



Telecom Information Bulletin CRTC 2011-214

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Ottawa, 25 March 2011

Revised guidelines for review and vary applications

In this information bulletin, the Commission revises its Guidelines for review and vary applications to reflect the revised time limit within which review and vary applications must be made, as per the Commission's new Rules of Procedure, which take effect on 1 April 2011.

Introduction

1. Section 62 of the *Telecommunications Act* (the Act) provides that the Commission may, on application or on its own motion, review and rescind or vary any decision made by it or re-hear a matter before rendering a decision. In Telecom Public Notice 98-6, the Commission issued guidelines for applications to review, rescind, or vary a decision (review and vary applications). These guidelines contain the following information:
 - a. the test that the Commission uses to determine whether to exercise its power to review and vary its telecommunications decisions;
 - b. the time limit within which to file review and vary applications; and
 - c. a list of factors that the Commission may take into consideration in determining whether an application should be considered a new application or a review and vary application.
2. In light of the current converged communications environment, the Commission has adopted the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (SOR/2010-277) (the Rules of Procedure)¹, which will apply to all proceedings before the Commission as of 1 April 2011. The Rules of Procedure, among other things, shorten the time limit for filing review and vary applications.
3. Accordingly, the Commission is revising its Guidelines for review and vary applications, originally published in Telecom Public Notice 98-6, to reflect the revised time limit and remove certain background information.
4. These revised guidelines, including the revised time frame for filing review and vary applications, will apply to all review and vary applications for which the original decision was issued on or after 1 April 2011.

¹ The new Rules of Procedure are outlined in Broadcasting and Telecom Regulatory Policy 2010-958 and related guidelines are outlined in Broadcasting and Telecom Information Bulletin 2010-959.

Criteria for review and vary applications

5. In order for the Commission to exercise its discretion pursuant to section 62 of the Act, applicants must demonstrate that there is substantial doubt as to the correctness of the original decision, for example due to
 - (i) an error in law or in fact;
 - (ii) a fundamental change in circumstances or facts since the decision;
 - (iii) a failure to consider a basic principle which had been raised in the original proceeding; or
 - (iv) a new principle which has arisen as a result of the decision.
6. The Commission notes that there may be instances where it will first decide whether a review is warranted – for example, where it considers there was a procedural error – and only then conduct a proceeding to determine whether to vary the decision.

Time frame for filing review and vary applications

7. Pursuant to section 71 of the Rules of Procedure, an application to review, rescind, or vary a decision of the Commission must be filed with the Commission within 90 days after the date of the decision.
8. The Commission may extend the deadline if it is of the opinion that it is just and equitable to do so.

Criteria for distinguishing review and vary applications from new applications

9. In the past, some applications have been framed as new applications when they should have been framed as review and vary applications, and vice versa. The delineation of general guidelines for distinguishing among the various applications should assist applicants in determining whether to proceed by way of a new application or a review and vary application and avoid unnecessary delays.
10. The “substantial doubt” test outlined in paragraph 5 above will assist the Commission in its determination as to whether an application should be treated as a new application or a review and vary application. Where an application raises substantial doubt as to the correctness of the original decision at the time it was made, the Commission will generally consider the application to be a review and vary application. However, where the application essentially relates to the continuing correctness of a decision rather than its original correctness, the application will generally be treated as a new application.

11. The Commission has identified five factors that, although not exhaustive, will assist in assessing whether an application raises an issue relating to the original or the continuing correctness of the decision in question and accordingly, whether it should be treated as a review and vary application or a new application. These factors are the following:
 - (i) whether the application raises an error of law, jurisdiction, or fact;
 - (ii) the extent to which the issues raised in the application were central to the original decision;
 - (iii) the extent to which the facts or circumstances relied upon in the application were relied upon in the original decision;
 - (iv) the length of time since the original decision; and
 - (v) whether the resulting decision would supersede the original decision in a prospective manner as opposed to curing an error on a retrospective basis.
12. In considering whether an application essentially relates to the original or the continuing correctness of a decision, a number of the factors outlined above may be applicable to any particular situation. One factor may suggest that an application be treated as a review and vary application while another may suggest it is a new application. The weight to be given to each of these factors will depend on the circumstances of each case.
13. Where an application relates only to the legal or factual correctness of the original decision, it will generally be treated as a review and vary application, except where the error is clerical or otherwise of the type which would justify the issuance of a correction.
14. Where an application raises an issue that was not addressed in the original decision, or was clearly peripheral to it, the application will generally be considered as a new application. If, on the other hand, the application challenges the correctness of an integral aspect of the original decision, it will generally proceed as a review and vary application.
15. The extent to which the facts or circumstances raised in the application were relied upon in the original decision will generally be relevant where the application relates to a substantial change in circumstances. In general, where the original decision was correct at the time it was made but new facts or circumstances have arisen that render the original decision inappropriate or obsolete in light of them, the application will be treated as a new application. However, when a change in circumstances or facts raises a substantial doubt as to the correctness of the original decision at the time it was rendered, the matter is not generally one of continuing correctness, but one of original correctness. Such applications will generally be treated as review and vary applications.

16. The greater the time period which has passed since the original decision, the more likely that an application will raise a substantial doubt as to the continuing correctness of the decision and, therefore, be more appropriately treated as a new application. It is to be noted that this factor will, in many instances, be closely related to a change in circumstances as it is not the passage of time per se that is significant, but rather the change in facts or circumstances.
17. Finally, where a party seeks to vary a decision such that the variance has retrospective effect, the application will generally be treated as a review and vary application.

Secretary General

Related documents

- *Implementation of new Rules of Practice and Procedure, Broadcasting and Telecom Regulatory Policy CRTC 2010-958, 23 December 2010*
- *Guidelines on the CRTC Rules of Practice and Procedure, Broadcasting and Telecom Information Bulletin CRTC 2010-959, 23 December 2010*
- *Guidelines for review and vary applications, Telecom Public Notice CRTC 98-6, 20 March 1998*