



Broadcasting Public Notice CRTC 2008-102

Ottawa, 30 October 2008

Notice of consultation

Call for comments on a proposed framework for the sale of commercial advertising in the local availabilities of non-Canadian services

*The Commission calls for comments on a proposed framework for the sale of commercial advertising in the local availabilities of non-Canadian services that are distributed across Canada by various broadcasting distribution undertakings, including new forms of advertising that utilize the potential of digital platforms. The deadline for filing comments is **15 January 2009**. Parties may file replies to matters raised in the initial comments. The deadline for filing replies is **19 February 2009**.*

Introduction

1. The term “local availabilities” refers to periods of time within the programming of non-Canadian services where broadcasting distribution undertakings (BDUs) may insert announcements or promotions. The Commission’s current policy governing the use of local availabilities by Canadian BDUs was first articulated in Decision 95-12. In that decision, the Commission stated that it was not prepared to consider applications to use local availabilities for the broadcast of commercial messages. Since the issuance of Decision 95-12, virtually all large Canadian BDUs have applied for, and have been granted, a condition of licence that authorizes them to insert certain promotional material during local availabilities. Currently, conditions of licence authorize BDUs to use at least 75% of local availabilities to promote Canadian programming services and up to 25% to promote their own services, including certain non-programming services.
2. The Commission has consistently recognized that BDUs commonly acquire the right to use local availabilities through commercial negotiations with non-Canadian services. Thus, in Broadcasting Decision 2007-169, the Commission denied the application of a third party, Only Imagine Inc., to use local availabilities because, among other things, such use would be an inappropriate intrusion on the rights of BDUs negotiated in agreements with non-Canadian services.
3. There has been recurrent interest in making use of local availabilities for the insertion of commercial advertising.¹ Therefore, in Broadcasting Notice of Public Hearing 2007-10, the Commission asked parties to describe any new revenue-generating opportunities related to the use of local availabilities and sought comment on how Canadian BDUs and programmers (including over-the-air television stations) can best share the risks and rewards of those opportunities.

¹ In addition to Only Imagine Inc., the Commission has dealt with requests from the Canadian Cable Television Association and Videotron Ltd. See Broadcasting Public Notice 2005-88 and Broadcasting Decision 2005-460.

4. Submissions in response to Broadcasting Notice of Public Hearing 2007-10 and discussions at the public hearing that began on 8 April 2008 made it clear that new forms of digitally based advertising represent a new revenue opportunity for all sectors of the Canadian broadcasting system. BDUs were, however, of the view that these new advertising opportunities and their associated revenue potential are not yet being exploited within the regulated system because, among other things, distributors that have the technological capacity are restricted from participating in the advertising market and do not have the incentive to incur the costs required to upgrade their networks. BDUs suggested that advertisers would receive substantially greater value from targeted advertising,² in particular, and would thus place a higher value on such advertising than on traditional advertising.
5. In their submissions, BDUs once again proposed the use of local availabilities for the sale of commercial advertising as a means of generating additional revenues that would result in benefits to the Canadian broadcasting system. In Broadcasting Public Notice 2008-100, also issued today, the Commission expressed the view that, in certain circumstances, revenues from the sale of advertising in the local availabilities of non-Canadian services could provide a net benefit to the Canadian broadcasting system. The Commission also stated that it considers that any additional advertising inventory made available through local availabilities should encourage the development of new forms of advertising content that utilize the potential of digital platforms. The Commission stated that such advertising should provide additional value to advertisers and result in new sources of revenue for the system.
6. The Commission also stressed that any new source of revenue for the system must result in a net benefit to the Canadian broadcasting system.
7. The Commission considers, however, that it does not have the information required to, among other things, assess accurately the likely costs and potential revenues associated with the exploitation of new forms of advertising during local availabilities and that a further public process is required.
8. Following the Commission's consideration of any comments received, it will make a final decision on the use of local availabilities for advertising so that the Canadian broadcasting system can benefit from this new source of revenues as quickly as possible.

Issues for consideration

9. Taking into account the considerations noted above, a regulatory framework for the sale of commercial advertising in the local availabilities of non-Canadian programming services should seek to:

² "Targeted advertising" refers to a practice in which different advertising messages could be sent to different audience segments.

- encourage the development of new forms of advertising content that utilize the potential of digital platforms;
 - preserve a venue for the promotion of Canadian programming services, particularly independent programming services; and
 - provide additional funding for the creation of new Canadian programming.
10. With these objectives in mind, the Commission proposes that BDUs be permitted to sell advertising in 75% of local availabilities. The Commission further proposes that the remaining 25% of local availabilities be used to promote Canadian programming services that are unrelated to the BDU.
11. The Commission seeks input on the matters set out below.

Encouraging new forms of advertising content

12. The Commission seeks comment on the following issues related to how local availabilities can be used to encourage the development of new forms of advertising content:
- a) Definitions
 - What types of advertising should be included in the definition of “new forms of advertising.” For example, should the definition be limited to targeted advertising, or should it include other new forms of interactive or non-interactive advertising? If yes, how should these other new forms of interactive or non-interactive advertising be delineated?
 - b) Technological Developments
 - What is the state of development of new forms of advertising in Canada? BDUs, in particular, are asked to provide details on their plans to upgrade their networks to undertake new forms of advertising. Such details should include the cost of such upgrades and the time line for developing platforms for new forms of advertising.
 - c) Business Models
 - What is the potential business case for new forms of advertising? Parties are requested to provide details on the estimated total value of advertising in local availabilities under this proposal. Such details should include the estimated cost per minute at which the advertising will likely be sold, taking into account any incremental value that new forms of advertising, particularly targeted advertising, might bring.

- BDU licensees are asked to provide details on the type of advertising that they would insert into local availabilities (e.g., local, regional and/or national) and all parties are asked to address what, if any, limitations in this respect should be placed on advertising sold in local availabilities.
- The Commission requests that parties address any potential negative impact of the proposal described in this public notice on television and radio programming undertakings. They should also address the potential benefits to such undertakings once the infrastructure to distribute new forms of advertising is in place.
- Could new forms of advertising in local availabilities play a role in repatriating or retaining advertising revenues for the Canadian broadcasting system?

d) Implementation

- Should the Commission permit BDUs to sell only new forms of advertising (e.g. targeted advertising) in local availabilities? Alternatively, would it be sufficient that, in order to be permitted to sell advertising in local availabilities, the BDU be required to have in place the technical systems necessary to accommodate new forms of advertising? If so, how can the Commission be assured that such technical systems are in place?
- Should exempt BDUs be permitted to sell advertising in 75% of local availabilities without being subject to conditions related to new advertising content such as those noted above?

Promotion of Canadian programming services

13. As noted above, the Commission proposes that BDUs be permitted to sell advertising in 75% of local availabilities and that the remaining 25% of local availabilities be used to promote Canadian programming services that are unrelated to the BDU.³
14. The Commission notes that, under the current policy, BDUs are permitted to recover from Canadian programming services the direct costs of inserting such promotions. However, the recovery of these costs by BDUs has been a source of some complaints. The Commission also considers that this practice has, in some cases, served as an obstacle to certain programming services gaining access to these promotional opportunities. Consequently, the Commission proposes that BDUs offer these promotional spots at no cost to programming services.

³ As noted in Public Notice 2008-100 issued today, a related programming undertaking means a programming undertaking of which the licensee or an affiliate, or both, controls more than 10% of the total shares issued and outstanding.

15. Access to local availabilities for the promotion of Canadian programming should continue to be made available on a non-discriminatory, equitable basis and would include both television and radio services.
16. BDUs would no longer be permitted to promote related services within the 25% of the local availabilities time set aside for the promotion of Canadian programming services.
 - The Commission seeks comment on the above proposals related to the promotion of Canadian programming services.

Ensuring a net benefit to the Canadian broadcasting system

17. The Commission notes that past proposals for the sale of commercial messages in local availabilities have all included a commitment to contribute a portion of the revenues earned from advertising in local availabilities to Canadian programming. The Commission considers that there is a need to ensure that the proceeds of new sources of revenue result in a net benefit to the Canadian broadcasting system. In this respect, the Commission notes that, pursuant to the Commission's determination in Broadcasting Public Notice 2008-100, BDUs will be required to contribute 6% of any additional revenues resulting from the sale of advertising in local availabilities to Canadian programming. Also, as the Commission noted above, it expects that creating an incentive for BDUs to invest in the infrastructure necessary to enable new forms of advertising will benefit the broadcasting system by providing programmers with an opportunity to share in the incremental benefits of new forms of advertising.
 - Are these potential net benefits to the system described above sufficient?
 - If not, what would be the most appropriate terms and conditions to ensure a net benefit to the system?

Call for comments

18. The Commission calls for comments on the issues and questions set out in this public notice. Parties are further encouraged to file information and data to support their views. The deadline for filing written comments is **15 January 2009**. The Commission invites parties to file replies to any of the comments submitted during the first stage. Parties will have until **19 February 2009** to do so. The Commission will only accept submissions that it has received on or before the dates noted above.

Procedures for filing comments

19. Interested parties can file their comments to the Secretary General of the Commission:

- **by using the**
[Broadcasting Intervention/Comments Form](#)

OR

- **by mail to**
CRTC, Ottawa, Ontario K1A 0N2

OR

- **by fax at**
819-994-0218

20. Submissions longer than five pages should include a summary.

21. Please number each paragraph of your submission. In addition, please enter the line ***End of document*** following the last paragraph. This will help the Commission verify that the document has not been damaged during transmission.

Important notice

22. Note that all information that you provide as part of this public process, except information granted confidentiality, whether sent by postal mail, facsimile, e-mail 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 your personal information, such as your full name, e-mail address, postal/street address, telephone and facsimile number(s), and any other personal information you provide.

23. The personal information you 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.

24. Documents received electronically or otherwise will be put on the Commission's website in their entirety exactly as you send them, 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.

25. Please note that the information you 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 webpage of this particular public process. As a result, a general search of our website with the help of either our own search engine or a

third-party search engine will not provide access to the information which was provided as part of this public process.

26. The Commission encourages interested parties to monitor the public examination file and the Commission's website for additional information that they may find useful when preparing their comments.

Examination of public comments and related documents at the following Commission offices during normal business hours

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

Toll-free TDD: 1-877-909-2782

Central Building
Les Terrasses de la Chaudière
1 Promenade du Portage, Room 206
Gatineau, Quebec K1A 0N2
Tel.: 819-997-2429
Fax: 819-994-0218

Metropolitan Place
99 Wyse Road
Suite 1410
Dartmouth, Nova Scotia B3A 4S5
Tel.: 902-426-7997
Fax: 902-426-2721

205 Viger Avenue West
Suite 504
Montréal, Quebec H2Z 1G2
Tel.: 514-283-6607

55 St. Clair Avenue East
Suite 624
Toronto, Ontario M4T 1M2
Tel.: 416-952-9096

Kensington Building
275 Portage Avenue
Suite 1810
Winnipeg, Manitoba R3B 2B3
Tel.: 204-983-6306
TDD: 204-983-8274
Fax: 204-983-6317

Cornwall Professional Building
2125 - 11th Avenue
Room 103
Regina, Saskatchewan S4P 3X3
Tel.: 306-780-3422

10405 Jasper Avenue
Suite 520
Edmonton, Alberta T5J 3N4
Tel.: 780-495-3224

530-580 Hornby Street
Vancouver, British Columbia V6C 3B6
Tel.: 604-666-2111
TDD: 604-666-0778
Fax: 604-666-8322

Secretary General

Related documents

- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services* – Regulatory policy, Broadcasting Public Notice CRTC 2008-100, 30 October 2008
- *Review of the regulatory frameworks for broadcasting distribution undertakings and discretionary programming services*, Broadcasting Notice of Public Hearing CRTC 2007-10, 5 July 2007
- *Proposal to sell commercial advertising and insert it into the local availabilities of U.S. programming services distributed by Canadian broadcasting distribution undertakings*, Broadcasting Decision CRTC 2007-169, 8 June 2007
- *Determinations on a request by the Canadian Cable Telecommunications Association for an amendment to the Commission's policy regarding the use by cable broadcasting distribution undertakings of local availabilities contained in the signals of U.S. satellite programming services*, Broadcasting Public Notice CRTC 2005-88, 9 September 2005
- *Proposed amendments to conditions of licence*, Broadcasting Decision CRTC 2005-460, 9 September 2005

- *Proposal to insert certain promotional material in the local availabilities of U.S satellite services, Decision CRTC 95-12, 18 January 1995*

This document 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>.