



## Broadcasting Public Notice CRTC 2007-74

Ottawa, 5 July 2007

### Previews and promotional channels

*In this public notice, the Commission is expanding its preview policy to provide distributors with greater flexibility to promote both Canadian and non-Canadian programming services. In particular, the Commission will now permit distributors to preview non-Canadian programming services originating from countries other than the United States, and will amend the Broadcasting Distribution Regulations to permit the airing of previews on promotional channels.*

### Introduction

1. The Commission's current policy with respect to the distribution of free previews is set out in Public Notice 1998-73. The Commission's approach to the use of promotional channels is embodied in sections 19(n), 33(k) and 39(f) of the *Broadcasting Distribution Regulations* (the Regulations). These sections authorize broadcasting distribution undertakings (BDUs) to distribute "any programming service that promotes a programming service distributed by the licensee" and that meets the criteria set out in Public Notice 1995-172.
2. In Broadcasting Public Notice 2006-136, the Commission noted that a number of changes with respect to the nature and number of services distributed by BDUs had occurred since the preview policy was last revised and the above-noted sections of the Regulations were put in place, including the licensing and launching of Category 1 and Category 2 digital services and a significant increase in the number of non-Canadian services authorized for distribution on a digital basis. In light of these and other developments, the Commission considered that a review of its approach to previews and promotional channels was warranted.
3. Accordingly, the Commission called for comment on:
  - a) its preliminary view that it would be appropriate to permit previews of authorized non-Canadian services originating from countries other than the United States (U.S.); and
  - b) whether it should permit previews of entire programs or services on the promotional (barker) channels authorized by sections 19(n), 33(k) and 39(f) of the Regulations, and if so, subject to what terms and conditions, if any.
4. Public Notice 2006-136 also invited parties to provide comments on other changes with respect to previews and promotional channels that may be appropriate.

5. The Commission received comments in response to the public notice from the following parties: the Bell Video Group (Bell), on behalf of Bell ExpressVu<sup>1</sup> and the Bell Canada Class 1 BDU; the Canadian Association of Broadcasters (CAB); the Canadian Cable Systems Alliance Inc. (CCSA); CanWest MediaWorks Inc. (CanWest); Rogers Cable Communications Inc. (Rogers); and the Telco Television Association of Canada (Telco TV), representing MTS Allstream Inc., Saskatchewan Telecommunications and TELUS Communications Inc. The public record for this proceeding is available on the Commission's Web site at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Public Proceedings."
6. The Commission has considered all the submissions in reaching its determinations, and concludes that the major issues to be addressed are the following:
  - a) Should the preview policy be expanded to permit previews of non-Canadian, non-U.S. services as the Commission first proposed? What conditions, if any, should apply generally to previews?
  - b) Should the Commission expand its policies and regulations with respect to promotional channels to permit the exhibition of previews on such channels? What criteria or conditions, if any, should apply to material, including previews, exhibited on the promotional channel?

### **Commission's analysis and determinations**

7. In Broadcasting Notice of Public Hearing 2007-10, also issued today, the Commission has initiated a proceeding intended to put in place a streamlined regulatory approach that will provide both distributors and programmers with sufficient flexibility to enable them to contribute to the Canadian broadcasting system in an era of increasing technological and business challenge. In such an environment, the Commission considers it critical in order to ensure a strong Canadian presence in the broadcasting system, not only that there be Canadian programming available, but that both programmers and distributors be encouraged to promote and publicize that programming, and that they have the flexibility to do so by the most effective means possible. To that end, the Commission considers that there should be a significant reduction in the requirements applicable to both previews and promotional channels.

#### **The preview policy**

8. Bell, the CCSA, Rogers and Telco TV supported the expansion of the preview policy to permit previews of non-Canadian services originating from countries other than the U.S. The CAB, supported by CanWest, stated that it had no objection to such previews.

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<sup>1</sup> Bell ExpressVu Inc. (the general partner), and BCE Inc. and 4119649 Canada Inc. (partners in BCE Holdings G.P., a general partnership that is the limited partner), carrying on business as Bell ExpressVu Limited Partnership

9. As noted in Public Notice 2006-136, the Commission is of the view that:
  - a) permitting previews of non-Canadian services from countries other than the U.S. could contribute to the roll-out of digital technology and services; and
  - b) previews of such services could assist in increasing penetration rates for Canadian programming services.
10. Accordingly, the Commission will permit previews of such services. Going forward, BDUs may air previews, on either an analog or digital basis, of all authorized services distributed on their systems, be they Canadian or non-Canadian.
11. As to conditions on the airing of previews, the Commission notes that the current policy, set out in Public Notice 1998-73, includes specific limitations as to the scheduling and content of previews, including a prohibition on the airing of previews, other than previews associated with the initial launch of newly licensed pay and specialty services, during major national broadcasting ratings periods.
12. Upon examining the conditions in question, the Commission concludes that they are of little relevance in the current environment. In particular, the Commission considers that good business practice would militate against BDUs engaging in many of the behaviours addressed in the current conditions.<sup>2</sup> Further, the Commission is mindful of the submissions of the CCSA that standard practices for the airing of previews are well entrenched between programmers and BDUs, and that this is an area of low risk to the broadcasting system where detailed regulation is not necessary. In this regard, the Commission is of the view that issues related to the presentation of previews can and should be addressed co-operatively by programmers and BDUs through affiliation agreements or other arrangements.
13. In light of the above, the Commission concludes that this is an area where it need not regulate, but rather can rely on market forces in the form of reasonable negotiations and sensible business practices on the part of industry participants. The Commission will therefore no longer specify terms and conditions applicable to the airing of previews, other than minimal conditions applicable to the airing of previews on promotional channels, as discussed below.

#### **Promotional channels**

##### *Previews on promotional channels*

14. Public Notice 1995-172 specifies that material aired on the promotional channel is limited to “promotional programming, including previews, clips or trailers. No trailer shall exceed 10 minutes in duration and no full-length program shall be presented on this service.”

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<sup>2</sup> For example, the condition specifying that “programming distributed during these periods may only consist of programs that are part of the pay television or specialty programming services actually offered to subscribers.”

15. The Commission remains of the view expressed in Public Notice 2006-136 that permitting previews of digital services on analog channels could contribute to the roll-out of digital technology and services. Among other things, and as pointed out by Rogers and Telco TV, permitting such previews would allow BDUs to expose analog-only subscribers to the array of services available by way of digital distribution, perhaps inducing them to subscribe to digital services. Further, as also noted in Public Notice 2006-136, permitting the airing of such previews on an analog promotional channel would appear to provide for the most capacity-efficient means of permitting such previews.
16. The Commission sees no reason to limit the presentation of previews on the promotional channel to circumstances where there is no other special programming channel or otherwise unused channel available for the purpose, as noted in the current preview policy. In fact, especially with respect to the analog mode of distribution, the Commission would expect that there would be little or no unused capacity available for this purpose.
17. In light of the above, the Commission considers that it would be in the interests of both subscribers and the Canadian broadcasting system to permit the airing of previews on promotional channels. Further, while the greatest benefit might be derived from the airing of digital services on analog promotional channels, the Commission sees no advantage in imposing limitations to that effect. Accordingly, the Commission will permit previews, on analog or digital promotional channels, of both digital services and those services originally licensed or authorized for analog distribution.
18. With regard to the CAB's submission that "scarce analog capacity occupied by a barker channel should not be used for previews of non-Canadian services," the Commission does not consider it necessary to limit previews on analog promotional channels to previews of Canadian services. The Commission notes that, in recent years, non-Canadian services authorized for distribution in Canada have been authorized for digital distribution only. The Commission considers that previewing such services on an analog basis could contribute to demand for digital services, thus encouraging the digital roll-out. The Commission will, however, continue to require that at least 50% of the promotional programming, including previews, aired in each quarter on each promotional channel be Canadian, to the extent that such material is available.
19. CanWest expressed concern that "these previews can have a very real and possibly negative impact on both conventional and other licensed Canadian specialty or pay services, as the audience shifts to sample programming on the promotional/barker channel." To prevent the over-extended duration and the overuse of this promotional tool by any one service or ownership group, CanWest suggested that no one service should be permitted access to the BDU's promotional channel for full-length programming for more than a certain period during any broadcast quarter. The Commission considers such a limitation unnecessary. However, as recommended by the CAB, the Commission will retain its requirement that the BDU grant access to the promotional channel on a non-

discriminatory, equitable basis for the promotion of all Canadian television services that the BDU distributes. The Commission considers that any potential for the type of abuse noted by CanWest can be addressed by applying this requirement to previews as well as to other promotional material. Similarly, the Commission considers this requirement sufficient to address the concern that promotional material be scheduled in a balanced manner throughout the broadcast day, and that the explicit requirement for balance can be deleted from the current criteria applicable to promotional channels.

20. The CAB, supported by CanWest, submitted that the Commission should limit to 50% the amount of time that could be allotted to previews on any analog promotional channel in any given week. However, as indicated earlier, it is the Commission's view that greater flexibility should be afforded to both programmers and distributors to promote programming services by the most effective means possible. Accordingly, the Commission will not prescribe a limit on the amount of time on promotional channels that can be devoted to previews. As with the concern noted in the previous paragraph, the Commission considers that any potential for the abuse of this flexibility is constrained by the requirement for non-discriminatory access.
21. While not placing a specific limit on the amount of time that can be allotted to previews, the Commission considers that the presentation of shorter-form promotional material also plays a useful role in making customers aware of individual programs and of the array of services available on an ongoing basis through their distributor. The Commission considers it important that the promotional channel continue to fill this role, and notes that the standard practice is for the programmer to supply such material, either directly or through its agent or distributor.
22. The CAB also submitted that the Commission should require that the BDU obtain the prior written consent of the programming service for any preview aired on the promotional channel. The Commission considers that such consent would be required in any event, and that the Commission need not incorporate such a requirement into the Regulations.

*Promotion of non-programming services*

23. Rogers asked the Commission to consider a further amendment to its policy. Specifically, Rogers proposed that the Commission amend its approach to the use of promotional channels to allow BDUs to promote non-programming services (e.g., telephony, Internet) on those channels, consistent with the authority granted to BDUs with respect to the use of the local availabilities.<sup>3</sup> In Rogers' view, this further amendment would provide consistency between the two policies and provide BDUs

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<sup>3</sup> Local availabilities are the approximately two minutes per hour in U.S. specialty services available to BDUs for the insertion of promotional material. At present, it is the Commission's policy to permit BDUs, by condition of licence, to insert promotional messages from Canadian programming services as well as promotions for the community channel and public service announcements into at least 75% of these local availabilities, and to use up to 25% to promote BDU services, such as discretionary packages or equipment, to promote non-programming services offered in conjunction with programming services, and to provide customer service information.

with a further ability to encourage Canadians to adopt digital technology.

24. The Commission is not persuaded by Rogers' arguments that it should permit BDUs to use the promotional channel to promote non-programming services because, among other things, to do so would be consistent with the Commission's recent determination with respect to local availabilities.
25. Specifically, in Broadcasting Public Notice 2006-69, the Commission permitted BDUs to promote non-programming services in the up to 25% of local availabilities set aside for the BDU to promote BDU services, such as discretionary packages or equipment, and to provide customer service information. However, at least 75% of local availabilities must still be made available for the promotion of programming services.<sup>4</sup> Thus, the terms of the Commission's decision to permit BDUs to promote non-programming services using local availabilities did not lessen to any significant degree the opportunities for the promotion of programming services.
26. By contrast, the Commission is of the view that authorizing the use of the promotional channel to promote non-programming services has the potential to detract significantly from opportunities for the promotion of Canadian services, which, as described earlier, the Commission considers critical to the success of Canadian programming. Accordingly, the Commission will continue to require, by regulation, that the promotional channel be used exclusively for the promotion of programming services. That is, the authorization granted by sections 19(n), 33(k) and 39(f) of the Regulations will remain an authorization for a "programming service that promotes a programming service" distributed by the BDU.

*Revised criteria*

27. The criteria applicable to the promotional channel are set out below:
  - Material aired on promotional channels must be limited to promotional programming pertaining to authorized programming services distributed by the licensee, including previews, clips or trailers.
  - At least 50% of the promotional programming aired in each quarter will be for the promotion of Canadian programming, to the extent that such material is available.
  - Access to the promotional channel is to be made available on a non-discriminatory, equitable basis for the promotion of all Canadian television services that the licensee distributes.
  - No fees may be charged for the exhibition of promotional material.

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<sup>4</sup> The Commission's approach to the use of local availabilities was recently confirmed in Broadcasting Decision 2007-169, which dealt with an application by Only Imagine Inc. to use local availabilities for commercial advertising.

## Implementation

28. The Commission notes that the implementation of its revised approach to promotional channels will require amendments to the Regulations. Specifically, section 19(n) of the Regulations currently authorizes Class 1 and 2 BDUs to distribute “any programming service that promotes a programming service distributed by the licensee and that meets the criteria set out in Public Notice CRTC 1995-172, entitled *Revision to the Commission’s Policy Governing the Distribution of Pay Television Promotional Material by Cable Television Licensees*.” Sections 33(k) and 39(f) of the Regulations provide a similar authorization for Class 3 and direct-to-home licensees, respectively. These sections will have to be amended to refer to the present public notice. The Commission will shortly issue a public notice to that end.

Secretary General

### Related documents

- *Review of the regulatory frameworks for broadcasting distribution undertakings and discretionary programming services*, Broadcasting Notice of Public Hearing CRTC 2007-10, 5 July 2007
- *Proposal to sell commercial advertising and insert it into the local availabilities of U.S. programming services distributed by Canadian broadcasting distribution undertakings*, Broadcasting Decision CRTC 2007-169, 8 June 2007
- *Call for comments on proposed amendments to the Commission’s policy on the distribution of previews, and to its regulations regarding the use of promotional channels by broadcasting distribution undertakings*, Broadcasting Public Notice CRTC 2006-136, 20 October 2006
- *Promotion of non-programming services using local availabilities*, Broadcasting Public Notice CRTC 2006-69, 2 June 2006
- *Amendments to the Commission’s Policy concerning the distribution of free previews of Pay Television and Specialty Programming during major national broadcasting rating periods*, Public Notice CRTC 1998-73, 23 July 1998
- *Revision to the Commission’s Policy Governing the Distribution of Pay Television Promotional Material by Cable Television Licensees*, Public Notice CRTC 1995-172, 12 October 1995

*This document is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>*