



Broadcasting Notice of Consultation CRTC 2011-806

PDF version

Ottawa, 22 December 2011

Call for comments on proposed amendments to the *Broadcasting Distribution Regulations* and other Commission regulations—provisions relating to vertical integration

The Commission calls for comments on amendments to the Broadcasting Distribution Regulations, the Pay Television Regulations, 1990, the Specialty Services Regulations, 1990 and the Television Broadcasting Regulations, 1987 in order to implement certain determinations relating to vertical integration set out in Broadcasting Regulatory Policy 2011-601. The deadline for the receipt of comments is 23 January 2012.

Introduction

1. The Commission proposes to amend the *Broadcasting Distribution Regulations*, the *Pay Television Regulations, 1990*, the *Specialty Services Regulations, 1990* and the *Television Broadcasting Regulations, 1987* in order to implement certain determinations set out in Broadcasting Regulatory Policy 2011-601 (the Regulatory framework relating to vertical integration).
2. Specifically, the Commission proposes to amend the above-mentioned regulations in order to give effect to the following aspects of the Regulatory framework relating to vertical integration:
 - it establishes the evidentiary burden in cases of undue preference or disadvantage;
 - it prohibits tied selling of programming services by broadcasters;
 - it establishes a mechanism to guard against anti-competitive head starts of programming services;
 - it provides for the establishment of rates, terms and conditions surrounding carriage of newly launched programming services absent a commercial agreement and establishes requirements with respect to the resolution of disputes surrounding the carriage of such services;
 - it provides for mandatory mediation between parties to disputes retained by the Commission;
 - it provides for the provision and distribution of programming services after the expiry of a commercial agreement and pending the conclusion of a new agreement or resolution of the dispute by the Commission and establishes

requirements with respect to the resolution of disputes surrounding the provision and distribution of such programming services; and

- it provides for the mandatory distribution of independent Category B services by licensed broadcasting distribution undertakings when the latter distribute related Category B services as currently defined in the *Broadcasting Distribution Regulations*.
3. In Broadcasting Notices of Consultation 2011-804 and 2011-805, also issued today, the Commission called for comments on a number of proposed amendments to the terms and conditions of the exemption order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers and to the exemption order for new media broadcasting undertakings, in order to give effect to various determinations reached in the Regulatory framework relating to vertical integration.

Call for comments

4. The proposed *Regulations Amending Certain Regulations Made under the Broadcasting Act* are appended to this notice. The Commission invites comments on the wording of the proposed amendments. The Commission will accept interventions that it receives on or before **23 January 2012**.

Procedure

5. The new *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure*, SOR/2010-277 (the Rules of Procedure), set out, among other things, the rules for content, format, filing and service of interventions. Accordingly, the procedure set out below must be read in conjunction with the Rules of Procedure and its accompanying documents, which can be found on the Commission's website under "CRTC Rules of Practice and Procedure."
6. In accordance with the Rules of Procedure, a document must be filed with, not merely sent to, the Commission by 5 p.m. Vancouver time (8 p.m. Ottawa time) on the date it is due. The Commission takes no responsibility for postal delays and will not notify a party whose submission is received after the deadline date. Late submissions will not be considered by the Commission and will not be made part of the public file.
7. The Commission will not formally acknowledge interventions. It will, however, fully consider all interventions, and they will form part of the public record of the proceeding, provided that the procedures for filing set out in the Rules of Procedure and this notice have been followed.
8. Submissions must be filed by sending them to the Secretary General of the Commission by **only one** of the following means:

by using the
[[Intervention/comment/answer form](#)]

or

by mail to
CRTC, Ottawa, Ontario K1A 0N2

or

by fax at
819-994-0218

9. Submissions longer than five pages should include a summary.
10. Each paragraph of the submission should be numbered. In addition, where the comment is filed by electronic means, the line *****End of document***** should be entered following the last paragraph of the document, as an indication that the document has not been altered during electronic transmission.

Important notice

11. All information that parties provide as part of this public process, except information designated confidential, whether sent by postal mail, facsimile, e-mail or through the Commission's website at www.crtc.gc.ca, becomes part of a publicly accessible file and will be posted on the Commission's website. This information includes personal information, such as full names, e-mail addresses, postal/street addresses, telephone and facsimile numbers, and any other personal information parties provide.
12. The personal information that parties provide will be used and may be disclosed for the purpose for which the information was obtained or compiled by the Commission, or for a use consistent with that purpose.
13. Documents received electronically or otherwise will be put on the Commission's website in their entirety exactly as received, including any personal information contained therein, in the official language and format in which they are received. Documents not received electronically will be available in PDF format.
14. The information that parties provide to the Commission as part of this public process is entered into an unsearchable database dedicated to this specific public process. This database is accessible only from the web page of this particular public process. As a result, a general search of the Commission's website with the help of either its own search engine or a third-party search engine will not provide access to the information that was provided as part of this public process.
15. The Commission encourages parties and interested persons to monitor the record of the proceeding, available on the Commission's website, for additional information that they may find useful when preparing their submissions.

Examination of documents

16. A list of all interventions and answers will also be available on the Commission's website. The list is accessible by selecting "View all proceedings open for comment" from the "Public Proceedings" section of the Commission's website and clicking on the "Interventions/Answers" link associated with this notice.
17. The public may examine public interventions and related documents at the following Commission offices during normal business hours.

Location of Commission offices

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

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

Les Terrasses de la Chaudière
Central Building
1 Promenade du Portage, Room 206
Gatineau, Quebec
J8X 4B1
Tel.: 819-997-2429
Fax: 819-994-0218

Regional offices

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

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

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

360 Main Street
Suite 970
Winnipeg, Manitoba

R3C 3Z3
Tel.: 204-983-6306
Fax: 204-983-6317

2220 – 12th Avenue
Suite 620
Regina, Saskatchewan
S4P 0M8
Tel.: 306-780-3422

100 – 4th Avenue South-West
Suite 403
Calgary, Alberta
T2P 3N2
Tel.: 403-292-6660
Fax: 403-292-6686

858 Beatty Street
Suite 290
Vancouver, British Columbia
V6B 1C1
Tel.: 604-666-2111
Fax: 604-666-8322

Secretary General

Related documents

- *Call for comments on proposed amendments to the exemption order for new media broadcasting undertakings—provisions relating to vertical integration*, Broadcasting Notice of consultation CRTC 2011-805, 22 December 2011
- *Call for comments on proposed amendments to the terms and conditions of the exemption order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers*, Broadcasting Notice of consultation CRTC 2011-804, 22 December 2011
- *Regulatory framework relating to vertical integration*, Broadcasting Regulatory Policy CRTC 2011-601, 21 September 2011

Appendix to Broadcasting Notice of Consultation CRTC 2011-806

REGULATIONS AMENDING CERTAIN REGULATIONS MADE UNDER THE BROADCASTING ACT

TELEVISION BROADCASTING REGULATIONS, 1987

1. (1) The definition “licensed” in section 2 of the *Television Broadcasting Regulations, 1987*¹ is replaced by the following:

“licensed” means licensed by the Commission under paragraph 9(1)(b) of the Act; (*autorisé*)

(2) Section 2 of the Regulations is amended by adding the following in alphabetical order:

“exempt distribution undertaking” means a distribution undertaking whose operator is, by order of the Commission made under subsection 9(4) of the Act, exempt from any or all of the requirements of Part II of the Act; (*exemptée*)

2. Section 15 of the Regulations is renumbered as subsection 15(1) and is amended by adding the following:

(2) In any proceeding before the Commission, the burden of establishing that any preference or disadvantage is not undue is on the licensee that gives the preference or subjects the person to the disadvantage.

3. The Regulations are amended by adding the following after section 15:

TIED SELLING

16. A licensee shall not offer its programming service for distribution as part of a package with other programming services unless it also makes its programming services available on a stand-alone basis.

DISPUTE RESOLUTION

17. (1) If there is a dispute between the licensee and the operator of a licensed distribution undertaking or an exempt distribution undertaking, concerning the carriage or terms of carriage of programming originated by the licensee — including the wholesale rate and the terms of any audit referred to in section 15.1 of the *Broadcasting Distribution Regulations* — one or both of the parties to the dispute may refer the matter to the Commission for dispute resolution.

(2) If the Commission accepts a referral of a matter for dispute resolution, the parties to the dispute are required to participate in a mediation with a person appointed by the Commission.

(3) During the dispute resolution process, the person appointed under subsection (2) may require additional information from the parties.

PAY TELEVISION REGULATIONS, 1990

4. Section 2 of the *Pay Television Regulations, 1990*² is amended by adding the following in alphabetical order:

“licensed” means licensed by the Commission under paragraph 9(1)(b) of the Act; (*autorisé*)

5. Section 6.1 of the Regulations is amended by adding the following after subsection (2):

(3) In any proceeding before the Commission, the burden of establishing that any preference or disadvantage is not undue is on the licensee that gives the preference or subjects the person to the disadvantage.

6. The Regulations are amended by adding the following after section 6.1:

TIED SELLING

6.2 A licensee shall not offer its programming service for distribution as part of a package with other programming services unless it also makes its programming services available on a stand-alone basis.

AVAILABILITY OF NEW PROGRAMMING SERVICES FOR DISTRIBUTION

6.3 Except as otherwise provided under a condition of its licence, a licensee that is ready to launch a new programming service shall make that programming service available for distribution by all licensed broadcasting distribution undertakings or operators of exempt distribution undertakings, despite the absence of a commercial agreement.

DISPUTE RESOLUTION

6.4 (1) If there is a dispute between the licensee and the operator of a licensed distribution undertaking or an exempt distribution undertaking, concerning the carriage or terms of carriage of programming originated by the licensee — including the wholesale rate and the terms of any audit referred to in section 15.1 of the *Broadcasting Distribution Regulations* — one or both of the parties to the dispute may refer the matter to the Commission for dispute resolution.

(2) If the Commission accepts a referral of a matter for dispute resolution, the parties to the dispute are required to participate in a mediation with a person appointed by the Commission.

(3) During the dispute resolution process, the person appointed under subsection (2) may require additional information from the parties.

(4) If a licensed distribution undertaking or an exempt distribution undertaking distributes the programming service of the licensee in the absence of a commercial agreement and the matter proceeds before the Commission for dispute resolution, the Commission will resolve the dispute by means of final offer arbitration, as provided for in Broadcasting and Telecom Information Bulletin CRTC 2009-38, dated 29 January 2009, and the rates, terms and conditions established by the Commission will apply as of the date on which the programming service was first made available to the distributor in the absence of a commercial agreement.

(5) If the dispute relates to the rates, terms or conditions, or any combination of them, surrounding a newly launched programming service that is being distributed in the absence of a commercial agreement and the matter proceeds before the Commission for dispute resolution, the parties will be bound by the rates, terms and conditions established by the Commission for the duration of the contractual term established by the Commission.

(6) Despite subsections (4) and (5), the parties may reach an agreement with respect to rates, terms or conditions that differ from those established by the Commission.

7. Section 7 of the Regulations is replaced by the following:

7. (1) During any dispute between a licensee and a person licensed to carry on a distribution undertaking or the operator of an exempt distribution undertaking concerning the carriage or terms of carriage of programming originated by the licensee or concerning any right or obligation under the Act, the licensee shall continue to provide its programming services at the same rates and on the same terms and conditions as it did before the dispute.

(2) For the purposes of subsection (1), a dispute exists from the moment that written notice of the dispute is provided to the Commission and served on the other undertaking that is subject party to the dispute and ends when an agreement settling the dispute is reached by the concerned undertakings or, if no such agreement is reached, when the Commission renders a decision concerning any unresolved matter.

SPECIALTY SERVICES REGULATIONS, 1990

8. Section 2 of the *Specialty Services Regulations, 1990*³ is amended by adding the following in alphabetical order:

“licensed” means licensed by the Commission under paragraph 9(1)(b) of the Act; (*autorisé*)

9. Section 10.1 of the Regulations is renumbered as subsection 10.1(1) and is amended by adding the following:

(2) In any proceeding before the Commission, the burden of establishing that any preference or disadvantage is not undue is on the licensee that gives the preference or subjects the person to the disadvantage.

10. The Regulations are amended by adding the following after section 10.1:

TIED SELLING

10.2 A licensee shall not offer its programming service for distribution as part of a package with other programming services unless it also makes its programming services available on a stand-alone basis.

AVAILABILITY OF NEW PROGRAMMING SERVICES FOR DISTRIBUTION

10.3 Except as otherwise provided under a condition of its licence, a licensee that is ready to launch a new programming service shall make that programming service available for distribution by all licensed broadcasting distribution undertakings or operators of exempt distribution undertakings, despite the absence of a commercial agreement.

DISPUTE RESOLUTION

10.4 (1) If there is a dispute between the licensee and the operator of a licensed distribution undertaking or an exempt distribution undertaking, concerning the carriage or terms of carriage of programming originated by the licensee — including the wholesale rate and the terms of any audit referred to in section 15.1 of the *Broadcasting Distribution Regulations* — one or both of the parties to the dispute may refer the matter to the Commission for dispute resolution.

(2) If the Commission accepts a referral of a matter for dispute resolution, the parties to the dispute are required to participate in a mediation with a person appointed by the Commission.

(3) During the dispute resolution process, the person appointed under subsection (2) may require additional information from the parties.

(4) If a licensed distribution undertaking or an exempt distribution undertaking distributes the programming service of the licensee in the absence of a commercial agreement and the matter proceeds before the Commission for dispute resolution, the Commission will resolve the dispute by means of final offer arbitration, as provided for in Broadcasting and Telecom Information Bulletin CRTC 2009-38, dated 29 January 2009,

and the rates, terms and conditions established by the Commission will apply as of the date on which the programming service was first made available to the distributor in the absence of a commercial agreement.

(5) If the dispute relates to the rates, terms or conditions, or any combination of them, surrounding a newly launched programming service that is being distributed in the absence of a carriage agreement and the matter proceeds before the Commission for dispute resolution, the parties will be bound by the rates, terms and conditions established by the Commission for the duration of the contractual term established by the Commission.

(6) Despite subsections (4) and (5), the parties may reach an agreement with respect to rates, terms or conditions that differ from those established by the Commission.

11. Section 11 of the Regulations is replaced by the following:

11. (1) During any dispute between a licensee and a person licensed to carry on a distribution undertaking or the operator of an exempt distribution undertaking concerning the carriage or terms of carriage of programming originated by the licensee or concerning any right or obligation under the Act, the licensee shall continue to provide its programming services at the same rates and on the same terms and conditions as it did before the dispute.

(2) For the purposes of subsection (1), a dispute exists from the moment that written notice of the dispute is provided to the Commission and served on the other undertaking that is party to the dispute and ends when an agreement settling the dispute is reached by the concerned undertakings or, if no such agreement is reached, when the Commission renders a decision concerning any unresolved matter.

BROADCASTING DISTRIBUTION REGULATIONS

12. Paragraph (c) of the definition “voting interest” in subsection 4(1) of the *Broadcasting Distribution Regulations*⁴ is replaced by the following:

(c) a partnership, a trust, an association or a joint venture, means an interest or right in the assets of it that entitles the owner to receive a share of its profits, to receive a share of its assets on dissolution and to participate directly in its management or to vote on the election of the persons to be entrusted with the power and responsibility to manage it; and

13. (1) Subsections 12(4) and (5) of the Regulations are replaced by the following:

(4) If the Commission accepts a referral of a matter for dispute resolution, the parties to the dispute are required to participate in a mediation with a person appointed by the Commission.

(2) Subsection 12(7) of the Regulations is replaced by the following:

(7) During the dispute resolution process, the person appointed under subsection (4) may require additional information from the parties.

(3) Section 12 of the Regulations is amended by adding the following after subsection (8):

(9) If the dispute relates to the rates, terms or conditions, or any combination of them, surrounding a programming service that is being distributed in the absence of a commercial agreement and the matter proceeds before the Commission for dispute resolution, the Commission will proceed to resolve the matter by means of a final offer arbitration, as provided for in Broadcasting and Telecom Information Bulletin CRTC 2009-38, dated 29 January 2009, and the rates, terms and conditions established by the Commission will apply as of the date on which the programming service was first made available to the distributor in the absence of a commercial agreement.

(10) If the dispute relates to the rates, terms or conditions, or any combination of them, surrounding a newly launched programming service that is being distributed in the absence of a commercial agreement and the matter proceeds before the Commission for dispute resolution, the parties will be bound by the rates, terms and conditions established by the Commission for the duration of the contractual term established by the Commission.

(11) Despite subsections (9) and (10), the parties may reach an agreement with respect to rates, terms or conditions that differ from those established by the Commission.

14. The Regulations are amended by adding the following after section 15:

OBLIGATION DURING DISPUTE

15.01 (1) During any dispute between a licensee and a person licensed to carry on a programming undertaking or the operator of an exempt programming undertaking concerning the carriage or terms of carriage of programming or concerning any right or obligation under the Act, the licensee shall continue to provide its programming services at the same rates and on the same terms and conditions as it did before the dispute.

(2) For the purposes of subsection (1), a dispute exists from the moment that written notice of the dispute is provided to the Commission and served on the other undertaking that is party to the dispute and ends when an agreement settling the dispute is reached by the concerned undertakings or, if no such agreement is reached, when the Commission renders a decision concerning any unresolved matter.

OBLIGATION TO PROGRAMMING UNDERTAKINGS REGARDING DISTRIBUTION WITHOUT AGREEMENT

15.02 A licensee who distributes a newly launched programming service with respect to which it has no commercial agreement shall abide by the rates, terms and conditions established by the operator of the concerned programming undertaking until a

commercial agreement is reached between the parties or the Commission renders a decision concerning any unresolved matter.

15. (1) The portion of subsection 19(2) of the Regulations before paragraph (a) is replaced by the following:

(2) For the purposes of subsections (3) and (3.1), a Category B service includes

(2) Subsections 19(3) and (4) of the Regulations are replaced by the following:

(3) Except as otherwise provided under a condition of its licence and subject to subsections (3.1) to (4), a licensee shall, for each Category B service and each exempt third-language service of a related programming undertaking that it distributes in a licensed area, distribute in that area at least three Category B services or at least three exempt third-language services — or any combination of at least three of those services — of unrelated programming undertakings.

(3.1) Except as otherwise provided under a condition of its licence, a licensee shall, for each Category B service of a related programming undertaking that it distributes in a licensed area, distribute in that area at least one Category B service for which no licensee of a distribution undertaking or operator of an exempt distribution undertaking holds, directly or indirectly, an interest or right in the assets.

(3.2) If the Category B service of the related programming undertaking referred to in subsections (3) and (3.1) is an English-language Category B service, at least two of the three programming services of the unrelated programming undertakings that are to be distributed under subsection (3) shall, to the extent that they are available, be English-language services of which at least one shall be a Category B service in which no licensee of a distribution undertaking or operator of an exempt distribution undertaking holds, directly or indirectly, an interest or right in the assets.

(4) If the Category B service of the related programming undertaking referred to in subsections (3) and (3.1) is a French-language Category B service, at least two of the three programming services of the unrelated programming undertakings that are to be distributed under subsection (3) shall, to the extent that they are available, be services of which at least one shall be a French-language Category B service in which no licensee of a distribution undertaking or operator of an exempt distribution undertaking holds, directly or indirectly, an interest or right in the assets.

COMING INTO FORCE

16. These Regulations come into force on the day on which they are registered.

¹ SOR/87-49

² SOR/90-105

³ SOR/90-106

⁴ SOR/97-555