



Broadcasting Notice of Consultation CRTC 2015-97

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Ottawa, 19 March 2015

Call for comments on a Wholesale Code

The Commission calls for comments on a Wholesale Code, which is appended to this notice of consultation. The Code is intended, in the first instance, to govern the commercial arrangements between broadcasting distribution undertakings (BDUs), programming undertakings, and exempt digital media undertakings. The Code's provisions also ultimately serve to ensure that subscribers have access to a broad array of services and greater flexibility and control over the services they receive.

*The Commission will accept comments that it receives on or before **4 May 2015**. Parties may file replies on or before **14 May 2015**.*

Introduction

1. In Broadcasting Regulatory Policy 2011-601-1, the Commission set out a *Code of conduct for commercial arrangements and interactions* (the Wholesale Code), which serves to govern the commercial arrangements between broadcasting distribution undertakings (BDUs), programming undertakings, and exempt digital media undertakings.¹
2. In Broadcasting Regulatory Policy 2015-96 also issued today, the Commission noted that a vigorous wholesale market is essential to fostering an environment and a retail market that enhances greater subscriber choice. It noted that a healthy and dynamic wholesale market is one in which
 - risk and reward is shared between BDUs and programming services and a fair balance is struck between allowing BDUs to provide their subscribers with more choice and flexibility, while ensuring reasonable and predictable levels of revenue for programming services
 - BDUs have the flexibility to package and set retail prices for discretionary services in the manner that they consider will best respond to customer demand and enable them to compete on an equitable basis with other BDUs;
 - programming services are discoverable and able to make their programming available to Canadians on multiple platforms, in order to foster continued diversity and innovation within the system; and

¹ See the *Exemption order for digital media undertakings* set out in the appendix to Broadcasting Order 2012-409.

- appropriate wholesale fees and other terms of distribution are negotiated based on the fair market value (FMV) of the service, regardless of the ownership or other interests of either the BDU or programming service.
3. In Broadcasting Regulatory Policy 2015-96, the Commission determined that strengthening the Code and making it applicable by regulation to all licensed undertakings would provide parties with certainty and transparency to conduct negotiations fairly. The Code's provisions ultimately serve to ensure that subscribers have access to a broad array of services and greater flexibility and control over the services they receive.
 4. This notice of consultation calls for comment on the wording of the Code, as set out in the appendix to this notice. The Commission also intends to issue an information bulletin at the same time it issues the Code to help parties understand and interpret the Code's provisions.

Structure and content of the revised Code

5. As stated in Broadcasting Regulatory Policy 2015-96, the Commission is revising the Wholesale Code to prohibit provisions in affiliation agreements that limit the ability of BDUs to offer their subscribers more choice and flexibility; ensure the continued availability and discoverability of a diverse range of programming on multiple platforms, including programming from independent programmers; and otherwise ensure the fair negotiation of terms and conditions for the distribution of programming services.
6. The Wholesale Code now includes a section setting out to whom the Code applies. It is then organized into sections setting out specific provisions in affiliation agreements that are prohibited, practices that the Commission considers to be commercially unreasonable, practices that the Commission considers to be commercially reasonable, and provisions with respect to the filing of affiliation agreements.
7. This notice of consultation addresses each of those sections. Within the appropriate sections, it discusses in more detail the following provisions on which the Commission specifically seeks additional comment:
 - minimum penetration or revenue guarantees;
 - volume-based rate cards;
 - penetration-based rate cards;
 - availability and discoverability of independent programming services; and
 - multiplatform access.

Introduction to the Code

8. The revised Code retains the introductory statement and purpose as previously set out in Broadcasting Regulatory Policy 2011-601-1 with changes to clarify, update, or strengthen its wording.

Application

9. The revised Code will govern the wholesale relationship between distributors and programmers and apply to the distribution of programming on an analog or digital basis. Once the Code is finalized, the Commission intends to make the Code applicable to all licensed undertakings by way of regulation. For all other parties, including exempt BDUs, exempt programming undertakings, and exempt digital media undertakings, the Code shall serve as a basis for guiding commercial interactions in the negotiation of agreements in the Canadian market. To this end, the Commission expects that non-Canadian parties that have a presence in Canada will conduct their negotiations and enter into agreements in a manner that is consistent with the intent and spirit of the Code if they wish to continue to have their programming services available in Canada.
10. The interpretation of the Code's provisions continues to rely on the specific set of facts and circumstances in any dispute resolution or complaint process.

Prohibitions

11. The Prohibitions section is chiefly designed to ensure that affiliation agreements do not include clauses that negatively impact the ability of BDUs to respond to consumer choice. Specifically, it prohibits provisions in agreements that prevent or constrain the offering of programming services on a pick-and-pay or build-your-own-package basis or otherwise constrain BDUs' packaging flexibility (e.g. grandfathering provisions, requirements to mirror existing analog tiers in a digital offering, etc.). Prohibiting such practices will help ensure that programming services, particularly those owned by vertically integrated entities, do not restrict the ability of BDUs to respond to subscribers' demands for increased choice and flexibility.
12. Other prohibitions in this section are designed to remove barriers to fair negotiation or to remove provisions that are inconsistent with a competitive marketplace. For example, the revised Code prohibits the inclusion of most favoured nation (MFN) clauses in affiliation agreements. These clauses are generally used to ensure that provisions that apply to one party, such as the lowest wholesale rate, will be at least as favourable as those applied to another. In practice, MFN clauses have generally been imposed by larger players and generally disadvantage smaller players who do not have the leverage to negotiate similar clauses.

Minimum penetration or revenue guarantees

13. Minimum penetration or revenue guarantee clauses set a guaranteed floor on either the penetration of a service or the revenue that the BDU must provide. Such clauses can impede a BDU's flexibility in packaging programming services. In general, the Commission considers that a programming service should not be able to dictate the penetration level or revenue that it receives from a BDU and thus be unaffected should fewer Canadians decide to subscribe to the service. However, there may be exceptional circumstances where it would be appropriate for a programming service to seek a reasonable minimum level of penetration in order to ensure a degree of reliability in its wholesale revenue.
14. In Broadcasting Regulatory Policy 2015-96, the Commission stated that it would phase out access privileges for Category A discretionary services in a staged manner as their licenses are renewed. This means that Category A services would no longer be guaranteed distribution. Independent Category A services, which are not owned by large vertically integrated companies, may be particularly vulnerable during this transition. In such cases, a minimum penetration guarantee could provide an incentive to a BDU to find packaging options that would limit a programming service's risk or improve the marketing for the service or the packages in which the service is offered.
15. In light of the above, the Commission considers it appropriate to prohibit minimum penetration or revenue guarantees in the revised Code as a general practice. The Commission, however, seeks comment on whether there are exceptional circumstances in which programming services, particularly independent services, should be permitted to require minimum penetration levels.

Commercially unreasonable practices

16. This provision sets out the types of terms and conditions for the distribution of programming services that are considered to be commercially unreasonable. Affiliation agreements would not impose requirements that would violate this set of principles. The interpretation of whether a given practice is unreasonable continues to be based on the specific facts and circumstances present in any dispute resolution or complaint process. The following are examples of commercially unreasonable practices.

Unreasonable volume-based rate cards

17. Volume-based rate cards offer discounts for BDUs that provide large numbers of subscribers. Usually, percentage discounts are set out on a rate card based on the number of BDU subscribers. In practice, they appear to be disadvantageous to smaller BDUs, which do not have large numbers of subscribers. Smaller BDUs thus end up paying higher rates than larger BDUs for the same programming even though there is generally no incremental cost to providing the programming to the BDU. These higher costs are then generally passed on to subscribers, disadvantaging subscribers to smaller BDUs.

18. Nevertheless, the Commission considers that volume discounts may continue to be appropriate in some cases, such as to make a programming service more attractive to a larger BDU. Accordingly, rather than prohibiting such discounts outright, the Commission considers it more appropriate to prohibit only *unreasonable* volume discounts. This would apply to volume-based rates cards that cannot be justified on a commercial basis or that are anti-competitive.
19. In this proceeding, the Commission invites parties to comment on what limits should be established on volume-based rate cards. Specifically, it invites parties to comment on what would constitute an unreasonable volume-based rate card, and what factors should be considered in making this assessment.

Unreasonable penetration-based rate cards

20. Penetration-based rate cards (PBRCs) set out varying wholesale rates depending on penetration – generally speaking, the lower the penetration, the higher the wholesale rate. PBRCs can be a useful mechanism in providing programming services with a degree of predictability in their revenues while also providing BDUs with flexibility in packaging services.
21. During the Let’s Talk TV proceeding, a number of BDUs called on the Commission to adopt measures that would prevent unreasonable or punitive PBRCs. They argued that rate cards that compensate a programming service for more than subscription losses and losses associated with advertising decline should be considered punitive. On the other hand, given that BDUs control packaging and thus penetration levels, some parties argued that compensation for lost subscriber revenue is appropriate.
22. The Commission is of the view that PBRCs should be the subject of negotiation between programmers and BDUs based on the notion of shared risk. Moreover, PBRCs that cannot be justified on a commercial basis or that are anti-competitive will be considered “unreasonable.”
23. In previous Commission decisions, such as Broadcasting Decision 2012-208, the Commission considered that PBRCs that force distribution of a service on the basic tier or in a package that is inconsistent with the service’s theme or price point would be unreasonable. Consistent with its previous findings, the Commission also considers that it would be unfair for a PBRC to insulate a programming service entirely from the effects of consumer choice. Finally, based on the record of the Let’s Talk TV proceeding, the Commission is of the preliminary view that PBRCs that seek compensation for advertising revenue losses would also be considered unreasonable.
24. However, given that BDUs control packaging and thus the penetration levels of specific programming services, the Commission considers that it would be unfair to expect programmers to bear all the risks for those packaging and marketing decisions. Without some degree of protection, programming services, particularly those not owned by vertically integrated entities, may be unable to generate the stable revenues necessary to create, acquire, and present Canadian programming.

25. In this proceeding, the Commission invites parties to comment on what limits should be established on PBRCs. Specifically, it invites parties to comment on what terms would constitute an unreasonable PBRC, and what factors should be considered in making this assessment.

Commercially reasonable practices

26. These provisions include packaging practices, terms of access to multiple distribution platforms, and marketing provisions. While the current Code already sets out a number of these practices, the revised Code includes strengthened provisions to ensure that independent services are discoverable by viewers and able to make their programming available on fair terms. This will foster greater diversity in the broadcasting system, which will bring greater choice to Canadians.

Fair market value

27. This provision sets out the factors that must be taken into consideration by parties, where applicable, to ensure that negotiated wholesale rates are reasonable, i.e., based on the FMV of a programming service.

28. As noted in Broadcasting Regulatory Policy 2015-96, TELUS proposed a new framework created by Nordicity (the Nordicity framework) to determine the commercial reasonableness of wholesale rates. As part of its framework, Nordicity proposed that the test for determining the FMV of programming services include a consideration of the public policy objectives of maximizing choice and preventing anti-competitive conduct, and that it specifically include viewership as the best indicator of consumer choice.

29. The Commission is of the view that the concerns expressed related to the existing FMV factors may relate to a lack of clarity and certainty on the part of stakeholders rather than the factors themselves. With respect to the Nordicity framework, the Commission considers that the FMV assessment that it currently applies remains appropriate. First, while the Nordicity framework puts emphasis on viewership, the Commission notes that viewership is already examined under two of the existing FMV factors which pertain to a programming service's value to consumers and the decision to include a service in a package. Moreover, although Nordicity proposed two overarching public policy objectives, the Commission framework is more flexible as it decides which public policy objectives are applicable on a case-by-case basis, based on the facts of the dispute. For example, the Commission may consider

- the impact on the BDU's ability to deliver choice and flexibility to consumers;
- the impact on the ability of a programming service to contribute to the diversity of Canadian programming; and
- the programming service's historical and current commitments to Canadian programming.

30. Accordingly, the Commission has proposed only slight changes to the current factors set out in the Code to assess FMV. In order to address any lack of clarity, the revised Code explicitly makes viewership of a service a consideration in assessing the FMV of a service. This occurs under factors 6(d) and (e). Further, the Commission considers it appropriate to combine packaging and penetration levels within the same FMV factor rather than include them as two discrete factors.

Availability and discoverability of independent programming services

31. In the Let's Talk TV proceeding, independent broadcasters proposed a number of very specific marketing and packaging provisions designed to ensure their availability and discoverability in an environment that maximizes choice and flexibility for subscribers. For example, they proposed

- a 1:1 linkage rule within packages (and on basic) between related and independent services;
- a redefinition of “best available package” to include a penetration component (e.g. the highest penetration tier);
- preferential and free access to advertising availabilities on foreign services, barker channels, electronic program guides (EPGs), and BDU “recommendation” systems; and
- fixed penetration levels (at historical levels) or minimum levels based on Canadian programming expenditures.

32. In the Commission's view, the existing Code already includes provisions that address many of the points listed above. For example, the Commission is of the view that the current provision related to marketing is sufficient to ensure that independent services have a level of promotion that will help to ensure their discoverability. In this regard, the Commission is of the preliminary view that BDUs must ensure that independent services have comparable access to their marketing tools such as websites, EPGs, barker channels, and printed materials.

33. The Commission is not adopting all of the measures related to packaging recommended by independent programming services. However, in light of the importance of discoverability in an environment of increased choice, the Commission considers it appropriate to amend the Code to provide for the packaging of independent services in pre-assembled or themed packages, where they are offered, in addition to being offered on a stand-alone basis.

Multiplatform access

34. Canadians are increasingly accessing programming over the Internet and on platforms other than the traditional television set. It is clear that the broadcasting industry needs to pursue creative multiplatform programming strategies to ensure that they are reaching and engaging their viewers. The record of this proceeding shows, however, that there are some challenges. For example, in some cases, restrictive terms in

affiliation agreements are acting as barriers to creative exploitation of programming rights. Independent programming services expressed concern that they do not have full and fair access to pursue their own multiplatform strategies, and smaller BDUs expressed concern about their ability to access the most popular programming for their Internet, video-on-demand, and other offerings.

35. The Commission considers that BDUs and programmers should work co-operatively to ensure that
- Canadians have access to programming on multiple platforms, including Canadian programming, and
 - access to such platforms is provided to vertically and non-vertically integrated undertakings on a fair and equitable basis.
36. To ensure that these objectives are met, programming services should, when engaging in multiple platforms strategies, provide BDUs with reasonable access to their programming. At the same time, BDUs must not unduly constrain the ability of programmers to experiment and provide their content to subscribers in new ways on multiple platforms. Further, independent programming services must be given similar opportunities to exploit their programming rights as vertically integrated programming services.
37. To this end, the Commission notes that the current Code already includes an obligation on vertically integrated BDUs to provide reasonable terms of access based on FMV to independent programming services. The Commission has added a similar provision to the revised Code that requires programming services to offer their non-linear multiplatform rights to other BDUs on commercially reasonable terms so that those BDUs can provide this content to their customers.
38. Moreover, the revised Code reflects the Commission's determination that imposing unreasonable terms and conditions that restrict a programming service from providing access to its programming on multiple distribution platforms would constitute an unreasonable commercial practice.
39. In this proceeding, the Commission invites parties to comment on what would be an unreasonable restriction on multiplatform access, and what factors should be considered in making this assessment.

Affiliation agreements

40. In Broadcasting Regulatory Policy 2015-96, the Commission considered that it would be appropriate to add a provision to the Code requiring parties to submit to dispute resolution 120 days before the expiry of an affiliation agreement. This eliminates the obligation for smaller undertakings to request Commission intervention, should negotiations with a larger undertaking prove difficult. The Commission will be able to intervene without the need for small undertakings to file a complaint, which they fear undermines their relationship with larger business partners.

41. The Commission notes that Bell, Corus, and Rogers are currently required, by condition of licence, to submit to dispute resolution. It considers that applying this requirement to all licensees through the revised Code will help alleviate the fear of retaliation expressed by smaller BDUs and independent programming services.
42. In its decisions approving the acquisition of services owned by Astral Media inc. by BCE Inc. and Corus Entertainment Inc., the Commission introduced a requirement that these parties file affiliation agreements with the Commission. The Commission remains of the view that having access to affiliation agreements provides the Commission with improved oversight over the wholesale market and better data in the context of dispute resolution proceedings. Accordingly, the Commission will add a requirement to the Code that all BDUs must file affiliation agreements with the Commission. Similarly, the Commission will require BDUs to submit agreements within 120 days following the launch of a programming service. In the event that an agreement raises concerns over improper conduct, such as undue preference or a breach of the Wholesale Code, the Commission may inquire into the matter pursuant to section 12(1) of the *Broadcasting Act*.

Information bulletin

43. Based on the comments received in this proceeding, the Commission intends to publish an information bulletin to help parties understand and interpret the provisions of the Wholesale Code. The Commission will publish the information bulletin at the same time that it publishes the finalized Code.

Call for comments

44. The Commission calls for comment on the wording of the Wholesale Code, which is appended to this notice. Parties should focus their comments on the parts of the Wholesale Code discussed in this notice and provide alternate wording where they consider that changes are necessary.
45. The Commission will accept interventions that it receives on or before **4 May 2015**. Only parties that file interventions may file a reply to matters raised during the intervention phase. The deadline for the filing of replies is **14 May 2015**.

Procedure

46. The *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure) apply to the present proceeding. The Rules of Procedure set out, among other things, the rules for content, format, filing and service of interventions, replies, answers of respondents and requests for information; the procedure for filing confidential information and requesting its disclosure; and the conduct of public hearings. Accordingly, the procedure set out below must be read in conjunction with the Rules of Procedure and its accompanying documents, which can be found on the Commission's website under "Statutes and Regulations." The *Guidelines on the CRTC Rules of Practice and Procedure*, set out in Broadcasting and Telecom Information Bulletin 2010-959, provide information to

help interested persons and parties understand the Rules of Procedure so that they can more effectively participate in Commission proceedings.

47. The Commission encourages interested persons and parties to monitor the record of the proceeding, available on the Commission's website, for additional information that they may find useful when preparing their submissions.
48. Submissions longer than five pages should include a summary. Each paragraph of all submissions should be numbered, and the line *****End of document***** should follow the last paragraph. This will help the Commission verify that the document has not been damaged during electronic transmission.
49. Submissions must be filed by sending them to the Secretary General of the Commission using **only one** of the following means:

by completing the
[\[Intervention/comment/answer form\]](#)

or

by mail to
CRTC, Ottawa, Ontario K1A 0N2

or

by fax at
819-994-0218

50. Parties who send documents electronically must ensure that they will be able to prove, upon Commission request, that service/filing of a particular document was completed. Accordingly, parties must keep proof of the sending and receipt of each document for 180 days after the date on which the document is filed. The Commission advises parties who file and serve documents by electronic means to exercise caution when using email for the service of documents, as it may be difficult to establish that service has occurred.
51. In accordance with the Rules of Procedure, a document must be received by the Commission and all relevant parties by 5 p.m. Vancouver time (8 p.m. Ottawa time) on the date it is due. Parties are responsible for ensuring the timely delivery of their submissions and will not be notified if their submissions are received after the deadline. Late submissions, including those due to postal delays, will not be considered by the Commission and will not be made part of the public record.
52. The Commission will not formally acknowledge submissions. It will, however, fully consider all submissions, which will form part of the public record of the proceeding, provided that the procedure for filing set out above has been followed.

Important notice

53. All information that parties provide as part of this public process, except information designated confidential, whether sent by postal mail, facsimile, email or through the Commission's website at www.crtc.gc.ca, becomes part of a publicly accessible file and will be posted on the Commission's website. This information includes personal information, such as full names, email addresses, postal/street addresses, telephone and facsimile numbers, etc.
54. The personal information that parties provide will be used and may be disclosed for the purpose for which the information was obtained or compiled by the Commission, or for a use consistent with that purpose.
55. Documents received electronically or otherwise will be put on the Commission's website in their entirety exactly as received, including any personal information contained therein, in the official language and format in which they are received. Documents not received electronically will be available in PDF format.
56. The information that parties provide to the Commission as part of this public process is entered into an unsearchable database dedicated to this specific public process. This database is accessible only from the web page of this particular public process. As a result, a general search of the Commission's website with the help of either its own search engine or a third-party search engine will not provide access to the information that was provided as part of this public process.

Availability of documents

57. Electronic versions of the interventions and of other documents referred to in this notice, are available on the Commission's website at www.crtc.gc.ca by visiting the "Participate" section, selecting "Submit Ideas and Comments," and then selecting "our open processes." Documents can then be accessed by clicking on the links in the "Subject" and "Related Documents" columns associated with this particular notice.
58. Documents are also available from Commission offices, upon request, during normal business hours.

Location of Commission offices

Toll-free telephone: 1-877-249-2782

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Secretary General

Related documents

- *Let's Talk TV: A World of Choice – A roadmap to maximize choice for TV viewers and to foster a healthy, dynamic TV market*, Broadcasting Regulatory Policy CRTC 2015-96, 19 March 2015
- *Amendments to the Exemption order for new media broadcasting undertakings (now known as the Exemption order for digital media broadcasting undertakings)*, Broadcasting Order CRTC 2012-409, 26 July 2012
- *Request for dispute resolution by the Canadian Independent Distributors Group relating to the distribution of specialty television services controlled by Bell Media Inc.*, Broadcasting Decision CRTC 2012-208, 5 April 2012
- *Regulatory framework relating to vertical integration – Correction*, Broadcasting Regulatory Policy CRTC 2011-601-1, 14 October 2011
- *Guidelines on the CRTC Rules of Practice and Procedure*, Broadcasting and Telecom Information Bulletin CRTC 2010-959, 23 December 2010

Appendix to Broadcasting Notice of Consultation CRTC 2015-97

Wholesale Code

Introduction

This code sets out the general provisions that shall govern the commercial arrangements between broadcasting distribution undertakings (BDUs), programming undertakings, and exempt digital media undertakings.

While such matters are generally best determined by negotiations between the parties, there may be circumstances where the Commission must intervene in the public interest. This would primarily occur in cases where the attainment of the objectives set out in the *Broadcasting Act* could be compromised including when the provisions set out in the code have not been respected by the parties engaged in commercial arrangements.

This code sets the rules and parameters on matters that shall be considered by parties as part of the negotiation process between BDUs, programming undertakings, and exempt digital media undertakings. It also establishes the practices that would generally be considered reasonable or unreasonable by the Commission in any subsequent process concerning allegations of undue preference/disadvantage or other requests for a dispute resolution determination.

Application

1. This Code applies to the distribution of programming on an analog or digital basis.
2. For the purposes of this code, “programming undertakings” means programming undertakings as defined in the *Broadcasting Act*, with the exception of radio programming undertakings.
3. Unless otherwise provided, this Code applies to licensed programming and distribution undertakings. It serves as a guideline for programming, distribution, and digital media undertakings operating under an exemption order.

Prohibitions

4. Except as otherwise authorized by the Commission, the following provisions are prohibited in any affiliation agreement between a programming undertaking, a BDU, or on an exempt digital media undertaking:
 - (a) terms that prohibit the distribution of programming services on a stand-alone basis;
 - (b) terms that prevent the offering of programming services on a build-your-own-package basis;
 - (c) grandfathering provisions, or any similar clause that ensures distribution on the same terms and conditions as the previously negotiated agreement;

- (d) veto rights by programming undertakings of BDU packaging changes;
- (e) requirements to mirror existing analog tiers in a digital offering;
- (f) most favored nation (MFN) provisions, or any similarly worded clause that has the effect of guaranteeing terms as favorable as those agreed to with other parties in other affiliation agreements;
- (g) requirements to renegotiate agreements triggered by subscriber losses; and
- (h) minimum penetration or subscription levels.

Commercially unreasonable practices

5. A programming undertaking, BDU, or exempt digital media undertaking shall not require that a party accept terms or conditions for the distribution of programming that are commercially unreasonable, such as
 - (a) requiring an unreasonable rate (e.g. not based on fair market value);
 - (b) requiring an unreasonable volume-based rate card;
 - (c) requiring an unreasonable penetration-based rate card;
 - (d) requiring the acquisition of a program or service in order to obtain another program or service (tied-selling);
 - (e) imposing unreasonable terms and conditions that restrict the ability of a BDU to provide consumer choice; and
 - (f) imposing unreasonable terms and conditions that restrict a programming service from providing access to its programming on multiple distribution platforms.

Commercially reasonable practices

6. A wholesale rate for a programming service based on fair market value shall take into consideration the following factors, where applicable:
 - (a) historical rates;
 - (b) penetration levels, volume discounts, and the packaging of the service;
 - (c) rates paid by unaffiliated BDUs for the programming service;
 - (d) rates paid for programming services of similar value to consumers, taking into consideration viewership;
 - (e) the number of subscribers that subscribe to a package in part or in whole due to the inclusion of the programming service in that package, taking into consideration viewership;
 - (f) the retail rate charged for the service on a stand-alone basis; and
 - (g) the retail rate for any packages in which the service is included.

7. Where a BDU offers pre-assembled or themed packages, independent programming services, with the exception of adult services, shall be offered in at least one package in addition to being offered on a stand-alone basis.
8. Where a BDU includes related programming services in themed packages, it shall include all relevant independent programming services in those packages.
9. An independent programming service shall, unless the parties agree otherwise, be included in the best available pre-assembled or themed package consistent with its theme and programming.
10. A programming service shall be given comparable marketing support by the BDU as is given to similar or related services.
11. Where a BDU provides its related programming services with access to multiple distribution platforms, it shall offer reasonable terms of access that are based on fair market value to independent programming services.
12. Where a programming service provides a related BDU with programming on multiple distribution platforms, it shall offer reasonable terms based on fair market value to other BDUs for their non-linear multiplatform rights at the same time as their linear rights and provide such content on a timely basis.

Affiliation agreements

13. If a BDU has not renewed an affiliation agreement to which it is a party with a programming service by 120 days preceding the expiry date of the agreement and if the other contracting party has confirmed in writing its intention to renew the agreement, the parties shall refer the matter to the Commission for dispute resolution under sections 12 to 15 of the *Broadcasting Distribution Regulations*.
14. Parties shall file with the Commission all affiliation agreements to which they are a party with a programming service within five days following the execution of the agreement by the parties.
15. Within 120 days following the launch of a programming service, parties shall file with the Commission all agreements to which they are a party with the programming service.