



Montreal, October 5th, 2020

Claude Doucet
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Dear Mr. Doucet:

Re: Call for Comments on Low Motion Programming
Broadcasting Notice of Consultation CRTC 2020-324

1. These are the comments of Stingray Group Inc. ("Stingray") regarding the proposal to amend the existing exemption order for still image programming services to include low-motion programming. Stingray supports the proposed amendment.
2. In *Broadcasting Notice of Consultation CRTC 2020-324*, the Commission is calling for comments on the following two questions:

Question #1 - Would it be appropriate to amend the current exemption order relating to still image programming services undertakings, set out in Public Notice 2000-10, to include low-motion programming? If so, is the following definition of that programming appropriate? If not, what other definition should be used?

A program that features extended coverage of an ordinary event or scene with no or limited video editing or camera movement.

Question #2 - Please explain if low-motion programming services should benefit from regulatory protections that are similarly offered to independent discretionary services.

QUESTION #1 – Including low motion programming services in the SI Exemption Order

3. Stingray currently operates Stingray Naturescape (previously known as Stingray Ambiance). Stingray Naturescape provides viewers with extended natural scenes in moving video, which are sometimes accompanied by soothing non-vocal music. The service may vary on a seasonal basis, providing a crackling fireplace, for example, during the December and January holiday period. Typically, a scene may last for several hours or shorter.

4. Stingray Naturescape is not eligible to operate as an exempt still-image programming service. This is because the extended scenes that the service offers are taken from life and thus include motion. As a result, Stingray Naturescape currently operates as a licensed discretionary television service, as per CRTC's *Broadcasting Decision CRTC 2013-66*, which term was administratively renewed until August 31, 2021¹.
5. Stingray Naturescape, would, we believe, fall within the Commission's proposed definition for a low-motion service:

A program that features extended coverage of an ordinary event or scene with no or limited video editing or camera movement.

Accordingly, if the amendment to the still-image exemption order ("the SI Exemption Order") were approved, it would no longer require a discretionary service licence regardless of the number of subscribers.

6. Exempting these services from licensing would, we believe, be consistent with the Commission's exemption powers under the *Broadcasting Act*. In particular, as the Commission noted in its notice of public consultation, the programming offered by these services is limited in scope. It is not well suited to licensing in that matters typically dealt with at licensing, such as Canadian programming expenditure requirements, are not meaningfully and practically applied (*from an administrative standpoint*) to these services. Similarly, obligations applicable to licensees (such as filing programming logs for review by the Commission, for example) serve little purpose when there is limited program variation. Application of an exemption order to these services would treat these services in a more appropriate manner and reduce the administrative burden (for the Commission and the service operator, alike) of filing regular licence renewal applications.
7. For these reasons, we support the Commission's proposal to exempt low-motion programming services through an amendment to the exemption order for still image programming services. The exemption should allow a service to offer both low-motion programming and still images. Offering either one or the other would, we believe, unduly inhibit the creative development of these services.
8. To be consistent with the existing exemption order, the proposed definition for a low-motion service should permit the same accompanying material as that provided for still images, as set out in section 4 of the existing exemption order. This would permit low-motion services to offer the same background music, Canadian audio services and spoken word content as still image services. It is our understanding that the overall SI Exemption Order's language and sections would be adjusted or changed (such as its current title), to adapt to low motion programming services' realities.

¹ As per CRTC Decisions 2019-261 and 2020-186.

9. Hence, it would be helpful to provide greater clarity in the existing SI Exemption Order in two respects. First, the reference to “background music” in subsection 4(a) should be expanded to include “background sounds that relate to what is presented by the still images or the low-motion programming”. For example, a serene beach scene could include sounds of wind and waves, with or without music. This is a common feature for these types of services. The following could be appropriate: “(a) background music and/or sounds that relate to what is presented by the still images or low-motion programming content”.
10. Second, the reference to spoken word content in subsection 4(e) should recognize that this content could be promotional in nature, provided it is related to what is presented by the still images or low-motion programming. As the Commission is aware, existing still image services have traditionally functioned to provide limited promotional and advertising opportunities, such as real estate listings and classified ads and the promotion of goods or services presented through “still images”. The same approach would apply to low-motion services. We feel it would be helpful and avoid misunderstanding if subsection 4(e) were amended slightly to reflect the fact that spoken word content could be promotional in nature. The following could be appropriate: “(e) spoken words, including spoken words that are promotional in nature, that relate to what is presented by the still images or low-motion programming content”.

QUESTION #2: Mirroring carriage requirements for similar type of services

11. In response to the Commission’s questions as to whether or not low-motion programming services should benefit from regulatory protections that are similarly offered to independent discretionary services, our answer is yes.
12. Canadian, independent, low-motion programming services, such as Stingray Naturescape, contribute to broadcasting policy objectives as well as to diversity in the broadcasting system, in a manner that is appropriate for these services. Diversity in the broadcasting system also means diversity of voices and of (Canadian) ownership. It is as important as diversity in programming content (which would necessarily derive from a wide variety of sources). We can state with confidence that Stingray Naturescape is a unique service that is valued by its partners and its subscribers alike and attains good viewership. As the Commission notes in the Notice of Consultation, some BDUs offer their own “Fireplace Channel” or “Aquarium Channel”. In our view, Stingray Naturescape is superior in content and presentation. It reflects the benefits of a dynamic market for programming services in which independent services may develop programming genres and reach audiences that might otherwise languish. Moreover, it is an attractive service for many BDUs (whether or not they are vertically integrated) that may not wish to produce their own content of this nature.

13. Stingray is, and must be able to continue, to offer the content on a competitive basis.
14. This supports broadcasting policy objectives through the provision of a diversity of programming content from a diversity of sources – including from independent companies. We employ Canadians to create, edit and package both the audio and video components of this programming with appropriate soundtracks. This requires real expertise. Stingray Naturescape is a good, Canadian, independent programming service that meets a clear demand. We would not want to minimize the significance of this type of service within the wide context of the Canadian broadcasting system.
15. We recognize that exempting low-motion programming services from licensing will result in these services no longer being eligible for 1:1 linkage with BDU-owned discretionary services. The long-standing linkage rule for exempt programming services, currently found under subsection 19(5) of the *Broadcasting Distribution Regulations*, is not protection enough for independent services ***still being denied access by vertically integrated BDUs.***
16. Subsection 19(5) of the *Broadcasting Distribution Regulations* reads as follows:
 - (5) A licensee that distributes one or more programming services of related exempt programming undertakings in a licensed area shall also distribute an equal number of programming services of unrelated exempt programming undertakings in the licensed area.

This linkage requirement applies only to exempt programming services that are not exempt discretionary programming services. Even if this linkage requirement will help to ensure the continued access for unrelated exempt non-discretionary programming services in a way that is consistent with the distribution of related exempt non-discretionary programming services, it will NOT be enough to ensure access for Stingray Naturescape on certain VI BDUs that currently offer their own still images programming services.

17. Stingray appreciates the Commission’s concern that BDUs may previously have counted low-motion services for the purposes of their 1:1 linkage obligation for discretionary services. There is no concern, however, when the linkage requirement is applied on a like for like basis: i.e. when an unrelated exempt non-discretionary service such as a low-motion service is linked to a related exempt non-discretionary service. In fact, the linkage requirement is entirely appropriate since it provides access to BDU distribution for competitive unrelated services that could otherwise be displaced by BDU-owned services.
18. However, this is a long-standing concern for **independent exempt non-discretionary services** (as it is for discretionary services). The Commission emphasized the rationale for the linkage rule in *Broadcasting Decision CRTC 2010-590*:

In Public Notice 1996-60, the Commission explained that the purpose of requiring a 1:1 matching requirement for affiliated exempt programming services distributed on analog distribution systems was to preclude “any preferential treatment being given to the

exempt services in which distribution undertakings have an ownership interest above a certain level.

19. Questions surrounding concentration of ownership and vertical integration were not nearly as pressing in 1996 as they are today. In 1996, very few BDU-distributed programming services were owned by BDUs. Today, the vast majority of these services are BDU-owned.
20. An amendment to the SI Exemption Order that would provide for a regulatory protection similar to the one currently offered to independent discretionary services would be necessary in the current highly competitive and consolidated market environment. We therefore respectfully request that the Commission confirm that the 1:1 linkage requirement such as the one found under subsection 19(3) of the *Broadcasting Distribution Regulations*, be similarly applicable to exempt independent programming undertakings, in order to avoid any misunderstanding regarding this matter.
21. In addition, it would be consistent with the Commission's approach to the preservation of diversity in the broadcasting system, that the 1:1 linkage requirement for exempt low-motion services be applied in respect to low-motion independent services, and not just to any "unrelated" exempt service. This requirement could be incorporated into the Exemption Order as well as the *Broadcasting Distribution Regulations*.²
22. Stingray is concerned that the change in status for low-motion services (which are currently counted as discretionary services, as noted by the Commission) may result in BDUs dropping independent exempt low-motion services (which would otherwise be linked to their own related exempt low-motion services) and replacing them with low motion or other exempt services that are "swapped" between BDUs. Such a result would undermine the operation of successful independent low-motion services. These independent services do indeed contribute to diversity in the broadcasting system and the achievement of broadcasting policy objectives, as discussed above, albeit in a manner that is different from the contribution made by other discretionary services.

² For example, the definition of "unrelated exempt programming undertaking" in section 19(1) could be amended by adding new paragraph (c) as follows: "[and] (c) in the case of an undertaking the operator of which operates under the [exemption order for low motion or still image programming undertakings], an independent programming undertaking."

23. Stingray appreciates this opportunity to present its views regarding low-motion programming services and the overall broadcasting system modern realities. We support the proposal to include these services within the existing exemption order for still image programming services. We also are of the view that independent exempt (SI/low motion) programming services should benefit from regulatory protections that are similarly offered to independent discretionary services as found under subsection 19 (3) of the *Broadcasting Distribution Regulations*.
24. We look forward to reviewing other submissions on this matter.



Yours truly,

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