ExpressVu does cite data for subscriber numbers for the BDU market as a whole,<sup>9</sup> but this is not an application for the BDU sector as a whole, it is an application related to ExpressVu's SRDU licence. Broader BDU subscriber declines do not necessarily help us understand the dynamics of the *relay* distribution market, since relay distribution undertakings are essentially wholesalers<sup>10</sup> which do not deal directly with retail subscribers. As such, we are left with fundamental questions about *why* the declines ExpressVu is claiming have occurred, based on what factors, how these factors do or do not relate to the objectives of the Act, how availability of competition in the relay distribution market (or lack thereof)<sup>11</sup> relates to exemption from the *cultural* objectives of the Act, and the rationale(s) for SRDU (or TRDU) exemption generally. This, again, returns us back to the fact that what ExpressVu is really doing is attempting to engage structural policy issues through a Part 1 application. The WGC submits that the Commission should not engage in such undercover policy proceedings.
10. ExpressVu states that it must pay Part I licence fees to the Commission,<sup>12</sup> but the Commission has just reduced Part I licence fees for traditional broadcasters in light of the broader base from which they would be collected going forward.<sup>13</sup> This follows the elimination of Part II licence fees,<sup>14</sup> valued at over \$120 million.<sup>15</sup> In these things alone, Canadian broadcasters are already receiving significant and immediate regulatory relief.
11. SRDU obligations to support Canadian programming already self-adjust to size and financial fortunes, since they are expressed as a percentage of gross revenues of the previous broadcast year. This means that revenue declines have *automatically* translated into lower spending obligations, as a matter of course. And the Commission has already said that, as it establishes the larger regulatory landscape following passage of the *Online Streaming Act*, that "regulated entities will remain subject to the same requirements to which they were bound prior to the coming into force of the current *Broadcasting Act*,"<sup>16</sup> and, "existing contributions by traditional broadcasters will not change as a result of Step 1, but will form part of the Step 2 discussion."<sup>17</sup>

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<sup>8</sup> Canada Media Fund, Annual Report, pages 12, 123 (<https://cmf-fmc.ca/about-us/annual-reports/>).

<sup>9</sup> ExpressVu Supplementary Brief, 18 March 2024, paras. 11-12.

<sup>10</sup> See Broadcasting Public Notice CRTC 2008-100, para. 169.

<sup>11</sup> ExpressVu Supplementary Brief, 18 March 2024, para. 27.

<sup>12</sup> ExpressVu Supplementary Brief, 18 March 2024, para. 23.

<sup>13</sup> Broadcasting Regulatory Policy CRTC 2024-65.

<sup>14</sup> *Broadcasting Act*, section 11(3.1).

<sup>15</sup> In Broadcasting Order CRTC 2022-295, *Broadcasting Licence Fees – Part II*, the Commission set Part II licence fees at \$123,706,535 for 2022.

<sup>16</sup> Broadcasting Information Bulletin CRTC 2023-137, *Guidance on the current Broadcasting Act and the transitional provisions of the Online Streaming Act*, para. 4.

<sup>17</sup> Broadcasting Notice of Consultation CRTC 2023-138, para. 54.

12. For all of these reasons, the WGC submits that the Commission should deny this application by ExpressVu, and focus instead on resolving the structural issues raised in this application, if it agrees that they exist, through the structural processes that the Commission has already initiated or plans to initiate, or through a policy proceeding to consider the regulatory framework for SRDUs and TRDUs.
13. We thank the Commission for the opportunity to have participated in this process.

Yours very truly,



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