



Broadcasting Notice of Consultation CRTC 2014-190-3

PDF version

Additional references: 2014-190, 2014-190-1 and 2014-190-2

Ottawa, 21 August 2014

Notice of hearing

8 September 2014
Gatineau, Quebec

Let's Talk TV

Working document for discussion

In Broadcasting Notice of Consultation 2014-190, which announced the public hearing for the Let's Talk TV conversation, the Commission stated that it would publish an additional document in August 2014 that would set out areas for exploration during the oral phase of the hearing, based on the comments received.

After reviewing the submissions that Canadians have made, the Commission is providing a working document setting out various proposals for the future regulation of the Canadian television system as the appendix to this notice. The inclusion of certain proposals in the working document should not be seen as an indication that the Commission has made up its mind on any issue or that it prefers one option over another. The document is intended only to provide parties with a possible model and to stimulate discussion and debate.

The document is in the form of a table. Themes are identified in the left column. The middle column sets out proposals. The column on the right describes the implications of the proposals for Canadians.

In considering the working document, the Commission invites parties to address the following questions as they relate to each of the policy approaches set out therein:

- What would be the appropriate timeframe for the implementation of the policy approach, and why?
- How can the Commission ensure that the policy approach is adaptable so that it can be sustainable and effective over time, taking into account, in particular, the evolving technological and economic landscape?
- In the event that a party supports an alternative to any of the proposals in the working document, what are the appropriate timeframes for the implementation of these approaches? How can they be adaptable so as to remain sustainable and

effective over time, taking into account, in particular, the evolving technological and economic landscape?

To facilitate the further engagement of Canadians, the Commission is extending the deadline for the second phase of the online discussion forum for this proceeding. To submit comments on the working document, Canadians may participate in the online discussion forum, which will run from **today until 19 September 2014**, the last day of the public hearing.

Following the online discussion forum, transcripts will be available on the Commission's website at www.crtc.gc.ca. The record of the online discussion forum will be made part of the record of this proceeding.

Issues for discussion at the public hearing

A wide range of issues will be addressed as part of this process. However, after reviewing the submissions, the Commission considers that the issues set out below, in particular, require a more complete record. It will therefore focus its questioning on the following issues at the public hearing:

- Maximizing choice and flexibility (pick and pay)
- Relationships between broadcasting distribution undertakings and programmers
- Ways to foster local programming, including a regulatory model for conventional television
- Ways to foster compelling Canadian programming, including program production, promotion, exhibition and Canadian programming expenditures

Parties may address whatever issues they consider appropriate in their presentations.

Dates for filing documents after the public hearing

During the public hearing, the Commission may accept or require undertakings by appearing parties to file additional material. Parties must file such material by **19 September 2014**, the last day of the hearing, by 5 p.m. Vancouver time.

The Commission will also provide parties that have filed interventions to this proceeding with the opportunity to file final written submissions. Such submissions must be limited to comments on the working document set out below, submissions made during the online discussion forum, and submissions made during the public hearing. Final submissions must not exceed 15 pages, including an executive summary, and be filed no later than **3 October 2014**.

Secretary General

Appendix to Broadcasting Notice of Consultation CRTC 2014-190-3

WORKING DOCUMENT FOR DISCUSSION

CHOICE AND FLEXIBILITY « A healthy and dynamic retail market »

Theme	Proposal	What this means for Canadians
1. Small Basic	<p>Option A: Broadcasting distribution undertakings (BDUs) would be required to offer a small basic service that includes only: local Canadian stations, all 9(1)(h) services, educational services, and, if offered, the community channel and the provincial legislature.</p> <p>The small basic service would be promoted in an equivalent manner to other packages.</p>	<p>Canadians would be able to purchase a small basic cable or satellite package that includes a limited number of Canadian-only channels.</p> <p>This package would include their local stations, and if offered, a community channel and a provincial legislature channel. It would also include Canadian channels that fulfill important policy objectives under the <i>Broadcasting Act</i>.</p> <p>It wouldn't be necessary to buy any other channels.</p>
	<p>Option B: BDUs would be required to offer a basic service that would include: local Canadian stations, all 9(1)(h) services, educational services, and, if offered, the community channel and the provincial legislature, and any other services selected by the BDU.</p> <p>The retail price of basic would be capped at one of the following prices:</p> <p>\$20 \$25 \$30</p> <p>The basic service would be promoted in an equivalent manner to other packages.</p>	<p>Canadians would be able to purchase an affordable basic cable or satellite package for a set price between \$20 and \$30. This package would include their local stations, and if offered, a community channel and a provincial legislature channel. It would also include Canadian channels that fulfill important policy objectives under the <i>Broadcasting Act</i>, as well as any other channels that their cable or satellite provider chooses to offer.</p>

Theme	Proposal	What this means for Canadians
2. Pick and Pay	BDUs would be required to allow subscribers to select all discretionary services on a standalone (pick-and-pay) basis.	Canadians would be able to choose the discretionary television channels they receive from their cable or satellite television providers on an individual basis.
3. Build-your-own package	BDUs would be required to allow subscribers to build their own custom packages of discretionary programming services (BYOP). BDUs could still offer pre-assembled packages.	Canadians would be able to build their own packages made up of channels that they choose. Canadians who like the convenience of pre-assembled packages could continue to benefit from this option.
4. Simultaneous Substitution	Option A: BDUs would no longer be permitted to perform simultaneous substitution.	Canadians would be able to watch all non-Canadian programs, such as the Super Bowl, with American advertisements.
	Option B: BDUs would not be permitted to perform simultaneous substitution for live event programming (e.g., a sporting event or an awards show).	Canadians would be able to watch live events, including sporting events such as the Super Bowl, with American advertisements.
5. Preponderance	Option A: BDUs would be required to ensure that each subscriber <i>receives</i> a preponderance of Canadian services.	Subscribers to cable or satellite television providers would have to receive more Canadian channels than non-Canadian channels.
	Option B: BDUs would be required to <i>offer</i> a preponderance of Canadian services	Cable and satellite television providers would have to offer more Canadian than non-Canadian channels. However, subscribers would ultimately choose how many Canadian or non-Canadian channels to which they subscribe.

BDU-PROGRAMMER RELATIONSHIP “A healthy and dynamic wholesale market”

Theme	Proposal	What this means for Canadians
<p>6. Affiliation agreement issues that impact the ability of BDUs to offer more choice</p>	<p>The Vertical Integration Code of Conduct (VI Code) would be expanded to prohibit certain provisions that impede a BDU’s ability to offer a pick and pay option on an affordable basis, i.e., unreasonable penetration-based rate cards, requirements to distribute a service on the same terms as at a prior date, most favored nation (MFN) provisions.</p>	<p>This would ensure that negotiations between television providers and Canadian programmers are conducted fairly so that Canadians are able to choose only the discretionary television channels that they want.</p>
<p>7. Access for non-vertically integrated (VI) programming services</p>	<p>The VI Code would be expanded to include provisions that would ensure access for non-VI services to the system, i.e., BDUs would have to facilitate and not impose unreasonable conditions on the ability of independent programming services to pursue multi-platform programming strategies.</p> <p>For every two related services that it distributes, a VI BDU would have to distribute at least one non-VI service in the same language (2:1 linkage).</p>	<p>This would ensure that negotiations between large broadcasting companies and independent broadcasters are conducted fairly so that Canadians would continue to have access to the diverse array of programming that independent television channels bring to the Canadian broadcasting system.</p>
<p>8. Dispute resolution and the VI Code</p>	<p>All VI undertakings would have to abide by the VI Code as a regulatory requirement.</p> <p>If they have not renewed an affiliation agreement with a non-VI service within 120 days of its expiry, VI undertakings would be required to submit to dispute resolution.</p>	<p>This is another measure to ensure that Canadians continue to have access to the diverse array of programming that independent broadcasters bring to the Canadian broadcasting system.</p>

Theme	Proposal	What this means for Canadians
9. Distribution of non-Canadian programming services	<p>The current approach to authorizing non-Canadian services for distribution in Canada would be maintained.</p> <p>As a condition of authorization, non-Canadian services would have to agree to abide by the VI Code and submit to the Commission's dispute resolution mechanisms, including undue preference.</p>	<p>Canadians would continue to have access to non-Canadian channels, as they do now.</p>

CANADIAN PROGRAMMING “A renewed national programming strategy”

Theme	Proposal	What this means for Canadians
<p>10. Redefining broadcasting revenues (French and English markets)</p>	<p>The definition of broadcasting revenues for licensees would be revised to include revenues from programming offered online or on other exempt platforms.</p> <p>Broadcasters would be allowed to count towards Canadian programming expenditures (CPE) their expenditures on original online only programming.</p>	<p>For the first time, broadcasters would be allowed to count what they spend on original programming that they produce for the Internet towards what they are required to spend on Canadian programming overall. This would encourage broadcasters to make more Canadian content online.</p>
<p>11. Programs of National Interest (PNI) (French and English markets)</p>	<p>The percentage of revenues dedicated to the funding of PNI would be maintained.</p> <p>For the largest private broadcast groups:</p> <ul style="list-style-type: none"> • PNI contributions range from a minimum of 5% to up to 9% of revenues; • 75% of PNI must be allocated to independent production <p>CBC English-language television would continue to broadcast a minimum of nine hours per week of PNI in prime time, averaged over the broadcast year.</p> <p>Given the specific circumstances of the French-language market, existing requirements regarding the level of PNI would be maintained at current levels and would be re-examined during the licensees’ licence renewal.</p> <p>Children’s programming would be included in the definition of PNI.</p>	<p>Broadcasters would still have to spend a portion of their revenues on certain types of Canadian programs such as dramas like <i>Orphan Black</i>, <i>Lost Girl</i>, <i>Unité 9</i> and <i>La Galère</i>, long-form documentaries such as <i>W5</i> and <i>Museum Secrets</i>, as well as music and variety shows. They would also be encouraged to spend a portion of this revenue on children’s programming. This policy would ensure that consumers have access to programming for Canadians made by Canadians.</p>

Theme	Proposal	What this means for Canadians
12. Programming requirements (French and English markets)	<p>All licensed television stations and specialty and pay services would be subject to CPE requirements.</p> <p>The group-based licensing approach would be maintained and CPE levels would be adjusted initially to maintain the current level of dollar expenditures. CPE would increase over the licence term. CPE levels would be determined at licence renewal.</p> <p>Exhibition requirements for the broadcast day would be eliminated, but evening period requirements would be maintained.</p>	<p>All licensed TV stations and specialty and pay channels would contribute financially to the production of Canadian programs. However, they could continue to take advantage of the efficiencies available by being members of a large broadcasting group.</p> <p>Their financial contributions to Canadian programs would increase over time.</p> <p>Requirements to show Canadian programs during the day would be lifted. Canadian programs must still be shown in the evening. This means that Canadian programs would still be available during the time of day when most Canadians watch television while reducing program repeats.</p>
13. Genre protection (French and English markets)	<p>The genre exclusivity policy and protections for Category A pay and specialty services would be eliminated. Specialty services would no longer have a regulated nature of service, but would be fully competitive and subject to standard requirements. These services would no longer have access rights.</p>	<p>Consumers would be able to choose from a number of Canadian channels that cater to specific tastes on a variety of topics from various sources. This would help ensure that programming is created to appeal to consumers' varied interests, and give creators the flexibility to come up with innovative and entertaining content.</p>
14. Licensing criteria for Category C national news services	<ul style="list-style-type: none"> • In addition to the current licensing criteria for Category C news specialty services, the Commission would introduce new obligations in order to ensure high-quality news programming. The obligations would include the following: • An average of 16 hours per day of original news coverage 7 days a week; • A commitment that programming would be drawn exclusively from news and 	<p>The Commission would introduce criteria that an applicant would have to meet to be licensed as a national news channel. This would ensure that Canadians have access to quality news programming that provides them with a reasonable opportunity to be exposed to the expression of differing views on matters of public concern.</p>

Theme	Proposal	What this means for Canadians
	<p>current affairs programming.</p> <p>In addition, applicants would have to demonstrate that:</p> <ul style="list-style-type: none">• They have a proven track record in producing high quality news programming;• There is evidence of demand in the market for an additional national news service; and• The proposed service would bring additional programming diversity to the national news landscape.	

Theme	Proposal	What this means for Canadians
<p>15. Audience Measurements</p>	<p>The industry would be required to establish a working group to work cooperatively to develop a set-top box (STB) based audience measurement system, which would include technical standards, privacy protections, governance structure and cost sharing.</p> <p>The working group would be established within 3 months of the date of the decision on the Let's Talk TV proceeding and report back to the Commission within eight months with a progress report. The report would set out the working group's accomplishments (including a concrete model for the establishment of an STB-based audience measurement system which addresses, among other things, the data to be collected, a governance structure, privacy protocols and a system for addressing the funding and cost recovery).</p>	<p>By having more information about what programs are being watched, broadcasters would be able to better serve Canadian viewers through the programming that they offer.</p> <p>This would be done with due regard to the privacy of Canadians.</p>

LOCAL PROGRAMMING “A viable local presence”

Theme	Proposal	What this means for Canadians
<p>16. Licensing regime for over-the-air stations</p>	<p>Local stations would be permitted to shut down transmitters.</p> <p>Service areas would be designated according to the contours of the former transmitter.</p> <p>Local stations without transmitters would continue to be distributed on the basic service and be subject to the current weekly local programming requirements.</p> <p>BDUs would not be required to pay a wholesale fee for these local stations.</p> <p>Local stations without transmitters would continue to be allowed to share CPE and PNI within the same licence group.</p>	<p>Local stations would no longer have to operate transmitters. This would reduce some costs for struggling local stations so that they can continue to offer Canadians a local presence in their communities.</p>
<p>17. Community programming</p>	<p>The current regulatory requirements for community programming would continue to apply. As set out in its three-year plan, the CRTC would assess the ongoing effectiveness of the Community Television Policy in 2015-16.</p>	<p>Canadians would be provided with the same level and quality of community programming as they are now.</p>

TELEVISION PROGRAMMING AVAILABLE TO ALL CANADIANS “Accessible and diverse content for all Canadians”

Theme	Proposal	What this means for Canadians
<p>18. Official language minority communities</p>	<p>The current requirement for all licensed terrestrial BDUs to distribute one minority-language discretionary service, where licensed, for every ten majority-language services they distribute would be maintained. This rule would be extended to direct-to-home (DTH) providers.</p>	<p>Canadians living in official language minority communities would continue to have access to television channels in their official language.</p>
<p>19. Third-language services</p>	<p>The buy-through requirement with respect to Category A third-language services would be eliminated. BDUs would be required to offer one Canadian third-language service (if one exists) for each non-Canadian third-language service it offers. The licensing of ethnic and third-language services would be streamlined by the creation of one type of licence for both Category A and B ethnic and third-language services and by harmonizing the requirements, including CPE requirements.</p>	<p>Currently, consumers must first subscribe to Fairchild TV, Telelatino, Talentvision, Asian Television Network or Odyssey if they want to subscribe to any other Canadian or non-Canadian channel in the same language, i.e., Cantonese, Italian, Spanish, Mandarin, Hindi and Greek. Eliminating this requirement would make all types of ethnic and third-language channels generally more accessible and affordable for Canadians. Canadians, especially members of multicultural communities, would have access to more programming of particular relevance to them.</p>

Theme	Proposal	What this means for Canadians
<p>20. Availability of Described Video (DV)</p>	<p>The amount of DV would be increased through a requirement that by the end of the next licence term:</p> <ul style="list-style-type: none"> • Broadcasters that are currently subject to DV requirements, as well as those that are part of a VI group, are required to provide DV for programming aired between 7 p.m. and 11 p.m. (prime time) that could be described based on existing program categories for DV. • All licensed broadcasters, including educational broadcasters, are required to provide four hours of DV per week, consistent with the existing DV requirement. <p>As part of this approach, the obligation to ensure that two of the four hours of DV are original to the service would be eliminated.</p> <p>Exempt services that are not part of a VI group would not be subject to the new DV requirements.</p>	<p>Availability of described video would be ramped up to encompass all suitable programming during prime time (7 p.m. to 11 p.m.).</p>
<p>21. Accessibility of hardware</p>	<p>BDUs' compliance with existing customer service requirements with respect to accommodating subscribers with disabilities would be assessed. In addition, BDUs would be required to ensure that:</p> <ul style="list-style-type: none"> • subscribers are able to identify programming with DV in the electronic programming guide; and • set-top boxes, where available for procurement, are accessible to subscribers with vision and fine motor skill disabilities. These should include accessibility features such as set and forget, and activation of DV with a single button click. 	<p>Set top boxes that are accessible to users (e.g., those who are blind or partially sighted) would be offered as they become available.</p> <p>The Commission would review customer service practices to ensure that all Canadians are well served.</p>

Theme	Proposal	What this means for Canadians
<p>22. Closed Captioning (CC) online</p>	<p>Broadcasters would be expected to ensure that, when linear programming that includes CC is broadcast over digital media, the CC is included in the non-linear version.</p> <p>The existing approach with respect to the quality of CC would be maintained. Members of the French- and English-language working groups would be asked to report on the status of their ongoing work related to quality standards and the timing of their new proposals.</p>	<p>More content aired with closed captioning on television would be accessible online.</p> <p>Ongoing developments by the closed captioning working groups would be examined to ensure that users of closed captioning are being well served.</p>

CONSUMER INFORMATION AND RECOURSE “An informed and empowered consumer”

Theme	Proposal	What this means for Canadians
<p>23. BDU Code</p>	<p>A new BDU Code would govern the relationship between BDUs and their subscribers, consistent with applicable provisions of the Wireless Code such as contract clarity, notice of changes to contract terms, and cancellation fees.</p> <p>The BDU Code would also ensure that subscribers are notified of changes in the packaging and genres of the programming services to which they subscribe.</p> <p>The BDU Code would also be consistent with the provisions of the Cable Television Customer Service Standards and the Digital Competitive Services Standards (for DTH undertakings) relating to customer service standards and complaints procedures.</p>	<p>Canadians would benefit from more consistent customer service. They would be equipped with greater knowledge about their contracts and bills and how to make complaints. As a result, they would be able to make more informed choices about the channels they receive.</p>
<p>24. Ombudsman</p>	<p>In addition to companies’ internal ombudsmen, an industry-wide ombudsman would be appointed to adjudicate the BDU Code.</p>	<p>The ombudsman would oversee the BDU Code and make sure that it is followed. Consumers would be able to take their complaints to this ombudsman.</p>

STREAMLING THE REGULATORY REGIME “A forward-looking regulatory regime”

Theme	Proposal	What this means for Canadians
<p>25. Expanding the BDU exemption order</p>	<p>The exemption order for terrestrial BDUs would be broadened to allow BDUs with fewer than 20,000 subscribers to enter and compete in markets with licensed BDUs.</p> <p>Undertakings that qualify for exemption would be required to notify the Commission by letter no later than three months prior to commencing operations in the new service area. This letter, which would be posted on the Commission’s website, would contain relevant information regarding the operation of the undertaking, including a distribution grid(s).</p>	<p>This would allow more distributors to compete in larger markets without first having to get a licence, thereby providing Canadians with a greater choice of television providers.</p>
<p>26. Eliminating rules with respect to analog distribution</p>	<p>The rules regarding the distribution of BDUs’ programming services on an analog basis would be streamlined by eliminating existing rules and replacing them with:</p> <p>Option A: an overall requirement to distribute predominantly Canadian services.</p> <p>Option B: an obligation to distribute on the basic service only those Canadian priority services currently being carried on an analog basis.</p> <p>Option C: a provision that grandfathers the distribution of services currently carried on basic.</p>	<p>Canadians that wish to receive analog cable service would be able to do so for the foreseeable future.</p> <p>The vast majority of Canadians do not receive their television services through this older technology.</p>

Theme	Proposal	What this means for Canadians
<p>27. Discretionary programming services exemption orders</p>	<p>The exemption order related to third-language programming services would be expanded to eliminate exclusions for particular languages.</p> <p>The Category B exemption order would be expanded to include all discretionary services that serve fewer than 200,000 subscribers.</p>	<p>Currently, most third-language channels do not require a broadcasting licence. The exemption order would be expanded to include <i>all</i> third-language channels.</p> <p>Expanding the exemption orders would make it easier for broadcasters to launch new discretionary channels in English, French and many other languages to serve consumers.</p>
<p>28. Consolidation of programming services licences</p>	<p>The following new programming service categories would be established, based on their distribution by BDUs:</p> <ol style="list-style-type: none"> 1. Basic services (current television stations and provincial educational services). 2. Discretionary services (current specialty and pay Category A, B and C services. Services granted a 9(1)(h) order requiring their distribution on basic would continue to be offered on basic, but would be licensed as discretionary services). 3. On-demand services (current video-on-demand and pay-per-view services). 	<p>Programming service licences would now be divided into three distinct categories. This would simplify the regulation of these channels but won't affect the programming.</p>

Other matters

Theme	Proposal	What this means For Canadians
29. Implementation	The regulatory framework set out above would come into force on 15 December 2015.	Canadians would know exactly when these new rules will come into force.