



Broadcasting Notice of Consultation CRTC 2013-394

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Ottawa, 8 August 2013

Call for comments on the terms and conditions of distribution for Canadian Category C national news specialty services

The Commission calls for written comments on its preliminary views on a proposed framework to ensure a healthy and diverse range of Canadian news programming within the Canadian broadcasting system. The Commission considers that greater and more equitable access to such programming is crucial to providing Canadians with a reasonable opportunity to be exposed to the expression of differing views on matters of public concern.

The deadline for receipt of comments is 9 September 2013. Only parties that file interventions may file a reply to matters raised during the intervention phase. The deadline for the filing of replies is 24 September 2013.

Introduction

1. In its regulatory frameworks for broadcasting distribution undertakings (BDUs) and discretionary programming services (see Broadcasting Public Notice 2008-100), the Commission stated that services operating in the genre of mainstream national news¹ were strong, healthy, highly popular and highly competitive, and therefore ripe for competition. As such, it determined that it would be appropriate to introduce competition between Canadian services operating in this genre.
2. The Commission also established rules that would apply to such services, including 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;
 - no access rights;
 - no regulated wholesale fee; and
 - continued genre exclusivity from non-Canadian and Category B services.

¹ CBC Newsworld, Newsnet, Le Réseau de l'information (RDI) and Le Canal Nouvelles (LCN)

3. As of 1 September 2011, services operating within the genre of mainstream national news were designated as Category C services. BDUs are not required to distribute Category C services, which have no access rights pursuant to the *Broadcasting Distribution Regulations*² (the Regulations).
4. At a public hearing beginning on 23 April 2013, the Commission heard applications for mandatory distribution on terrestrial and satellite BDUs pursuant to section 9(1)(h) of the *Broadcasting Act* (the Act). Over the course of that hearing, a number of issues and concerns were raised over the challenges faced by new entrants offering Canadian Category C national news specialty services, particularly in regard to the distribution of such services by BDUs. As part of that hearing, BDUs provided responses to undertakings regarding the news services they distribute, classified by country of origin, channel location and package.
5. The Commission considers that the information provided by BDUs shows non-Canadian news services enjoy a more favourable distribution when compared to Canadian Category C national news specialty services. Due to incumbency, non-Canadian services are distributed for the most part in packages that enjoy high penetration and therefore significant access to potential viewership by Canadians. These services have also secured more lucrative wholesale fees when compared to their Canadian counterparts. On average, non-Canadian news services receive a wholesale fee of \$0.73 per subscriber per month, whereas English- and French-language Canadian news services receive on average a wholesale fee of \$0.36 per subscriber per month.
6. The Commission also noted with interest over the course of the hearing how other jurisdictions such as the United States have ensured that its news and information services receive pride of place within its broadcasting system. The Commission understands that the Federal Communications Commission has ordered certain distributors to carry certain news channels adjacent to one another to create “news neighbourhoods.” In the multitude of programming services available, positioning news services together offers viewers the ability to access their news and information on easily locatable channels.
7. In Broadcasting Regulatory Policy 2013-372, also issued today, the Commission has acknowledged the barriers to entry when launching a national news service. As noted in that policy, the Commission is sensitive to the problems of access to the broadcasting system of new mainstream Category C national news specialty services, such as Sun News TV. However, these problems are not unique to one service, but

² RDI does not have access rights in French-language markets and CBC News Network does not have access rights in English-language markets. However, in order to ensure that a range of broadcasting services in English and in French is extended to all Canadians, the Commission has ordered that these services be distributed in their respective minority markets pursuant to section 9(1)(h) of the *Broadcasting Act* (see Appendices 8 and 9 to Broadcasting Decision 2013-263). This distribution is required at a lower wholesale rate than what these services have secured in their respective majority markets.

are rather indicative of a larger, more systemic issue with respect to the distribution of new and existing Canadian national news services on fair and commercially reasonable terms. These barriers constitute a significant obstacle to the exchange of ideas on matters of public concern and the overall democratic dialogue in Canada, principles that the Canadian broadcasting system has a duty to facilitate.

8. Accordingly, in the following paragraphs, the Commission has set out its preliminary views on how best to ensure that Canadians have access to a healthy and diverse range of Canadian news programming.

Preliminary proposal for governing the distribution of Canadian Category C national news specialty services

9. The Commission's mandate is to regulate and supervise all aspects of the Canadian broadcasting system with a view to implementing the broadcasting policy set out in section 3(1) of the Act. As set out in section 3(1)(b) of the Act, the Canadian broadcasting system "provides, through its programming, a public service essential to the maintenance and enhancement of national identity and cultural sovereignty." The Act also specifies that the broadcasting system must provide Canadians with a reasonable opportunity to be exposed to the expression of differing views on matters of public concern.³
10. The Commission considers that national news services play a vital role in achieving these objectives by helping Canadians participate fully in the democratic, economic, social and cultural life of their country, their regions, their provinces and their neighbourhoods. For these objectives to be achieved, such programming must come from a variety of independent sources – especially Canadian – but other non-Canadian sources as well. For their part, BDUs, in giving priority to the carriage of Canadian programming services,⁴ play a fundamental role in ensuring that Canadian news services are given pride of place within the multitude of news and information services available to Canadians.
11. Finally, the Commission is mindful of its legislative duty to construe and apply the Act in a manner that is consistent with the freedom of expression and journalistic, creative and programming independence enjoyed by broadcasting undertakings.⁵ Therefore, it is the Commission's view that it would be best to treat all Category C national news services, whether new or existing, as a class, without regard to the particular editorial choices made by these services in their treatment of news and information. Issues such as access to distribution, negotiating power and incumbency, as well as other distribution issues encountered by all Canadian Category C national news specialty services, must be addressed holistically.

³ See section 3(1)(i)(iv).

⁴ See section 3(1)(f)(i) of the Act.

⁵ See section 2(3) of the Act.

12. In light of the above, it is the Commission's preliminary view that the following framework should govern Canadian Category C national news specialty services:

- BDU licensees shall distribute all licensed Canadian Category C national news specialty services (i.e., these services must be made available to subscribers).
- BDU licensees shall place new and existing Canadian Category C national news specialty services on channels in close proximity to one another (so as to create news neighbourhoods).
- Canadian Category C national news specialty services shall be available to subscribers in a package and on a stand-alone basis. Further, non-Canadian news services may be included in packages that offer Canadian Category C national news specialty services.
- Canadian Category C national news specialty services should, unless the parties agree otherwise, be included in the best available package consistent with their genre and programming.
- BDU licensees should file with the Commission all affiliation agreements to which they are a party with a new or existing Canadian Category C national news specialty service or a non-Canadian news service within five days following the execution of the agreement by the parties.
- In the case of an existing Canadian Category C national news specialty service, if the BDU licensee has not renewed an affiliation agreement to which it is a party with a Canadian Category C national news specialty service within the 120 days preceding the expiry date of the agreement, and if the other contracting party has confirmed its intention to renew the agreement, the BDU licensee should refer the matter to the Commission for dispute resolution under sections 12 to 15 of the Regulations.
- In the case of a new Canadian Category C national news specialty service, if the BDU licensee and the Category C news service have not successfully negotiated and signed an affiliation agreement within the 120 days prior to the service's intended launch date, the BDU licensee should refer the matter to the Commission for dispute resolution under sections 12 to 15 of the Regulations.
- When negotiating a wholesale rate for a new or existing Canadian Category C national news specialty service based on fair market value, the BDU licensee should take into consideration the following factors:
 - (a) historical rates;
 - (b) penetration levels and volume discounts;
 - (c) the packaging of the service;

- (d) rates paid by unaffiliated BDUs for the programming service;
 - (e) rates paid for programming services of similar value to consumers;
 - (f) the number of subscribers that subscribe to a package in part or in whole due to the inclusion of the programming service in that package;
 - (g) the retail rate charged for the service on a stand-alone basis; and
 - (h) the retail rate for any packages in which the service is included.
13. The Commission is of the view that these additional safeguards will ensure greater and more equitable access for new and existing Canadian Category C national news specialty services and will provide all parties with the regulatory clarity they require to govern their commercial interactions.
14. The Commission intends to act swiftly on this matter. In this regard, the Commission reminds parties that it has the authority under section 9(1)(h) of the Act to require any licensee who is authorized to carry on a distribution undertaking to carry, on such terms and conditions as the Commission deems appropriate, programming services specified by the Commission. Accordingly, the Commission may elect to implement the framework resulting from this proceeding through an order of general application pursuant to section 9(1)(h) of the Act, rather than by an amendment to the Regulations. The Commission does not intend to apply the framework described above to BDUs operating pursuant to an exemption order.
15. Should the Commission elect to implement the framework through an order pursuant to section 9(1)(h) of the Act, it would be the Commission's intention to make such orders effective within 90 days following the publication of the regulatory policy announcing the framework. This will give BDUs sufficient time to negotiate appropriate agreements with the programming services, adjust their channel lineups and billing systems, and notify their customers of any changes to their cable or satellite package.
16. To assist it in its review of this matter, the Commission has placed on the record of this proceeding the responses by BDUs to undertakings provided as part of the 23 April 2013 public hearing in regard to the news services they distribute, classified by country of origin, channel location, and package. These responses to undertakings are therefore made part of the record of this proceeding. The abridged responses to undertakings can be found by clicking [here](#).

Procedure

The *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, the procedure for filing confidential information and requesting its disclosure, and the conduct of the public hearing. 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."

The Commission invites interventions that address the issues and questions set out above, and related matters. The Commission will accept interventions that it receives on or before **9 September 2013**. Only parties that file interventions may file a reply to matters raised during the intervention phase. The deadline for the filing of replies is **24 September 2013**.

The Commission will not formally acknowledge comments. It will, however, fully consider all comments and they will form part of the public record of the proceeding, provided that the procedure for filing set out below has been followed.

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.

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

Submissions longer than five pages should include a summary.

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

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.

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.

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.

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.

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

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.

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

Nova Scotia

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

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205 Viger Avenue West
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Tel.: 416-952-9096

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360 Main Street
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Fax: 204-983-6317

Saskatchewan

2220 – 12th Avenue
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S4P 0M8
Tel.: 306-780-3422

Alberta

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Calgary, Alberta
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Fax: 403-292-6686

British Columbia

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

Secretary General

Related documents

- *Applications for mandatory distribution on cable and satellite under section 9(1)(h) of the Broadcasting Act*, Broadcasting Regulatory Policy CRTC 2013-372, 8 August 2013
- *Canadian Broadcasting Corporation – Licence renewals*, Broadcasting Decision CRTC 2013-263 and Broadcasting Orders CRTC 2013-264 and 2013-265, 28 May 2013
- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services – Regulatory policy*, Broadcasting Public Notice CRTC 2008-100, 30 October 2008