



Broadcasting Public Notice CRTC 2008-97

Ottawa, 21 October 2008

Astral Media Inc., BCE Inc., Bragg Communications Inc., Canadian Broadcasting Corporation/Société Radio-Canada, Canwest Media Inc., Cogeco Inc., Corus Entertainment Inc., CTVglobemedia Inc., Newcap Inc., Quebecor Media Inc., Remstar Diffusion Inc., Rogers Communications Inc., Shaw Communications Inc. and their successors
Across Canada

Regulatory policy

Disclosure of aggregate financial data for large broadcasting distribution undertakings and over-the-air television and radio ownership groups

The Commission announces its determination to disclose aggregate financial data for large broadcasting distribution undertakings, multi-system operators and over-the-air television and radio ownership groups, including the above-noted licensees.

Introduction

1. Under the Commission's current policy on the disclosure of the annual return information of broadcasting distribution undertakings (BDUs) (Public Notice 1998-89), the annual returns and financial statements (annual returns) of individual undertakings that do not have a regulated basic monthly subscriber fee are treated as confidential. The policy was established following the Commission's decision to license competition in the delivery of distribution services. The Commission determined that as the monopoly of an incumbent cable BDU began to erode, the disaggregated information reported in its annual return could become of increasing value to competitors in the market such that its disclosure could undermine its competitive position and cause it specific harm, thus having an impact on its ability to contribute positively to the broadcasting system.
2. The Commission's current policy with respect to the disclosure of the annual returns of over-the-air (OTA) television and radio undertakings is to treat them as confidential in their entirety (Circular No. 429). This policy was established at a time when the broadcast environment was characterized by a larger number of smaller, locally based owners such that disclosure might prejudice a smaller undertaking's ability to compete and contribute positively to the broadcasting system.
3. As a result, only the annual returns of BDUs that have a regulated basic monthly subscriber fee and the financial data aggregated at the national and regional levels for each of the BDU, OTA television and radio industries are currently made available to the public.

4. Since 2000, however, increased consolidation in the broadcasting industry has resulted in a relatively small number of large multi-station ownership groups, most of whom also control a significant number of pay and specialty services. Accordingly, as part of the 17 September 2007 Diversity of Voices Proceeding (Broadcasting Notice of Public Hearing 2007-5), the Commission requested comments from a number of industry parties on the potential impact of disclosing the annual returns for large OTA television and radio ownership groups in aggregate form.
5. Although none of the parties were in favour of disclosure, Canwest Media Inc. (Canwest) and Rogers Communications Inc. (Rogers) indicated that the release of such information would be acceptable if it were to occur only in the context of particular proceedings where such additional disclosure was warranted, as was done in the case of the licence renewals of the large OTA television groups in 2001. Astral Media Inc. also proposed that should the Commission decide to disclose the aggregate financial data for the large OTA television and radio ownership groups, it must do so for everyone, including the Canadian Broadcasting Corporation (CBC).
6. Following the discussion at the Diversity of Voices Proceeding and in order to ensure that all interested parties would have an opportunity to comment, the Commission issued Broadcasting Public Notice 2008-6, in which it called for comments from the public on the proposal to publicly disclose aggregate financial data for large ownership groups.
7. The specific proposal was to disclose the following information from the annual returns of the large ownership groups aggregated at the group level:
 - financial summaries of OTA television and radio stations;
 - overall contributions to Canadian content development by radio; and
 - Canadian programming expenditure data subdivided by program category for OTA television.
8. For those groups with interests in both television and radio undertakings, separate group-level aggregates for television and radio would be made public. Group-level aggregates would also be made public for English and French services taken separately. Where aggregated information would reveal the results of an individual television or radio undertaking, the aggregate would be kept confidential. The Commission also requested comments on whether it should disclose the aggregated financial data of the CBC on this same basis.
9. As consolidation had also been taking place in the delivery of distribution services, the Commission decided that it would also be appropriate to examine its disclosure policy with respect to the annual returns of large BDUs and large multi-system operators (MSOs). Accordingly, in Broadcasting Notice of Public Hearing 2007-10-1 relating to its review of the BDU regulatory frameworks, the Commission requested comments from interested parties on the potential impact of disclosing the annual returns of large BDUs and large MSOs by ownership group.

10. As part of both of these processes, the Commission received and considered numerous interventions. The interventions are available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Commission's analysis and determinations

11. Although it was set out in Broadcasting Public Notice 2008-6 as its preliminary view, the Commission is now convinced, based on the comments received at the proceedings on the Diversity of Voices and the BDU regulatory frameworks, that the public disclosure of the aggregate financial data of both large BDUs and/or MSOs and large OTA television and radio broadcasters by ownership group would serve the public interest and would be valuable for parties interested in submitting comments to the various Commission hearings and proceedings.
12. Bragg Communications Inc., Rogers and other parties argued that the broadcasting distribution sector is highly competitive and that disclosure of confidential financial information, even at the ownership group level, would cause specific and direct harm to BDUs that would not be outweighed by the public interest in placing the information on the public record. In the Commission's view, no evidence was presented to support this argument. Rather, the reasons why confidentiality was extended to certain BDUs in Public Notice 1998-89 are still valid and as a result the Commission's current policy of granting confidentiality to the financial data of individual licensed undertakings is being maintained for the smaller BDUs and MSOs. However, in view of the increase in consolidations within the industry since 1998 and the resulting increase in horizontal integration within the larger ownership groups, the Commission is not convinced that the fear of economic harm from the disclosure of the aggregate data for large ownership groups is justified.
13. The argument of Canwest, Rogers and others that the Commission has not identified the benefit that would flow from disclosure also lacks support. The Commission agrees with the comments of the many interveners who argued that public participation is an essential tenet of the Canadian broadcasting system and that greater transparency and increased access to the financial data of licensees will benefit the system by allowing the public to participate in a better informed and more constructive manner in the Commission's public proceedings and decision-making process.
14. The Canadian Association of Broadcasters' (CAB) argument that the Commission has not demonstrated how the public interest would be better served by the proposed disclosure as the current rules provide more than enough information of value to parties interested in submitting comments to hearings and proceedings is also unsupported. The Commission agrees with the comments of the interveners who argued that given the significant consolidation and increased vertical/horizontal integration that has taken place within the large ownership groups in the industry in recent years, the public release of the broadcasters' annual financial and programming expenditure information is an essential tool for interested parties to properly assess and provide better and more informed interventions to the Commission on the ongoing performance of these large broadcast groups in delivering on their promises and meeting their regulatory obligations.

15. The Commission agrees with the arguments put forward by the Canadian Film and Television Production Association, the Alliance of Canadian Cinema, Television and Radio Artists, the Writers Guild of Canada, the Directors Guild of Canada and the Documentary Organization of Canada (collectively, the Independent Production Community [IPC]) in rejecting both the broadcasters' and the CAB's argument that the release of more detailed financial and statistical information will negatively affect their competitive position. As noted by the IPC, the Commission has made detailed revenue and expenditure information on Canadian pay and specialty services public on an annual basis for many years and there is no evidence that it has adversely affected their financial position. Moreover, the Commission released additional detailed financial and statistical information on a number of OTA television broadcasters in the context of their licence renewals in 2001 and there has been no evidence that it has had a negative impact on them. As disclosure would result in greater horizontal equity across the industry by treating all corporate groups equally, no evidence has been presented to substantiate how one group would be disadvantaged over another.
16. For the reasons then that
- increased consolidation has resulted in fewer but larger ownership groups controlling an increasing number of services across the Canadian broadcasting system,
 - advantages have accrued to these large ownership groups in terms of the increased vertical and horizontal integration that has resulted from this consolidation, and
 - the disclosure of the financial information of the large broadcasters will benefit the Canadian broadcasting system, as it will allow for better submissions from the public to the Commission's proceedings and ultimately better and more informed decisions,

the Commission has decided that the public interest will best be served by disclosing the annual returns of large BDUs and MSOs in aggregate form by ownership group, as described below:

- i) the aggregated annual return, including all of the financial data down to and including profit before interest and taxes (PBIT), will be disclosed on the public file;
- ii) any portion of the annual return that would lead to the disclosure of a licensee's aggregated net income or loss, such as information below PBIT or detailed information on shareholders' equity, will be treated on a confidential basis; and
- iii) for those groups with interests in both cable and direct-to-home (DTH) satellite distribution, separate group-level aggregates for each will be made public.

17. As is current Commission practice, the aggregated BDU industry statistics will continue to be disclosed on a regional and national basis.
18. The ownership groups for the large BDUs and MSOs will include BCE Inc., Bragg Communications Inc., Cogeco Inc., Quebecor Media Inc., Rogers Communications Inc. and Shaw Communications Inc.
19. The Commission has also decided for the reasons set out above that the public interest will best be served by disclosing the annual returns of the large OTA television and radio broadcasting ownership groups, including the CBC and Société Radio-Canada, in aggregate form by ownership group, as described below:
 - i) for those groups with interests in both television and radio undertakings, separate group-level aggregates for each will be made public;
 - ii) group-level aggregates will also be made public for English and French services separately;
 - iii) where disclosure of a group's aggregate annual return would result in the disclosure of the financial results of an individual OTA television or radio undertaking, the annual return(s) of that undertaking will be treated as confidential; and
 - iv) any portion of the annual return that would lead to the disclosure of a licensee's aggregated net income or loss, such as information below PBIT or detailed information on shareholders' equity, will be treated on a confidential basis.
20. As is current Commission practice, the aggregated industry statistics for both television and radio will continue to be disclosed on a regional and national basis.
21. The ownership groups for the large OTA television and radio undertakings will include Astral Media Inc., the Canadian Broadcasting Corporation/Société Radio-Canada, CTVglobemedia Inc., Canwest Media Inc., Cogeco Inc., Corus Entertainment Inc., Newcap Inc., Quebecor Media Inc., Remstar Diffusion Inc., Rogers Communications Inc. and Shaw Communications Inc.
22. Notwithstanding the above, the Commission may request additional ownership groups to file aggregated annual return and financial statement data in the future as changes in the ownership and landscape of the broadcasting industry warrant.

Filing of annual returns

23. In order to implement the policy set out above, the companies identified in this notice will be required to file their aggregated annual return forms with the Commission each year by 30 November beginning in 2008. At the same time, the companies will be required to post the same information on their respective websites. Upon receipt of the aggregate financial data, the Commission will post such data on its own website.

24. The aggregated annual return form for BDUs will be available as of 30 October 2008 at the following address: http://www.crtc.gc.ca/dcs/eng/current/dcs4_7.htm. Where a group offers both cable and DTH services, the form should be completed for each distribution method.
25. The aggregated annual return forms for radio and television ownership groups will be available as of 30 October 2008 at the following address: http://www.crtc.gc.ca/dcs/eng/current/dcs4_7.htm. Where appropriate, these should be completed separately for English and French services, subject to the confidentiality restrictions indicated in this notice.

Secretary General

Related documents

- *Call for comments on the public disclosure of aggregate financial data for large ownership groups of over-the-air television and radio broadcasters* – Notice of Consultation, Broadcasting Public Notice CRTC 2008-6, 15 January 2008
- *Review of the regulatory frameworks for broadcasting distribution undertakings and discretionary programming services*, Broadcasting Notice of Public Hearing CRTC 2007-10-1, 12 September 2007
- *Diversity of Voices Proceeding*, Broadcasting Notice of Public Hearing CRTC 2007-5, 13 April 2007
- *Guidelines respecting the confidential treatment of annual returns and material or information filed in support of a broadcasting application before the Commission*, Circular No. 429, 19 August 1998
- *Broadcasting Distribution Undertakings: Confidentiality of Information Filed in Annual Returns and in Applications for New Licences*, Public Notice 1998-89, 19 August 1998

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>.