



Broadcasting Notice of Consultation CRTC 2012-366

PDF version

Additional references: 2011-441, 2011-444 and 2011-447

Ottawa, 6 July 2012

Call for comments on the Commission's policy regarding Canadian programming expenditure over-expenditures for conventional television and specialty services from large broadcast groups

*Following the receipt of applications by Bell Media Inc. and Rogers Broadcasting Limited, the Commission calls for comments on its policy regarding Canadian programming expenditure (CPE) over-expenditures for conventional television and specialty services from large broadcast groups, as well as on the impact that approval of those applications would have on the Commission's CPE policy. The deadline for the filing of comments is **7 August 2012**. The deadline for the filing of replies is **17 August 2012**.*

Background

1. In Broadcasting Regulatory Policy 2010-167 (the group-based policy), the Commission set out a new conceptual model with respect to Canadian programming expenditures (CPE) for large private English-language ownership groups that hold conventional and specialty (Category A and Category B) television licences. In that model, large ownership groups are allowed to flexibly allocate the aggregate of their required CPE across individual programming undertakings, while ensuring that the full aggregate amount is spent. In addition to encouraging effective business judgments, this ensures that there is no reduction in overall spending on Canadian programming. The conceptual model was implemented by the Commission in Broadcasting Decision 2011-441.
2. In that decision, the Commission outlined the criteria for qualifying services under the new group-based policy. As such, qualifying services for the group-based approach were limited to conventional television stations, Category A services, and Category B services with more than one million subscribers. Moreover, as these qualifying services would now have the flexibility to allocate the aggregate of their required CPE across individual programming undertakings, the Commission established specific requirements with respect to over- and under-expenditures on CPE.
3. Prior to the issuance of Broadcasting Decision 2011-441, specialty and pay television services were permitted to carry forward all CPE over-expenditures of the amounts that are spent on Canadian programming in one broadcast year against CPE requirements in any of the remaining broadcast years of the same licence term.

4. In Broadcasting Decision 2011-441, the Commission stated that an authorization to carry forward over-expenditures (and to make up under-expenditures) would continue to be a useful tool for large private English-language ownership groups (i.e., designated groups) to manage CPE requirements, particularly in the case of multi-year projects. It also considered, however, that an under- or over-expenditure level of 5% would be sufficient for groups to manage CPE requirements, especially given that the designated groups would also be granted the flexibility to count CPE on one qualifying service towards the CPE requirements on another service. In that same decision, the Commission also clarified, amongst other things, that over-expenditures in any broadcast year could be used as a credit against CPE requirements in subsequent broadcast years. Moreover, the Commission indicated that requirements relating to CPE as well as to spending on programs of national interest (PNI) were to be considered minimum spending requirements.
5. In Broadcasting Decisions 2011-444 and 2011-447, the Commission imposed a condition of licence relating to the above on the various qualifying conventional television and specialty services affiliated with the Bell Media Inc. (Bell Media) and Rogers Media Inc. (Rogers) broadcasting ownership groups. A list of these services is set out in Appendix 1 to each of those decisions. As per the above-noted determinations, Bell Media's and Rogers' qualifying conventional television and specialty services currently receive a credit for expenditures that exceeds the minimum CPE requirements, which is limited to 5% of minimum expenditures and which must be used in the year after which the expenditure is made.

The applications

6. The Commission has received applications by Bell Media (2012-0374-4) and Rogers (2012-0579-0) seeking to amend the broadcasting licences for their various qualifying conventional television and specialty services so that the above-noted 5% "cap" on CPE over-expenditures as well as the obligation to use that over-expenditure in the subsequent broadcast year be deleted.
7. Noting that the group-based policy was intended to give greater flexibility to licensees in their support of Canadian programming, Bell Media submitted that the Commission's determination on CPE overspending was not consistent with that policy and with its historical practices. It further submitted that the current 5% cap on CPE over-expenditures and the obligation to use that over-expenditure in the subsequent broadcast year limited its ability to commission the best projects as they become available, which it argued is necessary for the program commissioning cycle. As an example, Bell Media indicated that, due to the high cost of the rights to the Olympic Games and the fact that CPE requirements are based on the previous year's revenues, overall CPE will significantly exceed the required CPE amount, even when including the 5% over-expenditure. It further noted that the issue of a cap on CPE over-expenditures was not discussed at the public hearing for group-based licensing and that licensees therefore did not have the opportunity to comment on or respond to this issue.

8. For its part, Rogers submitted that the 5% cap will limit its ability to operate its Citytv conventional television stations since, in its view, the cap does not offer sufficient flexibility, and given that some of its expenditures were already committed to large budget productions during the first broadcast year of the licence term. Moreover, Rogers stated that the Commission's rationale for the 5% cap does not apply to it, given that it was not one of the designated groups identified during the group-based licence renewal process, and given that, unlike the designated groups, it is not able to allocate CPE and PNI expenditures between services.
9. The Commission considers that the applications submitted by Bell Media and Rogers are essentially requests to amend part of the Commission's group-based policy relating to the implementation of CPE over-expenditures, and that the interpretation of the conditions of licence in question could have an impact on a number of parties, including the other groups that operate under similar conditions and the production industry, which benefit from these CPE and PNI requirements. As such, the Commission considers it appropriate to launch a public process in order to consider the impact that approval of the applications by Bell Media and Rogers would have on its policy regarding CPE over-expenditures.

Questions

10. In light of all of the above, the Commission seeks comments on the following questions:
 - Are the proposals regarding the elimination of the 5% cap on CPE over-expenditures and of the obligation to expend that over-expenditure in the subsequent broadcast year, as set out in the applications by Bell Media and Rogers, necessary in order to allow services to benefit from the CPE flexibility granted in the group-based licensing policy?
 - What are the impact/benefits of the current policy regarding CPE on the Canadian broadcasting industry?
 - Does the over-expenditure cap limit the ability of broadcasters to expend capital on large-scale programs and events?
 - What is most appropriate way to monitor compliance as it relates to CPE over-expenditures?
 - What impact would the above-noted proposal by Bell Media and Rogers, as set out in their applications, have on the program commissioning cycle, and on the production sector in general?
 - In the event the Commission does not approve Bell Media's and/or Rogers' applications, how should the Commission address the implementation of its policy regarding a cap on CPE over-expenditures?

Call for comments

11. The Commission invites comments on the questions set out above. The Commission will accept interventions that it receives on or before **7 August 2012**. Parties may file replies to the matters raised in the initial interventions. The deadline for the filing of replies is **17 August 2012**.

Procedure

12. 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, and the procedure for filing confidential information and requesting its disclosure. 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."
13. 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.
14. 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

15. Submissions longer than five pages should include a summary.
16. 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

17. All information that parties provide as part of this public process, except information designated confidential, 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.
18. 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.
19. 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.
20. 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.
21. The Commission encourages parties and interested persons to monitor the record of the proceeding, available on the Commission's website, for additional information that they may find useful when preparing their submissions.

Examination of documents

22. 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.
23. 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

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
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Toronto, Ontario
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2220 – 12th Avenue
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Tel.: 604-666-2111
Fax: 604-666-8322

Secretary General

Related documents

- *Rogers Media Inc. – Group-based licence renewals*, Broadcasting Decision CRTC 2011-447, 27 July 2011
- *Bell Media Inc. – Group-based licence renewals*, Broadcasting Decision CRTC 2011-444, 27 July 2011
- *Group-based licence renewals for English-language television groups – Introductory decision*, Broadcasting Decision CRTC 2011-441, 27 July 2011
- *A group-based approach to the licensing of private television services*, Broadcasting Regulatory Policy CRTC 2010-167, 22 March 2010