



## Broadcasting Notice of Consultation CRTC 2012-246

PDF version

Ottawa, 26 April 2012

### **Call for comments on opening up the programming genre of popular music to competition, and on proposed standard conditions of licence for competitive Canadian specialty Category C services operating in the genre of popular music**

*The Commission invites written comments on the appropriateness of opening up the programming genre of popular music to competition in the English- and French-language television markets, consistent with the regulatory framework announced in Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services – Regulatory policy, Broadcasting Public Notice CRTC 2008-100, 30 October 2008.*

*The Commission also invites written comments on proposed standard conditions of licence for competitive Canadian specialty Category C services operating in the genre of popular music, in the event that it opens up the genre to competition.*

*The deadline for filing written comments is **11 June 2012**. The deadline for filing replies is **26 June 2012**.*

#### **Introduction**

1. In Broadcasting Public Notice 2008-100, the Commission announced that it would introduce competition in programming genres where it is convinced that a competitive environment would not significantly reduce either the diversity of services available to viewers or their contribution to the creation of Canadian programming. In order to determine the ability of a programming genre to sustain competition, the Commission stated in that public notice that it would use criteria relating to the economic health of the services in a genre, the popularity of a genre, programming availability, diversity that exists within a genre, and other consequences that might result from relaxing genre exclusivity.
2. In the present notice of consultation, the Commission invites comments on the appropriateness of opening up the genre of popular music to competition in both the English- and French-language television markets.

## Opening up the genre of popular music to competition in the English- and French-language television markets

3. General interest, music-based specialty Category A services<sup>1</sup> focus on broad categories of music and are required to broadcast a large proportion of music video clips. Most music-based specialty Category B services operate in specific niches that are limited in the amount of music video clips that they are permitted to broadcast.
4. The specialty Category A services that currently operate in the genre of popular music in the English- and French-language television markets are the following: MuchMusic and MuchMoreMusic, owned by Bell Media Inc. (Bell Media); MusiquePlus and MusiMax, owned by Astral Broadcasting Group Inc. (Astral); and Country Music Television Ltd., owned by Corus Entertainment Inc. (Corus). The nature of service for each of these specialty Category A services focuses on the broadcast of music videos, music video clips and music-related programming.
5. The Commission notes that in the past it has denied applications filed by Bell Media (see Broadcasting Decision 2011-444) and Corus (see Broadcasting Decision 2011-446) for reductions in their minimum programming requirements relating to the broadcast of music videos and music video clips (program categories 8(b) and 8(c),<sup>2</sup> respectively, from 50% to 25% for both categories). Furthermore, the Commission has denied various applications for specialty music services on the basis that they would be competitive with specialty Category A services.<sup>3</sup> In addition, in recent decisions where it has approved applications for broadcasting licences to operate various specialty Category B services devoted to music,<sup>4</sup> the Commission has imposed limitations on those services' programming in order to ensure that they do not directly compete with existing music-based specialty Category A services.

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<sup>1</sup> As set out in Broadcasting Public Notice 2008-100, effective 31 August 2011, Category 1 digital and analog pay and specialty services were renamed Category A services, and Category 2 digital services were renamed Category B services.

<sup>2</sup> The full list of program categories is set out in Item 6 of Schedule I to the *Specialty Services Regulations, 1990*.

<sup>3</sup> For example, in Broadcasting Decision 2012-149, the Commission denied an application by Canyon.TV, Incorporated for a broadcasting licence to operate Canyon Music TV because it considered that the proposed service would be competitive with MuchMusic. In Broadcasting Decision 2010-223, the Commission denied an application by Glassbox Television Inc. for a broadcasting licence to operate the French-language service AUX TV because it considered that the proposed service would be competitive with MusiquePlus.

<sup>4</sup> For example, Chaîne de Divertissement Clovys Entertainment Channel (see Broadcasting Decision 2008-341), the English-language service AUX TV (see Broadcasting Decision 2009-121), Live Music Channel (see Broadcasting Decision 2011-498), The Karaoke Channel Français (see Broadcasting Decision 2011-566), GlassBOX Créneau musical : musiques émergentes (see Broadcasting Decision 2012-175), CHANNEL NEW VICTORY/CNV (see Broadcasting Decision 2012-228), CNV – CANAL NOUVELLE VISION (see Broadcasting Decision 2012-229), and AUX 2 (see Broadcasting Decision 2012-247),

6. In light of the above, the Commission has determined that it would be appropriate to seek public comment on whether the programming genre of popular music should be opened up to competition and, if so, under what terms and conditions.

### **Criteria for determining the ability of a programming genre to withstand competition**

7. As noted above, the Commission set out in Broadcasting Public Notice 2008-100 the criteria it would use in order to determine the ability of a programming genre to withstand competition. These criteria are as follows:
  - economic health of the services in a genre – includes profitability and revenue over a period of time, which will serve in determining the financial capacity of the service(s) within that genre to withstand competition and continue meeting programming commitments;
  - popularity – includes audience and subscriber information and degree of brand recognition, which will serve in identifying genres that are most popular with viewers and that would arguably attract more viewers, rather than fragment existing viewing;
  - programming availability – relates to the availability of programming within a genre – to the extent that there are large libraries of programming in that genre (Canadian and non-Canadian); it is possible that more services could be supported by that programming, without undue program duplication or competition for program rights;
  - diversity that exists within a genre – includes the extent to which the genre is already open to a degree of competition and the risk that, without some genre exclusivity, services might "rush to the middle," seeking programming with the highest margins, rather than maintaining a specific nature of service and/or serving a specific audience; and
  - other consequences that might result from relaxing genre exclusivity – for example, whether exclusivity enjoyed in one language cross-subsidizes programming in the other.
8. The Commission invites comments on how music-based services meet or do not meet these criteria.

### **Impact on existing services of opening up the genre of popular music to competition**

9. In the event that the Commission decides to open up the programming genre of popular music to competition, it invites comments as to whether existing music-based specialty Category A services and/or specialty Category B services should be

re-licensed as competitive specialty Category C services. If so, should this be done at their next licence renewals or at an earlier time?

10. In addition, if certain music-based specialty Category A or Category B services are not re-licensed as competitive specialty Category C services, to what extent should the Commission permit or require changes to each service's nature of service? If the Commission were to grant such changes to their nature of service, should it continue to licence some of these services as Category A services or should all such services be licensed as Category B services? In addition, should future applicants for music-based services be licensed exclusively as Category C services?

### **Standard conditions of licence**

11. Specialty Category A services, including music-based services, are currently subject to the standard conditions of licence, expectations and encouragements set out in Broadcasting Regulatory Policy 2011-443. Furthermore, in Broadcasting Public Notice 2008-100, the Commission stated that all services operating within a genre that is open to competition, including services not yet under that genre, would be subject to the following:
  - a common and standard nature of service definition;
  - common Canadian programming exhibition and spending obligations, as well as original programming obligations, where appropriate; these would be set at levels consistent with conditions that currently apply to the incumbent service(s);
  - no access rights;
  - no regulated wholesale fee;
  - continued genre exclusivity from non-Canadian and Category B services.
12. In the appendix to the present notice, the Commission sets out proposed standard conditions of licence, expectations and encouragement for competitive specialty Category C services operating in the genre of popular music. The Commission invites comments on the substance of the proposed standard conditions of licence, expectations and encouragement, as well as on their proposed wording.

### **Canadian programming expenditures**

13. The Commission notes that requirements relating to Canadian programming expenditures (CPE) for specialty Category C services operating in the programming genre of popular music are not set out in the appendix to the present notice. Accordingly, the Commission seeks comments on an appropriate CPE level for such services. The proposed CPE level should be based on the current regulatory requirements for music-based specialty services while providing an appropriate level

of support for Canadian music videos, music video clips, music artists and music programming in general. The Commission also seeks comment on whether expenditures on Canadian programming for such services should count toward the group CPE for licensees that operate under the group-based licensing regime.

14. Following the consultation undertaken in this notice, the Commission will publish final conditions of licence that will apply to all competitive Canadian specialty services operating in the genre of popular music. New entrants may then apply for services in the genre of popular music. Similarly, existing licensees of music-based specialty services will be invited to apply to amend their conditions of licence to reflect these new conditions.

### **Call for comments**

15. The Commission calls for comments on the issues and questions set out in this notice. The Commission will accept interventions that it receives on or before **11 June 2012**. Parties may file replies to matters raised in the initial comments. The deadline for the filing of replies is **26 June 2012**.

### **Procedure**

16. 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, as well as the procedure for filing confidential information and requesting its disclosure. 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."
17. 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.
18. 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

19. Submissions longer than five pages should include a summary.
20. Each paragraph of the submission should be numbered. In addition, where the intervention 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**

21. 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](http://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.
22. 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.
23. 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.
24. 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.
25. 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**

26. A list of all interventions 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.

27. 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 – 12<sup>th</sup> Avenue  
Suite 620  
Regina, Saskatchewan  
S4P 0M8  
Tel.: 306-780-3422

100 – 4<sup>th</sup> 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**

- *AUX 2 – Specialty Category B service*, Broadcasting Decision CRTC 2012-247, 26 April 2012
- *CNV – CANAL NOUVELLE VISION – Specialty Category B service*, Broadcasting Decision CRTC 2012-229, 20 April 2012
- *CHANNEL NEW VICTORY/CNV – Specialty Category B service*, Broadcasting Decision CRTC 2012-228, 20 April 2012
- *GlassBOX Créneau musical : musiques émergentes – Specialty Category B service*, Broadcasting Decision CRTC 2012-175, 23 March 2012
- *Canyon Music TV – Specialty Category B service*, Broadcasting Decision CRTC 2012-149, 14 March 2012
- *The Karaoke Channel Français – Specialty Category B service*, Broadcasting Decision CRTC 2011-566, 2 September 2011
- *Live Music Channel – Specialty Category B service*, Broadcasting Decision CRTC 2011-498, 16 August 2011
- *Corus Entertainment Inc. – Group-based licence renewals*, Broadcasting Decision CRTC 2011-446, 27 July 2011



- *Bell Media Inc. – Group-based licence renewals*, Broadcasting Decision CRTC 2011-444, 27 July 2011
- *Standard conditions of licence, expectations and encouragements for specialty and pay television Category A services*, Broadcasting Regulatory Policy CRTC 2011-443, 27 July 2011
- *AUX TV – Category 2 specialty service*, Broadcasting Decision CRTC 2010-223, 21 April 2010
- *AUX TV – Category 2 specialty service*, Broadcasting Decision CRTC 2009-121, 6 March 2009
- *Chaîne de Divertissement Clovys Entertainment Channel – Category 2 specialty service*, Broadcasting Decision CRTC 2008-341, 5 December 2008
- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services – Regulatory policy*, Broadcasting Public Notice CRTC 2008-100, 30 October 2008

## Appendix to Broadcasting Notice of Consultation 2012-246

### ***Proposed conditions of licence, expectations and encouragement for competitive specialty Category C services operating in the programming genre of popular music***

#### **Conditions of licence**

1. (a) The licensee shall provide a national, English- or French-language specialty programming service that consists of programming dedicated to all aspects of music, with an emphasis on music videos and music video clips.

(b) The licensee may draw programming from all the program categories set out in Item 6 of Schedule I to the *Specialty Services Regulations, 1990*, as amended from time to time.

(c) The licensee shall devote not less than 35% of the broadcast week to programming drawn from program categories 8(b) Music video clips and 8(c) Music video programs combined.

(d) The licensee shall devote not more than 10% of all programming broadcast during the broadcast month to programming drawn from program category 7(d) Theatrical feature films aired on TV.

(e) The licensee shall devote not more than 10% of all programming broadcast during the broadcast month to programming drawn from program category 7(b) On-going comedy series (sitcoms), 7(f) Programs of comedy sketches, improvisations, unscripted works, stand-up comedy, and 7(g) Other drama combined.

(f) The licensee shall devote not more than 15% of the broadcast week to music-related programming drawn from program categories 7(a) Ongoing dramatic series and 7(e) Animated television programs and films combined.

(g) The licensee shall devote not more than 10% of all programming broadcast during the broadcast month to music-related programming drawn from program category 2(b) Long-form documentaries.

(h) The licensee shall devote not more than 10% of the broadcast week to programming drawn from program categories 6(a) Professional sports and 6(b) Amateur sports combined.
2. (a) In each broadcast year, the licensee shall devote to the exhibition of Canadian programs not less than 60% of the broadcast day, and not less than 50% of the evening broadcast period.

(b) The licensee shall ensure that not less than 30% of the total number of music video clips exhibited by the licensee during each broadcast week are Canadian music video clips.

- (c) For French-language services the licensee shall devote the following percentages of all music videos broadcast to French-language music videos: 25% during the first year of operation, 30% during the second year, and 35% during subsequent years.
- (d) The licensee shall schedule its Canadian music video clips evenly throughout the broadcast week and in a reasonable manner throughout each broadcast day.
3. The licensee shall adhere to the *Equitable Portrayal Code*, as amended from time to time and approved by the Commission. However, the application of the foregoing condition of licence will be suspended if the licensee is a member in good standing of the Canadian Broadcast Standards Council.
  4. The licensee shall adhere to the *Broadcast code for advertising to children*, as amended from time to time and approved by the Commission.
  5. The licensee shall adhere to the *Violence Code*, as amended from time to time and approved by the Commission. However, the application of the foregoing condition of licence will be suspended if the licensee is a member in good standing of the Canadian Broadcast Standards Council.
  6. The licensee shall caption 100% of the English- and French-language programs broadcast over the broadcast day, consistent with the approach set out in *A new policy with respect to closed captioning*, Broadcasting Public Notice CRTC 2007-54, 17 May 2007.
  7. Consistent with *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009, as subsequently amended by the Commission,<sup>1</sup> the licensee shall:
    - a) adhere to the quality standards on closed captioning developed by television industry working groups, as amended from time to time and approved by the Commission; and
    - b) implement a monitoring system to ensure that, for any signal that is closed captioned, the correct signal is captioned, the captioning is included in its broadcast signal and this captioning reaches the distributor of that signal in its original form. “Original form” means, at a minimum, that the captioning provided by the licensee reaches the distributor unaltered, whether it is passed through in analog or in digital, including in high definition.
  8. The licensee shall provide audio description for all the key elements of Canadian information programs, including news programming. For the purposes of this condition of licence, “audio description” refers to announcers reading aloud the key textual and graphic information that is displayed on the screen during information programs.

9. If the service devotes 50% or more of its program schedule to programming drawn from program categories 7 Drama and comedy or 2(b) Long-form documentary, set out in item 6 of Schedule I to the *Specialty Service Regulations, 1990* (the Regulations), and/or to children's programming, the licensee shall provide described video for a minimum of four hours per broadcast week, of which two hours must be broadcast in described video for the first time on the service. The minimum four hours of described video programming broadcast during each broadcast week may be drawn from the following program categories, set out in item 6 of Schedule I to the Regulations: 2(b) Long-form documentary; 7 Drama and comedy; 9 Variety; 11(a) General entertainment and human interest; and 11(b) Reality television, and/or may be programming targeting children.
10. In regard to the broadcast of advertising material:
- a) Except as otherwise provided in subparagraphs b) and c), the licensee shall not broadcast more than twelve (12) minutes of advertising material during each clock hour.
  - b) Where a program occupies time in two or more consecutive clock hours, the licensee may exceed the maximum number of minutes of advertising material allowed in those clock hours if the average number of minutes of advertising material in the clock hours occupied by the program does not exceed the maximum number of minutes that would otherwise be allowed per clock hour.
  - c) In addition to the twelve (12) minutes of advertising material referred to in subparagraph a), the licensee may broadcast partisan political advertising during an election period.
  - d) The licensee shall not broadcast any paid advertising material other than paid national advertising.

For the purposes of this condition of licence:

“clock hour” shall have the same meaning as that set out in the *Television Broadcasting Regulations, 1987*; and

“paid national advertising” shall mean advertising material as defined under the *Specialty Services Regulations, 1990* and that is purchased at a national rate and receives national distribution on the service.

11. The licensee is authorized to make available for distribution both a standard definition and a high definition version of its service, provided that not less than 95% of the video and audio components of the high definition and standard definition versions of the service are the same, exclusive of commercial messages and of any part of the service carried on a subsidiary signal. Further, all of the programming making up the 5% allowance shall be provided in high definition.

12. In order to ensure that the licensee complies at all times with the *Direction to the CRTC (Ineligibility of non-Canadians)*, the licensee shall file, within 30 days of its execution, for the Commission's review, a copy of the programming supply agreement and/or licence or trademark agreement it has entered into with a non-Canadian party. In addition, the Commission may request any additional document(s) that could affect control of the programming or management of the service.
13. If the licensee broadcasts religious programming as defined in *Religious Broadcasting Policy*, Public Notice CRTC 1993-78, 3 June 1993, the licensee shall adhere to the guidelines set out in sections III.B.2.a) and IV of that public notice with respect to the provision of balance and ethics in religious programming, as amended from time to time.
14. If the licensee broadcasts adult programming, the licensee shall adhere to section D.3 of the *Industry code of programming standards and practices governing pay, pay-per-view and video-on-demand services*, Broadcasting Public Notice CRTC 2003-10, 6 March 2003.

For the purpose of these conditions of licence:

“broadcast day” shall mean a 24-hour period beginning each day at 6 a.m., or any other period approved by the Commission;

“broadcast month,” “broadcast year,” “clock hour” and “evening broadcast period” shall have the same meanings as those set out in the *Television Broadcasting Regulations, 1987*; and

“broadcast week” shall mean seven consecutive broadcast days beginning on a Friday.

## **Expectations**

When captions are available, the Commission expects the licensee to provide viewers with a closed captioned version of all programming aired during the overnight period.

The Commission expects the licensee to acquire and make available described versions of programming whenever possible.

Further, the Commission expects the licensee to:

- display a standard described video logo and air an audio announcement indicating the presence of described video before the broadcast of each described program; and
- make information available regarding the described programs that it will broadcast.

## Encouragement

The Commission encourages broadcasters to repeat the standard described video logo and audio announcement indicating the presence of described video, following each commercial break.

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<sup>i</sup> See *Standard conditions of licence, expectations and encouragements for Category B pay and specialty services – Corrected Appendices 1 and 2*, Broadcasting Regulatory Policy CRTC 2010-786-1, 18 July 2011, *Conditions of licence for competitive Canadian specialty services operating in the genres of mainstream sports and national news – Implementation of the Accessibility Policy and other matters*, Broadcasting Regulatory Policy CRTC 2009-562-1, 18 June 2010; and *Implementation of the Accessibility Policy with respect to new Category 2 pay and specialty services*, Broadcasting Regulatory Policy CRTC 2010-355, 8 June 2010.