



## Broadcasting Notice of Consultation CRTC 2011-805

PDF version

Ottawa, 22 December 2011

### **Call for comments on proposed amendments to the *Exemption order for new media broadcasting undertakings* – provisions relating to vertical integration**

*The Commission calls for comments on proposed amendments to the Exemption order for new media broadcasting undertakings set out in Appendix A to Public Notice 1999-197, as amended by the appendix to Broadcasting Order 2009-660. These amendments implement certain determinations made by the Commission in the Regulatory framework relating to vertical integration. The deadline for the receipt of comments is 23 January 2012.*

#### **Introduction**

1. In Broadcasting Regulatory Policy 2011-601 (the Regulatory Policy), the Commission set out its determinations regarding a regulatory framework relating to vertical integration. The Commission determined, among other things, that no person operating under the *Exemption order for new media broadcasting undertakings* may offer programming designed primarily for conventional television, specialty, pay or video-on-demand services on an exclusive or other preferential basis in a manner that is dependent on the subscription to a specific mobile or retail Internet access service. This approach will ensure that customers will not have to subscribe to several distributors in order to view the most popular programming.
2. The Regulatory Policy also set out a number of determinations designed to ensure fair treatment for independent broadcasting distribution and programming services that must compete against strong vertically integrated competitors.
3. The Commission proposes to amend the *Exemption order for new media broadcasting undertakings* set out in Appendix A to Public Notice 1999-197, as amended by the appendix to Broadcasting Order 2009-660 (the Exemption Order), in order to implement the above-mentioned determinations. Specifically, the Commission proposes to amend the Exemption Order to address the following matters:
  - exclusivity of content, and
  - anti-competitive head starts.
4. In Broadcasting Notices of Consultation 2011-804 and 2011-806, issued concurrently with the present Notice of Consultation, the Commission has called for comments on a number of proposed amendments to its regulations and to the terms and conditions

of the exemption order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers, in order to give effect to various determinations reached in the Regulatory Policy.

### **Call for comments**

5. The proposed amendments to the Exemption Order are appended to this notice. The Commission invites comments on the wording of those proposed amendment. The Commission will accept comments that it receives on or before **23 January 2012**.

### **Procedure for filing comments**

6. The new *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. 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."
7. 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.
8. The Commission will not formally acknowledge interventions. It will, however, fully consider all interventions, and they will form part of the public record of the proceeding, provided that the procedures for filing set out in the Rules of Procedure and this notice have been followed.
9. 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

10. Submissions longer than five pages should include a summary.

11. 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 altered during electronic transmission.

### **Important notice**

12. All information provided 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](http://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 provided.
13. The personal information provided 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.
14. 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.
15. The information provided 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 webpage 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.
16. The Commission encourages interested persons 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**

17. 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.
18. 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

Central Building  
Les Terrasses de la Chaudière  
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

360 Main Street, Suite 970  
Winnipeg, Manitoba  
R3C 3Z3  
Tel.: 204-983-6306  
Fax: 204-983-6317

Cornwall Professional Building  
2220 – 12th Avenue  
Suite 620

Regina, Saskatchewan  
S4P 0M8  
Tel.: 306-780-3422

100 4<sup>th</sup> Avenue South-West  
Suite 403  
Calgary, Alberta  
T2P 3N2

Tel.: 403-292-6660

Fax: 403-292-6686

Suite 290, 858 Beatty Street  
Vancouver, British Columbia  
V6B 1C1

Tel.: 604-666-2111

Fax: 604-666-8322

Secretary General

#### **Related documents**

- *Call for comments on proposed amendments to the Broadcasting Distribution Regulations and other Commission regulations – provisions related to vertical integration*, Broadcasting Notice of Consultation CRTC 2011-806, 22 December 2011
- *Call for comments on proposed amendments to the terms and conditions of the exemption order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers*, Broadcasting Notice of Consultation CRTC 2011-804, 22 December 2011
- *Regulatory framework relating to vertical integration* CRTC 2011-601, 21 September 2011
- *Amendments to the Exemption order for new media broadcasting undertakings (Appendix A to Public Notice CRTC 1999-197); Revocation of the Exemption order for mobile television broadcasting undertakings*, Broadcasting Order CRTC 2009-660, 22 October 2009

## Appendix to Broadcasting Notice of Consultation CRTC 2011-805

### Amendment to the Exemption order for new media broadcasting undertakings

The *Exemption order for new media broadcasting undertakings* (Appendix A to public notice 1999-97), which is set out in the Appendix to Broadcasting Order 2009-660, is replaced with the following (amendments are indicated in **bold** with the former criterion 3 renumbered as criterion 10):

1. The undertaking provides broadcasting services, in accordance with the interpretation of “broadcasting” set out in *New Media*, Broadcasting Public Notice CRTC 1999-84/Telecom Public Notice CRTC 99-14, 17 May 1999, that are:
  - a. delivered and accessed over the Internet; or
  - b. delivered using point-to-point technology and received by way of mobile devices.
2. The undertaking does not give an undue preference to any person, including itself, or subject any person to an undue disadvantage. In any proceeding before the Commission, the burden of establishing that any preference or disadvantage is not undue is on the party that gives the preference or subjects the person to the disadvantage.
3. **The undertaking does not offer programming designed primarily for conventional television, specialty, pay or video-on-demand services (Television programming) on an exclusive or otherwise preferential basis in a manner that is dependent on the subscription to a specific mobile or retail Internet access service. The undertaking does not acquire or exercise rights to Television programming that prevent the undertaking, directly or indirectly, from making Television programming available to subscribers of all service providers providing access to the same platform over which the undertaking broadcasts the programming.**
4. **The undertaking, when ready to provide access to Television programming from a newly launched licensed or exempt conventional television, specialty, pay or video-on-demand television programming undertaking, makes available:**
  - a) **that Television programming in a manner that does not restrict access dependent on a consumer’s subscription to a particular wireless mobile or retail internet access service provider; or,**
  - b) **all Television programming available from that newly launched programming undertaking to which the undertaking itself provides**

**access available to all undertakings operating over the same broadcasting access platform that have communicated an intent to provide access to the programming, subject to rates, terms and conditions (Terms of Carriage) determined by the undertaking in the absence of a commercial agreement.**

- 5. If there is a dispute concerning any aspect of the Terms of Carriage, one or both of the undertakings to the dispute may refer the matter to the Commission for dispute resolution and the undertakings to the dispute submit to any decision that may result therefrom.**
- 6. If the Commission accepts a referral of a matter for dispute resolution, the undertaking submits to participation in a mediation before a person appointed by the Commission.**
- 7. Where the undertaking provides another undertaking with access to Television programming in the absence of a commercial agreement and the matter proceeds before the Commission for dispute resolution, the undertaking submits to having the dispute resolved by means of final offer arbitration, as provided for in *Practices and procedures for staff-assisted mediation, final offer arbitration, and expedited hearings*, Broadcasting and Telecom Information Bulletin CRTC 2009-38, 29 January 2009, as amended from time to time, and further submits to the Terms of Carriage established by the Commission as of the date the programming was first made available to the relevant undertaking absent a commercial agreement and on a going-forward basis for the contractual term established by the Commission.**
- 8. For greater certainty, nothing in paragraphs 6 or 7 prevents parties from reaching an agreement with respect to rates, terms or conditions that differ from those established by the Commission.**
- 9. During dispute resolution, the undertaking submits to produce and file such additional information as may be requested by the Commission or any individual named by the Commission to act as a mediator in a given dispute.**
- 10. The undertaking submits such information regarding the undertaking's activities in broadcasting in new media, and such other information that is required by the Commission in order to monitor the development of broadcasting in new media, at such time and in such form, as requested by the Commission from time to time.**