



Broadcasting Regulatory Policy CRTC 2009-545

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Transition to digital broadcasting – Distribution of U.S. 4+1 signals and related short-term issues

In this document, the Commission sets out its approach with respect to certain issues concerning the transition to digital broadcasting and, in particular, on the distribution of U.S. digital over-the-air signals and related short-term issues. In this respect, the Commission will proceed with the proposed rules and authorizations set out in Broadcasting Notice of Consultation 2009-49, with certain modifications as set out below.

The proceeding

1. In Broadcasting Notice of Consultation 2009-49 (the Call for comments), the Commission set out preliminary views and called for comments on certain issues concerning the transition to digital broadcasting and, in particular, on the distribution of U.S. digital over-the-air (OTA) signals and related short-term issues.
2. In the Call for comments, the Commission noted that, in the United States, federal law would largely require the shut down of analog television broadcasting by June 2009.¹ As a result of the shut down, analog U.S. OTA signals, including the signals of the four main U.S. commercial networks (ABC, CBS, NBC, FOX) and the U.S. Public Broadcasting System (PBS) (collectively, the U.S. 4+1 signals), would be replaced by digital signals with increasing amounts of high definition (HD) content.
3. With respect to the Canadian transition to digital OTA broadcasting, the Commission noted that it had adopted a shut-down date for analog television transmission of 31 August 2011.²
4. In the Call for comments, the Commission stated that it considers that, while longer-term issues related to the Canadian transition to digital broadcasting will be addressed in future proceedings, there is an immediate need to deal with certain issues arising in the short term, most notably, issues arising by virtue of the shut down of analog broadcasting in the United States. As a result, the Commission called for comments on, among other things, the terms and conditions under which broadcasting distribution undertakings (BDUs) should be permitted to distribute down-converted versions of digital U.S. OTA signals, including the U.S. 4+1 signals. In particular, the Commission proposed the following:

¹ With minor exceptions for low-power transmitters, for emergency information and for information concerning the digital transition.

² With possible exceptions for Northern and remote areas and low-power transmitters.

- (a) BDUs should be authorized to distribute any standard definition (SD) version of a primary digital U.S. 4+1 signal that may be provided by a U.S. broadcaster, for example, by “multi-cast” or by direct feed, or any analog version that may be made available by direct feed. Such distribution would be subject to all the rules otherwise applicable to the distribution of these signals.
- (b) Cable BDUs should be authorized to down-convert any SD version that may be provided by the U.S. broadcaster to analog for distribution to analog subscribers.
- (c) Where the U.S. broadcaster does not provide an SD version, BDUs should be authorized to down-convert the OTA HD signal to SD and/or to analog themselves, for distribution to SD digital and analog subscribers, respectively.
- (d) BDUs should be authorized to distribute down-converted SD versions of additional U.S. 4+1 signals (second sets) that may be provided by U.S. broadcasters, and to down-convert such signals from HD to SD where the broadcasters do not themselves make down-converted versions available. Distribution of such signals would be subject to the existing requirements for program deletion or such alternatives as may be established.
- (e) Licensed Canadian OTA broadcasters airing digital-only signals (i.e., where there is no equivalent analog transmitter) should be authorized to provide distributors, by direct feed, with analog versions, or, when the OTA signal has HD content, with SD and/or analog versions.
- (f) BDUs should be authorized to provide such versions to their SD digital or analog subscribers.
- (g) Where an SD or analog version is not provided by the Canadian broadcaster, BDUs should be authorized, with the consent of the broadcaster, to perform the down-conversions themselves, either to SD digital or analog, and to distribute those down-converted signals to their subscribers.
- (h) BDUs that have a digital offering should be required to also distribute the primary digital OTA signal as transmitted by the broadcaster.
- (i) If a terrestrial BDU elects to distribute any authorized digital-only OTA signal on a down-converted basis, it must distribute all Canadian digital-only signals in a similar fashion on a non-discriminatory basis (unless a particular broadcaster indicates to the BDU that it does not want its signal distributed on a down-converted basis). If a terrestrial BDU does not distribute down-converted versions of a second set of U.S. 4+1 signals, it would not be obliged to distribute down-converted versions of any distant Canadian digital-only OTA signals offered under the same authority (e.g., as first set out in Decision 2000-437).

- (j) Broadcasters should be permitted to request, and BDUs required to perform, simultaneous substitution of a Canadian OTA analog signal over a down-converted analog version of a U.S. 4+1 signal, and of an analog or SD version of a Canadian digital-only signal over an analog or SD version, respectively, of a U.S. 4+1 signal, in accordance with the rules and priorities generally applicable to simultaneous substitution.
5. Finally, since further proceedings regarding the digital transition were contemplated, the Commission stated in the Call for comments that it was of the preliminary view that any rules or authorizations established as a result of this proceeding should expire as of 1 September 2011, unless explicitly extended in further proceedings.

Position of the parties

6. As part of this proceeding, the Commission received and considered comments from Bell Aliant Regional Communications Limited Partnership and Bell Canada (collectively, Bell), Canwest Television Limited Partnership (Canwest), CTVglobemedia Inc. (CTVgm), MTS Allstream Inc. (MTS), Quebecor Media Inc. (QMI), Rogers Cable Communications Inc. (Rogers) and from two individuals. The public record for this proceeding is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."
7. Generally, parties were supportive of the Commission's objectives, although some raised concerns with specific aspects of the Commission's proposals. The major points raised are noted below in the context of the individual issues raised by the parties.

Issues raised in the proceeding

Non-discriminatory down-conversion

The Commission's proposal

8. In the Call for comments, the Commission proposed that, if a terrestrial BDU elects to distribute any authorized digital-only OTA signal on a down-converted basis, it must distribute all Canadian digital-only signals in a similar fashion on a non-discriminatory basis, unless a particular broadcaster indicates to the BDU that it does not want its signal distributed on a down-converted basis (the down-convert rule).
9. The Commission envisaged that this proposed rule would apply primarily with respect to priority digital-only signals such as local signals. For example, if a BDU elected to down-convert its first set of U.S. 4+1 signals, i.e., the set usually distributed as part of the basic service, it would also be required to down-convert and distribute any priority Canadian digital-only signals.

Comments received

10. Rogers considered that the Commission's objective should be to maintain the status quo for analog customers. Therefore, OTA stations that have never built analog OTA transmission facilities, and as a result have never been distributed on an analog basis, should not be entitled to mandatory analog carriage. Rogers further argued that to require analog distribution of such digital signals would remove an incentive for the customer to transition to digital, and would reduce a BDU's ability to distribute new and innovative digital services. In support, Rogers cited the Commission's ruling denying a licence to HDTV Networks Incorporated (HDTV Networks), in which the Commission stated that proposed distribution of a digital-only OTA signal on analog would be inconsistent with its framework for the distribution of digital television signals.
11. Rogers noted that Sun TV Company (Sun TV) had opted not to construct analog transmitters. Therefore, it should not be entitled to analog distribution. Rogers added that, if the Commission's proposed rule was adopted, it would be required to add Sun TV's signal to its analog line-up in Ottawa, London, St. Thomas, Strathroy, Woodstock and Tillsonburg, where the addition of the service would likely displace an existing service.
12. On the other hand, Rogers considered that stations that had invested in analog transmission facilities, and subsequently decommissioned those facilities, should have the right to down-convert their signals and retain priority distribution rights (including simultaneous substitution) on analog until at least August 2011. Rogers stated that this would support an accelerated investment in digital transmitters by redirecting funds currently required for the upkeep and maintenance of analog facilities.
13. With regard to its Sun TV stations, QMI noted that it made a decision not to erect analog facilities in certain markets because such facilities would be rendered obsolete before the end of their amortization period by virtue of the Commission's announced deadline for the analog shut down.
14. In QMI's view, if a BDU refused to down-convert the signal of a Canadian station such as Sun TV, while down-converting U.S. 4+1 signals, it could constitute discrimination in favour of foreign competition, contrary to the objectives of the *Broadcasting Act* (the Act).

The Commission's determinations

15. The Commission notes that a primary motive for its proposal was indeed to avoid disruption to analog and SD customers, in light of the U.S. analog shut down. However, the Commission does not agree that this necessarily leads to the position adopted by Rogers, i.e., that OTA stations that have never built analog OTA transmission facilities, and as a result have never been distributed on an analog basis, should not be entitled to be down-converted and distributed on that basis.

16. In this regard, several objectives of the the Act require that precedence be given to Canadian programming. Among other objectives, section 3(1)(t)(i) states that distribution undertakings “should give priority to the carriage of Canadian programming services and, in particular, to the carriage of local Canadian stations.” In the Commission’s view, it would be consistent with this objective to include digital stations that have never broadcast in analog within the scope of the requirement to distribute all (priority) Canadian digital-only signals on a down-converted basis, if any such down-converted signals are distributed.
17. As for Rogers’ reference to HDTV Networks, the Commission’s denial of the application was based in part on the fact that HDTV Networks proposed to provide only minimal local content (two hours per week). In its application, HDTV Networks had also requested that the service be distributed in analog and SD. In this regard, in Broadcasting Decision 2008-75, the Commission made the following determination:

... the Commission considers that granting non-HD carriage to a station for which the only distinguishing feature is its HD technology and requiring BDUs to distribute the service in the manner proposed by HDTV Networks [on analog and digital basic] is not warranted.
18. Further, in the Commission’s view, the inclusion of digital-only stations that have never been distributed in analog would not result in a significant increase in the number of stations that would have to be down-converted and distributed. Certainly, in the short term, such inclusion would have very little impact. Most Canadian television digital stations are in fact duplicates of analog stations, with the analog station continuing to operate. Therefore, in the short-term, there will be no requirement in most cases to down-convert a digital signal for analog distribution. In fact, in the short term, it is more likely that analog signals will be up-converted for distribution on a digital basis.
19. In light of the above, the Commission considers it appropriate to adopt the down-convert rule. Further, the rule will encompass digital-only stations that have never operated on an analog basis.
20. With respect to those stations currently operating in analog mode, or in both analog and digital, the Commission notes that there may be some cost savings for broadcasters to shut down their analog facilities prior to 31 August 2011. The Commission considers it appropriate that, once the analog signal is removed, the digital signal become subject to the down-convert rule.

Non-discriminatory down-conversion – A down-convert rule for distant signals

The Commission’s proposal

21. In the Call for comments, the Commission stated the preliminary view that it would be appropriate to also authorize the down-conversion (from HD to SD) of a second set of U.S. 4+1 signals, which the Commission generally authorizes for distribution on a digital discretionary basis, subject to certain conditions. With respect to a second set of U.S. 4+1 signals, the Commission proposed the following:

If a terrestrial BDU does not distribute down-converted versions of a second set of U.S. 4+1 signals, it would not be obliged to distribute down-converted versions of any distant Canadian digital-only OTA signals offered under the same authority.

Comments received

22. QMI noted that the Commission had proposed to apply *le principe d'équité* [the principle of equity] with respect to distant signals, as well as to local or regional signals. QMI was of the view that to do otherwise would involve discrimination in favour of distant foreign signals, again contrary to the objectives of the Act. QMI was generally in favour of the Commission's proposals, specifying that, when a BDU chooses to distribute down-converted versions of a second set of U.S. 4+1 signals, the BDU should also be required to distribute down-converted versions of Canadian distant digital-only signals from the major Canadian networks (CTV, CBC, Canwest and TVA).

The Commission's determinations

23. The Commission notes that, beginning with Decision 2000-437, it has adopted a policy of authorizing the distribution of a second set of U.S. 4+1 signals on a digital discretionary basis. Usually, in the same condition of licence, the Commission also authorizes the distribution of distant Canadian signals (hence the reference in the Commission's proposal to "signals offered under the same authority"). Under the current approach, the distribution of all these signals is subject to a requirement for non-simultaneous deletion of identical programming. The relevant condition of licence states that the Commission is prepared to suspend this requirement, upon approval of an agreement between the distributor and affected broadcasters intended to protect the program rights of the broadcasters.
24. In the Commission's view, these signals should be subject to terms and conditions generally comparable to those applicable to signals distributed as part of the basic service. Thus, if the terrestrial BDU is making a second set of U.S. 4+1 signals available on a down-converted basis, it must also make any distant Canadian digital-only signals available on a down-converted basis, provided that the Canadian broadcasters wish to have their signals distributed on this basis. The Commission notes that, since the authorization in question (as found in Decision 2000-437) is for distribution on a digital discretionary basis, down-conversion would only be from HD to SD, and not to analog. Again, the Commission considers that such a rule would have only a very limited impact in the short term, since, as noted above, most Canadian television digital stations are duplicates of analog stations, with the analog station continuing in operation.
25. In light of the above, the Commission determines that, as proposed in the Call for comments, distribution of U.S. 4+1 and distant Canadian signals should be subject to the existing requirements for program deletion or such alternatives as may be established, until such time as the changes contemplated in Broadcasting Public Notice 2008-100 come into effect.

Other U.S. signals

26. Bell noted that the proposed authorization for down-conversion appears to deal only with U.S. 4+1 signals, and suggested that other U.S. OTA signals should also be included (for example, specific authorized OTA signals and “superstations”).
27. The Commission notes that some BDUs have traditionally distributed specific authorized U.S. OTA signals and some “superstations” on an analog basis. Subscribers could be subject to disruption if such signals are not available for distribution on an analog and SD basis. Accordingly, U.S. OTA signals other than the 4+1 signals will be included under the proposed authorizations and applicable conditions.

Preconditions for BDUs to perform the down-conversions – Consent, broadcasters’ non-provision of down-converted versions

The Commission’s proposal

28. When an SD or analog version is not provided by the broadcaster, the Commission proposed to authorize BDUs to perform the down-conversions themselves, either to SD digital or to analog, and to distribute those down-converted signals to their subscribers, provided that they have the consent of the broadcaster to do so. Under the Commission’s proposal, broadcasters would have to provide down-converted versions or their consent for BDUs to do the down-conversions themselves on a non-discriminatory basis.

Comments received

29. Rogers disagreed that a BDU should have to obtain the consent of a broadcaster in order to down-convert a digital-only OTA signal. However, if the Commission should determine that there is a need for consent, Rogers considered that it should be subject to a requirement that consent not be unreasonably withheld.
30. Bell also disagreed with the proposed consent requirement. Bell was concerned that the “consent” clause would be abused, as it would provide broadcasters with significant power over BDUs and their subscribers. In particular, a need for explicit consent could provide vertically-integrated OTA broadcasters with levers to exact terms and conditions from BDUs on other issues unrelated to distribution of the OTA signal. For example, the broadcasters might demand greater fees for distant signals, different channel placement, better terms for the distribution of affiliated pay or specialty services, increased access to video-on-demand platforms, or other financial considerations. Bell was also concerned that, if the proposed rule is adopted with the consent clause, OTA broadcasters would have the power to insist that any signals carried by direct-to-home (DTH) undertakings must be in HD, in essence overriding the Commission’s one-per-province determination (i.e., the Commission’s determination in Broadcasting Public Notice 2008-100 that the DTH basic service should consist of one station from each major ownership group operating in a province). Bell argued that this would force a DTH BDU to drop signals from its line-up, causing significant disruption to its customers and placing it at a competitive disadvantage with other platforms.

31. If the Commission considered a consent provision necessary, Bell strongly supported the view that it should be subject to a non-discrimination condition. Further, the Commission should specify that consent must not be unreasonably withheld, and should advise the industry that, in dealing with a possible dispute over down-conversion, it will take into consideration the BDU's capacity and its subscribers' ability to receive HD signals. In addition, during the dispute, consistent with prior Commission determinations, the BDU should be able to proceed with down-conversion until the matter is resolved.
32. As an all-digital BDU, MTS took no position on the down-conversion of digital signals to analog. Similarly, Bell confined its comments to down-conversion to SD. As for down-conversion from HD to SD, MTS submitted that the rules should recognize that, currently, the HD and SD versions of a signal usually contain substantially the same programming and that allowing BDUs to perform the down-conversion promotes the efficient use of transponder space, avoids duplication in the BDUs' networks and can provide cost savings to both BDUs and broadcasters. Thus, MTS considered that, even where there is both an SD and an HD version, it would be appropriate for the Commission to authorize BDUs to down-convert the HD signal to SD themselves for distribution.
33. Bell also opposed the precondition that authorization to down-convert an HD signal to SD should be dependent on the absence of an available SD signal from the broadcaster, arguing that elimination of this precondition would permit the BDU to receive a signal once in one format, rather than receiving the signal in two formats. Bell submitted that, as long as the BDUs fulfil their regulatory obligations to distribute the HD signals, they must have the flexibility to distribute signals in SD in order to ensure as wide as possible distribution of Canadian programming. Bell requested that the Commission give BDUs a blanket authority to down-convert all Canadian OTA HD signals to SD.
34. Canwest strongly suggested that, if a BDU is allowed to down-convert a domestic signal, it should only be with the prior written consent of the affected broadcaster. It considered this necessary to ensure the "appropriate treatment of programming and commercial content in 16x9 for 4x3 SD viewing during this transition period."

The Commission's determinations

35. As indicated above, a major motivation for the Commission's proposals in the Call for comments was to prevent disruption to customers. The immediate concern was that subscribers not lose access to the U.S. 4+1 signals traditionally available on an analog basis, while at the same time ensuring the equitable treatment of Canadian signals in comparable circumstances. The Commission is concerned that broadcasters may elect not to provide their signals in analog or SD format, and at the same time withhold consent for BDUs to down-convert the signals themselves. This, in conjunction with the down-convert rule discussed above, could be construed as permitting broadcasters to preclude BDUs from distributing down-converted U.S. 4+1 signals, or other Canadian digital-only signals, resulting in disruption to BDUs and their subscribers.

36. The Commission notes that the consent provision was included in order to ensure that a down-conversion from HD to SD or analog, which entails down-converting a picture with a 16x9 aspect ratio to one with a 4x3 aspect ratio, is performed in a fashion that reflects well on a broadcaster's signal. It was not intended to block BDUs' distribution of down-converted U.S. or other Canadian digital-only signals. It was for this reason that the Commission included in the proposed down-convert rule the proviso that, "if a terrestrial BDU elects to distribute any authorized digital-only OTA signal on a down-converted basis, it must distribute all Canadian digital-only signals... *unless a particular broadcaster indicates to the BDU that it does not want its signal distributed on a down-converted basis*" (emphasis added). The Commission remains of the view that this is the appropriate approach, and that a Canadian broadcaster should not be permitted to block distribution of down-converted U.S. 4+1 signals or other down-converted Canadian signals by withholding "consent" to down-conversion of its signal.
37. With respect to the submissions by MTS and Bell, the Commission considers that these distributors provided few details as to the efficiencies that could be achieved if BDUs were given a blanket authorization to perform down-conversions themselves, regardless of the broadcaster's willingness to provide a down-converted version. It is not apparent to the Commission what significant benefit would result from providing BDUs with such an authorization. In particular, the Commission considers it likely that broadcasters providing down-converted versions would provide SD versions, transmission of which would not consume large amounts of capacity, and that BDUs can compress SD signals for transmission among or within their undertakings, contributing further to efficient use of capacity.
38. Further, when the broadcaster provides the down-converted version itself, the broadcaster can ensure that the down-conversion, especially the change in the aspect ratio, is properly undertaken to its own satisfaction.
39. In light of the above, with respect to Canadian licensed television stations, the Commission will require that the BDU distribute a down-converted version provided by the broadcaster, where such a version is available, unless the broadcaster and the BDU agree that the BDU will do the down-conversion. Specifically, if a licensed Canadian broadcaster does not provide an SD or analog version, the BDU may perform the down-conversion itself, provided that it has the consent of the broadcaster.
40. However, as described above, the consent requirement, in conjunction with the down-convert rule, will not preclude BDUs from distributing down-converted U.S. 4+1 signals or other down-converted Canadian digital-only signals by virtue of the fact that a particular broadcaster does not provide either a down-converted version or its consent for the BDU to perform the down-conversion itself.
41. In addition, the Commission proposed in the Call for comments that broadcasters be obliged to provide either down-converted versions or their consent for BDUs to do the down-conversions themselves on a non-discriminatory basis. Further, the Commission has amended the *Television Broadcasting Regulations, 1987* to include a provision

prohibiting a television licensee from giving an undue preference to any person, including itself, or subjecting any person to an undue disadvantage (see Broadcasting Regulatory Policy 2009-543). Thus, should the situation described in the concerns raised by Bell arise, Bell would be able to file a complaint of unjust discrimination or undue preference or to approach the Commission for dispute resolution.

42. With respect to U.S. signals, the Commission will authorize BDUs to down-convert U.S. signals themselves if (a) an SD version is not provided by the broadcaster or (b) the originating broadcaster has an SD version available, but has raised no objections to the BDU doing the down-conversion itself.

Preconditions for BDUs to perform the down-conversions – Requirement to also distribute the primary digital signal as transmitted by the broadcaster

The Commission's proposal

43. The Commission proposed that BDUs that have a digital offering also be required to distribute the primary digital OTA signal as transmitted by the broadcaster.

Comments received

44. Bell opposed the proposed condition, submitting that it would have a significant negative impact on DTH distributors and subscribers, with no discernible benefit. Bell noted that it operates in a highly competitive market and must offer as comprehensive a set of HD services as is practical. Further, with respect to technical quality, consumers are the best judges. Bell was of the view that progressive (p) scan formats provide superior quality to interlaced (i) formats, and further that 720p-60 is the highest quality progressive scan ATSC broadcast standard³ available. Further, 1080i-30 signals cannot be multiplexed as efficiently. As a result, one or two fewer HD channels can be carried on each transponder than can be accommodated with 720p. Accordingly, in order to get the best combination of signal quality and signal throughput, Bell distributes HD services in 720p-60 format.
45. Bell submitted that to require it to distribute all HD signals “as transmitted by the broadcaster”— for example, in 1080i — would reduce the number of signals it could distribute to consumers. Further, as noted above, there would be no discernible benefit to the condition. Bell suggested that the Commission remain silent on this issue and confine its rule-making in this proceeding to the down-conversion issue.

The Commission's determinations

46. In Public Notice 2003-61, the Commission adopted the principle that an OTA digital television signal distributed by a BDU to its subscribers should be of the same quality and in the same format as that received by the BDU, without any degradation. The Commission notes that a strict application of this principle could preclude Bell from converting 1080i OTA signals to 720p for distribution to subscribers.

³ Standards developed by the Advanced Television Systems Committee.

47. The Commission agrees that to require Bell to distribute signals in 1080i instead of 720p would reduce the number of signals it could carry on each transponder. This reduction would affect the Bell DTH undertaking, as well as the satellite relay distribution undertakings (SRDUs) operating on the same satellite platform, resulting in reduced availability of HD signals both for subscribers and for BDUs dependent on certain signals provided to them by satellite.
48. With respect to signal quality, the Commission agrees that Bell is subject to sufficient competition that it must maintain a high signal quality overall in order to retain subscribers. Taking this into account, as well as the public interest in ensuring the ability of the DTH BDUs and their related SRDUs to provide a wide range of HD signals, the Commission will not require that BDUs with a digital offering also distribute the primary digital OTA signal “as transmitted by the broadcaster.” Instead, the Commission will require that a primary digital HD signal be distributed in one of the accepted ATSC HD formats, generally, 720p or 1080i.⁴

Simultaneous substitution – Signal quality

The Commission’s proposal

49. The Commission proposed that OTA or down-converted analog versions of Canadian signals be substituted over U.S. signals down-converted to analog, and that any Canadian OTA⁵ or down-converted SD versions be substituted over U.S. SD versions.

Comments received

50. Rogers agreed with the Commission’s general policy that the quality of any Canadian signal requiring a substitution must be at least comparable to the signal being replaced. It requested that the Commission make this requirement explicit in its final determination. Specifically, Rogers considered that substitutions should be performed for comparable signal formats (analog for analog, SD for SD, HD for HD). QMI also submitted that BDUs should be obliged, upon request, to substitute Canadian SD and analog versions over U.S. 4+1 SD and analog versions, respectively, consistent with the generally applicable regulations and priorities.
51. MTS submitted that BDUs should be required to perform simultaneous substitution of a local Canadian OTA signal over a down-converted U.S. 4+1 signal, as long as the Canadian signal is of at least equal quality to the down-converted signals (thus, a BDU would not be required to perform simultaneous substitution of any analog local Canadian OTA signal over an HD U.S. 4+1 signal that has been converted to SD). MTS submitted that this would be consistent with the Commission’s policy to encourage the take-up of digital services.

⁴ The other acceptable format is 1080p.

⁵ That is, if the OTA version is fully SD.

52. Canwest objected to the Commission's policy approach that a broadcaster must have a signal of a quality comparable to that of the signal to be replaced in order to request substitution. Canwest based this position on the need to protect program rights, and argued that technology (signal quality) is not relevant to this discussion.
53. Canwest also suggested that priority carriage and simultaneous substitution be allowed generally when a BDU receives a signal by direct feed (for example, HD versions provided by direct feed when there is no transmitter). CTVgm expressed similar views.

The Commission's determinations

54. In Broadcasting Public Notice 2003-61, the Commission determined that digital broadcasters would only be permitted to request simultaneous substitution when the signal to be substituted was of a quality at least equal to the signal to be replaced.
55. The Commission considers that this generally remains the appropriate approach, and that Canadian broadcasters should be obliged to acquire the rights to and air the HD version of any programming in order to be entitled to substitution over HD versions aired on U.S. signals. Many television viewers have made a considerable investment in high quality HD receivers, and the Commission is of the view that they should be entitled to receive HD signals when they are available.
56. However, the Commission notes that the rule specifying that broadcasters may only request simultaneous substitution when their signal is of a quality at least equal to the signal to be substituted over could be interpreted as prohibiting the substitution of a 720p signal over a 1080i signal. Therefore, the Commission determines that it is appropriate to permit substitution provided that both signals are in an acceptable HD format. For example, with respect to the primary digital version of a signal that is also being distributed on a down-converted basis, it would be appropriate to permit substitution of a 720p signal over a 1080i signal.
57. With regard to Canwest's suggestion that priority carriage and simultaneous substitution be allowed generally when a broadcaster receives a signal by direct feed, the Commission notes that, in Broadcasting Public Notice 2003-61, it permitted broadcasters, once they have been authorized to construct digital facilities, to provide BDUs with an upgraded version (i.e., a version with some amount of HD content) by direct feed for a period of up to 24 months while their facilities are being constructed. The policy did not grant mandatory distribution rights to such direct-feed versions, nor did it permit simultaneous substitution. In connection with a recent request by CTVgm to authorize the provision of upgraded digital (HD) versions by direct feed by way of amendments to the broadcasting licences of analog television programming undertakings (rather than through the authorization of new digital transmitters), the Commission determined that it would be appropriate to consider the general issue of whether direct feed versions should generally be entitled to simultaneous substitution at the policy proceeding scheduled for the fall of 2009.⁶

⁶ See Broadcasting Notices of Consultation 2009-411 and 2009-411-3.

58. In light of the above, the Commission considers it appropriate to proceed with the proposal set out in the Call for comments that broadcasters be entitled to request and BDUs required to perform simultaneous substitution as follows:
- a Canadian HD OTA signal over a U.S. HD OTA signal;
 - a Canadian SD OTA signal, or a Canadian HD OTA signal that has been down-converted to SD, over a U.S. SD OTA signal or over a U.S. HD OTA signal that has been down-converted to SD;
 - a Canadian analog OTA signal, or a Canadian SD or HD OTA signal that has been down-converted to analog, over a U.S. SD or HD signal that has been down-converted to analog.⁷

Expiry date

The Commission's proposal

59. As noted above, the Commission proposed that any authorizations granted as a result of this proceeding expire as of 1 September 2011, unless explicitly extended in further proceedings dealing with the digital transition.

Comments received

60. Rogers submitted that cable companies should retain the ability to provide a down-converted version of the first set of U.S. 4+1 signals as part of analog basic until at least the Canadian analog shut-down date of 31 August 2011. QMI anticipated that distribution in “multiple modes” (analog, SD, HD) would continue past 31 August 2011, and saw no need to establish a firm end date at this time for the rules to be established as a result of this proceeding. Canwest also expressed the view that the Commission’s proposals have long-term applicability, as to the need to deliver both HD and SD versions of services to BDU viewers will continue beyond the 31 August 2011 date (until such time as all BDU subscribers have HD set-top boxes).
61. Bell saw no reason for the Commission to establish a firm expiry date of 1 September 2011. Bell submitted that a simple advisory that the Commission may revisit these rules from time to time should be sufficient. It stated that the Commission may find that there is no pressing need to re-visit this issue in 2011, and the imposition of a firm expiry date would simply add another regulatory proceeding to an already crowded regulatory agenda.

⁷ The Commission notes that nothing in its determinations here affects the rules regarding the substitution of Canadian analog OTA stations “up-converted” from analog to SD digital, for distribution to SD digital BDU subscribers.

62. MTS submitted that some of the rules and authorizations may remain appropriate even after the shut down of analog broadcasting in Canada. However, subject to the proviso that these longer-term issues are in fact addressed adequately prior to 1 September 2011, MTS agreed with the Commission's preliminary view that an expiry date of 1 September 2011 would be appropriate, unless explicitly extended.

The Commission's determinations

63. The Commission agrees with those parties who argued that the need to provide down-converted versions, both analog and SD, will continue past the 31 August 2011 analog shut-down date. However, noting the capacity implications of continued analog distribution and the desirability of completing the digital transition on a timely basis, the Commission maintains, at this time, the 1 September 2011 expiry date for the authorizations to be granted pursuant to this determination.

Conclusion and implementation

64. In light of the above, the Commission considers it appropriate to proceed with the proposed approach set out in the Call for comments, with the modifications discussed above.
65. In Broadcasting Public Notice 2008-100, the Commission stated that it would introduce a mechanism to reduce the need for duplicative applications by more than one BDU on the same issue. As noted in that document, this mechanism will be used when the Commission approves a request from a BDU to undertake some activity not authorized or contemplated by the *Broadcasting Distribution Regulations*. Under this mechanism, such approval could be granted through the issuance of a general (standard) authorization, which would be added to the licences of all BDUs by way of a general condition of licence.
66. The Commission has implemented this mechanism by way of two documents, also issued today. In Broadcasting Regulatory Policy 2009-547, the Commission has published the general conditions of licence applicable to BDUs. The conditions set out in that document include the following condition of licence, consistent with the Commission's determinations in Broadcasting Public Notice 2008-100:

The licensee is authorized to distribute any service or to undertake any activity authorized in the regulatory policy entitled *General authorizations for broadcasting distribution undertakings*, as amended from time to time, under the terms and conditions set out in that regulatory policy.

67. In Broadcasting Regulatory Policy 2009-546, the Commission has included, among others, the authorizations adopted in the present regulatory policy.
68. As a result of Broadcasting Regulatory Policy 2009-547 and Broadcasting Regulatory Policy 2009-546, the authorizations relating to the distribution of down-converted digital-only television signals, with the applicable terms and conditions, are incorporated

by reference into the licences of BDUs. The authorizations will also apply to those BDUs subject to the exemption order set out in Broadcasting Order 2009-544. For ease of reference, the authorizations are also set out in the appendix to this regulatory policy.

Secretary General

Related documents

- *General conditions of licence for terrestrial (cable, digital subscriber line, multipoint distribution system) and direct-to-home (DTH) satellite broadcasting distribution undertakings*, Broadcasting Regulatory Policy CRTC 2009-547, 31 August 2009
- *General authorizations for broadcasting distribution undertakings*, Broadcasting Regulatory Policy CRTC 2009-546, 31 August 2009
- *Exemption order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers*, Broadcasting Regulatory Policy CRTC 2009-544, 31 August 2009
- *Amendments to the Broadcasting Distribution Regulations, the Television Broadcasting Regulations, 1987, the Pay Television Regulations, 1990, and the Specialty Services Regulations, 1990 – Implementation of certain elements of the regulatory framework for broadcasting distribution undertakings and discretionary services, and contributions to Canadian programming*, Broadcasting Regulatory Policy CRTC 2009-543, 31 August 2009
- *Policy proceeding on a group-based approach to the licensing of television services and on certain issues relating to conventional television – Notice of hearing*, Broadcasting Notice of Consultation CRTC 2009-411, 6 July 2009
- *Call for comments on the transition to digital broadcasting – distribution of U.S. 4+1 signals and related short-term issues*, Broadcasting Notice of Consultation CRTC 2009-49, 4 February 2009
- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services – Regulatory policy*, Broadcasting Public Notice CRTC 2008-100, 30 October 2008
- *National high definition over-the-air digital television service*, Broadcasting Decision CRTC 2008-75, 3 April 2008
- *The regulatory framework for the distribution of digital television signals*, Broadcasting Public Notice CRTC 2003-61, 11 November 2003

- *Carriage of Canadian and U.S. 4+1 signals on a digital basis*, Decision CRTC 2000-437, 8 November 2000

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>.

Appendix to Broadcasting Regulatory Policy CRTC 2009-545

General authorizations – Distribution of down-converted digital-only television signals

Terrestrial (cable, digital subscriber line, multipoint distribution system) and direct-to-home (DTH) satellite broadcasting distribution undertakings

- (a) The licensee is authorized to distribute a standard definition (SD) version, provided by a U.S. broadcaster, of a primary upgraded U.S. over-the-air signal.
- (b) The licensee is authorized to down-convert any SD version provided as in paragraph (a), above, to analog format and to distribute it to analog subscribers.
- (c) The licensee is authorized to down-convert a primary upgraded U.S. digital over-the-air signal to either SD or analog format, and to distribute that SD or analog signal to its subscribers, if (i) an SD version is not provided by the U.S. broadcaster, or (ii) the U.S. broadcaster makes an SD version available, but has not objected in writing to the licensee performing the down-conversion itself.
- (d) The licensee is authorized to distribute any SD or analog version of an upgraded over-the-air digital-only television signal (i.e., where there is no equivalent analog transmitter), when that version is provided by a licensed Canadian over-the-air digital television undertaking.
- (e) Where an SD or analog version of an upgraded signal is not provided by the licensed Canadian over-the-air digital-only television station, the licensee is authorized, with the consent of the broadcaster, to down-convert the upgraded signal itself, to analog and/or to digital, for distribution to its subscribers.
- (f) The authorizations set out above expire as of 1 September 2011, and are subject to the following terms and conditions:
 - (i) The terms and conditions otherwise applicable to the distribution of the television signals in question apply, *mutatis mutandi*, to the distribution of down-converted versions of those signals.
 - (ii) If the licensee makes use of digital technology for the delivery of programming to subscribers, it must also distribute the primary digital version of the signal in an accepted Advanced Television Systems Committee (ATSC) high definition (HD) format (720p, 1080i or 1080p).
 - (iii) If the licensee of a terrestrial broadcasting distribution undertaking distributes an authorized upgraded digital-only over-the-air signal on a down-converted basis, it must distribute Canadian digital-only signals in a similar fashion, without undue discrimination or undue preference, unless

the broadcaster indicates to the licensee that it does not wish to have its signal distributed on a down-converted basis. Without limiting the generality of the foregoing, if the licensee distributes any down-converted signals as part of its basic service, it must distribute down-converted versions of all signals identified in section 17 of the *Broadcasting Distribution Regulations*, if the licensee is a Class 1 or Class 2 licensee, or section 32 of the *Broadcasting Distribution Regulations*, if the licensee is a Class 3 licensee. Similarly, if the licensee makes available a second set of U.S. 4+1 signals (ABC, CBS, NBC, FOX, PBS) on a down-converted SD basis, it must also make available on a down-converted SD basis, any distant Canadian digital-only signals that are also authorized for distribution on a digital discretionary basis.

- (iv) Notwithstanding section (iii), the licensee is not prohibited from down-converting and/or distributing other U.S. or Canadian digital-only upgraded signals by virtue of the fact that a particular Canadian digital-only broadcaster has not provided either a down-converted version of its service or its consent for the licensee to down-convert the primary digital upgraded version itself.
- (v) Upon the request of a licensed Canadian over-the-air digital-only television station, the licensee must perform the following simultaneous substitutions, consistent with the procedures and priorities set out in section 30 of the *Broadcasting Distribution Regulations*, if the licensee is a Class 1 or Class 2 undertaking, or with section 42(a), if the licensee is a direct-to-home satellite distribution undertaking:
 - in the case of a signal distributed pursuant to paragraph (ii) above, a Canadian HD over-the-air signal over a U.S. HD over-the-air signal, provided that the Canadian signal is in any of the formats noted in that paragraph;
 - a Canadian SD over-the-air signal, or a Canadian HD over-the-air signal that has been down-converted to SD, over a U.S. SD over-the-air signal or over a U.S. HD over-the-air signal that has been down-converted to SD;
 - a Canadian analog over-the-air signal, or an analog version of a Canadian SD or HD over-the-air signal, over a U.S. SD or HD signal that has been down-converted to analog.

(g) For the purposes of the above provisions, an “upgraded” service is a digital television service that contains any amount of programming in HD, and a “primary signal” or a “primary version” is the signal having the highest technical quality when a digital signal is used to transmit more than one program stream.