



Broadcasting Notice of Consultation CRTC 2010-488

PDF Version

Ottawa, 20 July 2010

Notice of hearing

16 November 2010

National Capital Region

Review of the direct-to-home satellite distribution policy

Deadline for submission of interventions/comments: 8 September 2010

The Commission hereby initiates a public proceeding to review its policies for direct-to-home (DTH) satellite distribution.

*As part of this proceeding, the Commission will hold a hearing commencing on **16 November 2010 at 9:00 a.m. at the Conference Centre, Phase IV, 140 Promenade du Portage, Gatineau, Quebec.***

In this document, the Commission invites comments and proposals on its regulatory framework for DTH satellite distribution, particularly with respect to:

- *the conventional television stations that DTH distributors are required to offer to their subscribers; and*
- *the manner in which DTH distributors perform simultaneous substitution.*

*The deadline for filing written comments is **8 September 2010.***

[Broadcasting interventions/comments form](#)

Background

1. Two licensed direct-to-home (DTH) satellite services currently operate in Canada: Bell TV and Shaw Direct. Both provide broadcasting services directly to Canadians as a type of broadcasting distribution undertaking (BDU) and collectively serve more than two million Canadian households. Each of these DTH services also operates under a satellite relay distribution undertaking (SRDU) licence, which permits them to transport broadcasting programming services from where they originate to other BDUs – such as cable BDUs – which, in turn, sell these services to their subscribers. Although their DTH and SRDU services are licensed separately, Bell TV and Shaw Direct use the same facilities, i.e., satellites, ground stations and other facilities, to offer both types of services. This means that choices made or actions taken with respect to one type of service frequently has an impact on the other.
2. In Broadcasting Decision 2010-61, the Commission licensed a third DTH service – FreeHD Canada – to provide both DTH and SRDU services. As of the date of this

Notice, the Commission has not yet received notification that FreeHD's DTH or SRDU services are in operation.

3. In Broadcasting Regulatory Policy 2010-167, the Commission published its determinations with respect to a new policy governing its licensing of conventional television stations and a number of related matters. During the proceeding that culminated in that Regulatory Policy, television licensees and other parties raised concerns regarding the current policy framework for DTH services and the new requirements set out in Broadcasting Public Notice 2008-100 that will come into effect on 1 September 2011. In particular, these concerns focussed on:
 - the conventional television stations that DTH distributors are required to offer to their subscribers; and
 - the manner in which DTH distributors perform simultaneous substitution.

Carriage of conventional television stations

4. In establishing its policy framework for DTH distribution of conventional television stations, the Commission has attempted to balance at least three factors:
 - the importance of DTH distribution for television stations;
 - ensuring that DTH subscribers are offered a diverse array of programming that is comparable to that offered by terrestrial BDUs, including not only television stations, but pay and specialty services as well as other services; and
 - the technical constraints of DTH licensees.
5. Through a combination of the provisions set out in the *Broadcasting Distribution Regulations* (the Regulations) and their various conditions of licence, the Commission currently requires each DTH licensee to distribute at least the following conventional television stations:
 - one television station affiliate of each nationally-licensed television network; and
 - a minimum of five CBC English- and five CBC French-language stations, including one from each time zone; or at least as many English- or French-language CBC stations as it distributes from a particular English- or French-language private broadcasting group.
6. In Broadcasting Public Notice 2008-100, the Commission announced that, effective 1 September 2011, requirements to distribute conventional television stations would be increased. As of 1 September 2011, DTH licensees will be required to distribute

one television station per province from each major Canadian broadcasting ownership group.¹

7. More recently, in Broadcasting Regulatory Policy 2010-162, the Commission augmented the future distribution requirements of DTH licensees by announcing that, as of 1 September 2011, they will also be required to distribute two stations from each Canadian broadcasting ownership group that is not one of the major groups.
8. However, in the proceeding that concluded in Regulatory Policy 2010-167, as well as in a number of other past proceedings, conventional television licensees have generally argued that DTH distribution is imperative to the operation of conventional television stations and proposed that DTH licensees be required to distribute all conventional television stations on a “local-into-local” basis, i.e., every local station should be distributed to DTH subscribers within at least their local market. In their view, local-into-local distribution is essential to ensure the integrity of their signals since DTH licensees serve a significant number of subscribers in each market.
9. For their part, DTH licensees have consistently maintained that distribution of all television stations on a local-into-local basis is not feasible for a variety of reasons and could prevent them from continuing to offer services that are competitive with those of terrestrial BDUs.

Simultaneous substitution

10. Section 42 of the Regulations requires DTH licensees to replace the signal of a non-Canadian television service with the signal of a Canadian television service when the two services are showing the same program at the same time. This is known as simultaneous substitution and occurs at the request of the licensee of a Canadian television service.
11. As part of its policies regarding distribution of digital and high definition (HD) programming services set out in Broadcasting Public Notices 2003-61 and 2006-74, the Commission has determined that BDUs are only required to perform simultaneous substitution when the signal of the service requesting simultaneous substitution is of similar or better quality than the signal that it is replacing. This means, for example, that a Canadian television station can only request simultaneous substitution over an HD program in a US signal if the Canadian station also broadcasts the program in HD.
12. Simultaneous substitution and, simultaneous substitution of HD programming in particular, is often the subject of complaints to the Commission by DTH subscribers and by broadcasters. In the proceeding that concluded in Broadcasting Regulatory

¹ These include Canwest Global, CBC English, CBC French, CTV, Rogers, TVA and V. In Broadcasting Regulatory Policy 2010-162, the Commission clarified that DTH licensees will not be required to distribute one station from each of these groups from each of the four Atlantic provinces: New Brunswick, Newfoundland and Labrador, Nova Scotia and Prince Edward Island. Instead, DTH licensees will only be required to distribute two Atlantic stations from each of these ownership groups.

Policy 2010-167, a number of broadcasters raised concerns with respect to the manner in which DTH licensees perform simultaneous substitution. In particular, broadcasters were concerned with Bell TV's practice of performing simultaneous substitution for only one local station at a time over any given non-Canadian programming service. This means that most of its subscribers receive substituted programming from a television station operating outside of their community (instead of programming from the non-Canadian service) regardless of whether or not there is a local station broadcasting the same programming in their community.²

Information submitted by DTH licensees

13. In preparation for this proceeding, the Commission has requested that DTH licensees submit certain information related to their current and future satellite capacity as well as other aspects of their operations. All of the information submitted by these licensees, except that which the Commission has designated confidential, will be placed on the public file of this proceeding and will be available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" as "Related Documents." Parties submitting interventions in this proceeding may wish to make use of this information in formulating their comments.

Public participation

14. The Commission invites written comments that address the concerns set out above. The deadline for filing written comments is **8 September 2010**.
15. Following the oral public hearing, those who filed comments may have an opportunity to file brief final written comments within 10 days of the **completion of the hearing**.
16. The Commission cannot be held responsible for postal delays and will not notify a party whose submission is received after the above-noted deadlines. The submission will not be considered by the Commission and will not be part of the public file.
17. Parties wishing to appear at the public hearing, either in person or by video conference from one of the Commission's regional offices, must state their request on the first page of their written submissions. Parties requesting appearance must provide clear reasons, on the first page of their submissions, as to why the written submission is not sufficient and why an appearance is necessary. The Commission will subsequently inform parties whether their request to appear has been granted. While submissions will not otherwise be acknowledged, they will be considered by the Commission and will form part of the public record of the proceeding, provided the procedures set out herein have been followed.

² For example, if CTV purchased the rights to broadcast an NBC program in its various local markets, a Bell TV subscriber in Edmonton would receive the Vancouver CTV signal in place of the Seattle NBC signal, even though an Edmonton CTV station is broadcasting the same program.

Procedures for filing comments

18. Interested parties can file their comments to the Secretary General of the Commission:

by using the

[Broadcasting interventions/comments 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. 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 damaged during electronic transmission.

21. Each paragraph of the document should be numbered.

Important notice

22. Note that all information that parties provide as part of this public process, except information granted confidentiality, 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.

23. 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.

24. 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.

25. Please note that 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 our website with the help of either our 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.
26. The Commission encourages interested parties to monitor the public examination file and the Commission's website for additional information that they may find useful when preparing their comments.

Examination of documents

27. A list of all comments will also be available on the Commission's website. An electronic version of all interventions/comments submitted will be accessible from this list. To access the list, select "Lists of interventions/comments" under "Public Proceedings" from the Commission's website.
28. Documents are also available during normal office hours at the local address provided in this notice and at the Commission offices and documentation centres directly involved with these applications, or, upon request, within two working days, at any other Commission offices and documentation centres.

Location of Commission offices

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Secretary General

Related documents

- *A group-based approach to the licensing of private television services*, Broadcasting Regulatory Policy CRTC 2010-167, 22 March 2010
- *Distribution by direct-to-home services of stations from the major ownership groups in the Atlantic provinces and independently owned stations across Canada*, Broadcasting Regulatory Policy CRTC 2010-162, 19 March 2010

- *Direct-to-home satellite distribution undertaking and satellite relay distribution undertaking*, Broadcasting Decision CRTC 2010-61, 8 February 2010
- *Regulatory framework for broadcasting distribution undertakings and discretionary programming services – Regulatory policy*, Broadcasting Public Notice CRTC 2008-100, 30 October 2008
- *Introductory statement to Broadcasting Decision CRTC 2004-129 and 2004-130, which renew the licences of the ExpressVu and Star Choice direct-to-home satellite distribution undertakings*, Broadcasting Public Notice CRTC 2004-19, 31 March 2004
- *Star Choice – Licence renewal*, Broadcasting Decision CRTC 2004-130, 31 March 2004
- *ExpressVu – Licence renewal*, Broadcasting Decision CRTC 2004-129, 31 March 2004