



Broadcasting Regulatory Policy CRTC 2012-519

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Ottawa, 26 September 2012

Amendments to the *Broadcasting Distribution Regulations* in regard to the definition of “demarcation point”

The Commission announces that it has made amendments to the Broadcasting Distribution Regulations in regard to the definition of “demarcation point.”

These amendments, effective the date of their registration, will be published in the Canada Gazette. A copy of the amendments is attached to this regulatory policy.

Introduction

1. On 5 May 2011, in response to an application by Bell TV (Bell), the Commission issued Broadcasting Notice of Consultation 2011-299 in which it called for comments on access to inside wire in commercial and institutional properties.
2. Following the receipt of comments, the Commission issued Broadcasting Regulatory Policy 2011-774 setting out its findings on this matter. The Commission concluded that mandating access to inside wire in commercial and institutional properties¹ would improve customer choice and the state of competition in the broadcasting distribution market. The Commission further indicated that, in its view, only minor changes to the definition of “demarcation point” in the *Broadcasting Distribution Regulations* (the Regulations) were needed to implement this determination.
3. On 29 March 2012, the Commission issued Broadcasting Notice of Consultation 2012-185 in which it proposed to insert the words “or subscriber” in subparagraphs (a)(ii) and (b)(ii) of the definition of “demarcation point” set out in section 1 of the Regulations. Under this approach, the subparagraphs in question would read as follows:

(a)(ii) any point to which the licensee and the customer *or subscriber* have agreed; and

(b)(ii) any point to which the licensee and the customer *or subscriber* have agreed.

¹ The commercial and institutional properties in question are those that would be captured by the definition of “distribution undertaking” as set out in the *Broadcasting Act*.

4. In that notice, the Commission also called for comments on proposed amendments to the *Specialty Services Regulations, 1990* in regard to the definition of “commercial message.” The Commission notes that the definition of “commercial message” was dealt with in Broadcasting Regulatory Policy 2012-415.

Comments

5. The Commission received two comments on its proposed change to the definition of “demarcation point.”
6. Rogers Communications Partnership (Rogers) indicated that, in its view, the addition of the words “or subscriber” to subparagraph (b)(ii) would enable the broadcasting distribution undertaking (BDU) licensee, who owns the inside wire, and the owner/operator of the commercial/institutional property, who is responsible for choosing the broadcasting service provider in that property, to establish a mutually acceptable demarcation point as part of the negotiated terms and conditions for access to the inside wire.
7. Rogers indicated, however, that the addition of the words “or subscriber” to subparagraph (a)(ii) was less clear. Where the single-unit building was a commercial/institutional property, the owner/operator of the property would be the subscriber and would be responsible for determining with the BDU licensee a suitable demarcation point. However, where the property was residential, allowing either the “customer” or the “subscriber” to decide on the demarcation point could give rise to a potential conflict. Rogers concluded that, in its view, the decision regarding the location of the demarcation point should in all cases rest solely with the person who pays for BDU service (i.e. the customer) and the BDU licensee.
8. Bell indicated that the proposed amendments were generally consistent with the Commission’s objective of extending the inside wire regime to commercial/institutional properties by giving the owners/operators of these properties the ability to agree with a BDU licensee on a demarcation point that is different from the fixed location prescribed by the Regulations.
9. Bell suggested, however, that there is a significant difference between non-transient commercial/institutional properties² where the resident typically pays for their own service and more transient commercial/institutional properties³ where the property owner/operator typically pays for the service. Bell suggested that it made little sense, in transient situations, to provide the recipient of the service with input into the location of the demarcation point. Bell suggested that the definition of “demarcation point” could be altered to expressly state that “in the case of transient situations only the owner or operator of the commercial or institutional premises is authorized to agree with the licensee to a flexible demarcation point.”

² i.e. university and college dormitories, retirement homes and long term care facilities

³ i.e. hotels, hospitals and prisons

10. Bell also noted a potential issue with respect to the term “licensee” in the definition of “demarcation point.” In Bell’s view, “licensee” could refer to either the licensee who owns the inside wire or the licensee wishing to use it. Bell requested that the Commission confirm that, under the definition of “demarcation point,” either the licensee that owns the wire or the licensee wishing to use the wire may agree with the customer or subscriber to locate the demarcation point somewhere other than the fixed location.

Further process

11. Following receipt of the comments from Rogers and Bell, the Commission requested that Bell provide further submissions on its request for confirmation that, under the definition of “demarcation point,” either the licensee that owns the wire or the licensee wishing to use the wire may agree with the customer or subscriber to locate the demarcation point somewhere other than the fixed location.
12. Bell submitted that the licensee wishing to use the inside wire needs to be able to negotiate an alternative demarcation point with the customer or subscriber for two reasons. First, this approach would provide the licensee wishing to use the wire with the same degree of flexibility to choose an alternative demarcation point as the licensee that owns that wire. Second, the licensee wishing to use the inside wire needs to be able to negotiate an alternative demarcation point in order to effectively veto a demarcation point location chosen by the licensee owning the inside wire that makes the use of that wire unnecessarily or unreasonably unfeasible on a technical or commercial basis.
13. Bell indicated that, given the newness of the Commission’s regime for access to commercial inside wire, it was unable to provide any examples of the potential problems it highlighted in its submissions. Bell submitted that resolving such problems via the undue preference provisions of the Regulations would be inefficient, costly, time consuming and could result in multiple complaints.
14. In response, Rogers submitted that it failed to see why a licensee wishing to use the inside wire in a commercial/institutional property should have the right to change the demarcation point location that has already been established. All licensed BDUs are subject to the undue preference provision under section 9 of the Regulations. In Rogers’ view, if the licensee that owns the inside wire selects a demarcation point location that makes the use of that wiring unnecessarily or unreasonably unfeasible on a technical or commercial basis, as Bell fears, the licensee wishing to use the inside wire can file a complaint with the Commission and argue that it is being subjected to an undue disadvantage.

Commission's analysis and decisions

15. Both Bell and Rogers indicated that the proposed amendments were generally consistent with the Commission's intention of extending the inside wire regime to commercial/institutional properties. Both parties, however, raised concerns that the proposed amendments might, in certain circumstances, cause some potential conflict between a customer and a subscriber as to the location of the demarcation point.
16. The Commission considers that the concerns about potential conflict raised by Bell and Rogers are largely theoretical and unlikely to arise in practice. In practice, the licensee negotiating a flexible demarcation point can choose the appropriate party with which to negotiate according to the particular circumstances involved.
17. In light of the above, the Commission has adopted the proposed amendments to section 1 of the Regulations as published in Broadcasting Notice of Consultation 2012-185. The *Regulations Amending the Broadcasting Distribution Regulations* were registered on 26 September 2012. A copy of the amendments to the *Broadcasting Distribution Regulations* is attached to this regulatory policy, and will be published in the *Canada Gazette, Part II*.
18. The Commission has also considered Bell's request that the Commission confirm that, under the definition of "demarcation point," either the licensee that owns the inside wire or the licensee wishing to use the inside wire may agree with the customer or subscriber to locate the demarcation point somewhere other than the fixed location defined in the Regulations.
19. The Commission considers that the best interpretation of the definition of "demarcation point" is that it is the licensee who owns the inside wire who may agree with the customer or subscriber on a different demarcation point. The Commission notes that while the Regulations allow for the use of the inside wire by any BDU, (i.e. the licensee who owns the inside wire, another licensee or an exempt BDU), the Regulations only allow a demarcation point to be negotiated by "the licensee." In the Commission's view, to interpret the term "the licensee" in the manner suggested by Bell would allow the licensee that owns the wire or the licensee wishing to use the wire to negotiate a new demarcation point while not granting exempt BDUs the same right.

Secretary General

Related documents

- *Amendment to the Specialty Services Regulations, 1990 in regard to the definition of "commercial message"*, Broadcasting Regulatory Policy CRTC 2012-415, 27 July 2012

- *Call for comments on amendments to the Specialty Services Regulations, 1990 in regard to the definition of “commercial message,” and on amendments to the Broadcasting Distribution Regulations in regard to the definition of “demarcation point”*, Broadcasting Notice of Consultation CRTC 2012-185, 29 March 2012
- *Access to inside wire in commercial and institutional properties*, Broadcasting Regulatory Policy CRTC 2011-774, 14 December 2011
- *Call for comments on access to inside wire in commercial and institutional properties*, Broadcasting Notice of Consultation CRTC 2011-299, 5 May 2011

Appendix to Broadcasting Regulatory Policy CRTC 2012-519

REGULATIONS AMENDING THE BROADCASTING DISTRIBUTION REGULATIONS

AMENDMENTS

1. (1) Subparagraph (a)(ii) of the definition “demarcation point” in section 1 of the *Broadcasting Distribution Regulations*¹ is replaced by the following:

(ii) any point to which the licensee and the customer or subscriber have agreed; and

(2) Subparagraph (b)(ii) of the definition “demarcation point” in section 1 of the Regulations is replaced by the following:

(ii) any point to which the licensee and the customer or subscriber have agreed.
(*point de démarcation*)

COMING INTO FORCE

2. These Regulations come into force on the day on which they are registered.

¹ SOR/97-555