



Broadcasting Notice of Consultation CRTC 2010-621

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Ottawa, 26 August 2010

Call for comments on standard conditions of licence and expectations for Category B services

*In this notice, the Commission calls for comments on standardized conditions of licence and expectations for Category B services and proposes certain minor changes to its approach to the licensing of Category B services. The deadline for comments is **24 September 2010**.*

Introduction

1. Prior to considering the first round of licence renewals for Category B services,¹ the Commission considers it appropriate to update the standard conditions of licence that govern these services. Once adopted, these new conditions and expectations will replace those set out in Public Notice 2000-171-1 and will be applied to all renewing and new Category B services. In this notice, the Commission is also setting out certain other changes to its approach to the licensing of Category B services.

Broadcast day

2. Applicants for specialty services have usually been given the option of choosing either an 18- or 24-hour broadcast day. However, the Commission considers that a common broadcast day should now be established for Category B services. The Commission proposes that the broadcast day for such services be defined as an 18-hour period beginning at six o'clock in the morning or any other period approved by the Commission.

Category B pay services

3. As set out in Broadcasting Public Notice 2008-100,² the Commission will shortly be eliminating the distribution and linkage requirements in favour of a set of simpler packaging rules. One of the particular outcomes of this decision is that the principal distinction between Category B specialty and Category B pay services, i.e. the 1:5 linkage rule for pay services,³ will no longer exist as of 31 August 2011. As a result, the key difference between a Category B specialty service and a Category B pay

¹ As set out in Broadcasting Public Notice 2008-100, Category 2 services will be renamed Category B services effective 31 August 2011. The term "Category B" is used in this notice to encompass Category 2 services until such time as they are renamed Category B services.

² See para. 128.

³ Under this rule, a Canadian pay television service may be packaged in a given discretionary tier with no more than five channels containing any of the non-Canadian-originated services specified in either Section A or Section B of the List of Part 2 eligible satellite services.

service will be the way in which Canadian content obligations are established and the fact that pay services are not permitted to air advertising.

4. In light of this change to the distribution and linkage rules, the Commission is of the view that it is no longer necessary to distinguish between Category B specialty and Category B pay services. Accordingly, the Commission will henceforth licence only Category B services, subject to the standard conditions of licence that will be established as a result of this proceeding.
5. The Commission notes that nothing would prevent such Category B services from pricing and marketing themselves as premium advertising-free services.

Multiple applications

6. The Commission is concerned by the practice of some applicants to file multiple Category B applications at a given time, including some that have the same nature of service definition. Mindful of the importance of ensuring that limited resources are put to the best and most efficient use, both within the Commission and throughout the industry, the Commission is of the view that such practices should be limited. In coming to this conclusion, the Commission has also taken into consideration the fact that only a limited number of Category B services become operational. Accordingly, the Commission will only be prepared to consider five (5) Category B applications from one applicant at any given time. Further, the Commission will expect an applicant to demonstrate that the proposed Category B services are distinct from each other. Applications that do not meet these conditions will be returned.

Deadline to commence operations

7. The Commission's approach to Category B services has been to require that these services launch within three years of their approval. In practice, the Commission has also granted a single-year extension to that launch deadline upon written request to the Commission, with such requests to be made 60 days in advance of the original launch deadline. To avoid administrative burden, the Commission is of the view that all new Category B services should launch within four (4) years of their approval, with no opportunity for extension.

New streamlined procedures

8. To further ensure that limited resources are put to the best and most efficient use, the Commission confirms that the onus is on applicants to provide complete applications. Consistent with the procedures set out in Broadcasting Public Notice 2004-24, this means that applicants must respond to all questions included in the application form to the Commission's satisfaction and must demonstrate in their application why their proposed service should not be considered competitive with Category A services by virtue of a sufficiently specific nature of service definition. Applications deemed incomplete will be returned.

Call for comments

9. The Commission invites comments that address the issues set out in this notice of consultation. The Commission will accept comments that it receives on or before **24 September 2010**.
10. 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.

Procedure for filing comments

11. Interested parties can file their comments to the Secretary General of the Commission in only one of the following formats:

by using the
[\[Broadcasting interventions/comments form\]](#)

OR

by mail to
CRTC, Ottawa, Ontario K1A 0N2

OR

by fax at
819-994-0218

12. Submissions longer than five pages should include a summary.
13. Each paragraph of the submission should be numbered. In addition, where the comment 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.

Important notice

14. 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.
15. 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.

16. 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.
17. 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.
18. 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

19. A list of all comments will also be available on the Commission's website. An electronic version of all 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.
20. The public may examine public comments 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

Kensington Building
275 Portage Avenue
Suite 1810
Winnipeg, Manitoba R3B 2B3
Tel.: 204-983-6306
Fax: 204-983-6317

2220 - 12th Avenue
Room 620
Regina, Saskatchewan S4P 0M8
Tel.: 306-780-3422

10405 Jasper Avenue
Suite 520
Edmonton, Alberta T5J 3N4
Tel.: 780-495-3224

530-580 Hornby Street
Vancouver, British Columbia V6C 3B6
Tel.: 604-666-2111
Fax: 604-666-8322

Secretary General

Related documents

- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services* – Regulatory policy, Broadcasting Public Notice CRTC 2008-100, 30 October 2008
- *Exemption order respecting certain third-language television undertakings*, Broadcasting Public Notice CRTC 2007-33, 30 March 2007
- *Revised approach for the consideration of broadcasting licence applications proposing new third-language ethnic Category 2 pay and specialty services*, Broadcasting Public Notice CRTC 2005-104, 23 November 2005

- *Revised procedures for processing applications for new digital Category 2 pay and specialty television services*, Broadcasting Public Notice CRTC 2004-24, 8 April 2004
- *Introductory statement – Licensing of new digital pay and specialty services*, Public Notice CRTC 2000-171, 14 December 2000, as amended by Public Notice CRTC 2000-171-1, 6 March 2001

Appendix to Broadcasting Notice of Consultation CRTC 2010-621

Standard conditions of licence, expectations and encouragement for Category B services

General

The following terms and conditions of licence are applicable to all Category B services, except where an authorization which represents a change from or addition to these terms and conditions is included in the decision granting a particular licence.

Category B services are also subject to the *Specialty Services Regulations, 1990*.

The distribution of Category B services is subject to the applicable distribution rules set out in *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services – Regulatory policy, Broadcasting Public Notice CRTC 2008-100, 30 October 2008*.

Conditions of licence

1. The licensee shall adhere to the Canadian Association of Broadcasters' (CAB) *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 (CBSC).
2. The licensee shall adhere to the *Broadcast code for advertising to children*, as amended from time to time and approved by the Commission.
3. The licensee shall adhere to the *CAB 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 CBSC.
4. 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.
5. In accordance with *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009, the licensee shall:

- ensure that advertising, sponsorship messages and promos in the English and French language are closed captioned by no later than the fourth year of the licence term;
 - 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
 - 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.
6. The licensee shall provide audio description for all the key elements of information programs, including news programming. For the purposes of this condition of licence, “audio description” refers to announcers reading aloud the textual and graphic information that is displayed on the screen during information programs.
- 7.
- 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 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 national paid advertising.
8. 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.

9. In order to ensure that the licensee complies at all times with the *Direction to the CRTC (Ineligibility of non-Canadians)*, P.C. 1997-486, 8 April 1997, as amended by P.C. 1998-1268, 15 July 1998, the licensee shall file, for the Commission's prior review, a copy of any programming supply agreement and/or licence trademark agreement it intends to enter into with a non-Canadian party.
10. 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.
11. 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 English- or French-language (or both) services only

12.

- a) In the first year of operation, the licensee shall devote not less than 15% of the broadcast year and of the evening broadcast period to the broadcast of Canadian programs.
- b) In the second year of operation, the licensee shall devote not less than 25% of the broadcast year and of the evening broadcast period to the broadcast of Canadian programs.
- c) In the third year of operation, and in each year thereafter, the licensee shall devote not less than 35% of the broadcast year and of the evening broadcast period to the broadcast of Canadian programs.

For ethnic/third-language services only

13. In each broadcast year or portion thereof, the licensee shall devote not less than 15% of the broadcast year and of the evening broadcast period to the broadcast of Canadian programs.

For music video services only

14. In addition to the minimum levels of Canadian content set out in paragraphs 12 and 13 above, the licensee shall devote not less than:
 - 20% of the total number of music videos broadcast during each broadcast week to Canadian music videos in the first year of operation;

- 25% of the total number of music videos broadcast during each broadcast week to Canadian music videos in the second year of operation; and
- 30% of the total number of music videos broadcast during each broadcast week to Canadian music videos in the third year of operation and each broadcast year thereafter.

Expectations

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

Further, the licensee is expected 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.

The Commission expects the licensee to endeavour, through its programming and employment opportunities, to reflect the presence in Canada of ethnocultural minorities, Aboriginal peoples, and persons with disabilities. The Commission further expects the licensee to ensure that the on-screen portrayal of such groups is accurate, fair and non-stereotypical.

In accordance with *Implementation of an employment equity policy*, Public Notice CRTC 1992-59, 1 September 1992 (Public Notice 1992-59), if the licensee has 100 or more employees, it is subject to the *1996 Employment Equity Act*.

If the licensee has between 25 and 99 employees, the Commission expects the licensee to have in place an employment equity plan that addresses the equitable representation of the four designated groups (women, Aboriginal peoples, persons with disabilities and visible minorities), as set out in Public Notices 1992-59 and *Amendments to the Commission's Employment Equity Policy*, Public Notice CRTC 1997-34, 2 April 1997.

In implementing its employment equity plan, the Commission further expects the licensee to:

- ensure that the details of the licensee's employment equity policies are communicated to managers and staff;
- assign a senior level person to be responsible for tracking progress and monitoring results; and

- dedicate financial resources to the promotion of employment equity in the workplace.

If the licensee has fewer than 25 employees, the Commission encourages the licensee to consider employment equity issues in its hiring practices and in all other aspects of its management of human resources.

If the licensee broadcasts adult programming, the Commission expects the licensee to provide its proposed internal policy on adult programming at least one month prior to the implementation of the service, as required by the Commission in *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. The Commission further expects that any future changes made by the licensee to its internal policy on adult programming will be submitted for Commission approval prior to their implementation.

The Commission expects the licensee to adhere to its internal policy on adult programming once reviewed and approved by the Commission.

Encouragement

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

Definitions

The programming shall be drawn exclusively from the categories specified in the nature of service condition of licence. These categories are set out in their entirety in item 6 of Schedule I to the *Specialty Services Regulations, 1990*.

For the purposes of these conditions of licence, all time periods shall be calculated according to Eastern standard time.

- “broadcast day” means the period of up to 18 consecutive hours beginning each day not earlier than six o’clock in the morning and ending not later than one o’clock in the morning of the following day, as selected by the licensee, or any other period approved by the Commission.
- “broadcast month,” “broadcast year,” “evening broadcast period” and “clock hour” shall have the same meanings as those set out in the *Television Broadcasting Regulations, 1987*.
- “broadcast week” shall have the same meaning as that set out in the *Radio Regulations, 1986*.

- “first year of operation” and “Year 1” shall mean the period in which the licensee is first in operation for a period exceeding 90 days, excluding any free trial period, and ending on 31 August of that calendar year.
- “second year of operation” and “Year 2” and corresponding terms referring to subsequent years of operation shall mean the broadcast year or years following the first year of operation.
- “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.