



Broadcasting Notice of Consultation CRTC 2011-791

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Ottawa, 19 December 2011

Call for comments on audit provisions for broadcasting distribution undertakings and on a standard form non-disclosure agreement

As announced in its regulatory framework relating to vertical integration set out in Broadcasting Regulatory Policy 2011-601, the Commission is seeking comments on:

- *the timeframes and other modalities with respect to the conduct of audits; and*
- *the wording for a standard form non-disclosure agreement, and to whom such agreements should apply.*

*The deadline for submitting comments is **15 February 2012**. The deadline for submitting replies is **6 March 2012**.*

Introduction

1. In its regulatory framework relating to vertical integration set out in Broadcasting Regulatory Policy 2011-601, the Commission announced, among other things, that it would initiate follow-up proceedings to:
 - develop timeframes and other modalities with respect to the conduct of audits; and
 - develop wording for a standard form non-disclosure agreement as well as determine to whom such agreements should apply.
2. The Commission hereby seeks comments on these two matters and on whether the provisions with respect to the conduct of audits should be made generally applicable to all broadcasting distribution undertakings (BDUs).

Annual audits of subscribers

3. As noted in Broadcasting Regulatory Policy 2011-601, the conduct of audits remains a concern for a number of industry participants. Their concerns relate to delays encountered when a request for an audit is submitted to a vertically integrated (VI) BDU to obtain subscriber information for their programming services and the selection of an auditor to secure the appropriate information from the BDU.

4. In Broadcasting Public Notice 2005-34, the Commission established a set of general guidelines related to the auditing of BDU subscriber information to ensure that programming services obtain reasonable access to information regarding subscribers to their services. These guidelines provided broad guidance with respect to the selection of the auditor, scope of information audited, timeframes for the conduct of audits, confidentiality of information and the resolution of discrepancies found in audits. However, in light of the concerns expressed by parties with respect to the conduct of audits, the Commission announced, in Broadcasting Regulatory Policy 2011-601, that it would launch a follow-up proceeding to explore the specific provisions regarding audits that would be applicable to VI BDUs.
5. Accordingly, the Commission invites comments on what timeframes and other modalities with respect to the conduct of audits should be made applicable to VI BDUs and whether these modalities should be made generally applicable to all BDUs. While not limiting the scope of comments, parties should address the following matters:
 - the standard information to be provided by BDUs to programming services annually, and on receipt of an audit request;
 - the format of the information on which the auditor's opinion will be sought;
 - the modalities of the audit process itself, particularly step-by-step timeframes for the conduct and completion of audits; and
 - the method and timeframe by which auditors will be selected by parties and possible disputes resolved.
6. Following the conclusion of this proceeding, the Commission will determine the appropriate audit provisions to be made applicable to VI BDUs and whether or not such provisions should be extended to all BDUs.

Standard form non-disclosure agreements

7. As noted in Broadcasting Regulatory Policy 2011-601, a number of parties to the vertical integration proceeding expressed concern that VI entities would have opportunities to gain a competitive advantage through the sharing and use of information obtained over the course of negotiations or other interaction between programming services and the BDUs that distribute those services. Such interactions usually include disclosure of matters deemed competitively sensitive by one or both parties, such as pricing, subscriber numbers, packaging, and marketing and business plans.
8. In Broadcasting Regulatory Policy 2011-601, the Commission determined that strong measures need to be in place to prevent the inappropriate use of competitively sensitive information generally, and particularly in the case of VI entities. It concluded that a properly framed non-disclosure agreement, which

minimizes the level of intrusion in the business functions of the VI entity, is the appropriate method to protect against the misuse of confidential information.

9. The Commission indicated that it would launch a follow-up written process to develop a record on exactly what needs to be included in non-disclosure agreements and to whom such agreements should apply, with the objective of establishing a standard form non-disclosure agreement.
10. Accordingly, the Commission invites interested persons to submit draft non-disclosure agreements, along with supporting rationale for why the specific provisions set out in the draft are necessary and sufficient to protect against the sharing and misuse of confidential information.
11. Without limiting the scope of their comments, parties should address the following matters as they relate to non-disclosure agreements:
 - format (e.g. who should sign the agreement);
 - carriage information;
 - packaging and marketing plans in advance of finalizing contracts;
 - discussions around business plans for certain systems;
 - subscriber numbers;
 - affiliation payments for each service;
 - serving technology (analog or digital) by system;
 - individual tier penetration by system;
 - subscriber wholesale rates by system; and
 - bulk discounts by system, and/or discounts and promotional allowances.
12. Following the conclusion of this proceeding, the Commission will determine the appropriate content and applicability of non-disclosure agreements and take measures to implement its determinations.

Procedure

13. The Commission invites interventions that address the matters set out above. The deadline for filing interventions is **15 February 2012**. Parties may file with the Commission by **6 March 2012**.
14. 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 as well as 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."

15. 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.
16. 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

17. Submissions longer than five pages should include a summary.
18. Each paragraph of the submission should be numbered. In addition, where the intervention 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

19. 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.

20. 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.
21. 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.
22. 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.
23. 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

24. 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.
25. 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
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

2220 – 12th Avenue
Suite 620
Regina, Saskatchewan
S4P 0M8
Tel.: 306-780-3422

100 – 4th Avenue South-West
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Calgary, Alberta
T2P 3N2
Tel.: 403-292-6660
Fax: 403-292-6686

858 Beatty Street
Suite 290
Vancouver, British Columbia
V6B 1C1
Tel.: 604-666-2111
Fax: 604-666-8322

Secretary General

Related documents

- *Regulatory framework relating to vertical integration*, Broadcasting Regulatory Policy CRTC 2011-601, 21 September 2011
- *Auditing of distributor subscriber information by programming services*, Broadcasting Public Notice CRTC 2005-34, 18 April 2005