



## Broadcasting Regulatory Policy CRTC 2010-162

Route references: Broadcasting Notice of Public Hearing 2007-10, Broadcasting Notice of Consultation 2009-577

Ottawa, 19 March 2010

### **Distribution by direct-to-home services of stations from the major ownership groups in the Atlantic provinces and independently owned stations across Canada**

*In Broadcasting Public Notice 2008-100, the Commission announced that as of 31 August 2011, new rules will apply to the distribution of television stations by direct-to-home (DTH) services. In this regulatory policy, the Commission announces two changes to those rules which have been adopted by majority decision:*

- *First, to ensure that subscribers in the Atlantic region receive an equitable range of television stations, DTH services will be required to carry two Atlantic stations from each of the major broadcast ownership groups as part of the basic service offered to subscribers in that region.*
- *Second, to ensure that subscribers have access to a local voice that is distinct from that offered by the major broadcast ownership groups, DTH services will also be required to distribute at least two independently owned television stations from the other ownership groups across Canada. DTH services will be required to provide at least one such station as part of the basic service in each province where such a station has been licensed.*

### **Introduction**

1. In Broadcasting Public Notice 2008-100, the Commission announced its determination that as of 31 August 2011, direct-to-home (DTH) broadcasting distribution undertakings (BDUs) will be required to offer a selection of provincially based local television stations as part of the basic service. Specifically, DTH undertakings would be required to distribute one television station per province, where such a station exists, from each of the major broadcast ownership groups – Canadian Broadcasting Corporation (CBC) English and French networks, Canwest Television GP Inc. (the general partner) and Canwest Media Inc. (the limited partner), carrying on business as Canwest Television Limited Partnership (Canwest), CTVglobemedia Inc. (CTVgm), Rogers Broadcasting Limited, Remstar Broadcasting Inc. and Quebecor Media Inc. – and at least one independently owned local station from each province where such stations have been licensed. However, with respect to the four Atlantic provinces, the Commission expressed the view that this approach might place too great a burden on DTH undertakings in light of increasing demands for bandwidth. Accordingly, in order to determine whether special rules for the Atlantic provinces would be necessary, the

Commission directed Bell ExpressVu Limited Partnership<sup>1</sup> (Bell) and Star Choice Television Network Incorporated (Star Choice), licensee of the DTH undertaking Shaw Direct, to submit updated information on their projected satellite capacity as of 31 August 2011.

2. Subsequently, in Broadcasting Notice of Consultation 2009-577, the Commission announced that it had received a joint submission by the following licensees of independently owned television stations: Astral Media Radio (Toronto) Inc. and 4382072 Canada Inc., partners in a general partnership carrying on business as Astral Media Radio G.P.; Corus Entertainment Inc. (Corus), on behalf of 591987 B.C. Ltd.; Jim Pattison Broadcast Group Ltd. (the general partner) and Jim Pattison Industries Ltd. (the limited partner), carrying on business as Jim Pattison Broadcast Group Limited Partnership; Newcap Inc.; RNC MEDIA Inc.; Télé Inter-Rives ltée, on behalf of itself and CKRT-TV ltée, Télévision MBS inc. and CHAU-TV Communications ltée; and Thunder Bay Electronics Limited (collectively, the applicants). These licensees operate 20 small-market television stations in 14 communities throughout Alberta, British Columbia, Ontario and Quebec. In response to the Commission's determinations in Broadcasting Public Notice 2008-100, these licensees requested that the Commission amend the *Broadcasting Distribution Regulations* (the Regulations) to require DTH licensees to distribute 14 specific stations to DTH subscribers within the Grade B contours of those stations. The proposed amendment would also require DTH licensees to distribute high definition versions of these stations should they become available. In Broadcasting Notice of Consultation 2009-577, the Commission also indicated that it would consider comments it might receive with respect to other small-market television stations.
3. Accordingly, the Commission considers that the issues to be determined are the appropriate distribution by DTH services of Atlantic television stations from the major ownership groups in the Atlantic provinces and independently owned stations across Canada.

### **DTH carriage of Atlantic television stations**

4. The Commission notes that there are currently 13 conventional television stations belonging to one of the major broadcasting ownership groups identified in paragraph 1 that operate in the Atlantic provinces, namely Canwest, CBC English, CBC French and CTVgm. In addition, CIHF-TV-2 Saint John, a rebroadcasting transmitter operated by Canwest, provides some local programming. CJON-TV St. John's, which is owned by Newfoundland Broadcasting Company Limited, also operates in the Atlantic provinces but is not part of one of the major broadcast ownership groups addressed in this section.
5. Based on its analysis of the [updated capacity reports](#) provided by the DTH licensees, the Commission finds that Bell and Star Choice will likely have sufficient capacity by September 2011 to meet a requirement to distribute two Atlantic stations from each of

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<sup>1</sup> Bell ExpressVu Inc. (the general partner), and BCE Inc. and Bell Canada (partners in BCE Holdings G.P., a general partnership that is the limited partner), carrying on business as Bell ExpressVu Limited Partnership.

the major broadcast ownership groups without significantly curtailing their distribution of other services and thereby harming their business model. Further, the Commission considers it appropriate to ensure that DTH subscribers in the Atlantic region receive an equitable range of television stations, as will subscribers in other regions. Accordingly, the Commission will require that the basic service provided to Atlantic subscribers include, at a minimum, two Atlantic stations from each of the major broadcast ownership groups. These stations may originate from any of the four Atlantic provinces and are to be provided to all subscribers in the Atlantic region. Accordingly, as of 31 August 2011, the Commission intends to amend the Regulations to this effect. This amendment has been adopted by majority decision.

6. However, the Commission notes that in its updated capacity report, Bell indicated that a number of the services in question provide little or no unique programming, i.e. the programming offered by affiliated services is identical or nearly identical.
7. The Commission is of the view that whether or not a station has committed to offering unique programming should be taken into consideration in determining whether DTH services should be required to carry that station pursuant to the rule set out in paragraph 5. In this regard, the Commission understands that a number of the stations operated by Canwest and CTVgm have committed to producing only a small amount of local programming as part of their last licence renewals or have made no local programming commitments at all.
8. Specifically, the Commission notes that Canwest operates two stations in the Atlantic provinces that offer largely identical programming. CIHF-TV Halifax produces local and regional programming in the Halifax market, most of which is also broadcast on CIHF-TV-2 Saint John. However, Canwest has committed to providing at least 7 to 10 minutes of local news daily that is unique to its Saint John station.
9. For its part, CTVgm currently operates four stations in the Atlantic provinces, namely CKCW-TV Moncton, CKLT-TV Saint John, CJCH-TV Halifax and CJCB-TV Sydney, that are licensed as regional stations. CTVgm has made no commitment to air local programming on any of these stations that is specific to the individual communities they serve, but instead offers similar programming on all four stations that is suitable to the Atlantic region in general. The Commission understands that CTVgm may offer brief “local spots” as part of the programming on some or all of these stations, but that such programming is minimal and is not, in any case, a part of what CTVgm has committed to do as part of its last licence renewal.
10. In the Commission’s view, since Canwest has committed to providing some local programming on each of its stations, there would be benefit in requiring DTH distribution of both of these stations, particularly if access to the local programming improvement fund and/or market demand results in additional local programming in the future. However, with respect to the CTVgm stations identified above, since these stations have not committed to providing any local programming, requiring DTH services to distribute more than one of these stations would not, in the Commission’s

view, benefit DTH subscribers, nor would it represent an efficient use of satellite capacity. Consequently, the Commission sees little benefit in requiring DTH undertakings to distribute more than one of the four CTVgm stations at this time.

11. In light of the above, as part of the rule set out in paragraph 5, the Commission will amend the Regulations to only require the distribution of a second station in the Atlantic provinces from a particular ownership group where the stations in question have committed to providing unique local programming as part of their licence renewal. Therefore, based on the information provided to the Commission, applying the new rule set out in paragraph 5, DTH services will be required to provide two CBC English-language stations, one CBC French-language station, two Canwest stations and one CTVgm station from the Atlantic provinces. Should the CTVgm stations that do not currently carry unique local programming decide to begin to offer local programming in the context of their licence renewal, the Commission may reconsider their eligibility for DTH distribution under the above rule.
12. Finally, the Commission notes that in a letter of 18 December 2008, the CBC argued that it would be inconsistent for the Commission to encourage broadcasters to improve and increase local programming in Broadcasting Public Notice 2008-100 and not to require DTH services to carry all of its Atlantic stations that offer local programming. The CBC also requested that interested parties be allowed to review and provide comments on the updated DTH capacity reports and that the Commission initiate a further process to permit broadcasters operating in the Atlantic provinces to comment on the carriage of television stations from these provinces by DTH services.
13. In response to these requests, the Commission notes that interested parties, including the CBC, made their positions on this matter clear in the proceeding that culminated in Broadcasting Public Notice 2008-100. In the Commission's view, additional comments would not have added anything of substance to the record. Further, in requesting updated capacity reports from DTH services, the Commission was unambiguous in Broadcasting Public Notice 2008-100 that its intent was to finalize its decision on this matter based on the record of that proceeding and the updated capacity information provided by DTH licensees and that it did not contemplate any further process at that time.
14. The Commission notes that it intends to further examine the distribution requirements for DTH services as part of the review of the regulatory framework for all such services discussed in paragraph 37.

## **DTH carriage of independently owned stations across Canada**

### **Background**

15. Section 42(1)(b) of the Regulations requires that a DTH undertaking delete a programming service that is comparable to that of a Canadian television programming undertaking and that would otherwise be received simultaneously by subscribers located within the Grade B contour of the television programming undertaking.

16. Section 43(1) of the Regulations requires DTH undertakings to do the same where the programming distributed is comparable to the programming broadcast by the Canadian programming undertaking and is distributed within the same broadcast week.
17. However, as early as in Public Notice 1995-217, the Commission noted that discussions had taken place between certain DTH undertakings and the Canadian Association of Broadcasters (CAB) concerning alternative measures that could be used to compensate broadcasters or protect local and regional program rights and advertising revenues in lieu of program deletion. The Commission stated that it would accept alternatives to the requirements set out above that had been mutually agreed upon by all parties.
18. In Broadcasting Public Notice 2003-37, the Commission noted that
  - DTH undertakings had significant numbers of subscribers in small markets (regions with populations of fewer than 300,000) not served by cable BDUs;
  - the local signals that were distributed by DTH undertakings tended to originate from large markets; and
  - stations serving small markets had experienced a decline in audience, local advertising revenues and profitability and that this decline was somewhat more pronounced for independently owned stations than for those owned by larger broadcast ownership groups.
19. Further, the Commission considered that smaller broadcast ownership groups did not have the same resources as larger ownership groups and were unable to benefit from economies of scale to the same extent. Thus they had fewer resources to cope with declines in audiences and in advertising revenues than stations belonging to larger ownership groups. It therefore approved a condition of licence suspending the program deletion provisions cited above provided that, among other things, DTH undertakings distributed the signals of at least 13 small-market independently owned stations to DTH subscribers who reside within the Grade B contours of the stations in question. This measure had been part of a memorandum of understanding that had been the subject of negotiations between each DTH undertaking and the CAB prior to the issuance of Broadcasting Public Notice 2003-37.
20. The current conditions of licence providing alternatives to program deletion, including various extensions that had been granted, all expired by the end of April 2009. Despite this fact, the DTH undertakings have continued to undertake the measures approved in lieu of program deletion and broadcasters have not, to date, made any formal deletion request.

#### **Submissions**

21. The applicants stated that they were generally supportive of the measures set out in Broadcasting Public Notice 2003-37 and had anticipated that these measures would constitute the long-term framework that would make it possible for their stations to survive. While DTH licensees were previously required to distribute 13 of their stations, as noted above, the applicants expressed concern that because the stations are located in

only four provinces, DTH undertakings would be required to distribute as few as four of these stations following the introduction of the new Regulations in 2011 announced in Broadcasting Public Notice 2008-100.

22. For their part, Bell and Star Choice submitted that the combination of their finite satellite capacity, limitations in their ability to expand this capacity and the uncertainty concerning the proceedings currently before the Commission made it difficult to commit to specific distribution requirements over and above those specified in Broadcasting Public Notice 2008-100. Bell further noted that the requirement to distribute the independently owned stations arose not through a policy decision, but rather as a direct result of a negotiation between itself and affected parties. Bell submitted that the Commission's findings in Broadcasting Public Notice 2008-100 were based on proposals made by broadcasters that involved rescinding past agreements, including those affecting the independently owned stations, and establishing a new compensation arrangement for the distribution of distant signals. Bell also stated that it considers the determination in Broadcasting Public Notice 2008-100 regarding the number of independently owned stations it is required to distribute as a minimum and that it remains willing to negotiate terms that will allow for the continued distribution of these stations.
23. More generally, Bell and Star Choice noted that Broadcasting Public Notice 2008-100 was issued less than a year ago and that the DTH distribution policy set out in that notice was established as part of a balancing act, taking into consideration requests from the cable BDUs, the conventional television broadcasters, licensees of specialty and pay services and other interested parties. They submitted that the application attempts to rewrite that policy without taking into consideration any of the other factors weighed.
24. Finally, a number of television licensees submitted that the Commission should go beyond what was proposed in the above-noted application and require DTH undertakings to distribute, among other things, all local television stations, including local community television stations, in their local markets. Further, S-VOX Group of Companies (S-VOX), which includes Christian Channel Inc., submitted that CHNU-TV Fraser Valley should also be distributed as an independently owned television station as it meets the criteria<sup>2</sup> for such a station set out in Broadcasting Public Notice 2003-37.

#### **Commission's analysis and determinations**

25. Much like other television stations, independently owned stations have traditionally been licensed with the expectation that they will provide Canadians residing in their local markets with programming that reflects their needs and concerns. In providing such programming, local stations can make a significant contribution to the attainment of the objectives of the *Broadcasting Act* and in particular that set out in section 3(1)(i)(ii), which specifies that programming provided by the Canadian broadcasting system should be drawn from local, regional, national and international sources. In this regard, independently owned stations often play a particular role in meeting this objective since they provide a local voice that is distinct from that offered by stations owned by the major broadcast ownership groups.

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<sup>2</sup> Independently owned station serving less than 300,000 people.

26. With respect to the present application, the Commission notes that the applicants indicated that the 20 independent stations they own and operate provide a total of approximately 137 hours of original local content each week to their viewers. The Commission further notes that in many instances the independent stations are the only source of English- and French-language local programming in some of Canada's smallest television markets and, in certain cases, in official language minority communities.
27. As defined in Broadcasting Public Notice 2008-100, an "independently owned local television station" means a licensed over-the-air local television station not owned by one of the major broadcast ownership groups that provides, in one of the official languages, local programming, including local news, to the community it is licensed to serve. In addition to the applicants, the following licensees operate television stations that currently correspond to this definition: 0859291 B.C. Ltd. (CHEK Media); Newfoundland Broadcasting Company Limited; 2190015 Ontario Inc. (Channel Zero); and Shaw Cablesystems Limited (Shaw).
28. Carriage of independent stations by DTH undertakings, especially in smaller communities where DTH penetration is often higher than in larger communities, puts these stations in a better position to contribute to local expression and reflection in their respective communities.
29. An examination of their channel line-ups reveals that the two DTH services in operation at this time each currently distribute considerably more independent television stations than required. While the Commission considers it unlikely that these DTH undertakings would drop many, if any, of the currently distributed independent stations after the new Regulations come into effect on 31 August 2011, the Commission is of the view that the Regulations should be modified to ensure that, to the extent possible, DTH services distribute a representatively diverse number of independently owned stations.
30. Accordingly, the Commission will include in the new Regulations a requirement that DTH undertakings provide at least two independently owned television stations from each independent ownership group within the Grade B contour of each of the stations in question. This amendment has been adopted by majority decision. The ownership groups to which this rule would currently apply would include the applicants and the groups described in paragraph 27. In addition, as announced in Broadcasting Public Notice 2008-100, the basic service offered to subscribers in each province must consist of at least one such station per province within the province in question, where such stations have been licensed, or, in the case of the Atlantic region, one station per region.
31. The Commission notes that the stations owned by Shaw and 591987 B.C. Ltd., the latter of which is a subsidiary of the applicant Corus, and Star Choice, licensee of the DTH undertaking Shaw Direct, are controlled by JR Shaw and therefore share certain common ownership interests. Under the current Regulations, where various types of programming services and distributors share common ownership interests, the programming services

are treated as “related” undertakings and particular rules govern the distribution of these related undertakings by BDUs. In Public Notice 2008-100, the Commission chose to maintain these rules in the new Regulations and, in some cases, reduce the ownership threshold that is used to determine whether undertakings are related. The Commission is of the view that a similar principle should be applied to the distribution of Shaw and Corus stations by DTH undertakings. Specifically, for the purposes of the rule to be set out in the new Regulations, as described in paragraph 30 above, the Shaw and Corus stations will be treated as if they were a single ownership group. This would mean that DTH undertakings will only be required to distribute two television stations taken from all of the stations owned by either the Shaw or Corus ownership groups, rather than two stations from each of these groups.

32. Factoring in the number of stations operated by each of the ownership groups noted earlier, DTH undertakings would be required to distribute a minimum of 17 stations under the above-noted provisions. Based on its examination of the current channel line-ups of the two currently operating DTH licensees, the Commission concludes that neither of these licensees would need to add more independent stations than are currently offered to meet this requirement.
33. As part of the future licence renewals for independent television stations, the Commission will take into consideration the DTH requirement to distribute independent television stations in determining the appropriate amount of local programming to be broadcast by these stations.
34. Finally, as regards the request by S-VOX that CHNU-TV be considered an independently owned television station, the Commission notes that CHNU-TV was originally licensed in Decision 2000-218 as a religious television station serving the Fraser Valley in British Columbia. The requirements set out in Broadcasting Public Notices 2003-37 and 2008-100 and the new requirements above all relate to general interest television stations. The Commission does not consider it appropriate to extend this new requirement to other types of stations at this time.
35. The Commission encourages DTH licensees to undertake cooperative arrangements, including the use of omnibus<sup>3</sup>/partial<sup>4</sup> channels to provide subscribers with the unique programming of local television stations.

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<sup>3</sup> An omnibus channel consists of the compilation of programming from several programming services on one channel. Such a channel permits the distribution of particular content, such as local news or other programming, from a number of services while using only the BDU capacity needed to distribute one service.

<sup>4</sup> A partial channel is a channel on which only a portion of the programming from a programming service is distributed. Each programming service distributed in this manner has a unique channel number, which “goes dark” or redirects the viewer to another channel at times when no local content is being broadcast. Certain BDUs are able to use a process called “statistical multiplexing” to use the capacity of partial channels for other services at times when programming is not distributed on the partial channel.



## **DTH policy review**

36. In the context of its fall proceeding relating to a group-based approach to the licensing of television services, the Commission heard a number of concerns from television station operators with respect to DTH services and in particular in relation to the distribution of conventional television stations and the performance of simultaneous substitution. In addition, the Commission anticipates that there will be significant changes in the broadcasting industry over the coming years that should be taken into account in the Commission's DTH policies, including the upcoming transition to digital television, the increase in high definition programming offerings, the introduction of a new DTH service and the addition of new and increased satellite capacity by the existing DTH providers, as well as other issues that may arise before the Commission.
37. In light of the above, the Commission will conduct a comprehensive review of its policies for all DTH services prior to the next licence renewal proceedings for such services.

Secretary General

### **Related documents**

- *Call for comments on a proposed change to the policy regarding the distribution of small-market independent television stations by direct-to-home broadcasting distribution undertakings*, Broadcasting Notice of Consultation CRTC 2009-577, 14 September 2009
- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services* – Regulatory policy, Broadcasting Public Notice CRTC 2008-100, 30 October 2008
- *Direct-to-home (DTH) broadcasting distribution undertakings – Simultaneous and non-simultaneous program deletion and the carriage of local television signals in smaller markets*, Broadcasting Public Notice CRTC 2003-37, 16 July 2003
- *New religious television station for the Fraser Valley*, Decision CRTC 2000-218, 6 July 2000
- *Introductory statement – Licensing of new direct-to-home (DTH) satellite distribution undertakings, and new DTH pay-per-view (PPV) television programming undertakings*, Public Notice CRTC 1995-217, 20 December 1995

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