



## Broadcasting Public Notice CRTC 2006-136

Ottawa, 20 October 2006

### **Call for comments on proposed amendments to the Commission's policy on the distribution of previews, and to its regulations regarding the use of promotional channels by broadcasting distribution undertakings**

*In this public notice, the Commission requests comment on proposed amendments to its policy regarding free previews and to sections of the Broadcasting Distribution Regulations related to the use of promotional channels by broadcasting distribution undertakings.*

#### **Introduction**

1. The Commission's current policy with respect to the distribution of free previews is set out in *Amendments to the Commission's Policy concerning the distribution of free previews of Pay Television and Specialty Programming during major national broadcasting rating periods*, Public Notice CRTC 1998-73, 23 July 1998 (Public Notice 1998-73). The Commission's approach to the use of promotional channels is embodied in sections 19(n), 33(k) and 39(f) of the *Broadcasting Distribution Regulations* (the Regulations).
2. A number of changes with respect to the nature and number of services distributed by broadcasting distribution undertakings (BDUs) have occurred in the years since the preview policy was last revised and the above-noted sections of the Regulations were put into place, including the licensing and launching of Category 1 and Category 2 digital services and a significant increase in the number of non-Canadian services authorized for distribution on a digital basis. In light of these and other developments, the Commission considers that a review of its approach to previews and promotional channels is warranted.

#### **Previews**

3. Pursuant to the Commission's current preview policy set out in Public Notice 1998-73, BDUs choosing to distribute previews of pay and specialty programming services must adhere to the following requirements:
  - no preview may be distributed during major national broadcasting rating periods, such as those conducted by BBM and Nielsen, with the exception of a preview accompanying the initial launch of a newly-licensed pay television or specialty service;

- programming distributed during preview periods may only consist of programs that are part of the pay television or specialty programming services actually offered to subscribers;
- the scheduling and content of previews must meet the same rules and standards that currently apply to conventional broadcasters;
- the distribution of a preview must not cause the removal of any Canadian service that is currently being offered ; and
- previews may be distributed on the channel or channels normally used to distribute the service, or on any special programming or currently unused channel other than the community channel or the special programming channel used for the distribution of promotional material (commonly known as the barker channel).

4. The Commission's policy with respect to previews was first enunciated in *Pay Television Previews*, Public Notice CRTC 1984-1, 5 January 1984. In that notice, the Commission authorized pay television previews, for a period of one year, subject to certain conditions. This authorization was granted in response to applications by "general interest pay television network licensees, on behalf of their cable television affiliates." The authorization was made permanent and was extended to specialty services in *Previews of Canadian Pay Television and Specialty Programming Services*, *Stereo Audio Signals of Pay Television Services and of the Canadian Specialty Music Service*, Public Notice CRTC 1985-6, 10 January 1985.
5. Subsequently, in *Cable Distribution of Previews of U.S. Specialty Services*, Public Notice CRTC 1985-43, 7 March 1985, and in *Distribution of Television Previews*, Public Notice CRTC 1987-203, 11 September 1987 (Public Notice 1987-203), the Commission authorized cable BDUs to distribute previews of U.S. specialty services, again subject to certain conditions. However, no similar authority was ever extended to BDUs to distribute previews of other non-Canadian services, i.e., non-Canadian services originating from countries other than the United States.
6. The Commission notes that it has recently authorized a number of non-Canadian services originating from countries other than the United States, in particular, a number of third-language services have been authorized for distribution on a digital basis only. In the Commission's view, there are sound arguments in favour of authorizing BDUs to present previews of such services, whether those services are authorized for analog and digital distribution, or for digital distribution only, and whether or not the preview is presented on an analog or a digital channel. In this regard, the Commission notes that such previews of non-Canadian, non-U.S. digital services, especially when distributed on analog channels, could assist in the roll-out of digital technology and services, which is a longstanding Commission objective.

7. Further, the Commission generally requires that English- and French-language non-Canadian services be packaged with Canadian services in ratios of one to one and one to five (specialty services and pay services, respectively). In addition, pursuant to the approach established in *Improving the diversity of third-language television services – A revised approach to assessing requests to add non-Canadian third-language television services to the lists of eligible satellite services for distribution on a digital basis*, Broadcasting Public Notice CRTC 2004-96, 16 December 2004, non-Canadian third-language services are subject to “buy-through” and “must-offer” provisions, with respect to analog and Category 2 ethnic services, respectively. Thus, the promotion of services originating from countries other than Canada or the U.S. may offer the additional benefit of increasing penetration rates for Canadian programming services.
8. In light of the above, the Commission proposes to expand its preview policy to permit previews of authorized non-U.S., non-Canadian services on digital or analog channels, regardless of whether the services themselves are authorized for analog and digital distribution, or for digital distribution only.
9. The Commission’s preview policy predates the licensing of Category 1 and Category 2 services, i.e., those pay and specialty services licensed for digital distribution only pursuant to *Licensing framework policy for new digital pay and specialty services*, Public Notice CRTC 2000-6, 13 January 2006. Thus, Public Notice 1998-73 does not make explicit reference to such services. The Commission wishes to clarify that its current preview policy, as set out in Public Notice 1998-73, encompasses these Canadian digital services.

### **Previews on promotional channels**

10. As noted above, as a matter that is entirely separate from the Commission’s policy on previews, sections 19(n), 33(k) and 39(f) of the Regulations authorize BDU licensees to offer promotional (barker) channels.
11. With respect to Class 1 and Class 2 BDUs, section 19(n) states as follows:

19. Except as otherwise provided under a condition of its licence, if a licensee satisfies the requirements of sections 17 and 18, it may distribute in any licensed area ...

(n) any programming service that promotes a programming service distributed by the licensee and that meets the criteria set out in Public Notice CRTC 1995-172, entitled *Revision to the Commission’s Policy Governing the Distribution of Pay Television Promotional Material by Cable Television Licensees* ....
12. Sections 33(k) and 39(f) of the Regulations extend the same authorization to Class 3 licensees and direct-to-home (DTH) licensees, respectively.

13. In *Revision to the Commission's Policy Governing the Distribution of Pay Television Promotional Material by Cable Television Licensees*, Public Notice CRTC 1995-172, 12 October 1995 (Public Notice 1995-172), the Commission stated that its authorization to distribute pay television promotional material would be subject to terms and conditions requiring that:
- such material be limited to promotional programming, including previews, clips or trailers. No trailer shall exceed 10 minutes in duration and no full-length program shall be presented on this service;
  - access to this service be available on a non-discriminatory, equitable basis for the promotion of all pay and non-pay Canadian television services which a licensee is authorized to exhibit. In this respect, the Commission notes that the promotional material should be supplied to the licensee by the service's distributor or its agent;
  - at least 50% of the time devoted each month to promotional material be used for the promotion of Canadian programs or services and that the suppliers and distributors will co-operate to ensure that this requirement is met. The Commission expects that such promotional material will be scheduled in a balanced manner throughout each broadcast day;
  - no fees be charged for the exhibition of this promotional service.
14. The Commission notes that the ability of BDUs to use the promotional channel to preview either programs or services, whether Canadian or non-Canadian, analog or digital, is limited under the current Regulations. Among other things, Public Notice 1995-172 specifies that no full-length program is to be presented on this channel. This would preclude the previewing of a service in its entirety on the promotional channel, even for a limited period of time.
15. The Commission notes that, prior to the enactment of the current Regulations, BDUs were authorized to provide previews on promotional channels in limited circumstances. Specifically, in Public Notice 1987-203, the Commission authorized the distribution of previews on the promotional channel when no other special programming channel was available. This exception disappeared with the enactment of the current Regulations.
16. The Commission considers that it may be appropriate to again permit the distribution of previews on the promotional channel, but that it may also be appropriate to specify some limits or conditions with respect to such previews. In the Commission's view, with respect to analog distribution, permitting the distribution of previews on the promotional channel would appear to provide for a more efficient use of capacity than having them limited to distribution on other "special" or unused channels. The Commission notes that appropriate conditions might include a limit on the duration of the preview, a requirement that the explicit, prior consent of the programmer be obtained, or, with respect to promotional channels offered on a digital basis, the limitation set out in Public

Notice 1987-203, i.e., that previews be permitted on promotional channels only when no other special programming channel is available.

### **Call for comments**

17. In light of the above, the Commission requests comment on (a) its preliminary view that it would be appropriate to authorize previews of authorized non-Canadian services originating from countries other than the United States, and (b) whether it should permit previews of entire programs or services on the promotional channels authorized by sections 19(n), 33(k) and 39(f) of the Regulations, and if so, subject to what terms and conditions, if any.
18. Parties may also wish to provide comments on other changes with respect to previews and promotional channels that may be appropriate.
19. The deadline for the filing of comments is **20 November 2006**. 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 procedures for filing set out below have been followed.

### **Procedures for filing comments**

20. Interested parties can file their comments to the Secretary General of the Commission:
  - **by using the**  
[Broadcasting Intervention/Comments Form](#)
  - OR
  - **by mail to**  
CRTC, Ottawa, Ontario K1A 0N2
  - OR
  - **by fax at**  
819-994-0218
21. Submissions longer than five pages should include a summary.
22. Please number each paragraph of your submission. In addition, please enter the line \*\*\*End of document\*\*\* following the last paragraph. This will help the Commission verify that the document has not been damaged during transmission.

### **Important notice**

23. Note that all information that you provide as part of this public process, except information granted confidentiality, whether sent by postal mail, facsimile, e-mail or through the Commission's web site 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 web site. This information includes your personal information, such as your full name, e-mail address, postal/street address, telephone and facsimile number(s), and any other personal information you provide.
24. Documents received electronically or otherwise will be put on the Commission's web site in their entirety exactly as you send them, 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. The personal information you 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.
26. The Commission encourages interested parties to monitor the public examination file and the Commission's web site for additional information that they may find useful when preparing their comments.

### **Examination of public comments and related documents at the following Commission offices during normal business hours**

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Secretary General

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