



Broadcasting Regulatory Policy CRTC 2010-189

Route reference: Broadcasting Public Notice 2008-102

Other references: Broadcasting Public Notices 2008-102-1, 2008-102-2

Ottawa, 29 March 2010

Commercial advertising in the local availabilities of non-Canadian services

In Broadcasting Public Notice 2008-102, the Commission called for comments on a proposed framework for the sale of commercial advertising by broadcasting distribution undertakings (BDUs) for insertion in the local availabilities of non-Canadian programming services. In doing so, it stated the view that, in certain circumstances, revenues from the sale of advertising for insertion in local availabilities could provide a net benefit to the Canadian broadcasting system by, for example, encouraging the development of new forms of advertising that could provide additional value to advertisers and result in new sources of revenue for the system.

Based on the comments received, the Commission has determined that a net benefit from the sale of commercial advertising for insertion in local availabilities at this time has not been sufficiently demonstrated. Accordingly, the Commission will retain its current policy with respect to the use of local availabilities, as set out in Broadcasting Public Notice 2006-69.

Introduction

1. In Broadcasting Public Notice 2008-102, the Commission called for comments on a proposed framework for the sale of commercial advertising to be inserted in the local availabilities of certain non-Canadian services¹ that are distributed across Canada by broadcasting distribution undertakings (BDUs).
2. Local availabilities are periods of time within the programming of non-Canadian services where BDUs may insert announcements or promotions, as per negotiated agreements between those BDUs and the programming services in question.

Current approach

3. Currently, BDUs are authorized to make use of local availabilities in accordance with the general authorization set out in Broadcasting Regulatory Policy 2009-546. This authorization provides that:

¹ These services originate in the United States, where they are often referred to as “cable services.”

- at least 75% of local availabilities must be made available for use by licensed Canadian programming services for the promotion of their respective services, for the promotion of a community channel and for unpaid Canadian public service announcements.
 - a maximum of 25% of local availabilities may be used to provide subscribers with information regarding customer service and channel realignments, and for the promotion of discretionary programming services and packages, cable FM service, additional cable outlets and non-programming services, including Internet and telephone services.
4. BDUs are not permitted to sell and insert commercial advertising in local availabilities.

The Commission's proposal

5. In Broadcasting Public Notice 2008-102, the Commission called for comments on a proposed new approach that would allow the sale of advertisements for insertion in local availabilities. The Commission stated that such a regulatory framework should seek to:
- 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.
6. Accordingly, the Commission requested comment on a proposal that 75% of local availabilities be used by BDUs for commercial advertising, with 25% retained for the promotion of unrelated Canadian programming services.² It also proposed that BDUs no longer be able to recover the direct costs of inserting such promotions.
7. In addition, the Commission expressed the view that creating an incentive for BDUs to invest in the infrastructure necessary to enable new forms of advertising would result in new revenue opportunities for all sectors of the Canadian broadcasting system. Accordingly, the Commission called for comment on issues related to the encouragement of new forms of advertising, including whether the Commission should permit BDUs to sell only new forms of advertising or require them to have the necessary equipment in place to insert such advertising in local availabilities as a precondition for using local availabilities for commercial advertising. The Commission also asked BDUs to provide details concerning the type of advertising they would insert into local availabilities (e.g., local, regional or national advertising), and whether any limitations should be imposed in this regard.

² An unrelated programming service is a programming undertaking of which the licensee or an affiliate, or both, does not control more than 10% of the total shares issued and outstanding.

8. The Commission also noted that BDUs would be required to contribute a portion of any additional revenues from the sale of advertising to be inserted in local availabilities to Canadian programming. This would include a contribution to independent funds plus a contribution to the Local Programming Improvement Fund (LPIF).
9. The Commission asked whether the proposed framework outlined above would provide sufficient net benefits and, if not, what would be the appropriate terms and conditions to ensure a net benefit to the Canadian broadcasting system.
10. The record of the proceeding closed 2 April 2009 with the filing of replies. The complete record is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Possible benefits to the Canadian broadcasting system

11. After examining the record of this proceeding, the Commission considers that the key issue to be determined is whether or not a change in its policies with respect to local availabilities to permit the insertion of advertising messages would bring a net benefit to the Canadian broadcasting system. To make its determination, the Commission will address four related questions:
 - Would there be a negative impact on broadcasters?
 - Would it provide significant additional funds to support Canadian programming?
 - Would it accelerate the implementation of new forms of advertising, such as targeted advertising?
 - Would there be other benefits to changing the Commission's policy?

Would there be a negative impact on broadcasters from the sale of advertising for insertion in local availabilities?

12. Most broadcasters were concerned that money spent on advertising to be inserted in local availabilities would reduce the advertising revenues that broadcasters currently receive. CTVglobemedia Inc. and Canwest Television GP Inc. filed a study estimating that, if BDUs had had the ability to sell advertising in local availabilities in 2008, revenues in the range of \$73.3 to \$81.4 million would have been transferred from English-language broadcasters to BDUs. Pelmorex Communications Inc. (Pelmorex) quoted a study by the Canadian Association of Broadcasters that estimated that the sale of advertising for insertion in local availabilities could mean a loss of \$64.3 million in revenues to broadcasters. Only Imagine (now called Média de Novo Inc.) agreed with Pelmorex regarding the significant negative repercussions for the Canadian broadcasting system that would result should the Commission authorize BDUs to sell commercial advertising for insertion in local availabilities.³

³ Média de Novo Inc. filed an application (see Broadcasting Notice of Consultation 2009-803) making an alternative proposal for the sale of commercial advertising in local availabilities.

13. Owners and representatives of BDUs argued that the comparatively minor revenue flow that BDUs would generate from the sale of advertising in local availabilities would have no material negative impact on television and radio programming undertakings. Rogers Communications Inc. (Rogers) estimated annual sales of advertising to be inserted in local availabilities at \$45 million.
14. The Commission notes that broadcasters and BDUs have different views on the revenues that would be garnered from the sale of advertising to be inserted in local availabilities. The Commission considers, however, that at least some of the revenues obtained by BDUs through the sale of advertising for insertion in local availabilities would be transferred from advertising revenues currently obtained by broadcasters, including conventional television stations. Therefore, a change in the Commission's policy to allow the sale of advertising for insertion in local availabilities would have at least some negative impact on the advertising revenues currently earned by broadcasters. While the amount of financial impact would likely be small relative to total broadcasting advertising revenues, the Commission considers that any decrease in advertising revenues for conventional broadcasters, at this time in particular, causes concern, given the severe financial constraints under which such broadcasters currently operate.

Would the sale of advertising for insertion in local availabilities provide significant funds to support Canadian programming?

15. Broadcasting Public Notice 2008-102 stated that BDUs would be required to contribute 6% (which later became 6.5%) of any additional revenues to Canadian programming. This would include a 5% contribution to the Canadian Television Fund, now known as the Canada Media Fund, and other independent funds, less certain funds paid to support community channels, plus a contribution to the LPIF, Rogers estimated that this contribution would amount to an immediate increase in funding for Canadian programming from BDUs of approximately \$3 million per year, ramping up to \$4 million or more per year once BDUs fully implement targeted advertising.
16. Broadcasters considered, however, that the benefits from additional revenue from BDUs would be more than offset by a decrease in advertising revenues flowing to broadcasters. This would also lead to a decrease in broadcasters' Canadian programming expenditures (CPE). The Canadian Film and Television Production Association, the Directors' Guild of Canada and the Writers' Guild of Canada all argued that the only way to offset a decrease in CPE from broadcasters would be to require BDUs to contribute a much greater proportion of any revenues derived from the sale of advertising in local availabilities to Canadian programming.
17. In light of the above, the Commission considers that it is unlikely that any net additional revenues would flow to Canadian programming as a result of increased contributions from BDUs. The relatively modest increase in contributions would not be sufficient to outweigh the potential negative impact on broadcasting advertising revenues.

Would the sale of advertising for insertion in local availabilities accelerate the move to new forms of advertising, such as targeted advertising?

18. None of the parties commenting on the issue considered that it was appropriate to link local availabilities with targeted advertising or other forms of advertising, as proposed by the Commission. Parties generally indicated that it is too early in the development of new forms of advertising for the Commission to make many, if any, determinations on this subject. Most BDUs noted that they are not yet sure when the technology to enable targeted advertising will be available, whether there is a feasible business model for it, or if there is an appropriate way of defining such advertising.
19. Rogers differed from other BDUs in that it provided specific information setting out anticipated time frames for its implementation of new forms of advertising. Rogers expected to roll out some forms of interactive advertising in 2010, but stated that addressable targeted advertising would not be implemented for three to five years.
20. BDUs emphasized the need for flexibility with respect to the types of advertising that might be broadcast during local availabilities, generally arguing that there continues to be considerable uncertainty as to how or when new forms of advertising will be introduced.
21. The Commission remains of the view that new forms of advertising and targeted advertising, in particular, will provide advertisers with more sophisticated and effective means of promoting products and services and measuring the audience for such advertising, which will benefit both broadcasters and distributors.⁴ However, with the possible exception of Rogers, which provided time-frames for the introduction of new forms of advertising, these developments will likely occur in the medium and long term, rather than the short term. Due to the current uncertainty surrounding the evolution of new forms of advertising, the sale of advertising for insertion in local availabilities is unlikely to accelerate, to a significant degree, further developments at this time.
22. Accordingly, the Commission concludes that authorizing the sale of advertising for insertion in local availabilities under the proposed framework would not likely accelerate the move to new forms of advertising, such as targeted advertising, at this time.

Would there be other benefits to changing the Commission's policy on local availabilities?

Costs of insertion equipment for small cable BDUs

23. The Canadian Cable Systems Alliance (CCSA) submitted that, for small cable BDUs, the ability to sell advertising in local availabilities is not likely to generate a substantial new revenue stream. It would, however, create an opportunity to offset the costs of the equipment required to insert messages in local availabilities and to cover the ongoing costs of insertion.

⁴ In recognition of this, the Commission has already amended the *Broadcasting Distribution Regulations* to permit targeted advertising in Canadian services, as announced in Broadcasting Regulatory Policy 2009-543.

24. The CCSA noted that most small cable BDUs have no choice but to receive signals from the Shaw Broadcasting Services (SBS) satellite transport service. Since SBS provides its service using the same signals offered by the Shaw Direct direct-to-home satellite service, the non-Canadian services distributed by small cable BDUs that receive signals from SBS often contain promotions for the Shaw Direct service in the local availabilities of those non-Canadian services. Without the capability to insert their own promotions in local availabilities, the smaller cable BDUs must pass the Shaw Direct advertisements through to their own customers. The CCSA argued that authorization to insert advertising in local availabilities would provide new revenues that may make it feasible for at least some smaller BDUs to purchase the equipment necessary to replace the Shaw Direct promotions.
25. The Commission is of the view that the revenues received from the sale of advertising for insertion in local availabilities may be sufficient to offset the related equipment and operating costs for some relatively small BDUs. However, it is unlikely that revenues would be sufficient to cover such costs for very small BDUs that rely on the SBS service. The Commission further notes that, in Broadcasting Regulatory Policy 2009-639 and Broadcasting Order 2009-638, it introduced more flexibility concerning how broadcasting signals are transported and received. These measures should provide smaller BDUs with increased flexibility with respect to the source from which they receive signals in the future.

Cost to broadcasters for the insertion of promotional announcements

26. In Broadcasting Public Notice 2008-102, the Commission stated that, under its proposed policy, BDUs wishing to sell advertising in local availabilities would not be permitted to recover the costs or charge any fee whatsoever for inserting promotional announcements for unrelated programming services in local availabilities.
27. Under the current policy, BDUs may recover the direct costs of inserting, in local availabilities, promotional announcements provided by programming services. Operators of programming services alleged that BDUs have inflated their costs and have charged fees that are unduly high. This has limited the ability of some programming services to make use of promotional time in local availabilities. Eliminating these fees would therefore provide a benefit to such programming services.
28. The Commission notes, however, that under the current system, broadcasters concerned that they have been charged fees for the insertion of promotional announcements in local availabilities that are beyond cost recovery may complain to the Commission. The Commission will address the complaint with the BDU involved and take appropriate action to ensure that its policy is respected.

Conclusion

29. As noted above, the Commission is concerned that the proposed change in policy with respect to local availabilities could lead to a reduction in the revenues of conventional television stations at a time when they are operating under severe financial constraints. It is further of the view that a net benefit to the Canadian broadcasting system from permitting the sale of advertising for insertion in local availabilities at this time has not been sufficiently demonstrated. The Commission therefore finds that it is appropriate to maintain its current policy with respect to the use of local availabilities, as set out in Broadcasting Public Notice 2006-69.
30. However, the Commission continues to be of the view that new forms of advertising have the potential to provide substantial benefits to both broadcasters and distributors and that accelerating their development would benefit the Canadian broadcasting system as a whole. Accordingly, the Commission will, in its examination of any future applications with respect to the sale of commercial advertising for insertion in local availabilities, place significant emphasis on the degree to which the proposals put forward will advance or accelerate the evolution of new forms of advertising.

Secretary General

Related documents

- *Amendments to the requirements set out in the lists of eligible satellite services*, Broadcasting Regulatory Policy CRTC 2009-639, 9 October 2009
- *Amendments to the Exemption order respecting terrestrial relay distribution undertakings*, Broadcasting Order CRTC 2009-638, 9 October 2009
- *General authorizations for broadcasting distribution undertakings*, Broadcasting Regulatory Policy CRTC 2009-546, 31 August 2009
- *Call for comments on a proposed framework for the sale of commercial advertising in the local availabilities of non-Canadian services* – Notice of consultation, Broadcasting Public Notice CRTC 2008-102, 30 October 2008
- *Promotion of non-programming services using local availabilities*, Broadcasting Public Notice CRTC 2006-69, 2 June 2006

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<http://www.crtc.gc.ca>.