



Broadcasting Regulatory Policy CRTC 2011-295

PDF version

Route reference: 2010-488

Additional reference: 2010-488-1

Ottawa, 4 May 2011

Direct-to-home satellite distribution policy – Distribution of local conventional television stations and simultaneous substitution

In Broadcasting Public Notice 2008-100, as clarified in Broadcasting Regulatory Policy 2010-162, the Commission announced that new rules would apply to the distribution of television stations by direct-to-home (DTH) broadcasting distribution undertakings (BDUs). In the present regulatory policy, the Commission further announces the following:

- *it will impose on the DTH satellite distribution undertaking Bell TV, by condition of licence, a requirement to distribute, at a minimum and by 31 August 2012, 43 television stations that meet the criteria set out in paragraph 38 of Broadcasting Decision 2011-163, in standard definition and on a full-time basis; and*
- *it will impose on the DTH satellite distribution undertaking Shaw Direct, by condition of licence, a requirement to distribute, in standard definition and on a full-time basis, all Local Programming Improvement Fund-conforming conventional television stations by 1 January 2013.*

In addition, the Commission finds that modifications to existing requirements imposed on DTH satellite distribution undertakings regarding simultaneous substitution are not warranted.

Introduction

1. In Broadcasting Notice of Consultation 2010-488, the Commission announced that it would hold a public hearing commencing 16 November 2010 to review its policy regarding direct-to-home (DTH) satellite distribution undertakings. In that notice, the Commission called for comments on the appropriate regulatory framework for DTH satellite distribution undertakings as it relates to the following:
 - the conventional television stations that DTH broadcasting distribution undertakings (BDUs) are required to offer their subscribers; and
 - the manner in which DTH BDUs perform simultaneous substitution.

2. The Commission received submissions from operators of DTH satellite distribution undertakings, terrestrial distribution undertakings, broadcasters and members of the general public. Following the hearing, the Commission provided those that had participated in the proceeding, including the parties that appeared at the hearing, with an opportunity to provide final written submissions. The complete record of this proceeding is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."
3. After examining the record of the proceeding, the Commission considers that the issues to be addressed in its determinations are the following:
 - Should DTH satellite distribution undertakings be required to distribute additional local conventional television stations?
 - Should existing requirements imposed on DTH satellite distribution undertakings regarding simultaneous substitution be modified?

Should direct-to-home satellite distribution undertakings be required to distribute additional local conventional television stations?

4. The Commission currently requires each licensee of a DTH satellite distribution undertaking to distribute, at a minimum, the following conventional television stations:
 - one television station affiliate of each nationally-licensed television network;
 - five English- and five French-language Canadian Broadcasting Corporation (CBC) television stations, including one from each time zone; or at least as many English- or French-language CBC stations as it distributes from a particular English- or French-language private broadcasting group;
 - one television station per province from each major Canadian broadcasting ownership group;
 - two Atlantic television stations from each major Canadian broadcasting ownership group; and
 - two television stations from each of the other Canadian broadcasting ownership groups.
5. In Broadcasting Notice of Consultation 2010-488, the Commission requested comments on whether licensees of DTH satellite distribution undertakings should be required to distribute all conventional television stations on a "local-into-local" basis, i.e., whether every local station should be distributed to DTH subscribers within at least their local market.

Positions of parties

6. Several parties that are not licensees of DTH satellite distribution undertakings, including organizations representing official language minority communities (OLMCs), submitted that, at a minimum, DTH satellite distribution undertakings should be required to distribute all Local Programming Improvement Fund (LPIF)-conforming conventional stations. In this regard, the Commission reiterates that the following are the criteria it uses to identify LPIF-confirming conventional stations:
 - English- and French-language conventional stations serving markets in which the population with a knowledge¹ of the official language of the station (i.e., English or French) is less than one million² (to be referred to as non-metropolitan markets) (The Commission notes that CBLFT Toronto, as well as CBKFT Regina, both of which serve OLMCs, are LPIF-conforming stations.);
 - in instances where local programming levels have been harmonized, conventional stations in non-metropolitan markets that are subject to and are in compliance with conditions of licence that require the following:
 - for English-language stations, the broadcast of a minimum of seven hours per broadcast week of local programming, including local news; and
 - for French-language stations, the broadcast of a minimum of five hours of local programming per broadcast week, including local news; and
 - in instances where local programming levels have not been harmonized, conventional stations in non-metropolitan markets that are meeting their current obligations/commitments relating to local programming, including news, as stated in their most recent licence renewal decisions.
7. In their replies, both Bell TV and Shaw Direct submitted that they already distribute many more local stations than is required of the typical terrestrial BDU, and that to require them to distribute any more local stations would put a strain on their ability to market a viable and competitive BDU service.

Commission's analysis and determinations

8. The Commission examined the capacity reports provided by Bell TV and Shaw Direct for the record of this proceeding. Although available capacity for the distribution of additional signals varies between the two DTH satellite distribution undertakings, the record shows that Bell TV forecast enough available capacity to

¹ According to the definition by Statistics Canada

² Accordingly, the metropolitan markets of Vancouver, Calgary, Edmonton, Toronto, Anglophone Ottawa-Gatineau, and Montréal do not qualify for funding from the LPIF.

propose the addition of 22 additional high definition (HD) signals by 1 September 2011. Further, Shaw Direct estimated that once its new satellite is operational,³ it would have the capacity to distribute approximately one hundred additional HD signals.

9. In regard to Bell TV, the Commission notes that in Broadcasting Decision 2011-163,⁴ it accepted a proposal by BCE Inc. (BCE) to allocate \$60 million of its total benefits package toward the provision of satellite distribution for an additional 43 local television services.
10. In that decision, the Commission directed Bell TV (BCE's DTH satellite distribution undertaking) to distribute at least the 43 additional television services that meet the following criteria in standard definition by 31 August 2012, and to make these services available as part of the basic package in the appropriate local markets:
 - local stations eligible for the LPIF;
 - non-branded community-based television services;
 - non-LPIF-eligible local stations that meet the five-hour (French-language) and seven-hour (English-language) minimum local programming commitment; and
 - existing independent television stations that currently operate in markets that are required to convert to digital transmission on 31 August 2011.
11. Further, in line with the above-noted tangible benefits package stemming from the change in the effective control of CTVglobemedia Inc.'s licensed broadcasting subsidiaries to BCE, the Commission will impose on Bell TV, at its next licence renewal, a condition of licence requiring it to distribute, at a minimum and by 31 August 2012, 43 stations that meet the criteria set out in paragraph 38 of Broadcasting Decision 2011-163, in standard definition and on a full-time basis.
12. In regard to Shaw Direct, the Commission notes that additional capacity will be available once its new satellite is operational. The Commission considers that, in the interest of furthering the objectives of the *Broadcasting Act*, it is reasonable to expect Shaw Direct to dedicate a portion of its new capacity to the distribution of additional local services.
13. The Commission notes that the overall objective of the LPIF is to maintain or improve the quality and diversity of local programming available to viewers in non-

³ Shaw Direct stated during the hearing that its newest satellite, Anik G1, is scheduled to come into service in the fourth quarter of 2012.

⁴ In that decision, the Commission approved an application by BCE Inc. (BCE), on behalf of CTVglobemedia Inc. (CTVgm), for authority to change the effective control of CTVgm's licensed broadcasting subsidiaries to BCE.

metropolitan markets. However, the Commission considers that it would be inconsistent with this objective for stations that receive LPIF funding and, by extension, the local programming that results from that funding, not to be distributed by all DTH providers.

14. The Commission further considers that distribution on an additional platform such as DTH, particularly in areas where DTH penetration is high (such as in smaller markets), would allow local stations to maximize advertising revenue potential, which could in turn further contribute to enhancing the quantity and quality of local programming.
15. In light of the above, the Commission will impose on Shaw Direct, at its next licence renewal, a condition of licence requiring it to distribute, in standard definition and on a full-time basis, all LPIF-conforming conventional stations by 1 January 2013.
16. The Commission notes that the distribution by Bell TV and Shaw Direct of all LPIF-conforming conventional stations will include CBLFT Toronto and CBKFT Regina, which, as noted above, serve OLMCs.
17. As an interim measure until a station is fully distributed, the Commission is prepared to consider applications for the use of omnibus, partial or virtual channels where parties agree to the terms and conditions of distribution. The Commission notes, however, that these types of channels are not equivalent to full distribution of a channel and are best used as interim measures.

Should existing requirements imposed on direct-to-home satellite distribution undertakings regarding simultaneous substitution be modified?

18. Section 42 of the *Broadcasting Distribution Regulations* requires DTH licensees to replace the signal of a non-Canadian television service with the signal of a Canadian television service when the two services are showing the same program at the same time. This is known as simultaneous substitution and occurs at the request of the licensee of a Canadian television service.
19. As part of its policies regarding distribution of digital and HD programming services set out in Broadcasting Public Notices 2003-61 and 2006-74, the Commission has determined that BDUs are only required to perform simultaneous substitution when the signal of the service requesting simultaneous substitution is of similar or better quality than the signal that it is replacing. This means, for example, that a Canadian television station can only request simultaneous substitution over an HD program of a U.S. signal if the Canadian station also broadcasts the program in HD.
20. Noting that simultaneous substitution, of HD programming in particular, is often the subject of complaints to the Commission by DTH subscribers and by broadcasters, the Commission, in Broadcasting Notice of Consultation 2010-488, called for comments on concerns raised by broadcasters, in previous proceedings, regarding the manner in which DTH licensees perform simultaneous substitution. These

broadcasters were particularly concerned with Bell TV's practice of performing simultaneous substitution for only one local station at a time over any given non-Canadian programming service. Through this practice, most of its subscribers receive substituted programming from a television station operating outside of their community (instead of programming from the non-Canadian service) regardless of whether or not there is a local station broadcasting the same programming in their community.

Positions of parties

21. Rogers Communications Inc. (Rogers) raised concerns relating to the distribution by DTH satellite distribution undertakings of the HD signals of major market television stations. These concerns related specifically to the distribution of those signals in the same time zone as that in which U.S. 4+1 signals⁵ are distributed in HD to ensure simultaneous substitution.
22. In its reply, Shaw Direct stated that it was confident that a negotiated agreement, whether monetary or non-monetary, could be reached with the over-the-air broadcasters regarding compensation for those stations that do not get HD simultaneous substitution. It also indicated its preference for this approach rather than a mandated solution.

Commission's analysis and determinations

23. The Commission notes that this issue, in essence, is one specific to Rogers and Shaw Direct, and further notes Shaw Direct's comment that a negotiated agreement could be reached. In this particular instance, it is the Commission's view that regulatory intervention would not be the most efficient manner in which to resolve this issue, which involves two large, vertically-integrated organizations.
24. Accordingly, the Commission expects Shaw Direct and Rogers to enter into good faith negotiations to resolve this issue, and notes that if these negotiations are not successful, the parties may avail themselves of existing alternate resolution mechanisms to help facilitate a solution.

Conclusion

25. The Commission is of the view that the determinations detailed in the present regulatory policy, as well as in those upon which they are based, create regulatory symmetry between BDUs, whether they are terrestrial- or satellite-based BDUs, in the context of their respective technical constraints, and ensure that Canadians, including those that live in OLMCs, have access to local programming, including local news, in all markets regardless of size.

⁵ This refers to the set of signals that provides the programming of the four U.S. commercial networks (CBS, NBC, ABC, FOX) and the non-commercial PBS network.

Secretary General

Related documents

- *Change in effective control of CTVglobemedia Inc.'s licensed broadcasting subsidiaries*, Broadcasting Decision CRTC 2011-163, 7 March 2011
- *Review of the direct-to-home satellite distribution policy*, Broadcasting Notice of Consultation CRTC 2010-488, 20 July 2010
- *Local Programming Improvement Fund*, Broadcasting Information Bulletin CRTC 2010-333, 31 May 2010
- *A group-based approach to the licensing of private television services*, Broadcasting Regulatory Policy CRTC 2010-167, 22 March 2010
- *Distribution by direct-to-home services of stations from the major ownership groups in the Atlantic provinces and independently owned stations across Canada*, Broadcasting Regulatory Policy CRTC 2010-162, 19 March 2010
- *Local Programming Improvement Fund*, Broadcasting Information Bulletin CRTC 2009-686, 2 November 2009
- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services – Regulatory policy*, Broadcasting Public Notice 2008-100, 30 October 2008
- *Direct-to-home (DTH) broadcasting distribution undertakings – simultaneous and non-simultaneous program deletion and the carriage of local television signals in smaller markets; Introduction to Licence amendment for ExpressVu – relief from requirements for simultaneous and non-simultaneous program deletion, Broadcasting Decision CRTC 2003-257, 16 July 2003, and Licence amendment for Star Choice – relief from requirements for simultaneous and non-simultaneous program deletion, Broadcasting Decision CRTC 2003-258, 16 July 2003, Broadcasting Public Notice CRTC 2003-37, 16 July 2003*
- *Introductory statement – Licensing of new direct-to-home (DTH) satellite distribution undertakings, and new DTH pay-per-view (PPV) television programming undertakings*, Public Notice CRTC 1995-217, 20 December 1995