



Broadcasting Public Notice CRTC 2007-129 Telecom Public Notice CRTC 2007-20

Ottawa, 15 November 2007

Proposed Practice Direction on the Provision of Confidential Access to Confidential Information

Telecom Reference: 8665-C12-200714346

In this public notice, the Commission announces that it will not proceed with the proposed Practice Direction on the Provision of Confidential information set out in Broadcasting Public Notice 2007-114 and Telecom Public Notice 2007-19.

Introduction

1. In Broadcasting Public Notice 2007-114 and Telecom Public Notice 2007-19, the Commission called for comments on a proposed Practice Direction on the Provision of Confidential Access to Confidential Information (the Practice Direction).
2. The Practice Direction was developed by the Commission to allow parties to receive confidential access to confidential information under certain conditions in both broadcasting and telecommunications proceedings, as well as to make provision for *in camera* hearings.

Summary of comments

3. The Commission received comments on the proposed Practice Direction from the following parties: The Alliance of Canadian Cinema Television and Radio Artists; a joint submission from Bell Aliant Regional Communications, Limited Partnership and Bell Canada; Bragg Communications Inc, carrying on business as EastLink; the Canadian Association of Broadcasters; the Canadian Conference of the Arts; the Canadian Film and Television Production Association; CanWest MediaWorks Inc.; the Directors Guild of Canada; Friends of Canadian Broadcasting; Goodmans LLP, on behalf of the Ontario Teachers' Pension Plan Board, Providence Equity Partners and Madison Dearborn Capital Partners; MTS Allstream Inc.; Public Interest Advocacy Centre; Quebecor Media Inc.; Saskatchewan Telecommunications; Shaw Communications Inc.; TELUS Communications Company; and the Writers Guild of Canada.
4. All parties expressed concerns with the proposed Practice Direction and almost all opposed its adoption. Many submitted that the Commission's current practice of treating confidential information is appropriate and allows for meaningful participation in Commission proceedings and the protection of confidential information. Many parties also expressed concern with the added costs of complying with the proposed Practice

Direction. Those parties argued that the requirement to use outside counsel and experts would increase costs and limit participation in Commission proceedings. While some were concerned that information could be leaked and damage occur, others argued that more information should be made public without the restrictions contained in the proposal.

Commission's analysis and determinations

5. The Commission notes that almost all parties did not support the proposed Practice Direction as drafted. In light of the comments received, the Commission will not proceed with the implementation of the proposed Practice Direction at this time.
6. As noted above, some parties expressed concern about the disclosure risks associated with making confidential information available to outside counsel and others permitted under the proposal, while others argued that more information should be made public. The Commission notes that it is considering whether to modify its information disclosure practices for over-the-air radio and television broadcasters, and broadcasting distribution undertakings and has invited comment in the context of the diversity of voices proceeding (Broadcasting Notice of Public Hearing 2007-5) and the review of regulatory frameworks for broadcasting distribution undertakings and discretionary programming services (Broadcasting Notice of Public Hearing 2007-10-1).
7. The Commission is of the view there will be a need in the future for a procedure for confidential access to confidential information along the lines of the proposal set out in the Practice Direction. Such a procedure, where appropriate, should allow for a fuller and more efficient examination. Of course, prior to putting in place a generally applicable procedure along these lines, the Commission will put forward a proposal for public comment.
8. The Commission appreciates the comments received, including those from parties that submitted suggestions for changes to the language of the proposed Practice Direction. The Commission finds such comments helpful and will consider all comments should it decide to implement a procedure for granting confidential access to confidential information and *in camera* hearings in the future.

Secretary General

Related documents

- *Call for comments on a proposed Practice Direction on the Provision of Confidential Access to Confidential Information*, Broadcasting Public Notice CRTC 2007-114/Telecom Public Notice CRTC 2007-19, 12 October 2007
- *Review of the regulatory frameworks for broadcasting distribution undertakings and discretionary programming services*; Broadcasting Notice of Public Hearing CRTC 2007-10-1, 12 September 2007

- *Diversity of Voices Proceeding*, Broadcasting Notice of Public Hearing
CRTC 2007-5, 13 April 2007

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>