



## Broadcasting Regulatory Policy CRTC 2009-560

Route reference: 2009-235

Ottawa, 4 September 2009

**Astral Media inc., BCE Inc., Bragg Communications Incorporated,  
Canadian Broadcasting Corporation, Canwest Media Inc., Cogeco Inc.,  
Corus Entertainment Inc., CTVglobemedia Inc., Newcap Inc., Quebecor  
Media Inc., Remstar Broadcasting Inc., Rogers Communications Inc.,  
Shaw Communications Inc. and their successors**

Across Canada

### **Public disclosure of aggregate financial data for owners of large broadcasting distribution undertakings, multi-system operators and conventional television and radio ownership groups**

*The Commission sets out its determinations on its proposal to publicly disclose aggregate financial data for owners of large broadcasting distribution undertakings, multi-system operators and conventional television and radio ownership groups.*

*The above-noted ownership groups will be required to file the confidential and public aggregated annual return forms identified in this policy with the Commission on or before 30 November of each year. Upon receipt of the public aggregated financial data, the Commission will post such data on its own website. The filing requirement for these confidential and public aggregated annual returns will begin with the 2007-2008 broadcast year, and the confidential and public aggregated returns for the 2007-2008 broadcast year must be filed on or before **14 September 2009**.*

#### **Introduction**

1. In Broadcasting Public Notice 2008-97, the Commission announced its determination to require the disclosure of aggregate financial data by owners of large broadcasting distribution undertakings (BDUs), multi-system operators (MSOs) and conventional television and radio ownership groups. The groups affected were Astral Media inc., BCE Inc., Bragg Communications Incorporated, the Canadian Broadcasting Corporation, Canwest Media Inc., Cogeco Inc., Corus Entertainment Inc., CTVglobemedia Inc., Newcap Inc., Quebecor Media Inc., Remstar Broadcasting Inc., Rogers Communications Inc., Shaw Communications Inc. and their successors.
2. The Commission's determination was the result of a public process initiated by Broadcasting Public Notice 2008-6 and Broadcasting Notice of Public Hearing 2007-10-1, in which it called for comments on its proposal to publicly disclose aggregate financial data for large ownership groups of conventional television and radio undertakings and for ownership groups of large BDUs and MSOs respectively.

3. In arriving at its determination, the Commission considered that because:
- increased consolidation has resulted in fewer but larger ownership groups controlling an increasing number of services across the Canadian broadcasting system,
  - advantages have accrued to these large ownership groups in terms of the increased vertical and horizontal integration that has resulted from this consolidation, and
  - the disclosure of the financial information of the large broadcasters will benefit the Canadian broadcasting system, as it will allow for better and more meaningful submissions from the public to the Commission's proceedings and ultimately better and more informed decisions,

the public interest would be best served by disclosing the annual returns of large BDUs and MSOs and of large conventional television and radio ownership groups in aggregate form by ownership group.

4. Following the issuance of Broadcasting Public Notice 2008-97, the majority of the affected ownership groups made written submissions expressing various concerns with the process and substance of the resulting policy on the disclosure of financial information.
5. The Commission determined that it would be in the public interest to initiate a further public process. Accordingly, in Broadcasting Notice of Consultation 2009-235, the Commission proposed revised reporting and disclosure requirements to respond to industry concerns and provided all interested parties with a full opportunity to comment on the revised requirements. The deadline for comments was 2 June 2009. The public record for this process, which includes the comments received with respect to Broadcasting Public Notice 2008-97, is available on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Public Proceedings."
6. Having reviewed the comments received in response to Broadcasting Notice of Consultation 2009-235, the Commission considers that the main issues to be addressed in its determinations are the following:
- Was the Commission justified in initiating a further process following the issuance of its determinations in Broadcasting Public Notice 2008-97?
  - Is the proposed disclosure consistent with the *CRTC Rules of Procedure* and the *Access to Information Act*?
  - What are the appropriate accounting principles to be used for the purposes of the proposed disclosures?
  - Does the public interest in disclosure clearly outweigh any financial loss or gain to a third party or the prejudice, if any, to the licensees' competitive position?

**Was the Commission justified in initiating a further process following the issuance of its determinations in Broadcasting Public Notice 2008-97?**

7. The Communications, Energy and Paperworkers Union of Canada submitted that the Commission should not have initiated a further process due to the principle of *functus officio*, whereby a tribunal's final decision cannot be reopened except to correct typographical errors or to correct an error in expressing the tribunal's manifest intention.
8. However, the Commission notes that the doctrine of *functus officio* governs decision-makers, not policy-makers. In the context of an administrative tribunal, once it has reached a final legally binding decision in respect of the matter that is before it in accordance with its enabling statute, that decision generally cannot be revisited. In the present case, the Commission is dealing with a regulatory policy. Therefore, the Commission had the right to revisit Broadcasting Public Notice 2008-97 with Broadcasting Notice of Consultation 2009-235.

**Is the proposed disclosure consistent with the *CRTC Rules of Procedure* and the *Access to Information Act*?**

9. Some parties questioned whether the proposed disclosure was consistent with the *CRTC Rules of Procedure* and the *Access to Information Act*. However, these parties did not provide rationale in support of their claim.
10. The Commission finds that disclosure to the extent set out in this regulatory policy is consistent with the *CRTC Rules of Procedure*. More specifically, such disclosure is consistent with the confidential information provision, which provides that the Commission may, at the request of an applicant and if the public interest will best be served by so doing, treat certain information as confidential. Where the Commission considers that it is not in the public interest to grant confidentiality, the information will be made public.
11. The Commission also finds that such disclosure is consistent with the *Access to Information Act* and with its purpose, which is, according to subsection 2(1) of the *Access to Information Act*, "to extend the present laws of Canada to provide a right of access to information in records under the control of a government institution [...]." Further, subsection 2(2) of the *Access to Information Act* provides that: "This Act is intended to complement and not replace existing procedures for access to government information." The Commission finds that disclosure to the extent set out in this regulatory policy could not reasonably be expected to result in material financial loss or gain to the affected BDUs, MSOs and conventional television and radio ownership groups and that the public interest in disclosure clearly outweighs in importance any financial loss or gain to a third party and any prejudice to its competitive position that could result from such disclosure.

**What are the appropriate accounting principles to be used for the purposes of the proposed disclosures?**

12. Comments were received indicating that aggregate financial data may be confusing where it is compared with information compiled on a basis other than Canadian generally accepted accounting principles (GAAP), such as US GAAP or International Financial Reporting Standards.
13. The Commission notes that the aggregate annual return forms are designed to provide uniform information filed by the various large ownership groups that would be in the public interest. To minimize the risk of confusion for the general public, aggregate financial data will be published on the Commission's website only, i.e. the original proposal that the large ownership groups be required to post this information on their website is removed.
14. The Commission expects that the aggregate financial data reported will be compiled on the basis of accounting principles used by the large ownership groups. Where the methodology used to compile the data is not in accordance with Canadian GAAP, it should be clearly identified in a manner consistent with Canadian accounting disclosure requirements.

**Does the public interest in disclosure clearly outweigh any financial loss or gain to a third party or the prejudice, if any, to the licensees' competitive position?**

15. Parties raised the following instances where they submitted that the proposed disclosure of aggregate data could result in a financial loss or gain to a third party or prejudice to the licensees' competitive position:
  - local and national radio advertising revenues;
  - separate reporting for French- and English-language operations;
  - staffing and salary levels by major activity category, i.e. programming and production, sales, administration;
  - program expenditures by category;
  - international payments and receipts segmented by country;
  - financial information on Internet and telephony services provided by BDUs;
  - profit before interest and taxes (PBIT) disclosure;
  - affiliation payments; and
  - individual payments in support of Canadian talent development (CTD) or Canadian content development (CCD).
16. The Commission notes that much of the information required to be disclosed in this regulatory policy is already publicly disclosed by some of the affected ownership groups.

### **Local and national radio advertising revenues**

17. The Commission considers that the aggregate disclosure of radio advertising revenues from national and local sources is in the public interest and will not result in a competitive disadvantage to the large ownership groups.

### **Separate reporting for French- and English-language operations**

18. The Commission considers that it would be in the public interest to require the large ownership groups to file separate aggregated financial data for their English- and French-language operations. In this context, the disclosure of aggregate financial data segmented by English- and French-language operations is in the public interest and will not result in a competitive disadvantage to the large ownership groups.
19. Where the disclosure of a group's public version of the aggregated annual return would result in the disclosure of the financial results of a group of three or fewer small conventional television or radio undertakings operating in the same language, the public version of the aggregated annual return of that ownership group will not be required for the group of same-language television or radio undertakings.

### **Staffing and salary levels by major activity category**

20. The Commission considers that the disclosure of aggregate staffing and remuneration data is in the public interest and will not result in a competitive disadvantage to the large ownership groups. However, the Commission recognizes that the distribution of staff and remuneration by activity may be sensitive. Accordingly, the required public aggregate financial data has been amended from what was proposed in Broadcasting Notice of Consultation 2009-235 to remove disclosure by activity segment.

### **Program expenditures by category**

21. Concerns were expressed by some parties over the publication of aggregate program expenditures for Canadian and non-Canadian programming by category.
22. The Commission considers that the disclosure of Canadian program expenditures by category on an aggregate basis is in the public interest as it demonstrates the level of investment in the various broadcasting categories by the large ownership groups.
23. The reporting of non-Canadian program expenditures is only required at the aggregate level as a total of all categories. The Commission considers the disclosure of non-Canadian program expenditures on this aggregate basis to be in the public interest as it demonstrates the level of such investment in comparison with the Canadian programming expenditures made by each of the large ownership groups. The Commission further considers that the risk that the disclosure of the above-noted information will be potentially harmful is diminished by the aggregate nature of this information and the fact that related details of proprietary contractual information will not be disclosed. Finally, the Commission is of the view that the public interest in such disclosure clearly outweighs any financial loss or gain to a third party or the prejudice, if any, to the licensees' competitive position.

### **International payments and receipts segmented by country**

24. Concerns were raised regarding the proposal to require the breakdown of international payments and receipts by specific country for each of the large ownership groups. This concern was based on the potential for competitive disadvantage where individual country information was disclosed.
25. The Commission has modified the aggregate public reporting requirement for international payments and receipts to minimize this risk while providing information on major broadcasting partner countries. The Commission is of the view that the public interest in such disclosure clearly outweighs any financial loss or gain to a third party or the prejudice, if any, to the licensees' competitive position.

### **Financial information on Internet and telephony services provided by BDUs**

26. The Commission considers that the disclosure of the financial information related to Internet and telephony activities provided by the BDUs is not necessary at this time.

### **Profit before interest and taxes disclosure**

27. Some parties expressed concern that the identification of PBIT was not a fair representation of financial performance, particularly because it does not recognize the cost of financing or debt service costs associated with the large ownership groups. This was of particular concern to the BDUs.
28. The Commission considers PBIT to be a comparable financial measure for the broadcasting and other activities being reported on by the large ownership groups. The additional disclosure of costs related to debt servicing would not contribute to the comparability of ownership groups from the perspective of broadcasting and other activities and is therefore not required.

### **Affiliation payments**

29. BDUs asserted that information on affiliation payments related to various activity segments forms the basis for competition within the industry and as such should be held confidential.
30. The Commission recognizes the competitive nature of affiliation arrangements. However, it notes that the relationship between BDUs and their affiliates on an aggregate basis is a matter of public interest. Accordingly, the Commission has modified the level of public disclosure of affiliation payments required in the aggregate financial data by removing the segmentation of affiliation payments by service type, i.e. pay and specialty. The Commission still requires the disclosure of the aggregate of total Canadian and non-Canadian affiliation payments. The Commission is of the view that the public interest in such disclosure clearly outweighs any financial loss or gain to a third party or the prejudice, if any, to the licensees' competitive position.

### **Individual payments in support of Canadian talent development or Canadian content development**

31. Large radio ownership groups were concerned about the public disclosure of payments relating to CTD and CCD, noting that the conditions of licence for each station specify their obligations in this regard.
32. The Commission considers that the disclosure of information on how such obligations are discharged by the large ownership groups is in the public interest as it demonstrates how the industry is contributing to the advancement of Canadian culture. The Commission considers that the risk that disclosure of this information will be potentially harmful is diminished by the aggregate nature of the information and the fact that related details of proprietary contractual information will not be disclosed. The Commission is further of the view that the public interest in such disclosure clearly outweighs any financial loss or gain to a third party or the prejudice, if any, to the licensees' competitive position.

### **Conclusion**

33. As stated in Broadcasting Notice of Consultation 2009-235, the Commission's policy objective with respect to the disclosure of financial information is to make available sufficient financial data from the large broadcast ownership groups so that the public can participate in the Commission's public proceedings and decision-making processes in a better informed and more meaningful manner. Submissions based on more complete disclosure will result in better and more informed Commission decisions and will ultimately benefit the Canadian broadcasting system. To achieve this goal, the Commission requires each of the ownership groups identified in this policy to file, on behalf of the licensed broadcasting undertakings within their respective groups, the financial data in respect of those licensed broadcasting undertakings that is set out in the applicable aggregated annual return forms identified below:
  - Aggregated Broadcasting Distribution Undertaking (BDU) Annual Return Form – Confidential
  - Aggregated Broadcasting Distribution Undertaking (BDU) Annual Return Form – Public
  - Aggregated Radio Annual Return Form – Confidential
  - Aggregated Radio Annual Return Form – Public
  - Aggregated Television Annual Return Form – Confidential
  - Aggregated Television Annual Return Form – Public

The electronic versions of these forms, which reflect the Commission's determinations in this regulatory policy, can be accessed through the links found above in the electronic versions of this document, which are available on the Commission's website.

34. The completed public version of the above-noted forms will be placed on the public file.

35. The Commission requires those ownership groups identified in this policy to file their aggregated annual returns, as applicable, in the manner described below:
  - i) for those groups with interests in both cable BDUs and direct-to-home satellite distribution undertakings, separate confidential and public group-level aggregated annual return forms for each type of undertaking;
  - ii) for those groups with interests in both television and radio undertakings, separate confidential and public group-level aggregate annual return forms for each type of undertaking; and
  - iii) for those groups with both English- and French-language services, separate confidential and public group-level aggregated forms for each language.
36. The confidential aggregated annual returns will be treated as confidential, while the completed public versions will be placed on the Commission's website.
37. Where disclosure of a group's public version of the aggregated annual return would result in the disclosure of the financial results of a group of three or fewer small conventional television or radio undertakings, the public version of the aggregated annual return of that ownership group will not be required.
38. For the purposes of completeness, the Commission requires the large ownership groups identified in this policy to file with the confidential aggregated annual return a reconciliation of the data reported in each of the individual annual returns for each licensed undertaking in the ownership group with the data filed in the confidential aggregated annual return. This will include identification of all undertakings used in compiling the aggregate return. This reconciliation will be treated as confidential.
39. The ownership groups for the large BDUs and MSOs will include BCE Inc., Bragg Communications Incorporated, Cogeco Inc., Quebecor Media Inc., Rogers Communications Inc. and Shaw Communications Inc. and their successors. The ownership groups for the large conventional television and radio undertakings will include Astral Media inc., the Canadian Broadcasting Corporation, Canwest Media Inc., Cogeco Inc., Corus Entertainment Inc., CTVglobemedia Inc., Newcap Inc., Quebecor Media Inc., Remstar Broadcasting Inc., Rogers Communications Inc., Shaw Communications Inc. and their successors.
40. The Commission may require additional ownership groups to file aggregated annual return data in the future as changes in the ownership and landscape of the broadcasting industry warrant.
41. The ownership groups identified in this policy will be required to file their confidential and public aggregated annual return forms with the Commission on or before 30 November of each year. Upon receipt of the public aggregated financial data, the Commission will post such data on its own website. The filing requirement for these confidential and public aggregated annual returns will begin with the 2007-2008

broadcast year, and the confidential and public aggregated returns for the 2007-2008 broadcast year must be filed on or before **14 September 2009**.

42. The Commission may from time to time modify the annual aggregate return forms to meet public disclosure needs consistent with the objectives and findings of this regulatory policy.

Secretary General

#### **Related documents**

- *Call for comments on the public disclosure of aggregate financial data for owners of large broadcasting distribution undertakings, multi-system operators and conventional television and radio ownership groups*, Broadcasting Notice of Consultation CRTC 2009-235, 28 April 2009
- *Disclosure of aggregate financial data for large broadcasting distribution undertakings and over-the-air television and radio ownership groups – Regulatory policy*, Broadcasting Public Notice CRTC 2008-97, 21 October 2008
- *Call for comments on the public disclosure of aggregate financial data for large ownership groups of over-the-air television and radio broadcasters – Notice of Consultation*, Broadcasting Public Notice CRTC 2008-6, 15 January 2008
- *Review of the regulatory frameworks for broadcasting distribution undertakings and discretionary programming services*, Broadcasting Notice of Public Hearing CRTC 2007-10-1, 12 September 2007

*This document is available in alternative format upon request and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>.*