



Broadcasting Regulatory Policy CRTC 2014-93

PDF version

Ottawa, 28 February 2014

Route reference: 2013-486

Linkage and distribution requirements for Canadian ethnic and third-language services

The Commission has amended the linkage and distribution requirements for Canadian ethnic and third-language services set out in the Broadcasting Distribution Regulations in order to clarify these requirements in light of established Commission policy. The amendment is set out in the appendix to this regulatory policy.

This amendment will be published in the Canada Gazette, Part II, and will come into force on the date of its registration.

Introduction

1. The Commission's current regulatory frameworks for broadcasting distribution undertakings (BDUs) and discretionary programming services (see Broadcasting Public Notice 2008-100) require the distribution of at least one Canadian ethnic or third-language service for every one to three non-Canadian third-languages services that a BDU distributes in the same principal language.¹
2. However, in Broadcasting Notice of Consultation 2013-486, the Commission noted that the related requirement in section 27(2) of the *Broadcasting Distribution Regulations* (the Regulations) refers only to Canadian third-language services and not to Canadian ethnic services.²
3. Given that four of the five services currently licensed as ethnic Category A services are also third-language services, a BDU that distributes an ethnic Category A service operating in the same principal language as the one to three non-Canadian third-language services it distributes will in most cases be following the intent of the Commission's policy and complying with the Regulations. However, it is possible for an ethnic Category A service not to be a third-language service. As a result, in a limited number of cases, a BDU will be distributing such a service with one to three

¹ Broadcasting Public Notice 2008-100, para. 138, as reiterated in Broadcasting Regulatory Policy 2011-455, para. 28. The *Broadcasting Distribution Regulations* (section 1) define a "third-language service" as "a programming service that provides at least 90% of its programming over the broadcast week in one or more languages other than English or French, exclusive of secondary audio programming and subtitles," and "principal language" as "a language in which 40% or more of the programming of a programming service is provided over the course of a broadcast week" (section 27(1)).

² The Regulations (section 1) presently refer to only one type of ethnic programming service, namely ethnic Category A services.

non-Canadian third-language services operating in the same principal language, but will nonetheless be in non-compliance with section 27(2) of the Regulations as currently worded.

4. To address such limited cases, the Commission called for comments on the wording of an amendment to the Regulations that would more clearly reflect its established policy as set out in Broadcasting Public Notice 2008-100 and Broadcasting Regulatory Policy 2011-455. Specifically, the Commission proposed to amend section 27(2) of the Regulations to clarify that a BDU may satisfy its regulatory obligation relating to the distribution of Canadian ethnic and third-language services by distributing either a Canadian third-language service or a Canadian ethnic Category A service for every one to three non-Canadian third-language services that it distributes in the same principal language.

Interventions

5. The Commission received interventions supporting the amendment from Comites Toronto, Fairchild Television Ltd., Festival Portuguese Television, Manitoba Telecom Services, Rogers Communications Partnership (Rogers) and TELUS Communications Company (TELUS). With the exception of Comites Toronto, these interveners proposed additional changes to other provisions in section 27 of the Regulations. These changes related chiefly to the packaging requirement for third-language services in section 27(3) of the Regulations. TELUS also proposed a change to the buy-through requirement in section 27(4). Finally, while largely agreeing with the Commission's assessment, Rogers submitted that the amendment to section 27(2) should refer to a "Canadian ethnic service" rather than an "ethnic Category A service." The interveners submitted that these changes would allow for an even greater reflection of Commission policy.
6. The Commission also received opposing interventions from Canadian Chinese Media Network, the Canadian-Italian Business and Professional Association of Toronto, the National Congress of Italian-Canadians (Quebec Region and Toronto District), Telelatino Network Inc. and local and national representatives of Unifor.
7. Finally, the Commission received a number of interventions by individuals that did not directly relate to the issues raised in Broadcasting Notice of Consultation 2013-486.
8. The public record for this proceeding can be found on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Commission's analysis and decision

9. With respect to Rogers' proposed alternate wording for section 27(2), the Commission notes that currently ethnic Category A services are the only type of ethnic service mentioned in the Regulations. Moreover, in Broadcasting Public Notice 2008-100, the Commission made it clear that the "ethnic" services to which it was referring and to which its policy was intended to apply were ethnic Category A

services.³ Therefore, Rogers' proposal to refer to "Canadian ethnic services" rather than "ethnic Category A services" risks decreasing the degree of precision in the Regulations, contrary to the aim of the proposed amendment.

10. As regards the opposing interventions, the Commission notes that many of these interventions offered rationales that fall outside the scope of this proceeding, such as advocating changes to established Commission policy. Further, as to the concern expressed by Unifor over the possible unintended consequences of the proposed amendment, the Commission notes that the addition of ethnic Category A services to section 27(2) will allow BDUs to distribute more non-Canadian third-language services where they distribute ethnic Category A services. However, given that the large majority of ethnic Category A services are also third-language services, the amendment will allow BDUs to distribute at most three additional non-Canadian third-language services rather than fifteen as Unifor submitted.
11. Finally, with respect to the proposed changes to the other provisions of section 27 of the Regulations, the Commission is of the view that no further amendments are necessary or appropriate at this time. Specifically, the Commission considers that while there is merit to some of the proposed amendments, this proceeding does not represent the appropriate forum to consider such changes. Finally, the Commission remains of the view that the proposed amendment to section 27(2) would achieve its stated goal of more fully reflecting Commission policy in the Regulations and addressing the limited cases raised in Broadcasting Notice of Consultation 2013-486.
12. In light of the foregoing, the Commission has adopted the amendment to section 27(2) of the Regulations set out in Broadcasting Notice of Consultation 2013-486. The amended Regulations will come into force on the date of their registration. A copy of the amendment to the Regulations is provided in the appendix to this regulatory policy and will be published in the *Canada Gazette*, Part II.

Secretary General

Related documents

- *Call for comments on an amendment to the linkage and distribution requirements for Canadian ethnic and third-language services*, Broadcasting Notice of Consultation CRTC 2013-486, 13 September 2013
- *Amendments to the Broadcasting Distribution Regulations and other Commission Regulations*, Broadcasting Regulatory Policy CRTC 2011-455, 29 July 2011
- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services* – Regulatory policy, Broadcasting Public Notice CRTC 2008-100, 30 October 2008

³ See, for example, para. 129: "There are currently five Canadian ethnic services licensed for analog distribution (now Category A) and numerous Category 2 (now Category B) third-language services..."

Appendix to Broadcasting Regulatory Policy CRTC 2014-93

REGULATIONS AMENDING THE *BROADCASTING DISTRIBUTION REGULATIONS*

AMENDMENT

1. Subsection 27(2) of the *Broadcasting Distribution Regulations*¹ is replaced by the following:

(2) Except as otherwise provided under a condition of its licence, a licensee shall, for every one to three non-Canadian third-language services that it distributes to its subscribers, distribute — to the extent that one or the other of the following is available — at least:

- (a) one Canadian third-language service in the same principal language; or
- (b) one ethnic Category A service in the same principal language.

COMING INTO FORCE

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

¹ SOR/97-555