



## Broadcasting Notice of Consultation CRTC 2022-272

PDF version

Ottawa, 6 October 2022

*Public record: 1011-NOC2022-0272*

### **Call for comments on an application by TVA to remove the advertising time limit of 12 minutes per clock hour on its discretionary services and on the possibility of removing this limit for other discretionary services**

The Commission calls for comments on an application by Quebecor Media Inc., on behalf of TVA Group Inc., to remove the limit on advertising time of 12 minutes per clock hour on its discretionary services as well as on the possibility of removing this limit for other discretionary services.

The deadline for the receipt of interventions is **7 November 2022**. Only parties that file interventions may file a reply to matters raised during the intervention phase. The deadline for the filing of replies is **22 November 2022**.

#### **Application by TVA**

1. Quebecor Media Inc., on behalf of TVA Group Inc. (TVA), filed an application (2020-0372-1) under Part 1 of the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* to remove the limit on advertising time of 12 minutes per clock hour limit on its discretionary services (AddikTV, CASA, Évasion, MOI ET CIE, PRISE2, Yooopa and Zeste, as well as its national news service LCN and its mainstream sports services, TVA Sports and TVA Sports 2). However, TVA still wishes to maintain the requirement that its discretionary services not broadcast any paid advertising material other than paid national advertising.
2. In support of its application, TVA submitted that only discretionary services are subject to a limit on advertising time and that this limit unduly favours foreign online platforms, which are capturing a growing share of advertising revenues. TVA added that removing the limit for its services would help restore healthier competition in the French-language market while injecting advertising revenues back into the Canadian broadcasting ecosystem, which online platforms do not do. In addition, TVA pointed out that the COVID-19 pandemic had an immediate impact on TVA's advertising revenues.
3. According to TVA, the French-language market has a greater need for regulatory flexibility than the English-language market. In this regard, TVA noted that the most popular programs in the French-language market are produced locally at higher cost. Therefore, TVA considers that making full use of advertising space would allow it to

better support the production of and profit from these programs. TVA submitted that, in contrast, the most popular content in the English-language market is foreign and less costly, and therefore easier to make profitable. The applicant also stressed that, according to Commission data,<sup>1</sup> the profitability of discretionary and on-demand services increased in the English-language and bilingual market between 2016 and 2020 but decreased in the French-language market.

4. Further, TVA added that the situation in the French-language advertising market is all the more alarming because Bell's selling power has been increasing since it acquired V Interactions Inc.<sup>2</sup> and now owns conventional television stations and discretionary services in both language markets.

### **Alternative proposal**

5. If the Commission declines to remove the limit on advertising time for its discretionary services, TVA asks that the Commission not count the promotion of foreign programs and feature films against the 12-minute per clock hour advertising time limit imposed on its discretionary services. TVA submitted that broadcasters require the revenues from foreign programming in order to be able to continue investing in Canadian content. According to TVA, this alternative proposal would enable it to optimize and better profit from its use of the 12 minutes per clock hour of advertising time, and that this would be to the benefit of Canadian content.

### **Regulatory framework**

6. In 2007,<sup>3</sup> the Commission recognized that the conventional television sector was facing a number of challenges, such as audience fragmentation resulting from the migration to discretionary services (formerly known as pay and specialty services). To allow conventional television stations to maximize their advertising revenues and respond to the adverse effects of audience fragmentation, the Commission phased out the advertising time limit for conventional television stations. These stations have not been subject to such a limit since 1 September 2009.
7. Currently, discretionary services, whether licensed<sup>4</sup> or exempt,<sup>5</sup> are the only services with a 12 minute per clock hour advertising time limit in the Canadian broadcasting system. However, the Commission does permit discretionary services operating as national news<sup>6</sup> and mainstream sports services<sup>7</sup> to spread the permitted maximum of

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<sup>1</sup> Source: [Discretionary and on-demand services: statistical and financial summaries](#).

<sup>2</sup> In 2020, Bell acquired from V Interactions inc. the television network called V (now known as Noovo) and five French-language conventional television stations (see Broadcasting Decisions [2020-116](#) and [2020-154](#)).

<sup>3</sup> See Broadcasting Public Notice [2007-53](#).

<sup>4</sup> See condition of licence 18 in Appendix 2 to Broadcasting Regulatory Policy [2016-436](#).

<sup>5</sup> See criterion 6 in the appendix to Broadcasting Order [2015-88](#).

<sup>6</sup> See condition of licence 3 in the appendix to Broadcasting Regulatory Policy [2015-436](#).

<sup>7</sup> The conditions of licence to this effect are set out in the respective broadcasting decisions addressing each mainstream sports service.

12 minutes per clock hour of advertising over the entire broadcasting day to allow for the broadcast of live events without interruption where appropriate, when done for the benefit of viewers, given the nature of their programming. In general, discretionary services must broadcast only national advertising, with the exception of a few services that may broadcast local advertising.

8. In recent years, the issue of removing the limit on advertising time for discretionary services owned by large ownership groups has been raised a few times. In general, the Commission considered that the limit remained appropriate, given the potential impact that its removal could have on independent services, which do not benefit from synergies the way large ownership groups do, as well as on conventional television stations, which do not benefit from subscription revenues the way discretionary services do and for which revenues are decreasing.<sup>8</sup> On the other hand, in the past, the Commission has recognized that the privileges granted to conventional television stations (such as distribution on the basic service, the right to broadcast local advertising and perform simultaneous substitution) might mitigate some of the risks associated with a potential loss of advertising revenues that could result from removing this limit for discretionary services.<sup>9</sup>
9. More recently, the issue of removing the limit on advertising time for independent services was raised during the proceeding regarding regulatory relief for private Canadian broadcasters in the context of the COVID-19 pandemic.<sup>10</sup> However, given the absence of a comprehensive record concerning that issue and that it was beyond the scope of that proceeding, the Commission did not consider it appropriate to issue a determination on the matter.

### **Current environment**

10. The Commission notes that, because of the challenges faced by all discretionary services, the issue of removing the limit on advertising time could be considered at this time. Specifically, the Commission notes, as does TVA, that discretionary services are currently facing challenges related to increased audience fragmentation that did not exist in 2007, when the Commission removed the limit on advertising time for conventional television stations but maintained it for discretionary services.<sup>11</sup> In effect, in recent years, the growing popularity of digital platforms has had a significant impact on Canadians' viewing habits. In general, television viewership is declining while viewership of content on online platforms is gradually increasing, which is accentuating audience fragmentation.<sup>12</sup>

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<sup>8</sup>See Broadcasting Public Notice [2008-100](#) as well as Broadcasting Decisions [2011-441](#) and [2017-150](#).

<sup>9</sup>See paragraph 39 of Broadcasting Decision [2017-150](#).

<sup>10</sup>See Broadcasting Decision [2021-274](#).

<sup>11</sup>See Broadcasting Public Notice [2007-53](#).

<sup>12</sup> Source: Numeris and Media Technology Monitor.

11. Audience fragmentation appears to have implications for the entire Canadian broadcasting system. In that respect, all Canadian discretionary services have experienced a gradual overall decline in total revenues, including advertising revenues, during the 2016-2017 to 2020-2021 broadcasting years.<sup>13</sup> That said, the Commission notes, as does TVA, that English-language and bilingual discretionary services were indeed more profitable, on average, than French-language ones over the same period. In addition, while the share of total broadcasting revenues has decreased for conventional television stations and discretionary services, digital platforms are capturing a growing share of total broadcasting revenues<sup>14</sup> and of the Canadian advertising market<sup>15</sup> while, as noted by TVA, not being subject to any limit concerning advertising.
12. The Commission recognizes that the COVID-19 pandemic had a significant impact on the entire broadcasting system during the 2019-2020 broadcasting year. However, the Commission notes that the revenues for conventional television stations and discretionary services during the 2020-2021 broadcasting year appear to have returned to levels comparable to those that preceded the pandemic.<sup>16</sup>
13. Notwithstanding the above, the Commission questions whether the limit on advertising for discretionary services remains justified in the current environment. The Commission also questions whether this is an appropriate time to consider this issue, in light of the degree of uncertainty surrounding certain regulatory issues affecting the Commission.

### **Process regarding the question of removing the limit on advertising time**

14. The Commission notes that the various challenges identified above, notably including the migration of advertising revenues to online platforms, could affect all Canadian discretionary services, not just TVA's services. For this reason, the Commission considers it appropriate to broaden the question of removing the limit on advertising time to all Canadian discretionary services, whether licensed or exempt, or owned by large ownership groups or independent operators. This approach will enable the Commission to holistically assess the impact of possibly removing the limit on advertising time on the entire broadcasting system.
15. Therefore, the Commission will consider the application submitted by TVA in the context of a notice of consultation rather than the Part 1 application process. Consequently, TVA is made party to this proceeding, and its application is made part of the record of this proceeding. The issues raised in the consultation will be addressed in accordance with the procedure set out in this notice of consultation.

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<sup>13</sup> Source: [Discretionary and on-demand services: statistical and financial summaries](#).

<sup>14</sup> Source: [Annual highlights of the broadcasting sector 2020-2021](#).

<sup>15</sup> Source: Net Advertising Volume, February 2022, [ThinkTV](#).

<sup>16</sup> Source: [Annual highlights of the broadcasting sector 2020-2021](#).

## **Call for comments**

16. In light of all of the above, the Commission calls for comments on TVA's application to remove the 12-minute per clock hour advertising limit on its discretionary services as well as on the possibility of removing this limit for other discretionary services. In addition, the Commission invites parties to file evidence, including studies and detailed financial data, to support their interventions.

## **Examination of the question of the limit on advertising time**

17. The Commission recognizes that there is currently a degree of uncertainty surrounding certain regulatory issues in light of a possible reform of the *Broadcasting Act*. However, given that the issue of the limit on advertising time concerns only one specific aspect of the current regulatory framework, the Commission considers that it could address this issue at this time. Notwithstanding the above, the Commission seeks comment on the following question:

Q1. Is this an appropriate time to address the issue of the current limit on advertising time for discretionary services? Explain your reasoning.

## **Current requirements relating to the limit on advertising time**

18. The Commission questions the appropriateness of the current requirements relating to the limit on advertising time for discretionary services. In light of the above, the Commission seeks comment on the following questions:

Q2. In general, is the 12-minute per clock hour limit on advertising time currently imposed on discretionary services still relevant? Explain your reasoning.

Q3. Is the requirement that discretionary services not broadcast any paid advertising material other than paid national advertising still relevant? Explain your reasoning.

Q4. If the advertising time limit were removed, should the few discretionary services authorized to broadcast local advertising still be limited in terms of the amount of local advertising that they can broadcast?

## **Discretionary services affected and impact on subscribers**

19. The Commission acknowledges that the application to remove the limit on advertising time was originally filed by TVA. However, given the issues described above, the Commission questions whether it would be appropriate to consider removing the limit on advertising time for other discretionary services. In addition, the Commission questions how to implement a possible removal of this limit and how such a removal would impact subscribers. In light of the above, the Commission seeks comment on the following questions:

Q5. Should the Commission consider removing the limit on advertising time for discretionary services other than those covered by TVA's application (e.g., French-language, English-language, bilingual and third-language

discretionary services, whether these services are independent or owned by a licensee of a large ownership group, or exempt discretionary services)?

- **If yes**, please specify which ones (which types of services) and describe the impacts that your proposal could have on both services that would be affected and those that would not be.
- **If no**, would the approval of TVA's application have an impact on other discretionary services? Please specify which ones and provide supporting evidence.

Q6. If the Commission were to remove the limit on advertising time for some or all discretionary services, should this be done in a phased manner, as the Commission did for conventional television stations,<sup>17</sup> in order to assess the impact on other services? Explain your reasoning.

Q7. What possible impact would removing the limit on advertising time have on subscribers?

Q8. How would removing the limit on advertising time serve the public interest?

### **Alternative proposals**

20. Finally, the Commission seeks comment on TVA's alternative proposal, as described below, and encourages interested parties to make any other proposals with respect to the limit on advertising time imposed on discretionary services.

Q9. Please comment on TVA's alternative proposal, which consists of excluding promotions for foreign programs and feature films from the 12-minute limit on advertising time.

Q10. Please provide any other alternative proposals with respect to the limit on advertising time.

### **Procedure**

21. The *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (Rules of Procedure) apply to the present proceeding. The Rules of Procedure set out, among other things, the rules for content, format, filing and service of interventions, answers, replies and requests for information; the procedure for filing confidential information and requesting its disclosure; and the conduct of public hearings. Accordingly, the procedure set out below must be read in conjunction with the Rules of Procedure and related documents, which can be found on the Commission's website under "[Statutes and Regulations](#)." The guidelines set out

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<sup>17</sup>In the case of conventional television stations, the limit on advertising time was phased out over two broadcasting years (that is, the 2007-2008 and 2008-2009 broadcasting years). As set out in Broadcasting Public Notice [2007-53](#), the limit was set at 14 minutes during prime time (from 7:00 p.m. to 11:00 p.m.) during the first broadcasting year and then increased to 15 minutes per hour for all broadcasting hours in the second broadcasting year. The limit was then completely eliminated.

in Broadcasting and Telecom Information Bulletin 2010-959 provide information to help interested persons and parties understand the Rules of Procedure so that they can more effectively participate in Commission proceedings.

22. The Commission invites interventions that address the issues and questions set out above. The Commission will accept interventions that it receives on or before **7 November 2022**. Only parties that file interventions may file a reply to matters raised during the intervention phase. The deadline for the filing of replies is **22 November 2022**.
23. The Commission encourages interested persons and parties 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.
24. Submissions longer than five pages should include a summary. Each paragraph of all submissions should be numbered, and the line **\*\*\*End of document\*\*\*** should follow the last paragraph. This will help the Commission verify that the document has not been damaged during electronic transmission.
25. Pursuant to Broadcasting and Telecom Information Bulletin 2015-242, the Commission expects incorporated entities and associations, and encourages all Canadians, to file submissions for Commission proceedings in accessible formats (for example, text-based file formats that allow text to be enlarged or modified, or read by screen readers). To provide assistance in this regard, the Commission has posted on its website [guidelines](#) for preparing documents in accessible formats.
26. Submissions must be filed by sending them to the Secretary General of the Commission using **only one** of the following means:

**by completing the**  
[\[Intervention/comment/answer form\]](#)

or

**by mail to**  
CRTC, Ottawa, Ontario K1A 0N2

or

**by fax at**  
819-994-0218

27. Parties who send documents electronically must ensure that they will be able to prove, upon Commission request, that filing, or where required, service of a particular document was completed. Accordingly, parties must keep proof of the sending and receipt of each document for 180 days after the date on which the document is filed or served. The Commission advises parties who file or serve documents by electronic

means to exercise caution when using email for the service of documents, as it may be difficult to establish that service has occurred.

28. In accordance with the Rules of Procedure, a document must be received by the Commission and all relevant parties by 5 p.m. Vancouver time (8 p.m. Ottawa time) on the date it is due. Parties are responsible for ensuring the timely delivery of their submissions and will not be notified if their submissions are received after the deadline. Late submissions, including those due to postal delays, will not be considered by the Commission and will not be made part of the public record.
29. The Commission will not formally acknowledge submissions. It will, however, fully consider all submissions, which will form part of the public record of the proceeding, provided that the procedure for filing set out above has been followed.

### **Important notice**

30. All information that parties provide as part of this public process, except information designated confidential, whether sent by postal mail, fax, email 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, email addresses, postal/street addresses, telephone and fax numbers, etc.
31. 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.
32. 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.
33. 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.

### **Availability of documents**

34. Links to interventions, replies and answers filed for this proceeding, as well as other documents referred to in this notice, are available on the Commission's "[Consultations and hearings: have your say](#)" page.

35. Documents are available upon request during normal business hours by contacting:

Documentation Centre  
[Examinationroom@crtc.gc.ca](mailto:Examinationroom@crtc.gc.ca)

Tel.: 819-997-4389

Fax: 819-994-0218

Client Services

Toll-free telephone: 1-877-249-2782

Toll-free TTY: 1-877-909-2782

Secretary General

### Related documents

- *Regulatory relief for private Canadian broadcasters in the context of the COVID-19 pandemic*, Broadcasting Decision CRTC 2021-274, 12 August 2021
- *V Interactions inc. – Change in ownership and effective control*, Broadcasting Decision CRTC 2020-154, 19 May 2020
- *V Interactions inc. – Change in ownership and effective control*, Broadcasting Decision CRTC 2020-116, 3 April 2020
- *Corus Entertainment Inc. – Licence renewals for English-language television stations and services*, Broadcasting Decision CRTC 2017-150, 15 May 2017
- *Standard requirements for television stations, discretionary services, and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016
- *Revised standard conditions of licence for Canadian discretionary services operating as national news services*, Broadcasting Regulatory Policy CRTC 2015-436, 23 September 2015
- *Filing submissions for Commission proceedings in accessible formats*, Broadcasting and Telecom Information Bulletin CRTC 2015-242, 8 June 2015
- *Exemption order respecting discretionary television programming undertakings serving fewer than 200,000 subscribers*, Broadcasting Order CRTC 2015-88, 12 March 2015
- *Group-based licence renewals for English-language television groups – Introductory decision*, Broadcasting Decision CRTC 2011-441, 27 July 2011
- *Guidelines on the CRTC Rules of Practice and Procedure*, Broadcasting and Telecom Information Bulletin CRTC 2010-959, 23 December 2010
- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services – Regulatory policy*, Broadcasting Public Notice CRTC 2008-100, 30 October 2008
- *Determinations regarding certain aspects of the regulatory framework for over-the-air television*, Broadcasting Public Notice CRTC 2007-53, 17 May 2007