



## Broadcasting Circular CRTC 2007-4

Ottawa, 7 June 2007

### **A guide to the CRTC processes for broadcasting applications and policy reviews**

*There are various processes available to the Commission when it considers broadcasting applications and conducts policy reviews. It is not always clear to the industry and the general public how the Commission chooses a particular process, and why processes can take a considerable amount of time.*

*In this circular, the Commission describes the process for dealing with broadcasting applications using:*

- *the administrative route,*
- *the public notice route, and*
- *the public hearing route.*

*For each route, it sets out the steps involved from the initial review of the application to the decision-making process.*

*This circular also describes the Commission's general approach to policy proceedings, including the factors that may lead the Commission to hold such a proceeding, and the steps that are generally taken in any such proceeding.*

### **I. The broadcasting application review and decision-making process**

#### **The legislative requirements**

1. Section 5 of the *Broadcasting Act* (the Act) provides that the Commission shall regulate and supervise, in a flexible manner, all aspects of the Canadian broadcasting system with a view to implementing the broadcasting policy set out in the Act. The general powers of the Commission are set out in section 9 of the Act and can be summarized as follows: establishing classes of licences; issuing, amending, renewing, suspending or revoking licences; requiring any licensee to obtain the approval of the Commission prior to entering into contract with a telecommunications common carrier for the distribution of programming directly to the public; and requiring any licensee who is authorized to carry on a distribution undertaking to give priority to the carriage of broadcasting and to carry programming services specified by the Commission.

2. Under section 18(1) of the Act, the Commission must hold a public hearing in connection with:
  - (a) the issuance of a licence, other than a licence to carry on a temporary network operation,
  - (b) the suspension or revocation of a licence,
  - (c) the establishment of any performance objective as a criterion for the calculation of licence fees, and
  - (d) the making of a mandatory order.
3. Section 18(2) of the Act provides that the Commission shall hold a public hearing in connection with the amendment or renewal of a licence unless it is satisfied that a hearing is not required in the public interest.
4. Finally, section 19 of the Act requires that the Commission cause notice in the *Canada Gazette* and in one or more newspapers of general circulation within the area affected of:
  - a) any application for the issuance, amendment or renewal of a licence, b) decisions on such applications, and c) any public hearing to be held under section 18. In addition, section 4(2) of the *CRTC Rules of Procedure* supports this requirement and provides that the notice period in the *Canada Gazette* not be less than 30 days before the day fixed for the commencement of the public hearing. The applications announced in CRTC notices will be published at least seven days later in the *Canada Gazette*, which is issued every Saturday.

#### **Classes of licence and types of applications**

5. There are currently some 50 different classes of licence, which can be grouped under four categories of broadcasting undertakings: radio, television, distribution and network operations. As an example, the radio category includes public broadcasting services, commercial, non-commercial, community, campus, native, religious, special events, carrier current, and others, as outlined in the broadcasting application forms that can be found on the CRTC Web site under “File, Register and Epass.”
6. Each broadcasting undertaking can generate three types of applications:
  - a proposal for a new service (issuance of licence)
  - an amendment of licence
  - the renewal of a licence
7. The Commission can deal with applications through one of three processing routes, taking into account the requirements of the Act and the nature of an application:
  - the administrative route (no public process);
  - the public notice route; or
  - the public hearing route.

### **What criteria will determine how an application will be processed?**

8. In making determinations on the best processing routes for broadcasting applications, the Commission is guided by the following objectives: (1) to ensure fairness and transparency at all times, and (2) to deal with applications in the most efficient and timely manner.

#### **a) Administrative route**

9. As a general rule, there is little or no complexity involved in applications dealt with administratively. The application is either seeking a temporary network authority or changes contemplated under existing conditions of licence. Examples of such changes include extensions of time to implement a licensed broadcasting undertaking; a minor change to the authorized contours of an over-the-air station; a minor change in the share structure or control of a licensee; a minor increase or decrease in the authorized service area of a cable distribution undertaking.
10. Because of the limited scope of this processing route, the Commission deals with only 20% of applications administratively. It is, however, the fastest processing route, since it does not involve a public process.

#### **b) Public notice route**

11. Applications dealt with by public notice pertain to licence amendments (including the addition, amendment or deletion of a condition of licence) and to the majority of licence renewals. The level of complexity of applications in these categories varies from low, in the case of routine amendments and non-contentious renewals, to complex, if the proposals raise policy concerns or if issues are raised during the intervention process.
12. The usual period for the submission of interventions on such applications is 35 days. Following the intervention period, the Commission may determine that an application raises concerns that warrant an appearance at a public hearing and the application will be scheduled accordingly.
13. The public notice route is used for approximately 40% of applications filed with the Commission.

#### **c) Public hearing route**

14. The Act requires that all applications proposing new services (issuance of licences), excluding requests for a temporary network authority, be scheduled at public hearings. This process also applies to applications for authority to acquire the assets of a broadcasting undertaking, which require the issuance of a new licence. As is the case for public notice items, the level of complexity varies significantly and dictates whether an application will be scheduled as a *non-appearing item*, i.e. subject to a paper proceeding only, or as an *appearing item* at a public hearing with an oral phase.

15. Most applications proposing new services conform to existing policies and do not raise concerns. These are usually scheduled as non-appearing items at a public hearing.
16. More complex and controversial applications are often scheduled as appearing items at public hearings to allow various parties to participate in the oral phase of the hearing. This is the case for major ownership transactions, as well as for applications received in response to a call for applications and that are competing for a radio or television service in a given area. Occasionally, licence renewal applications that raise serious issues of non compliance or the licence renewal of several undertakings owned by major players are scheduled for appearance at a public hearing.
17. The current *CRTC Rules of procedure* provide for a minimum period of 30 to 50 days between the date of publication in the *Canada Gazette* and the date of a public hearing to consider the application. The Commission will generally use the 30-day notice period in cases where applications do not raise policy concerns.
18. The public hearing route is used for approximately 40% of applications filed with the Commission. Because of the various levels of complexity involved, the current processing time ranges from 12 months for non-appearing items to 15 to 18 months for appearing items.

#### **Steps in processing applications**

19. The various steps in the Commission's application review process are described below. The first two stages apply to all applications, whether the Commission treats them using the administrative route, the public notice route or the public hearing route.
  - 1) **Reception and distribution:** The application is registered and sent to appropriate Commission staff analysts for review. The number of analysts assigned to various applications varies according to the type of application filed.
  - 2) **Initial review and completeness:** Analysts determine if the applicant has filed all the required information, or if clarifications are required. Where clarifications are required, staff requests the information, and the application may be set aside until the applicant provides the requested information. Where an application is deemed incomplete, it is returned to the applicant with guidance concerning the information required.

#### **a) Administrative route**

20. In addition to steps 1) and 2) described in paragraph 19:
  - 3) **Analysis:** When the application is complete, staff prepares the necessary documentation for the Commission, including a recommendation.

- 4) **Decision making:** The application is scheduled for a Commission meeting, and Commission members rule on it.
21. The processing of an application by the administrative route usually takes between one and three months. In 2006-2007, the average processing time was one month. The Commission issues a public notice every two months listing applications, along with a short description, that the Commission has dealt with using the administrative route. The public notice also provides electronic links to access the documents filed as part of these applications.
22. In Broadcasting Circular CRTC 2006-1, the Commission announced measures to streamline and expedite the review process for applications that are complete upon filing. These measures have reduced by half the processing time of applications dealt with administratively.

***b) Public notice route***

23. In addition to steps 1) and 2) described in paragraph 19:
  - 3) **Analysis:** When the application is complete, staff prepares the necessary documentation for the Commission. Where the application will not likely raise any public concern or policy issue, staff may make a preliminary recommendation on the application that is subject to interventions filed during the public process.
  - 4) **Review and decision making:** The application is placed on the agenda of a Commission meeting. At this point, the Commission approves the issuance of a public notice and, on occasion, makes a preliminary ruling that is subject to any interventions filed during the public process.
  - 5) **Issuance of a public notice:** A public notice is prepared, translated and issued. Prior to issuing the public notice, the Commission ensures that all necessary documentation has been placed on the public examination file, with the exception of documentation for which confidentiality has been granted. The examination file is made available to the public both in hard copy and by electronic link.

Public notices are issued in approximately 25 calendar days for applications that are complete at reception and in 35 calendar days for applications that require clarifications by the applicant.

The public notice provides approximately 35 days for interested parties to file comments or interventions. In the event that opposing interventions are filed, the applicant has an opportunity to provide a reply to interventions within the following 10 days. Commission staff files, codes and registers all interventions and replies that the Commission receives and an electronic link to them is available on the CRTC Web site.

- 6) **Analysis:** Staff prepares an analysis of the application in light of policies and regulations in place, and taking into account interventions filed during the process. The document sets out options and recommendations. This step of the process can consume very little time if no issues are raised or no opposing interventions are filed. If policy issues or serious concerns are raised, the analysis can be a time-consuming step of the process, even more so if several sectors have to provide input.
- 7) **Decision making:** The application will be scheduled on a Commission meeting and Commission members will rule on the application on the basis of the record and with the assistance of the documents prepared by staff. In most cases, the Commission will make a ruling on the applications at this stage but, in a few cases where important concerns are raised, it may reschedule the application on an appearing public hearing.
- 8) **Preparation of the decision:** A draft decision is prepared and translated. The final decision is issued once the Commission is satisfied that it accurately reflects its determination and grounds for decision. The resources required at the decision-drafting stage depend largely on the complexity of the application and the issues that it raises.

24. The processing time ranges from 6 to 10 months, depending on the following factors:

- various levels of complexity involved,
- the requirement for review by more than one sector in the CRTC,
- the workload at any given time, and
- the availability of resources.

25. In 2006-2007, the average processing time for applications that were not subject to opposing interventions was 3 months, and 5 months for applications that were subject to opposing interventions.

26. In Broadcasting Circular CRTC 2006-1, the Commission announced measures to streamline and expedite the review process for applications that are complete upon filing. These measures have reduced by half the processing time of applications dealt with by public notice.

***c) Public hearing route***

27. In addition to steps 1) and 2) described in paragraph 19:

- 3) **Initial analysis:** When the application is complete, the lead analyst prepares a document that describes the application, assesses the potential impact and recommends a processing route. This step also identifies applications that could trigger a call for applications, raise policy concerns or that may be competitive with other applications.

For applications that do not raise policy issues or will not likely raise any public concern, staff groups the descriptions of all complete applications for scheduling on the next available public hearing and will generally recommend that such applications be dealt with as non-appearing items. A draft notice of public hearing in both official languages is then prepared. For applications that raise policy issues, or could raise public concern, or could trigger a call for applications, staff prepares the necessary documentation for the Commission to determine how to proceed.

- 4) **Processing review:** A draft notice of public hearing or a staff document is placed on the agenda of a Commission meeting. At this stage the Commission rules on the issuance of a notice of public hearing. The considerations outlined above assist the Commission in determining a) if the application can be scheduled on the next available non-appearing or appearing public hearing, or b) if the application is to be placed on hold in order to issue a call for competing applications or to await the findings of another related Commission proceeding.
- 5) **Issuance of a notice of a call for applications, if required:** Where the Commission determines that a call for applications should be issued, the applicant is informed and given an opportunity to confirm that it still wishes to proceed with the application. A call for applications provides for a period of 60 to 90 days to file applications with the Commission.
- 6) **Issuance of a notice of public hearing:** Where the Commission decides to schedule the application on the next public hearing, the notice of public hearing is approved and issued. Prior to issuing the notice of public hearing, staff ensures that all necessary documentation has been placed on the public examination file, with the exception of documentation for which confidentiality has been granted. The examination file is made available to the public both in hard copy and by electronic link.

The scheduling of applications at public hearings depends on when an application is filed and when a public hearing can be scheduled. The notice of public hearing is usually issued approximately 60 days prior to the hearing date and provides 35 days or more for interested parties to file comments or interventions. The publication period may be reduced to approximately 40 days with a 20-day intervention period. In both cases, approximately seven days following the publication of the notice of public hearing on the Commission's Web site, the notice is published in the *Canada Gazette*, which is issued every Saturday.

- 7) **Assigning a panel:** The Chairperson of the Commission determines the Commission members who will form the panel to hear the applications scheduled on the public hearing. Panels usually include three or five members, but may include all members. The number of panel members depends on the volume of applications and their complexity.
- 8) **Determination of appearance and non-appearance:** When the deadline for interventions has past, staff prepares a list and summary of interventions pertaining to each application included in the notice of public hearing. The list is placed on the agenda of a meeting of the public hearing panel, and the panel determines whether each application will be non-appearing, appearing, or whether an item should be rescheduled to another public hearing. At this stage, the panel also determines the order of appearance for appearing applications. Staff then prepares the hearing agenda for the panel's approval.
- 9) **Analysis:** From the time the notice of public hearing is issued, staff prepares an analysis of the application. The analysis addresses any concerns relevant to policies and regulations and the interventions. The documentation prepared for *appearing applications* forms part of a briefing book that is made available to panel members to use as a basis for questioning. Staff also briefs panel members on the applications and interventions. The documentation prepared for *non-appearing applications* includes a complete analysis of the applications and interventions and sets out recommendations. If no issues are raised and no opposing interventions have been filed, this stage of the process can consume very little time. However, in the case of applications that raise serious issues and/or are subject to opposing interventions, a considerable amount of staff energy and time may be required.
- 10) **Non-appearing public hearings:** In the case of a *non-appearing public hearing*, this stage consists of a formal review of applications and interventions by panel members. After the review by the panel, staff distributes the documentation to all Commission members for the purpose of a consultation meeting.
- 11) **Appearing public hearings:** In the case of an *appearing public hearing*, applicants and appearing interveners make presentations at the public hearing, which are followed by questions by panel members. In the case of competing applications, applicants are allowed to intervene on any competing application. These interventions may also be followed by questions from panel members.
- 12) **Analysis:** Following an appearing public hearing, staff is guided by panel members in the preparation of the necessary analysis required for the decision-making process. The analysis, referred to as debriefing notes, contains a review of the concerns raised by the applications and the interventions and sets out options and recommendations. The analysis is then reviewed by the panel



members at a panel meeting. It is later distributed to all Commission members for a consultation meeting. Depending on the number of applications heard and the complexity of the issues raised, this stage of the review process can take six to ten weeks.

- 13) **Commission consultation and decision-making:** After the documentation related to appearing and non-appearing items has been provided to all Commission members, they have an opportunity to discuss the applications with the panel at a consultation meeting. The panel takes these views into consideration when deciding on the applications.
- 14) **Panel decision:** Following the consultation process, the public hearing panels meet to take decisions on each application and identify grounds for decision. Sometimes panels request additional analysis at this point, and the panel's decision is postponed. However, the Commission consultation and the subsequent panel meeting for decision-making purposes is usually conducted within two to three weeks following the distribution of the debriefing notes.
- 15) **Preparation of the decision:** A draft decision is prepared, translated and the final decision is issued once the panel is satisfied that it accurately sets out its determination and grounds for decision. The resources required at the decision-drafting stage depend largely on the complexity of the application and the issues that it raises. The decision preparation time can vary between three weeks for a non-competitive application of medium complexity to ten to twelve weeks for competitive applications. Occasionally, decisions for highly complex applications require three to four months to finalize.
- 16) **Dissent:** When a member sets out a dissenting opinion, an additional period of two weeks is added to take into account the time allowed for the member to write the grounds for the dissent which will then be translated.

28. The overall public hearing review process usually takes between 9 and 18 months. The wide variance in processing time is governed by the following factors:

- various levels of complexity involved,
- whether the applications trigger a call for applications,
- whether the applications require to be appearing in the relevant region,
- the requirement for review by more than one sector in the CRTC,
- the workload at any given time, and
- the availability of resources.

29. In 2006-2007, the average processing time was as follows:
- Appearing items: 7.3 months
  - Appearing items subject to a call for applications: 17.1 months
  - Non-appearing items: 11.5 months
  - Non-appearing items subject to a call for applications: 17.1 months
30. There is an expedited process for dispute resolutions as outlined in Broadcasting Circular CRTC 2005-463. Applications for transfer of ownership currently benefit from an expedited process given the impact that the transactions have on the employees of licensees affected. In addition, the Commission is currently reviewing means to streamline and expedite the review of applications dealt with by public hearing.

## **II. The policy review and decision-making process**

### **The legislative requirements underpinning a policy review process**

31. Sections 6 and 10 of the Act, respectively, empower the Commission to issue guidelines and statements with respect to any matter under its jurisdiction under the Act, and to make regulations with respect to matters relating to programming, Canadian content, the carriage of programming services by distributors, reporting requirements, and any other matters as the Commission may deem necessary in furtherance of its objectives. Section 15 of the Act provides for the Governor in Council to ask the Commission to hold hearings or make reports on any matter within the jurisdiction of the Commission under the Act. The Commission is not required to hold a hearing to implement these sections of the Act, but may do so or hold any other public consultation process if it is satisfied that it would be in the public interest to do so.

### **Factors that may lead to a policy review process**

32. The following factors may lead the Commission to initiate a process to develop a new policy or to amend an existing policy:
- recognition that changes in the market or industry make a new policy or a review of existing policies necessary or appropriate;
  - consideration by the Commission that a new policy or a policy review might be warranted following representations made by interested parties in this regard;
  - periodic review of existing policies to ensure they remain relevant and appropriate;
  - a request from the Governor in Council; or
  - the filing of an application that does not fall within existing policy or licensing frameworks, which causes the Commission to consider developing a new policy framework.

### Steps in a typical policy review process

33. Having determined that a policy review is appropriate, the Commission generally follows the steps outlined below. When the policy review is initiated further to the filing of an application, a consultation at a Commission meeting will take place to determine the appropriate procedural option. Generally, the Commission will set aside the application in order to consider the policy matters prior to the Commission ruling on the application. However, where the Commission considers it in the public interest, the application and the policy review can be dealt with together in the same process.

- 1) **Initial analysis and consultation:** Staff undertakes a preliminary review of the issues at stake. This review may include informal discussions with interested parties, and the commissioning of third-party research. Staff then prepares background material for the Commission members, and recommends a processing route. This could be an oral public hearing announced via a notice of public hearing, or a paper process announced by a public notice. The choice of route depends on the complexity of the matter at hand. The matter is then placed on the agenda of a Commission meeting. At this point, the Commission approves the issuance of a call for comments by either a public notice or a notice of public hearing.
- 2) **Call for comments:** A public notice or notice of public hearing is prepared, translated and issued. In some cases, the Commission already has a preliminary view on the direction that the new policy or policy amendment should take. In these cases, the notice will set out the proposed policy, including a description of the new policy or policy amendment, and may set out proposed language for a change to the affected regulations. In other policy processes, the Commission identifies a range of issues to be examined as part of the policy review and calls for comments on those issues, without expressing its own views. Occasionally, the policy process may be a combination of both approaches. If internal or third-party research documents are available, staff ensures that the public examination file is made available to the public both in hard copy and by electronic link.

Calls for comments, whether by public notice or notice of public hearing, usually provide 60 to 90 days for interested parties to file comments, depending on the nature of the subject under consideration. Shorter or longer periods are sometimes decided upon, based on the urgency or complexity of the issues being examined. The Commission has the discretion to provide for an opportunity to respond to comments filed by interested parties, which is often the case in a paper process policy review.

Commission staff files, codes and registers all comments that it receives and provides an electronic link to them on the CRTC Web site.

34. Where the Commission has chosen to proceed via a public hearing (notice of public hearing), the following steps are generally followed.

- 3) **Assigning a panel:** The Chairperson of the Commission determines the Commission members who will form part of the public hearing panel. The number of members on each panel depends on the nature of the policy proceeding. Notwithstanding the appointment of a panel, all policy matters are decided by the entire Commission.
- 4) **Determination of appearance and non-appearance:** When the deadline for comments has past, Commission staff prepares a list of parties that filed comments, which is placed on the agenda of a meeting of panel members. Staff identifies the key issues raised in the comments, and panel members determine which parties will appear and the order of appearance. In policy hearings every effort is made to hear all parties that have requested to appear. Staff then prepares the hearing agenda for the panel's approval.
- 5) **Analysis and preparation of briefing book:** Once the comments are received, staff prepares a summary and analysis of the comments. In addition to other relevant material, this forms part of a briefing book that is made available to panel members to use as a basis for questioning. Staff also briefs panel members on the issues and assists them in preparing for the public hearing.
- 6) **The public hearing:** Interested parties make presentations at the public hearing, which may be followed by questions from panel members, and, on occasion, legal staff. In some proceedings, parties are invited to file supplemental information, which is then made available on the public examination file both in hard copy and by electronic link, subject to confidentiality of certain material.

The following steps apply to the paper process and public hearing process:

- 7) **Analysis and preparation of debriefing material:** Staff prepares an analysis of the record of the proceeding, which also sets out options and recommendations. The analysis is then distributed to all Commission members for consultation. This stage of the review process can take 5 to 8 weeks, depending on the complexity of the issues and the volume of comments received.
- 8) **Decision making:** The matter is scheduled on a Commission meeting, and Commission members make a determination and identify grounds for the policy determination. In some cases, the Commission requests additional analysis at this point, and the determination is rescheduled at a future meeting.

- 9) **Preparation of the policy determination:** Staff drafts a public notice setting out the policy determination. The draft is made available to Commission members for comments to ensure that it accurately reflects their decision and the grounds for the policy determination. The final text is translated and released. The resources required at the drafting stage depend largely on the complexity of the matter under consideration. The preparation time can vary between 1 month for a matter of medium complexity to 2 months for more complex matters. Determinations for highly complex matters can require 3 to 4 months to finalize.
- 10) **Dissent:** When a member sets out a dissenting opinion, an additional period of two weeks is added to take into account the time allowed for the member to write the grounds for the dissent which will then be translated.
35. In many cases, the development of new policies or the amendment of existing policies requires implementation through amendments to conditions of licence and regulations, or related policy documents. Resources permitting, the processing of such amendments is usually started shortly after the Commission has made its determination, while the public notice is being drafted. The Commission is required to publish proposed amendments to regulations for comment. The process of considering amendments to regulations tracks the process described above for policy proceedings via written processes (public notices).
36. The overall policy review process can take between 5 to 12 months. The wide variance in processing time is governed by the following factors:
- the various levels of complexity involved,
  - the requirement for review by more than one sector in the CRTC,
  - the workload at any given time,
  - the availability of resources, and
  - the need for follow-up processes to implement policy changes.

## **Conclusion**

37. The procedures set out above are designed to ensure that the Commission's processes are conducted with fairness, transparency, timeliness and predictability. The procedures apply equally to all parties and opportunities are provided for all those interested to comment to ensure fairness. Applications, related correspondence, interventions, notices and decisions are all made public in order to ensure transparency, subject to the confidentiality exceptions set out in the *CRTC Rules of Procedure*. Applications and policy procedures are carefully considered, and members are thoroughly briefed on the matters before them. Finally, the Commission's Rules of Procedure, its Regulations,

and its various policy statements and decisions allow members of the regulated industries to predict and anticipate the issues that must be addressed in their applications and to know what is required of them as broadcasting licensees. These procedures thus serve to ensure that the Commission regulates and supervises the Canadian broadcasting system in a manner that serves to implement the broadcasting policy for Canada set out in the Act.

Secretary General

*This decision is to be appended to the licence. It 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>*