



Broadcasting Public Notice CRTC 2006-6

Ottawa, 19 January 2006

Distribution of video description by Class 2, Class 3 and exempt cable distribution undertakings (BDUs) and by multipoint distribution system BDUs

The Commission finds it appropriate to relieve exempt cable broadcasting distribution undertakings (BDUs), as well as Class 2 and Class 3 cable BDUs that are not fully interconnected with Class 1 BDUs, of the requirement to pass through video description on an analog basis. Class 2, Class 3 and exempt cable BDUs will continue to be required to pass through video description of all programming services distributed on a digital basis. The Commission also finds it appropriate to relieve all multipoint distribution system (MDS) BDUs of the requirement to pass through video description. The Commission's approach to the implementation of its findings are set out at the end of the notice.

Background

1. "Video description," or "described video," refers to a narrative description of a television program's key visual elements for the purpose of allowing persons who are blind or have a visual impairment to understand what is occurring on the screen. In providing video description, a narrator offers information on such visual cues as settings, costumes, body language, or other purely visual information. Video description is generally presented on secondary audio program channels, often called SAP channels.
2. In *Commission requirements for the pass-through of video description – Call for comments on the obligations of smaller broadcasting distribution undertakings*, Broadcasting Public Notice CRTC 2005-18, 25 February 2005 (Public Notice 2005-18), the Commission reminded licensees of broadcasting distribution undertakings (BDUs) of their obligation under the *Broadcasting Distribution Regulations* (the Regulations) to pass through video description to their subscribers. Specifically, the Commission emphasized that Class 1 cable and direct-to-home (DTH) BDUs that have not already done so must upgrade their systems to permit them to pass through the video description included in the programming of television services.
3. The Commission, however, acknowledged that there were a number of challenges facing smaller BDUs with respect to their ability to receive programming with video description from television services and to pass such programming through to their subscribers (end-to-end delivery). The Commission noted that some smaller BDUs have not yet acquired the technical capability to implement end-to-end delivery and now face substantial costs to fulfil their obligations in this regard.

4. In light of the technical, operational and cost concerns associated with upgrading the systems of smaller BDUs to permit the pass-through of video description, the Commission called for comments regarding the most appropriate approach to take to achieve the full pass-through of video description to subscribers in the case of all Class 2, Class 3 and exempt cable BDUs, as well as by multipoint distribution system (MDS) BDUs.

Position of parties

5. Thirteen submissions were filed in this proceeding. The interests of distributors and users of satellite facilities were represented by the Canadian Cable Telecommunications Association (CCTA), the Canadian Cable Systems Alliance (CCSA), the Canadian Satellite Users Association (CSUA), Rogers Cable Communications Inc. (Rogers), Quebecor Media Inc. (Quebecor), and Saskatchewan Telecommunications and TELUS Communications Inc. (collectively, SaskTel/TELUS). The interests of programmers were represented by the Canadian Association of Broadcasters (CAB). The National Broadcast Reading Service Inc. (NBRS), the Alliance for Equality of Blind Canadians (AEBC) and the individual interveners Heather Walkus, Chris and Marie Stark, Bob Anderson Boeoy and G.E. Rill, expressed the concerns of visually impaired persons.

Distributors and users of satellite facilities

6. Generally, distributors and users of satellite facilities focused on the costs associated with any required upgrades of existing analog networks and the ability of digital technology to more easily provide video description.
7. The CCTA, CCSA and CSUA submitted that video description could be implemented most effectively by small cable BDUs using digital technology. The timely deployment of digital distribution platforms, according to the CSUA, will permit the delivery of video description, as well as the improved service inherent to digital television. The CCTA and CCSA submitted that Class 2 and Class 3 cable BDUs should only be required to pass through video description once they have fully completed the transition to digital delivery; in other words, the complete migration of services from analog to digital delivery should be the trigger for supporting the pass-through of video description. The CSUA submitted that it would be preferable for resources to be used to implement digital plants for small systems rather than engineering video description solutions for the analog environment. Rogers submitted that the Commission should only impose a requirement to pass through video description on Class 2 and Class 3 cable systems that offer programming on a digital basis.
8. The CCTA submitted that requiring cable systems to support the pass-through of video description on two separate platforms (analog and digital) was unduly burdensome, uneconomic and unfair. No analog model, it argued, even one based on a phased-in approach or some future deadline that allowed a small cable company to spread the investments over time, would provide any substantial relief. Rogers also noted that the aggregate cost of the equipment required to support video description on analog would be very high. It estimated that such costs could exceed \$5 million for its small systems.

Quebecor estimated that costs could exceed \$5.4 million for its total analog upgrades. Installing SAP processing equipment for analog broadcast signals or for those signals received from satellite relay distribution undertakings (SRDUs), argued Rogers, is simply not cost-effective relative to the small number of customers served, particularly in a broadcasting world that is rapidly moving to digital technology.

9. The CCTA argued that Class 2 and Class 3 cable systems do not have the financial capacity to pay for the upgrades required to support the pass-through of video description programming in analog. It further submitted that video description was not being passed through by Canadian Satellite Communications Inc. (Cancom), an SRDU that provides satellite feeds of certain signals to small cable BDUs, making it impossible for those BDUs to pass through video description to their subscribers. As well, the CCTA stated that small cable BDUs face capacity constraints in an analog environment, and that more capacity would exist for small cable BDUs to pass through video description programming once they had made the transition to digital delivery.
10. The CCTA submitted that the challenges associated with the pass-through of video description are the same for large and small cable operators, and that the Class 2 and Class 3 systems owned and operated by the four largest cable companies face the same challenges as those owned by independent operators. Quebecor also was of the view that non-interconnected Class 2 and Class 3 systems should be exempt from the requirement to pass through video description.
11. With respect to exempt BDUs, in the CCTA's view, it is inappropriate for the Commission to continue to impose regulatory requirements since the objective of issuing the applicable exemption orders was to lessen their regulatory burden. The CCTA submitted that exempt BDUs should be relieved of the regulatory obligation to pass through video description, and that the pass-through of video description for exempt cable systems should be approached as an expectation based on costs being reasonable.
12. As for MDS BDUs, the CCTA argued that, since MDS BDUs are entirely digital, they could support the pass-through of video description more affordably than small cable BDUs that offer analog service.
13. SaskTel/TELUS addressed the situation of digital subscriber line (DSL) BDUs. It argued against a "one size fits all" solution, noting that DSL-based systems are fundamentally different from analog-based systems. SaskTel/TELUS submitted that the SAP channel, the Commission's accepted solution for providing video description, is highly impractical in the new digital environment. SaskTel/TELUS indicated that SAP channel capability is not available for DSL-based set-top boxes or middleware. In addition, it argued that a SAP channel solution alone may be insufficient for visually impaired persons as it is often difficult to access. SaskTel/TELUS also noted that, at this time, neither SaskTel nor TELUS have the bandwidth available over the copper wires to the home to pass through an additional audio signal for each Canadian specialty service that they distribute.

14. SaskTel/TELUS suggested that another possible means for DSL BDUs to deliver video description may be the use of omnibus channels. Using this approach, programming with video description from various services could be compiled onto one or more channels, depending on the amount of programming available. SaskTel/TELUS argued that omnibus channels would make efficient use of network resources, reduce unnecessary duplication, and provide a more user-friendly alternative for visually impaired consumers without the necessity for them to purchase additional equipment.

Programmers

15. The CAB noted that BDUs have been aware of their obligations under section 7(f) of the Regulations to pass through video description since 1997, and recommended that all BDUs, licensed and exempt, be required to pass through video description contained in both analog and digital signals to subscribers no later than 1 September 2008. In its view, this deadline would allow broadcasters and distributors time to acquire the capacity to deliver video description and to incorporate the costs into their regular upgrades.
16. The CAB submitted that a commitment by distributors to pass through video description programming only once all conventional, specialty and pay services are received and distributed on a digital basis was insufficient. The CAB noted that, despite the fact that many conventional and specialty services have begun the transition to digital transmission and distribution, there would be a substantial number of subscribers to analog services for well into the foreseeable future. Accordingly, it considered that subscribers choosing an analog service should not be prevented from accessing video description currently offered by conventional and specialty broadcasters.

Visually impaired persons

17. The NBRS was of the view that the current obligation of BDUs to pass through video description is clear and should be enforced with a strict deadline. It stated that a three-year deadline, under which requirements must be met by 1 September 2008, should give all BDUs, licensed and exempt, ample time to plan and budget for the introduction of the technology required to distribute all video description. The NBRS submitted that any BDU owned by one of the largest cable operators, regardless of size, should be obliged to pass through all video description programming by 1 September 2008, as they have the financial and organizational means to do so. The NBRS added that exempt BDUs should be subject to the same obligations relating to video description as licensed BDUs. With respect to MDS BDUs, the NBRS argued that bandwidth constraints should not be cause to deny subscribers access to video description. It noted that a range of options are available to MDS BDUs, including a video description soundtrack available to all viewers (open video description), an open video description soundtrack on a designated channel, and a discrete audio service separate from the programming signal.

18. The AEBC recommended that, unless a BDU could demonstrate that the needed changes would constitute “undue hardship,” the changes should be required within a reasonably short span of time, not to exceed three years. The history of closed captioning, argued the AEBC, proves that the industry will find a cost-effective way of achieving the pass-through of video description. Chris and Marie Stark expressed confidence that, if all BDUs were required to pass through all video description by 1 September 2008, the industry would find a cost-effective way of doing so.
19. Parties also raised a number of other issues related to video description and service to the blind and visually impaired. The AEBC addressed the accessibility of the SAP channel, the need for an audio format for program listings and the need for universal design of hardware and software.
20. Heather Walkus stated that she was not receiving any video description from the Star Choice DTH BDU. Noting that Canadian companies have not upgraded quickly enough to ensure equal access to the broadcasting system for visually impaired persons, Ms. Walkus submitted that video description must be incorporated into daily programming within a specific time frame, and that a specific percentage of prime time shows should include video description. Ms. Walkus also noted difficulties with respect to on-screen menus and viewing guides and submitted that a voice reading service for such information is essential for visually impaired persons. In her view, the Commission needs to balance “true universality of the airways” against profitability. Ms. Walkus submitted that companies should have to change or develop their software and hardware with a specific mandate that includes technologies such as video description within a specific timeframe.
21. Chris and Marie Stark submitted that all cable companies should be required to provide digital service at no cost to persons who are blind until such time as on-screen information is made accessible to all via the set-top box. They were of the view that requiring persons who are blind to pay for a service that they cannot use efficiently is akin to charging people who are blind for unequal and inferior service. Chris and Marie Stark also offered general comments regarding the accessibility of broadcasting services to visually impaired persons beyond mere video description. They sought the creation of “audio equivalents” of on-screen programming and on-screen controls. They also argued for a more accessible SAP channel selection feature and for commercially produced equipment such as television sets and set-top boxes that would be usable without sight.
22. Bob Anderson Boeey and G.E. Rill both supported the increase of video description programming. Mr. Boeey argued that the cost of any SAP channel upgrades on analog, which could provide a “book on tape” feature for the visually impaired, should warrant an additional cost to the consumer.

Commission's analysis and determinations

Current regulatory framework

23. As part of the broadcasting policy for Canada, section 3(1)(p) of the *Broadcasting Act* (the Act) states that “programming accessible by disabled persons should be provided within the Canadian broadcasting system as resources become available for the purpose.”
24. With respect to the obligations of BDUs, section 7 of the Regulations states:
7. A licensee shall not alter or delete a programming service in a licensed area in the course of its distribution except
- (a) as required or authorized under a condition of its licence or these Regulations;
...
(f) for the purpose of deleting a subsidiary signal, unless the signal is, itself, a programming service or is related to the service being distributed.
25. The Commission has already determined that video description is related to the service being distributed and that BDUs are, therefore, prohibited from altering or deleting video description under section 7 of the Regulations. This was stated explicitly in *Broadcasting Distribution Regulations*, Public Notice CRTC 1997-150, 22 December 1997, the public notice that introduced the Regulations in 1997. Accordingly, except as otherwise provided under a condition of its licence, a licensed BDU is required by the Regulations to pass through to its subscribers all video description. This same obligation is contained in the exemption orders for cable BDUs with 6,000 or fewer subscribers.¹
26. In Public Notice 2005-18, the Commission reminded all Class 1 cable and DTH BDUs of their obligation to pass through video description programming. In paragraph 22 of that Public Notice, the Commission stated:
- “...the Commission reminds BDUs of their responsibility under the Regulations to pass through described video programming to their subscribers. Specifically, the Commission emphasizes that Class 1 and DTH BDUs that have not already done so must upgrade their systems to permit them to pass through the signal of each television service that is providing described video programming. Television broadcasting licensees that do not currently include any described video programming in their schedules, but intend to do so, should notify BDUs of their plans at least six months in advance of implementing these plans. This will provide BDUs with sufficient time to acquire any equipment necessary to pass through this new described video programming to subscribers.”

¹ *Exemption order respecting cable broadcasting distribution undertakings that serve between 2,000 and 6,000 subscribers set out in Appendix II to Changes to the distribution of the Cable Public Affairs Channel and the parliamentary programming service in response to a Direction from the Governor in Council*, Broadcasting Public Notice CRTC 2006-5, 19 January 2006, and *Exemption order respecting cable systems having fewer than 2,000 subscribers*, Public Notice CRTC 2001-121, 7 December 2001.

27. The Commission remains of the view that all Class 1 and DTH BDUs must pass through video description. In the case of smaller BDUs, the Commission is aware that there are certain technical, operational and cost concerns associated with making the upgrades necessary to enable them to pass such programming signals through to subscribers.
28. In assessing whether the current obligations are appropriate for smaller BDUs, the Commission has sought to balance the need for access to video description by consumers residing in areas served by smaller BDUs with the financial and technical realities of such BDUs and the potential costs for them to upgrade their networks.

Licensed Class 2, Class 3 and exempt cable BDUs

29. The Commission notes three recurring areas of concern expressed by small cable BDUs or their representatives. These related to the current migration from analog technology, with its limitations, to fully addressable digital technology; the costs associated with analog network upgrades; and the issue of interconnection of small cable BDUs with large cable BDUs.
30. The Canadian broadcasting industry is in the midst of a transition to a fully digital television environment, a transformation that the Commission supports and encourages. Given this transition, the Commission considers that a requirement to upgrade analog networks to pass through video description could constitute a potentially inefficient use of small cable BDUs' resources, which are often limited. The Commission notes that the provision of video description on a digital platform is considerably easier and less costly for distributors.
31. The Commission is, however, of the view that video description is an important service provided by broadcasters, and considers that visually impaired persons served by small cable companies should not be forced to wait until the digital migration is complete in order to receive video description programming, as was argued by some parties. Accordingly, the Commission considers that small cable BDUs should be required to pass through video description as services are progressively offered on a digital basis. Such an approach would not be unduly burdensome on small BDUs and would allow video description to be made available to visually impaired persons as resources, in this case, distribution on a digital basis, become available.
32. The Commission acknowledges the distinction between fully interconnected small cable BDUs, who receive all of their programming from larger cable BDUs, and non-interconnected or partially interconnected small cable BDUs, which exercise a degree of control over their signals. Smaller cable BDUs that are fully interconnected receive all of their programming from a larger cable BDU. Where a small cable BDU is fully interconnected to a large Class 1 system, the programming obtained from that Class 1 system should also include video description, where available. Consequently, the Commission finds that, since Class 1 BDUs are obligated to pass through all video description, the fully interconnected BDU must also pass it through.

33. In light of the above, the Commission finds that it is appropriate to relieve exempt cable BDUs, as well as Class 2 and Class 3 cable BDUs that are not fully interconnected with Class 1 BDUs, of the requirement to pass through video description on an analog basis. Class 2, Class 3 and exempt cable BDUs will continue to be required to pass through video description of all programming services distributed on a digital basis, as it is made available.

MDS BDUs

34. While acknowledging that it might be possible for MDS BDUs to pass through video description more economically than cable BDUs, as argued by the CCTA, the Commission notes that MDS BDUs are experiencing difficulties in the existing competitive environment. The Commission discussed these difficulties in *Licence renewal for various multipoint distribution system undertakings*, Broadcasting Public Notice CRTC 2004-63, 16 August 2004, where it stated:

At its peak in 2001, the Canadian MDS industry served approximately 86,000 subscribers. According to the Commission's records, however, the number of MDS subscribers stood in the neighbourhood of 50,000 in 2002. The MDS industry has not achieved the success projected for it by its proponents. Rather, it experienced a rapid expansion of competition from the direct-to-home (DTH) industry, while its own growth was hampered by MDS technology's limited channel capacity and reliance on line-of-sight access between transmitter and receiving antenna. Although ... video compression technology now permits MDS BDUs to distribute, in some cases, as many as 120 low definition digital television signals, this number is far outstripped by the digital capacity of both cable and DTH technology.

35. In light of their current challenges, the Commission considers that it is appropriate to relieve MDS BDUs of the requirement to pass through video description.

DSL BDUs

36. As Class 1 BDUs, DSL BDUs are subject to the regulatory requirement respecting the pass-through of video description. As noted by SaskTel/TELUS, however, DSL BDUs are fundamentally different from other Class 1 BDUs. SaskTel/TELUS submitted that SAP channel capability is not available for DSL-based set-top boxes or middleware.
37. The Commission acknowledges the technical constraints facing DSL-based BDUs regarding the pass-through of video description using SAP channel technology and their need to find alternative approaches. SaskTel/TELUS suggested omnibus channels as a possible means of distributing programming with video description. Under this approach, programming, including video description, from various services could be compiled onto one or more channels, depending on the amount of programming available.

SaskTel/TELUS argued that omnibus channels would make efficient use of network resources and reduce unnecessary duplication. They further submitted that such channels would provide a more user-friendly alternative for visually impaired consumers without requiring the purchase of additional equipment.

38. The Commission considers that the use of omnibus channels to deliver the video description programming received via SAP channels may represent an appropriate alternative, as a temporary measure, to address the technological constraints of DSL BDUs pending the full availability of digital programming services. As noted in *Distribution of omnibus high definition channels by Star Choice and Cancom*, Broadcasting Decision CRTC 2005-195, 12 May 2005, omnibus channels should be developed with the consent and cooperation of programming services and require the approval of the Commission.
39. In light of the above, the Commission acknowledges that DSL-based BDUs will have to find alternative ways to provide video description programming delivered via SAP channels from analog programming services. This flexibility may or may not take the form of omnibus channels.

Other matters

Availability of video description from Cancom and Star Choice

40. As noted by the CCTA, the majority of small cable BDUs rely heavily on Cancom for the delivery of the signals that they distribute. Programming services must make arrangements with Cancom to have video description digitally encoded, properly tagged and transmitted via satellite for delivery to headends. The CCTA stated that very few, if any, of the video description service streams associated with the programming services identified in Public Notice 2005-18 are currently available through Cancom.
41. Heather Walkus noted that she was not receiving video description programming from Star Choice. The CAB also urged the Commission to work with Star Choice to overcome its technological impediments related to the pass-through of video description.
42. Due to the importance of video description programming to visually impaired individuals, the Commission considers the existing lack of availability of video description from Cancom and Star Choice to be a serious matter. Accordingly, the Commission will shortly issue letters requesting Cancom and Star Choice to comment regarding the submissions made in this proceeding concerning their alleged failure to distribute video description as part of their programming services. Cancom and Star Choice are to provide comments within 10 days.

Accessibility and quality of video description

43. Several parties urged that a customer service-oriented approach be implemented for the design and implementation of video description technology. More specifically, they argued that it is essential for visually impaired persons to have an integrated and easily accessible program guide, on-screen help in audio format and an accessible SAP channel selection feature. In the view of these parties, the advantages of marketplace competition arising from digital service do not currently accommodate persons who are blind or visually impaired in an integrated way that maximizes use and benefit.
44. The Commission notes that the CCTA, CSUA and the CAB addressed the issue of accessibility to video description in their comments and specifically cited their involvement in the potential improvement of the provision of this service. The Commission encourages programmers and distributors to work together with persons who are visually impaired to improve all aspects of accessibility to video description in order to better serve such persons.

Implementation

45. In order to implement the above-noted findings pertaining to licensed Class 2 and Class 3 cable BDUs, the Commission invites all licensed non-interconnected Class 2 and Class 3 cable BDUs, either individually or through their industry associations, to apply to the Commission to be relieved by condition of licence of the requirement to pass through video description for services distributed on an analog basis.
46. In the case of the above-noted determination pertaining to exempt cable BDUs, the Commission will amend the *Exemption order for small cable undertakings* set out in the appendix to *Amendment to the Exemption order for small cable undertakings*, Broadcasting Public Notice CRTC 2002-74, 19 November 2002, and the *Exemption order respecting cable distribution undertakings that serve between 2,000 and 6,000 subscribers* set out in Appendix II to *Changes to the distribution of the Cable Public Affairs Channel and the parliamentary programming service in response to a Direction from the Governor in Council*, Broadcasting Public Notice CRTC 2006-5, 19 January 2006. The Commission will issue a proposed amendment for public comment in a separate public notice.
47. In order to implement the above-noted recommendation pertaining to MDS BDUs, the Commission invites all licensees of MDS undertakings who wish to be relieved of their obligation to pass through video description to apply to the Commission for the appropriate amendments to their licences. Similarly, licensees of DSL BDUs that wish to offer video description using an alternate method, such as via omnibus channels, should submit an application for the appropriate amendments to their licences.

48. Licensees of all interested BDUs are encouraged to apply by **19 April 2006**. This will allow the Commission to process the applications in a single public process. In the absence of such applications, licensees will continue to be subject to their existing obligation under section 7 of the Regulations to pass through video description programming.

Secretary General

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