



Broadcasting Notice of Consultation CRTC 2014-190

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Ottawa, 24 April 2014

Notice of hearing

8 September 2014
Gatineau, Quebec

Let's Talk TV

Deadline for submission of interventions/comments: 25 June 2014

[\[Submit an intervention/comment/answer or view related documents\]](#)

The Commission launches Phase 3 of Let's Talk TV: A Conversation with Canadians. Phase 3 is a formal review of the television system that draws on the issues and priorities identified by Canadians in Phases 1 and 2. It will include an oral public hearing that will begin on 8 September 2014. In this notice, the Commission

- *provides background information on the Canadian television broadcasting system;*
- *requests information regarding trends and future developments in television; and*
- *discusses and calls for comment on various issues and, in some cases, possible approaches for a revised framework for the television system.*

The issues are organized according to three public interest outcomes:

- *A Canadian television system that fosters choice and flexibility in selecting programming services*
- *A Canadian television system that encourages the creation of compelling and diverse Canadian programming*
- *A Canadian television system that empowers Canadians to make informed choices and provides recourse mechanisms in the case of disputes*

*The deadline for filing comments is **25 June 2014**. Complete information about how to file can be found at the end of this notice.*

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Introduction

1. The Commission will hold a hearing commencing on **8 September 2014 at 9 a.m. at the Conference Centre, Phase IV, 140 Promenade du Portage, Gatineau, Quebec**, to consider the matters discussed below.
2. Although the public hearing will be held in Gatineau, Quebec, parties may participate from the Commission's regional offices via videoconference. Parties interested in doing so are asked to indicate, at the time they file their interventions, the regional office where they wish to appear. A list of the Commission's regional offices is included in this notice. In addition, the Commission may provide Skype, videoconference or teleconference links to other locations should it receive requests to do so.
3. On 24 October 2013, the Commission launched a conversation with Canadians about the future of television.
4. The Commission established a conversation consisting of three phases, two of which are now complete. During Phase 1, the Commission sought comments from Canadians on what they think about their television system. The Commission received over 1,300 comments through various channels (e-mail, an online discussion forum, fax, mail, an online form and a 1-800 number). The Commission also received 26 "Flash!" Conference¹ reports from consumer groups, industry associations, schools and universities.
5. During Phase 2, Canadians were invited to fill out the Let's Talk TV: Choicebook. This interactive questionnaire was developed using the comments that the Commission received during Phase 1. In the questionnaire, the Commission asked Canadians to consider possible scenarios that certain changes to the television system could bring about and to weigh some of the difficult choices that may be addressed in the present proceeding. The scenarios were designed to give Canadians an opportunity to think about how the various needs and interests of other Canadians may relate to their own, while keeping in mind the Commission's mandate. More than 7,500 people completed the Choicebook.
6. The content of the Let's Talk TV conversation with Canadians to date is available on the Commission's website and includes the following:
 - [*Let's Talk TV: A report on comments received during Phase I;*](#)
 - [*Reports from "Flash!" Conferences received during Phase I;*](#)
 - [*Let's Talk TV: A conversation with Canadians – Quantitative Research Report*](#) (the Quantitative Research Report), public opinion research conducted by Harris/Décima; and

¹“Flash!” Conferences were group discussions organized by Canadians to discuss the future of television in Canada. The host of each “Flash!” conference submitted a report on the group's discussion.i

- Let's Talk TV: Choicebook, research conducted by Hill+Knowlton Strategies (results to be available on the Commission website shortly).
7. Today, the Commission launches Phase 3, a formal review of the Commission's policy approach to the television system that draws on the issues and priorities identified by Canadians in Phases 1 and 2.
 8. In this notice, the Commission:
 - provides background information on the Canadian television broadcasting system;
 - requests information regarding trends and future developments in television; and
 - discusses and calls for comment on various issues and, in some cases, possible approaches for a revised framework for the television system.
 9. In *Maximizing the ability of Canadian consumers to subscribe to discretionary services on a service-by-service basis* (the Report), also issued today, the Commission sets out its response to Order in Council 2013-1167. The Order in Council requested that the Commission report on how the ability of Canadian consumers to subscribe to pay and specialty television services (also known as discretionary services) on a service-by-service basis can be maximized in a manner that most appropriately furthers the implementation of the objectives of the *Broadcasting Act* (the Act). In its response, the Commission set out its proposed approach and indicated that such an approach would be examined as part of the Let's Talk TV proceeding. Questions on this matter are included in this notice.
 10. The deadline for filing comments is **25 June 2014**. Complete information about how to file can be found at the end of this notice. The Commission requests that, whenever possible, parties provide evidence in support of whatever comments or proposals they may make. The questions in this notice are numbered, and the Commission asks that parties identify the number of the questions to which they are responding. The Commission also encourages parties and interested persons to monitor the record of the proceeding, available on the Commission's website, as additional information could be added that they may find useful in preparing their submissions. In addition, the Commission may ask parties to respond to additional questions. These questions and the responses will be placed on the public record. Public interest and consumer groups that need help with the cost of participating in this proceeding can apply to the Broadcasting Participation Fund. For more information on this Fund please see www.bpf-fpr.ca.
 11. To focus discussion and debate during the oral phase of the public hearing, the Commission expects to publish an additional document in August 2014 that will set out areas for exploration at the hearing based on the comments received.

The current broadcasting environment

The Canadian television system today

12. The Canadian television system is a thriving industry that directly employs almost 60,000 people. This system offers a wide range of over 700 Canadian and non-Canadian services.² These services operate in multiple languages and in a wide array of fields from drama, music and sports to news and documentaries.
13. The Canadian television system presents programming that draws millions of Canadian viewers on a variety of platforms. Programming is delivered over a well-developed system, which ensures that programming is available to Canadians no matter where they are in the country. Viewing to the television system, and to Canadian programming specifically, remains stable.³
14. The private television industry includes large, vertically integrated (VI) companies as well as smaller players. The industry is economically diverse, garnering revenues from different sources. Local television stations receive revenues from local and national advertising. Specialty services receive revenues from advertising (primarily national) and subscriber fees. Broadcasting distribution undertakings (BDUs), such as cable and satellite providers, are financed by subscriber fees.
15. The Canadian television system consists of viewers, programming services (such as, local television stations and specialty television services), BDUs and the production sector. Programming services and BDUs fulfill an important role as content aggregators. Programming services aggregate programs for broadcast to the public, while BDUs aggregate programming services for distribution to subscribers. Programming services and BDUs, include both licensed and exempt services. Often, programming services and BDUs with a large number of subscribers must operate under a licence, while those with a small number of subscribers can operate under one of the Commission's exemption orders. Broadcasting services delivered over the Internet or on mobile devices are other examples of exempt services that form part of the television system.
16. The French- and English-language markets have evolved separately due to different conditions and needs. The French-language market includes both the province of Quebec and official language minority communities (OLMCs) in other parts of the country. Market and consumer demand in Quebec ensures the production of diverse Canadian French-language programming. This programming is popular and successful. However, the size of the market limits both the number of services in existence and the production of more niche programming.

² See the Communications Monitoring Report 2013:
<http://www.crtc.gc.ca/eng/publications/reports/PolicyMonitoring/2013/cmr4.htm#n9>.

³ See section 4.3 Audience Measurement of the Communications Monitoring Report 2013:
<http://www.crtc.gc.ca/eng/publications/reports/PolicyMonitoring/2013/cmr4.htm#n11>.

17. With respect to the English-language market, which includes the OLMCs in the province of Quebec, most viewing is to Canadian programming services. However, many of the most popular programs, with the exception of news and sports, are non-Canadian. Since it has often historically been less expensive for television services to acquire programming from the United States (U.S.) than to produce and promote Canadian programming, U.S. programming is widely available in the English-language market from both Canadian and U.S. programming services. Viewership of Canadian programs, however, remains stable and numerous popular English-language Canadian programs are widely viewed by Canadians.⁴
18. Although consumers in both linguistic markets continue to watch programs on their traditional TV sets, a significant number of them have adopted new technologies.⁵ A slightly larger proportion of consumers in the English-language market have adopted new technologies, perhaps due in part to the wider availability of English-language content on various platforms.

The current regulatory approach

19. In its early years, the Commission's regulatory approach focused primarily on mainstream programming offered to a general audience, mostly through television stations received by Canadians directly over-the-air or through BDUs. Since these stations relied exclusively on advertising revenues to fund the broadcast of programming and to maintain their operations, regulation often focused on maintaining the integrity of local advertising markets and limiting potential loss of advertising revenues to distant Canadian and U.S. stations.
20. The Commission revised its approach in the late 1980s and in the 1990s to respond to the rising importance of targeted programming aimed at segments of the public defined by demographic characteristics or common interests. This resulted in the emergence of a large number of specialty and pay services.⁶ This programming was made available exclusively through BDUs—cable and satellite providers—and watched on traditional TV sets. The Commission's approach at that time involved the introduction of competition to the BDU market and the protection of new pay and specialty services from direct competition by Canadian and non-Canadian services. This approach was designed to enable those services to continue to produce and broadcast Canadian programming.
21. The advent of digital and, later, high definition programming and its distribution in the 1990s and 2000s prompted further changes to the Commission's regulatory approach. Numerous digital specialty and pay services were licensed to provide

⁴ See section 4.3 Audience Measurement of the Communications Monitoring Report 2013: <http://www.crtc.gc.ca/eng/publications/reports/PolicyMonitoring/2013/cmr4.htm#n11>.

⁵ See the Communications Monitoring Report 2013: <http://www.crtc.gc.ca/eng/publications/reports/PolicyMonitoring/2013/cmr6.htm#n9>

⁶ The primary difference between specialty and pay services is that specialty services broadcast advertisements in addition to receiving subscription fees. Pay services do not broadcast advertising and rely on subscription fees only.

Canadians with further choice in niche programming as well as programming in languages other than English, French and Aboriginal languages. More sophisticated distribution systems permitted access to programming on a per-program basis through pay-per-view, and later, through video-on-demand (VOD) services.⁷ Fully digital terrestrial BDUs⁸ and direct-to-home (DTH) BDUs were licensed to provide further competition and choice to Canadians. The Commission compelled Canadian television stations in large markets to convert their over-the-air signal from analog to digital in 2011. High definition programming is now available from most programming services of all types and accessible by all Canadians that choose to purchase newer television sets or other equipment needed to view it.

22. All of the television programming and BDU services described above continue to be part of today's broadcasting system. The Commission's regulatory approach to date has been generally to protect services from some forms of direct competition in cases where they have undertaken higher obligations with respect to the production and presentation of Canadian programming that could not be met without that protection. This approach also encourages a diversity of programming and program sources. For example, certain specialty services are required to spend significant portions of their revenues on the creation of Canadian programs and devote large parts of their schedule to such programs. These services are protected from various forms of direct competition from other Canadian and non-Canadian services, although they must still compete indirectly with other services for advertising revenues.
23. In other cases, the Commission encourages competition where regulatory obligations are lower or where services are better able to achieve public interest policy objectives without protection. For example, the Commission encourages competition between BDU services by licensing multiple services to serve each region in Canada and removing barriers to competition.
24. The Commission also requires all elements of the television system to contribute to the production and presentation of Canadian programming. Licensed BDUs are subject to requirements to offer specific types of programming services and to provide each subscriber with a preponderance of Canadian programming services. These BDUs also make financial contributions to Canadian programming by contributing to the Canada Media Fund (CMF), independent production funds and their own community channel. Programming services are required to devote a portion of their revenues to Canadian production and to broadcast minimum levels of Canadian programming. Producers are in turn indirectly affected by a range of regulatory measures intended to encourage production and make Canadian programming more widely available.

⁷ Both pay-per-view and VOD services permit subscribers to purchase access to individual programs or small sets of programs. In the case of pay-per-view services, a viewer can choose to purchase access to a program scheduled at a particular time on a particular channel offered by a BDU. VOD services offer programs that are available at any time, i.e., on demand.

⁸ Also known as DSL-based BDUs due to their use of digital subscriber line telecommunications networks.

Change and its challenges

25. Both the viewing habits of Canadians and the Canadian television system are changing in many ways and at a rapid pace. Audiences are becoming more diverse. Today's viewers include an increasing number of Canadians of different ethnic, cultural, and linguistic backgrounds; diverse age groups; as well as people with disabilities. The Canadian population is also aging. These audiences' interests and concerns are as varied as their backgrounds and influence the ways in which they access media and programming.
26. Over the past decade, each generation of technological innovation has made watching programming more individual and customizable. More programming is being made available on-demand to Canadians. Licensed BDUs and programmers are launching services that allow viewers to access on-demand content on exempt alternative platforms. These technological innovations have also allowed new types of content aggregators or curators⁹ and new means of content distribution to emerge. Canadians have access to an increasing number of exempt Internet video service providers, both Canadian and non-Canadian, which may be affiliated or unaffiliated with licensed programming services and BDUs. These providers offer a significant amount of content, including Canadian programming.
27. While Canadians increasingly watch video programming online, they also continue to watch television in the traditional way. Currently, online viewing and traditional television viewing complement rather than replace each other. However, Canadians are spending more for their television services. Cable subscription fees have increased faster than the Consumer Price Index in recent years. In 2012, the average amount Canadians spent on cable and satellite TV services increased by 5%, when inflation rose by just 1.5%. Canadian households spend an average of \$52 a month on television services—before factoring in telephone, Internet and wireless services. Added up together, these services cost on average \$185 a month or over \$2,200 annually. This represents the sixth largest expense for most families.
28. The increased availability of online and on-demand content has an impact on viewers' expectations. During Phases 1 and 2, many Canadians called for more control over the content they receive, and stated that they are increasingly seeking out individual programs rather than programming services. As well, the increasing cost of traditional television puts strain on the subscriber-BDU relationship.
29. Moreover, while changes in the television system provide new opportunities for Canadians to receive and view programming, they also challenge the traditional economic models for television. For example, the business model for local television stations—which relies on advertising revenues to finance its programming, including local programming—is increasingly under pressure as its advertising base erodes due to increasing audience fragmentation. In addition, overall growth in BDU

⁹ A curator selects works and serves as a custodian of a collection of works, such as television programs.

subscriptions has been slowing year by year and, according to the Commission's preliminary data, declined for the first time in 2013 as some Canadians choose to opt out of the traditional system entirely.

30. The decline in the growth of BDU subscriptions, in turn, has an impact on programming producers. Programming services and BDUs also finance the production of Canadian programming through the revenues they generate. If revenues stagnate or decline, so will the funds available for Canadian programming.
31. The trend to targeted and customizable viewing experiences will continue as Canadian consumption of video content moves more and more from:
 - scheduled and packaged programming services to on-demand and tailored programs;
 - passive to active viewers that want greater control over the programs they receive; and
 - viewing programs on television sets to also viewing programs on other screens, such as mobile devices.
32. Taking into consideration the environment described above, the Commission considers that there may be risks to public policy objectives if its current approach remains unchanged. A review of the Commission's overall approach to television is timely in order to ensure that these objectives continue to be fulfilled.

Outcomes of this proceeding

33. The Commission's mandate is to regulate and supervise all aspects of the Canadian broadcasting system with a view to implementing the broadcasting policy objectives set out in section 3(1) of the Act. These include:
 - Providing Canadians with a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and creativity. The system should be adaptable to changes in technology and the programming should be affordable.
 - Serving the needs and interests of Canadians. For example, the programming provided should:
 - present information and analysis concerning Canada and other countries from a Canadian point of view;
 - be accessible to people with disabilities; and
 - reflect the circumstances and aspirations of Canadian men, women and children, including equal rights, the linguistic duality and multicultural and multiracial nature of Canadian society and the special place of Aboriginal peoples in society.

- Supporting Canadian creators so that they can provide Canadians with varied and compelling creative content that is drawn from local, regional, national and international sources and that is available on a range of platforms.

34. The Act further states that English- and French-language broadcasting, while sharing common aspects, operate under different conditions and may have different requirements.

35. Some of the objectives may be achieved without regulation, through the evolution of the marketplace or the changing technological environment. Regulatory intervention is only warranted where specific outcomes or objectives would not be achievable without it. Where regulatory measures are necessary, the Commission considers that they should be as simple as possible, proportionate, easily administered and adaptable to change. Whether the Commission regulates, permits industry self-regulation, relies on market forces or a combination of these, its activities must be based on the public interest. Any approach adopted by the Commission will also need to be predictable for those who create and distribute the programs Canadians watch.

36. In light of the above, the issues addressed in this notice are organized according to these intended outcomes:

- I. A Canadian television system that fosters choice and flexibility in selecting programming services
- II. A Canadian television system that encourages the creation of compelling and diverse Canadian programming
- III. A Canadian television system that empowers Canadians to make informed choices and provides recourse mechanisms in the case of disputes

37. Each of these outcomes is addressed separately in the following sections. Each section concludes with a series of specific questions to which the Commission invites parties to respond. In responding to the questions, parties are encouraged to take into consideration the following:

- What challenges and barriers does the current television broadcasting system face in adapting to change? Which of these challenges and barriers are regulatory in nature? How can those barriers be removed and under what timeframe?
- What objectives of the Act can be achieved without regulatory intervention? In what areas is the Commission's intervention necessary?

I. A Canadian television system that fosters choice and flexibility in selecting programming services

38. As noted in *Let's Talk TV: A report on comments received during Phase I*, a major theme in Canadians' submissions in this proceeding to date is a desire for more

flexibility in how they choose programming services. Participants in Phases 1 and 2 generally stated that Canadian television should be more responsive to their demands for entertainment, information and local reflection. A majority of participants said that channels should be made available on a pick-and-pay basis. Further, as set out in the Quantitative Research Report prepared as part of the conversation, channel selection is a concern with half of those surveyed, saying they are satisfied with the current flexibility and more than a third saying they are dissatisfied.

39. The principles that will guide the Commission in achieving the above-noted outcome are as follows:

- The distribution and packaging of television services should maximize choice and flexibility.
- Canadians should continue to have access to the best of what Canada and the world have to offer.

Maximizing choice and flexibility

40. In its report in response to Order in Council 2013-1167, the Commission set out its preliminary view that the distribution and packaging of television services should be reviewed to maximize consumer choice and flexibility. The Commission also described its proposed approach, including its possible effects on Canadians, programming services and niche programming, the production sector and BDUs. It further set out proposed measures to ensure the continued availability of Canadian services.

41. As indicated in its response, the Commission will explore requiring BDUs to offer subscribers a small, all-Canadian basic service and promote this small basic service so Canadians are aware of its availability. This basic service would include only:

- local Canadian television stations;
- 9(1)(h) services;¹⁰
- provincial educational services, in provinces where there is one; and
- in some cases, the community channel and the provincial legislature programming service.¹¹

¹⁰ In this case, 9(1)(h) services represent the services designated by the Commission under section 9(1)(h) of the Act to receive mandatory distribution on the basic service. These designations are periodically reviewed. The current 9(1)(h) services are listed in Broadcasting Regulatory Policy 2013-372. The current services provide, among other things, programming for Aboriginal peoples, OLMCs and persons with disabilities.

¹¹ The requirement to distribute the community channel and the provincial legislature programming service on the basic service only applies to licensed terrestrial BDUs that choose to distribute such services.

42. The Commission considers that the distribution of all of these services on the basic service contributes to the public interest by ensuring that Canadians are informed on matters of public concern at all levels (local, community, provincial and national) and thus better able to participate in Canadian democratic, economic, social and cultural life.
43. All other licensed or exempt programming services and non-Canadian services, including U.S. television stations, would be excluded from this small basic. Under this approach, Canadian television stations that are not local to the market in which a subscriber resides (distant signals) would be treated as discretionary services and excluded from the small basic offering.
44. Under this proposed approach, BDUs would also be required to allow subscribers to select all discretionary programming services on a standalone (pick-and-pay) basis as well as allow subscribers to build their own custom packages of discretionary programming services (build-your-own-package).¹² Subscribers would not have to pay for discretionary services they do not wish to receive and could allocate their financial resources to the services they and their family wish to watch. This approach would be similar to the choice and flexibility currently offered by some licensed BDUs operating in Quebec and in Atlantic Canada.
45. In Phases 1 and 2, some participants stated that they are satisfied with the pre-assembled packages of services they currently receive. The Commission's proposed approach would allow BDUs to continue to offer discretionary programming services in pre-assembled packages to subscribers in the same manner as they do now.

Examples of comments on channel packaging received during Phase I of Let's Talk TV consultation:

"The problem with television in Canada is the bundled packages, which makes TV extremely expensive. When you want to watch 3-5 channels, you have to buy the basic package and then another 3 specialty packages, because of course the channels that you want to watch are all spread out between different packages, forcing you to pay a huge amount just to access a couple of channels that you actually want to watch."

"I could tolerate the way the channels are bundled, like I have for the longest time, if there were more features and more convenience giving me more for my money."

"I will drop cable the second I find a viable option to receive a quality sports feed online. The only way I would stay with a service provider like cable is if they went to a pick and pay system where you can access any program whenever you like without overpriced packages and fees."

"I hate that as a consumer I am forced to pay for content I will never watch, and frankly would rather not support!"

[Translation] *"I subscribe to a 20-channel bundle with Videotron and have succeeded in creating a reasonably satisfactory 'package,' but I would prefer a pick-and-pay subscription."*

¹² Also known as pick-a-pack, this option allows subscribers to choose, for example, five, ten, fifteen or twenty discretionary services for a set price.

46. The Commission notes that some discretionary services currently in operation might not survive in a pure pick-and-pay world. It wishes to ensure that a wide range of programming continues to be available to consumers and will also explore how the proposed approach might best be implemented, taking into account the impact it may have on discretionary services.
47. A requirement to offer all discretionary services on a stand-alone basis would compel most services to negotiate affiliation agreements permitting such distribution. The existing business model for programming services relies on maintaining minimum levels of subscribers. If the number of subscribers decreases, the rate charged by the programming service to the BDU could increase. This practice is known as penetration-based pricing agreements. This practice could result in an increase to the retail rate paid by the subscriber. Given this possibility, the Commission intends to closely examine the effect that its proposed approach could have on the cost of individual programming services, for example sports services.
48. Lastly, BDUs are subject to a requirement that each subscriber receives a preponderance of Canadian programming services (the preponderance rule). BDUs that currently offer flexible packaging options, such as build-your-own-package, have developed a mechanism, described in more detail in the Report, to ensure that their subscribers receive a majority of Canadian programming services. However, in an environment where subscribers expect more choice, the mechanisms that would prevent them from selecting non-Canadian services they wish to receive to comply with a preponderance rule could be seen as limiting choice and flexibility. For this reason, the Commission will explore whether there remains a need to maintain the preponderance rule as it is currently expressed or whether other measures might be more appropriate.

Questions

49. **The Commission invites parties to respond to the following questions, making reference to the English- and French-language markets as appropriate:**
 - Q1. What are the potential effects, both positive and negative, of the proposed approach set out in paragraphs 40 to 48 above on different elements of the broadcasting system, including consumers, discretionary services, BDUs, the production sector, OLMCs and ethnic broadcasters?**
 - Q2. Should this approach apply differently to different types of BDUs (e.g., exempt BDUs and DTH BDUs)?**
 - Q3. Which local television stations should be included in the small basic service offered by DTH BDUs?**
 - Q4. What effect would this approach have on the affordability of television services? Is there a particular impact on the affordability of sports services, for example?**

- Q5. What effect would this approach have on the cost of program acquisition?**
- Q6. Should the Commission establish any requirements regarding the size of the various packages that consumers may choose to build (build-your-own-package options)?**
- Q7. What role, if any, should the Commission or others play in ensuring that a small basic service and packaging options are available and well-promoted to all consumers?**
- Q8. What role, if any, should the Commission play regarding penetration-based pricing agreements?**
- Q9. What customer-care system upgrades would be required? How long would they take to implement? What would be the cost?**
- Q10. Are there barriers to implementing the Commission's proposed approach? What is the earliest feasible timeframe to implement this approach, in light of all the possible implications?**
- Q11. How can BDUs continue to give priority to the carriage of Canadian programming services? Is there a need to maintain the requirement that each subscriber receives a preponderance of Canadian services?**
- Q12. How should the Commission and Canadians measure the success of the Commission's approach with respect to ensuring choice and flexibility in the selection of programming services?**

Access to non-Canadian programming services

50. While Canadians already have access to many non-Canadian services, some participants in Phases 1 and 2 asked that the availability of such services be increased. While each person might prefer a specific service, a number of participants asked for unfettered selection of different kinds of programming. This included a desire for programming from non-traditional and international sources. Others pointed to types of programming from countries including France, the United Kingdom (UK) and other European nations as well as the U.S. as being emblematic of quality programming. The Commission therefore wishes to explore the potential impact on the Canadian television system of allowing increased access to non-Canadian services.
51. The Commission's general policy has been to authorize for distribution in Canada non-Canadian services that do not compete in whole or in part with Canadian pay or specialty services.¹³ The objective of this policy is to provide a measure of support to Canadian services so that they can fulfill their commitments and obligations and to encourage alliances between Canadian and non-Canadian services in similar genres.

¹³ The exception to this approach relates to third-language, non-Canadian services. Such services are generally authorized for distribution in Canada, subject to specific distribution and linkage requirements.

In assessing requests to authorize English- and French-language non-Canadian services for distribution in Canada, i.e. to add them to the *Revised list of non-Canadian services authorized for distribution*, the Commission examines factors such as the genre and nature of service of Canadian pay and specialty services. The Commission authorizes the distribution of such services on a case-by-case basis, relying on the comments filed to determine whether such services are partially or totally competitive with Canadian pay or specialty services. The current approach is based, to a large extent on the current genre exclusivity policy. The Commission is examining possible changes or elimination of that policy later in this notice (see paragraph 110). The Commission therefore wishes to explore whether a new approach to authorizing non-Canadian services for distribution in Canada would be appropriate.

52. One possible approach would be to authorize all non-Canadian services for distribution in Canada, except where it can be demonstrated that distributing a particular non-Canadian service would have an undue negative impact on the Canadian television system. For example, a non-Canadian programming service would be approved for distribution in Canada unless it holds exclusive program rights that would otherwise be available in Canada or if the non-Canadian service is an important source of programming for a Canadian service. As with the current approach, the Commission would continue to consider these applications on a case-by-case basis and would rely on evidence filed to demonstrate that authorizing a particular non-Canadian service for distribution in Canada would have an undue negative impact on the Canadian television system.

Questions

53. **The Commission invites parties to respond to the following questions, making reference to the English- and French-language markets as appropriate.**
 - Q13. Is there a way to remove barriers to the entry of more non-Canadian programming services into Canada without an undue negative impact on the Canadian television system?**
 - Q14. What are the possible approaches to authorizing non-Canadian services for distribution in Canada, particularly in the absence of genre requirements for Canadian services?**
 - Q15. Should the Commission choose to adopt a test such as that proposed in paragraph 52 above, what evidence should parties be required to provide?**
 - Q16. How should the Commission and Canadians measure success and determine whether the Commission's approach is providing access to non-Canadian programming services without any undue negative impact on the Canadian television system?**

Simultaneous substitution

54. Simultaneous substitution is the temporary replacement of the signal of one television programming service with another service that is broadcasting the same program at the same time at the request of the latter. Usually, an American signal is replaced with a Canadian signal. Sometimes, a Canadian signal from a distant market is replaced with a local signal. Simultaneous substitution occurs primarily in the English-language market. This allows Canadian broadcasters to earn a reasonable return on their investment in acquiring non-Canadian programming so they have the financial resources to contribute to the Canadian broadcasting system in the form of the production of Canadian programming. The Commission introduced regulations for simultaneous substitution for cable BDUs in 1972 and for DTH BDUs in 1995. Those requirements are now set out in sections 38 and 51 of the current *Broadcasting Distribution Regulations* (the BDU Regulations).¹⁴
55. Many Canadians have access to U.S. television stations affiliated with the CBS, NBC, ABC and FOX commercial networks and the non-commercial PBS network. Their signals (known as the U.S. 4+1 signals) are available across Canada and are made available as part of the basic service on most BDUs. A second set of U.S. 4+1 signals is sometimes made available to subscribers on a discretionary basis. Canadians also have access to distant signals from Canadian television stations.¹⁵ The availability of such signals provides multiple opportunities to view a given program.
56. When broadcasters buy programs from Canadian and U.S. producers or networks, they pay to have exclusive broadcast rights in certain markets. Simultaneous substitution assists television stations in maintaining advertising revenues from these programs. Specifically, television stations use simultaneous substitution to maximize the audiences for their programs, which enables them to charge a higher advertising rate. Replacing the U.S. feed with the Canadian one also ensures that advertising dollars remain in the Canadian market.
57. Simultaneous substitution was envisioned as a mechanism that would not be disruptive to viewers, that is, the program substituted is the same on both signals and broadcast simultaneously. However, errors made in performing substitutions and other problems as well as special events, such as the Super Bowl, have made it an irritant to consumers and a frequent source of complaints. In 2013, for example, the Commission received 458 complaints regarding simultaneous substitution, the majority of which related to the English-language market. Of these complaints, 20%

¹⁴ Terrestrial BDUs and DTH BDUs are required to substitute the programming of a higher priority (normally Canadian) broadcaster for that of a lower priority (normally U.S.) broadcaster when requested by a local or regional broadcaster, provided that the programming is comparable and simultaneously broadcast.

¹⁵ In the BDU Regulations, a distant signal, or “distant television station,” is defined as “a licensed television station that is not a local television station, regional television station or extra-regional television station.” This definition applies to terrestrial BDUs, as the term “distant signal” is not specifically defined in relation to DTH BDUs.

were related to Super Bowl commercials, as viewers would have preferred to see the U.S. commercials instead of the Canadian ones. The rest pertained to improperly done substitution, especially during live sports events that run into overtime. Some participants in Phases 1 and 2 suggested that this practice be restricted or banned outright.

58. Another criticism of simultaneous substitution rules is that they have had the unintended consequence of tying the broadcast schedules of Canadian programming services to those of U.S. broadcasters. To take advantage of simultaneous substitution, Canadian broadcasters must organize their schedules to match those of U.S. networks. This restricts their ability to schedule and promote Canadian programs to Canadian audiences effectively, especially in prime time.
59. Further, the actual value of simultaneous substitution may be relatively small. Although the value of simultaneous substitution has previously been estimated at approximately \$200 million annually, there are no up-to-date estimates of its value to Canadian broadcasters. This calls into question the efficiency and policy rationale for simultaneous substitution.
60. In light of the above, the Commission requests comments on whether simultaneous substitution remains an appropriate mechanism to enable local stations to maximize audiences and advertising revenues.

Questions

61. The Commission invites parties to respond to the following questions:

- Q17. Should simultaneous substitution be maintained? If so, why is it still beneficial and necessary, and why do its benefits outweigh its costs and other drawbacks?**
- Q18. What is the current and prospective value of simultaneous substitution to broadcasters?**
- Q19. Are there alternatives to simultaneous substitution, such as non-simultaneous substitution (the replacement of the same program regardless of when it is broadcast), that could fulfill the public policy objectives that simultaneous substitution was implemented to fulfill? If so, what would these alternatives be, why are they necessary, and how could they be implemented?**
- Q20. If the Commission were to decide to eliminate simultaneous substitution, how, and in what timeframe, should this change be implemented?**
- Q21. Would the elimination of simultaneous substitution have unintended consequences for French-language television services?**

Q22. How should the Commission and Canadians measure success and determine whether the Commission's new approach is achieving its objectives?

II. A Canadian television system that encourages the creation of compelling and diverse Canadian programming

62. The production and presentation of compelling programming is key to the success of the Canadian broadcasting system. It is the interest and viewing of Canadians that fuel the system and, as the Commission heard in Phases 1 and 2, Canadians are seeking quality programming. What constitutes quality programming varies considerably between individual Canadians and was not fully articulated during Phase 1. Nevertheless, some indicated that Canadian productions need to have high production values, creativity, and tell compelling stories.
63. The principles that will guide the Commission in achieving this outcome are as follows:
- The broadcasting system should focus primarily on the production and availability of high quality Canadian programming, including local programming.
 - The broadcasting system should promote the production of diverse programming that not only appeals to large audiences but also meets the needs of niche and underserved audiences.
 - The broadcasting system should encourage the promotion of Canadian programming in Canada and abroad.
 - Barriers within the broadcasting system should be removed to allow a diversity of programming from a variety of sources—big or small, integrated or independent, established or new.

Fostering local programming

64. Television stations offer broad, general interest programming as well as local programming, including news, that is specific to the market they are licensed to serve and produced primarily in that market. Not only are they distributed by BDUs on the basic service, but they are also available over the air (OTA) for free.
65. Television stations are the main providers of local programming. They are subject to various requirements to provide such programming based on the language and size of their market.¹⁶ Television stations also broadcast local, national and international news. Television news is an integral part of the broader news production cycle, and

¹⁶ English-language television stations must broadcast minimum levels of local programming by condition of licence, providing either 7 or 14 hours of local programming per week depending on the market served. French-language stations are subject to individual requirements, but most must provide 5 hours of local programming per week.

as such, is an important source of news and information production, whether Canadians choose to consume that news on television, radio, in print or on the Internet.

66. Local television stations earn their revenues from advertising. In return for the provision of local programming, these stations, unlike most other licensed television services, may solicit local advertising in addition to regional or national advertising. However, the business model for local television has been under long-term pressure due to audience fragmentation, decreases in advertising revenues and competition. These factors are exacerbated, in the French-language market in particular, by the small size of the market and have hindered the ability of some stations to provide local news and produce compelling Canadian programming. This is especially the case for independently owned television licensees.¹⁷ For example, in 2011 to 2012, the revenues of private local television stations in both the French- and English-language markets decreased by \$100 million or 5%.
67. In addition, television stations must currently assume the costs of maintaining OTA transmitters and, in most markets, digital television (DTV) transmitters. Given the high BDU subscription rates in most markets, few Canadians receive television signals over the air.
68. In light of the above, the Commission wishes to explore the ongoing role of local television, and more specifically the provision of local programming and new ways in which it may be offered in the future. The Commission is also prepared to explore whether there are appropriate ways to enhance the sustainability of local television stations.

Questions

69. **The Commission invites parties to respond to the following questions, making reference to the English- and French-language markets as appropriate.**
 - Q23. Are there alternative ways of fostering local programming? What role, if any, should the Commission play to ensure the presence of local programming? What measures could be put in place?**
 - Q24. Is regulatory intervention necessary to maintain access to local television stations and, if so, how could this best be achieved? Given that the vast majority of Canadians receive television services through a cable or satellite subscription, are there compelling reasons to maintain and support OTA transmission? Would the discontinuation of OTA transmission allow local television stations to devote more resources to programming? If the Commission determines that OTA transmission**

¹⁷ Those not owned and operated by one of the large broadcasting groups, such as TVA, Bell, Shaw or Rogers.

should no longer be required, under what timeframe should this be implemented?

Q25. What role, if any, should the Commission play to preserve the diversity of local television stations in the French-language market? Should measures be adopted specifically for this linguistic market?

Q26. Is a different approach needed for independent local television stations? What measures, if any, could be put in place?

Q27. How should the Commission and Canadians measure success in fostering local programming and allowing broadcasters to revitalize their business models?

Financing and promoting compelling Canadian programming

70. The objectives set out in section 3(1) of the Act state that the broadcasting system should provide Canadians with a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and creativity.
71. Some Canadian programming is produced by broadcasters in-house while a significant amount is the work of independent producers. The production of Canadian programming is generally funded through a combination of private sources and direct and indirect public supports. These include licence fees from Canadian broadcasters, tax credits from the federal and provincial governments, funding from the Canada Media Fund (CMF) and independent funds, venture capital loans and equity investment.
72. The Commission has supported Canadian programming in several ways. Certain types of programming services are required, by condition of licence, to devote a set portion of their revenues to Canadian programming expenditures (CPE). Typically, Category A services¹⁸ have the highest CPE obligations, on average 37% of revenues. VOD services are required to contribute 5% of their revenues to a certified independent production fund. All Canadian programming services are also subject to requirements for the exhibition of Canadian programming, which are intended to establish a market for the production and licensing of Canadian programming.
73. The Commission has also encouraged the production of certain types of programs through time credits and conditions of licence. Drama, long-form documentary, music/variety and award shows have benefited from such incentives.
74. In addition, licensed BDUs and exempt BDUs with more than 2,000 subscribers are currently required to contribute 5% of their gross revenues from broadcasting activities to Canadian programming. Many BDUs operate a community channel in their licensed area. In such cases, up to 2% of the gross revenues from a licensed

¹⁸ Category A services are programming services that BDUs must distribute.

BDU's broadcasting activities may be directed to support the operation of the community channel.¹⁹

75. All of the above financial contributions are calculated on revenues earned from broadcasting-related activities. For BDUs, such revenues currently include all subscriber revenues associated with the distribution of programming services. They exclude revenues earned from telecommunications services such as telephony and Internet services. For programming services, the revenues include both advertising (including sponsorship and other forms of advertising such as product placement) and subscriber revenue.
76. As the relationship between Canadians and the licensed system changes, existing supports for Canadian programming will be affected. In addition, as viewers increasingly seek out and choose to consume programming on a program-by-program basis rather than through linear channels, this shifting viewer behaviour will also have a significant impact on the funding model. The Commission therefore considers it timely to review the various supports for Canadian programming that fall under the Commission's purview.
77. To ensure the presence of compelling Canadian programs on multiple platforms in the future, the Commission is prepared to consider various incentives and other measures, such as:
 - Imposing CPE requirements on all licensed television stations and specialty and pay services.
 - Counting expenditures by licensed programming services for online or on-demand only productions toward their CPE requirements.
 - Reducing or eliminating exhibition requirements for Canadian programs other than local programming.
 - Changing its approach related to the allocation of BDU contributions between community channels, the CMF and independent production funds.
78. The Commission is also prepared to consider various incentives to ensure the promotion of Canadian programming so that it can be discovered by Canadians.
79. Finally, the Commission wishes to explore whether the definition of broadcasting revenues should be clarified to take into account the changes in the broadcasting environment and whether the current method of calculating contributions to Canadian programming remains appropriate. For example, many licensed BDUs and programming services also offer their programming online or on other exempt

¹⁹ As part of the last review of the community television policy in 2010, the Commission capped the total amount that licensed BDUs could contribute to the community channel at the 2010 level (adjusted for inflation) and indicated that the amount would remain capped until it reaches no more than 1.5% of those revenues.

platforms. In many cases, the programming offered on these alternative platforms is funded directly or indirectly by the licensed broadcasting system. It is unclear at this time whether such activities generate revenues, and these activities are not currently treated as broadcasting activities for the purposes of supporting Canadian programming.

Questions

- 80. The Commission invites parties to respond to the following questions, making reference to the English- and French-language markets as appropriate.**
- Q28. How will programs be delivered in the future (i.e. in five years and 10 years from now) and who will be the future aggregators and curators of programming?**
- Q29. Do funding mechanisms for Canadian programming need to be modified to take into account changes in the way Canadian programming is watched?**
- Q30. Are any regulatory measures required to encourage the production, promotion or presentation of new, compelling and innovative Canadian programming? If so, what would those measures look like?**
- Q31. Would these measures affect the purchase of program rights and licence fees paid to independent producers?**
- Q32. Should the Commission encourage the production of certain types of programs as it has done in the past? If so, which types of programs should be supported?**
- Q33. What form should incentives take? Would eliminating certain requirements, for example, exhibition requirements, be an effective and appropriate incentive for producing Canadian programming or programming of certain types?**
- Q34. If exhibition requirements are generally reduced or eliminated, would there still be a need for specific exhibition requirements for particular types of programming, e.g. local or children's programming?**
- Q35. Should the Commission encourage the promotion of Canadian programs, here and abroad? If so, how?**
- Q36. Is the current way to calculate contributions to Canadian programming still appropriate? For example, should the Commission update its definition of broadcasting revenues to reflect all broadcasting activities by licensees?**
- Q37. Does the current funding model for community channels continue to be appropriate?**

Q38. How should the Commission and Canadians measure success with respect to encouraging the production of compelling Canadian programming?

Making television services available to underserved audiences

81. A reasonable assurance that OLMCs across the country will continue to receive Canadian services in their language remains a fundamental objective for the Canadian broadcasting system. Further, as a federal institution subject to the *Official Languages Act*, the Commission is required to address the needs of linguistic minority communities and ensure that the Canadian broadcasting system reflects the linguistic duality of Canada.
82. Participants from OLMCs stated in Phases 1 and 2 that they want access to local, community and national programming in their language. Participants from French-language OLMCs were concerned by the lack of coverage and reflection of their communities in national broadcasts. English-speaking Quebecers receive programs in English from various sources but submitted that they rarely see their own stories reflected on television. English-speaking Quebecers also consider that an English-language community television channel and an English-language educational television service should be offered in Quebec.
83. In the past, the Commission found that market forces alone would not necessarily provide an adequate number of services to OLMCs and ensure their reflection. The Commission therefore implemented measures to address this situation.
84. In its 2009 Report to the Governor in Council, the Commission stated that although OLMCs appear to have appropriate access to television services, community reflection could be improved. Since then, the Commission has adopted measures to improve the reflection of OLMCs on television. For example, the Commission approved the mandatory distribution on the basic service of a new service called TV5-Unis, which will be dedicated to the reflection of French-language OLMCs. The Commission also imposed requirements on the French- and English-language television services of the Canadian Broadcasting Corporation in order to ensure that OLMCs are well served.
85. Further, in Broadcasting Public Notice 2008-100, the Commission revised its rules so that:
 - all licensed terrestrial BDUs are required to distribute one minority-language Category A or Category B service, for every ten majority-language²⁰ services they distribute; and
 - DTH BDUs are required to distribute all Category A services.

²⁰ Markets are defined either as a French- or an English-language market. In French-language markets, English-language services are considered to be minority language services and vice versa.

86. The Commission wishes to explore whether the current rules are still necessary to ensure that OLMCs continue to have access to services in the minority language. The Commission will need to determine how this objective could be achieved under any revised approach that may result from this process.
87. The Commission also wishes to explore whether there is a need for additional supports for the provision of programming to Aboriginal and third-language²¹ audiences. There are very few services that provide programming to Aboriginal Peoples aside from APTN, which is available on the basic service across the country. Aboriginal producers stated that they face challenges in getting their programs shown on more mainstream services. During Phases 1 and 2 several participants argued that television needs to do a better job of reflecting Canada's Aboriginal cultures.
88. Further, although there is an array of both non-Canadian and Canadian licensed and exempt programming services that provide third-language programming, many ethnic and third-language communities submitted during Phases 1 and 2 that there is not enough programming available to them in their particular language. Further, they stated that many of the ethnic and third-language services that are available are not accessible unless they purchase often expensive packages of services through a BDU. Ethnic and third-language communities were also concerned that programming does not reflect their communities or the cultural diversity within these various communities. In the view of these communities, French- and English-language programming often does not accurately reflect Canada's changing demographics both in the on-screen presence of members of these communities and in the portrayal of ethnic communities themselves.
89. Lastly, Canadians with disabilities currently have access to a number of features that make programs more accessible to them. However, they stated during Phases 1 and 2 that there is still work to be done, particularly with respect to service to people who are blind or visually impaired. For example, a simple way to access programming has been an ongoing issue. The remote controls provided by some BDUs require multiple button pushes to access described video, which can be challenging for members of this segment of the population. In addition, as noted by some participants during Phase 1, many platforms, including personal video recorders and other set-top boxes, mobile applications, and other platforms that require on-screen interaction are not accessible. Program guides are generally not usable by persons with visual disabilities. The Commission therefore wishes to explore whether there are means through which programming could be made more accessible.

Questions

- 90. The Commission invites parties to respond to the following questions, making reference to the English- and French-language markets as appropriate.**

²¹ "Third-language" refers to languages other than English, French and Aboriginal languages.

- Q39. Do OLMCs have appropriate access to a diversity of programming services in their language? If not, are regulatory measures needed to achieve this objective?**
- Q40. Are OLMCs adequately reflected on television? If not, are regulatory measures needed to achieve this objective?**
- Q41. Is there appropriate access to a diversity of programming by and for Aboriginal peoples? If not, are regulatory measures needed to achieve this objective?**
- Q42. Is there appropriate access to a diversity of programming by and for third-language communities? If not, are regulatory measures needed to achieve this objective?**
- Q43. What further actions can broadcasters take to improve the accessibility of programming for persons with disabilities, including, but not limited to the accessibility of program guides, regardless of the platform on which programming is broadcast?**
- Q44. What are the technical issues and costs of increasing the amount and quality of accessible programming, more specifically described video programming, in the system?**
- Q45. What are the technological barriers to improving the accessibility of features—like described video—to persons with disabilities?**
- Q46. How should the Commission and Canadians measure success with respect to ensuring that television services are made available and well promoted to underserved audiences?**

Promoting access for non-vertically integrated programming sources

91. The Canadian television system includes several large vertically integrated (VI) companies. These companies own both programming services and BDUs and provide their services to a large proportion of Canadians. VI companies are frequently able to use their larger scale and synergies between their services to generate greater revenues and profits. For instance, 49% of specialty, pay, pay-per-view and VOD services are owned by VI companies, but these services receive 84% of all subscriber revenues and 92% of all discretionary service advertising revenues (2012-13 broadcast year). Similarly, VI BDUs serve 80% of all subscribers across Canada and generate revenues of \$7.1 billion as compared to revenues of \$1.7 billion for other BDUs. However, it is also important to note that VI programming services spend much larger amounts on the production of Canadian programming (an average of \$9.5 million per VI service as compared to \$1.1 million by other services) and employ many more Canadians than other broadcasting companies.

92. The scale and scope of these companies give rise to the possibility that they may make use of their market power to engage in anti-competitive behaviour. Such behaviour would make it more difficult for other services, particularly new entrants, to operate. Non-VI services have the potential to provide program diversity and aid in the fulfillment of other objectives of the Act. The loss of such services could decrease the quality and diversity of programming that is available. Similarly, new entrants may offer new approaches or innovative business practices that would benefit Canadians and the broadcasting system, which could be lost should VI companies abuse their market power.
93. As an example of possible anti-competitive behaviour, BDUs controlled by VI companies could confer more preferable carriage arrangements on their own programming services to the detriment of services owned by competitors. To help ensure that competitor services receive fair distribution, the Commission requires BDUs to offer certain services (referred to as Category A services) to subscribers. Although subscribers are not required to take these services, these rules ensure that the services are at least available for subscribers should they choose them.
94. For other services that BDUs are not required to offer (referred to as Category B services), the Commission has established rules that specify that, for each Category B service offered by a BDU in which that BDU has an ownership interest, it must also offer at least three Category B services in which it does not have an ownership interest. Additional rules ensure that the services carried are in languages that are appropriate to the market that the BDU serves, and that at least some of these services are operated independently of all VI companies. Again, these rules are meant to achieve a certain parity and ensure that the services are available for subscribers should they decide to purchase them. It should be noted that there are no specific rules for VOD services relating to the provision of programming from non-VI sources.
95. More broadly, the Commission also established a regulatory framework for vertical integration in Broadcasting Regulatory Policy 2011-601. In that framework, the Commission acknowledged that, in an increasingly consolidated and vertically integrated broadcasting system, there is a possibility that VI companies might prioritize the distribution of their own services and of services from other VI companies over the distribution of independent programming services. This could limit the programming to which Canadians have access. Accordingly, the Commission set out a *Code of conduct for commercial arrangements and interactions* (known as the VI Code). This code sets out general objectives to govern commercial arrangements between BDUs, programming services and digital media services.
96. The Commission considers that non-VI services are most at risk in an environment where television services are unbundled and certain regulatory protections for such services are removed. Accordingly, the Commission proposes to examine whether regulatory intervention is necessary to ensure that non-VI services are treated equitably and that their programming is available on multiple platforms. The

Commission is prepared to explore whether there is a need to amend the VI Code or to adopt measures in addition to the VI Code, such as distribution requirements or undue preference provisions. These measures could also include imposing certain provisions of the VI Code on licensees through conditions of licence or regulation.

Questions

97. The Commission invites parties to respond to the following questions, making reference to the English- and French-language markets as appropriate.

Q47. Are measures, such as imposing distribution requirements, undue preference provisions or other measures such as those set out in the VI Code, needed to ensure the availability of non-vertically integrated programming sources and BDUs in the future?

Q48. How should the Commission and Canadians measure success with respect to promoting fair access for non-vertically integrated programming sources?

Enhanced audience measurement using set-top boxes

98. The Commission considers that the Canadian television industry should have access to appropriate tools to effectively respond to changes in the industry and to the needs and interests of viewers. Data from set-top boxes (STBs) could be such a tool as it can be used to measure viewing levels of programs more accurately. This could improve the industry's ability to provide viewers with the programming they want to watch and the information they need to make informed choices. It could also serve to increase revenues flowing to program creators.

99. Tom Pentefountas, Vice-Chairman, Broadcasting, carried out a fact-finding exercise in early 2014 on the possible use of STBs for audience measurement. A wide range of stakeholders provided information about current approaches to audience measurement and STB technology. A number of stakeholders also raised public policy issues relating to the relationship between audience measurement techniques and privacy, and the availability of STB information in the context of an industry in which some parties are vertically integrated and others are not.

100. STB-based data is currently being collected and used in Australia, UK and the U.S. and, to a more limited extent, in Canada.

101. The collection of STB data is an area in which VI companies may have an advantage to the extent that they share STB data received from their BDUs with the television programming services that they also own. Large broadcasters also have access to a large amount of useful and relevant data from existing audience measurement services such as BBM. In contrast, smaller services and those targeting niche audiences, especially those not operated by VI companies, may not have access to equivalent data either from STBs or from BBM.

102. The privacy of individuals is a paramount consideration and must be maintained. How best to achieve this goal is an important issue and raises additional matters related to viewer consent as well as the gathering and storage of personal information.

Questions

103. **The Commission invites parties to respond to the following questions, making reference to the English- and French-language markets as appropriate.**

Q49. Should an STB-based audience measurement system be implemented in Canada?

Q50. The Commission invites parties to propose a concrete model for the establishment of an STB-based audience measurement system that maintains the privacy of individual Canadians.

Q51. What role, if any, should the Commission play in enabling a STB-based audience measurement system?

Q52. What data points can and should be collected?

Q53. What methodology should be used to collect data?

Q54. If the Commission were to enable the collection and use of such data, what privacy protection methods should be established?

Q55. What technical matters must be resolved to establish an STB-based audience measurement system?

Q56. What governance model should oversee the operation of such a system?

Q57. Does the establishment of an STB-based audience measurement system have implications for resources, funding and cost recovery? If so, what are those implications?

Ensuring that television services can be made available while reducing regulation

Genre exclusivity and protections for Category A services

104. The Commission has licensed specialty and pay Category A services on a one-per-genre basis. This means that Category A services are licensed to provide specific types of programming and/or programming relating to certain subjects. These genres are intended to be defined in such a way that the services are complementary and do not compete head-to-head with one another. Category B services, on the other hand, may be competitive with each other, but the Commission does not generally authorize a Category B service that would be directly competitive with an existing Category A service. Category C services operating in the genres of mainstream news and sports may compete with each other, but not with Category A services.

105. BDUs are required to distribute Category A services in their linguistic markets (for example, French-language services in French-language markets) as described above, and in OLMC markets as well. This ensures a minimum level of revenues to enable these services to maximize their contribution to the creation of Canadian programming. There are no general distribution requirements for Category B or C services.
106. To ensure that a specialty service remains distinct and true to the genre in which it was licensed to operate, the Commission imposes conditions of licence that define and limit its nature of service. The Commission's objectives with respect to its genre policy are two-fold: to ensure a diversity of programming genres, and to provide a measure of support to pay and specialty Category A services to enable them to meet their Canadian content and other programming obligations, which are generally higher than other types of specialty and pay services. The nature of service also informs subscribers about the types of programming that they can expect to receive. This is known as the genre exclusivity policy.
107. The pay and specialty sector currently includes a wide range of genres. These include services that serve specific demographic groups such as women, men, children or third-language communities, as well as a significant number of services targeted to specific programming niches. The increasing number of specialty services has resulted in an increased overlap among genres. Despite occupying notionally distinct genres, there is a high degree of program sharing between services. In many genres, very little new programming is actually being produced. Some participants in Phases 1 and 2 were concerned about the high level of program repeats and recycled programming.
108. Further, nature of service conditions may limit a service from adjusting the orientation of its programming to respond to audience preferences. Over time, the Commission has considered a significant number of applications to amend nature of service conditions of licence, as well as complaints about alleged violations of nature of service. Instances when specialty services change their orientation may also raise questions about whether the service continues to operate within the genre for which it was licensed. The genre exclusivity policy also precludes new services that may provide different approaches to a genre of programming from entering the system.
109. Moreover, since many Category A services are owned by VI companies, which also operates BDUs, these services are often packaged in favourable ways, i.e., in large packages that include very popular services. This may allow certain Category A services to remain profitable due to beneficial packaging arrangements rather than on the merits of their programming.
110. The pay and specialty television industry is now mature, and is characterized by a diversity of popular, recognized brands in both linguistic markets. Accordingly, the Commission wishes to explore whether it is time to eliminate genre exclusivity and protections for pay and specialty services. Competition in genres may benefit consumers by better responding to their desire for a diversity of programming,

permit new services to enter the market in currently restricted genres and allow all services to innovate in providing programming to Canadians. The elimination of mandatory distribution rules for Category A services would place all specialty and pay services on a level playing field and could force these programming services to produce compelling programming and differentiate themselves in order to attract subscribers.

111. For greater clarity, under such a scenario, genre exclusivity and protections would be eliminated and programming services would no longer have a regulated nature of service, but could operate within broad genres. This would allow them to communicate their brand and programming to Canadians and BDUs. All discretionary services could compete with each other and offer programming of any type, category or genre. The requirement to distribute all English- and French-language Category A services would be eliminated. As well, the requirement to distribute all ethnic Category A services and the buy-through requirement would be eliminated.²² However, all current 9(1)(h) distribution orders would continue to apply, including those related to Category C national news specialty services.
112. Accordingly, the Commission seeks comment on whether there is an ongoing public interest purpose served by maintaining regulated genre protections and distribution requirements for pay and specialty services, as well as on the challenges and opportunities related to eliminating this policy.

Questions

113. **The Commission invites parties to respond to the following questions, making reference to the English- and French-language markets as appropriate.**

Q58. Are regulatory measures necessary to promote programming diversity? If so, what measures can best achieve this objective?

Q59. What are the implications, both positive and negative, of eliminating the genre exclusivity policy? What would be the earliest feasible timeframe to implement this approach, in light of all the possible implications?

Q60. Even in the absence of genre exclusivity, should programming services be required to identify the broad genres of programming they offer to ensure that consumers get the type of programming they expect from those services? What should these broad genres be?

Q61. How should the Commission and Canadians measure success with respect to ensuring a diversity of programming?

²² The buy-through requirement establishes that except as otherwise provided under a condition of its licence, a licensed BDU that distributes a general interest non-Canadian third-language service or a general interest third-language Category B service to subscribers shall also distribute an ethnic Category A service to them if one is available in the same principal language.

Streamlined licensing

114. The Commission wishes to explore ways of simplifying the current system of licensing. Accordingly, the Commission proposes to consolidate all programming services into three types, based on the way in which these services are distributed to Canadians by BDUs:

Basic services: the current television stations and provincial educational services.²³

Discretionary services: the 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 since these orders are limited to particular periods of time after which they expire, such services would generally be licensed as discretionary services.

On-demand services: the current VOD and pay-per-view services.

These three types of services would operate under standardized sets of obligations determined following a public process.

115. The Commission also considers that it would be appropriate to exempt from licensing additional discretionary and on-demand programming services with a low number of subscribers. This would reduce regulatory burden for these smaller services as well as eliminate the long period of time necessary to obtain a licence and enable a more dynamic market for programming services. The Commission is therefore prepared to explore ways to expand the existing exemption orders related to third-language programming services (Public Notice 2007-33), Category B services that serve fewer than 200,000 subscribers (Broadcasting Regulatory Policy 2013-292) and VOD services operated by exempt BDUs (Broadcasting Order 2011-60). In particular, should the Commission choose to eliminate genre protections and mandatory distribution requirements for Category A services, as described in the section above, the Commission could consider exempting all third-language discretionary services and all other discretionary services with a lower number of subscribers.

116. Further, Broadcasting Regulatory Policy 2013-734 set out the framework for the distribution of Category C national news specialty services. This framework was implemented in Broadcasting Order 2013-735. The order includes a number of safeguards to ensure greater and more equitable access by these national news services to the Canadian broadcasting system, including the mandatory distribution of such services. It also provides all parties with the regulatory clarity they require to govern their commercial interactions. The framework was designed to help ensure

²³ Community channels commonly operate as part of the BDU licence and, as such, would not be licensed separately as basic services.

that Canadians have access to a healthy and diverse range of Canadian news programming.

117. In that policy, the Commission acknowledged that in light of this new framework, the current licensing criteria for Category C national news specialty services²⁴ might not be strict enough to ensure high-quality news programming. Parties had proposed that the Commission impose further criteria to address this concern, including minimum thresholds for category 1 News programming, adherence to a journalistic code of ethics, the placement of reporters and news bureaus in a number of provinces and establishing an enhanced complaints process. Accordingly, the Commission announced its intention to review the appropriateness of the licensing criteria for Category C national news specialty services as part of this consultation on the future of television. For that reason, the Commission requests comments on the criteria that would be appropriate in licensing new Canadian national news specialty services.

Questions

118. **The Commission invites parties to respond to the following questions, making reference to the English- and French-language markets as appropriate.**

Q62. Should the current types of licences be consolidated to simplify the licensing process? Are there other ways than the approach set out in paragraph 114 above of simplifying this process?

Q63. What licensing criteria would be appropriate for the consolidated types of programming services?

Q64. What licensing criteria would be appropriate for Category C national news specialty services?

Q65. Should the Commission revise and/or simplify existing exemption orders to take into account a new approach to licensing and, if so, in what way?

Q66. How should the Commission and Canadians measure success with respect to a streamlined Commission approach to licensing and exemption?

III. A Canadian television system that empowers Canadians to make informed choices and provides recourse mechanisms in the case of disputes

119. During Phases 1 and 2, some participants submitted that the packaging and pricing information that BDUs provide is unclear. As a result, some complained that they did

²⁴ The standard conditions of licence for Category C national news specialty services are set out in Appendix 2 to Broadcasting Regulatory Policy 2009-562-2.

not receive the services to which they thought they had subscribed. Others considered that the information that BDUs provide is either misleading or confusing.

120. In an increasingly complex and competitive broadcasting environment, Canadians need better information and other tools, such as recourse mechanisms in the case of disputes, to ensure that they get the services they want on the best possible terms.

121. The principles that will guide the Commission in achieving this outcome are as follows:

- Canadians have the greatest possible level of flexibility and choice, both in the platforms and services through which they access programming.
- Canadians can make choices that are affordable to them.
- Canadians can knowledgeably choose and change program providers and platforms.

Notifying subscribers of changes to programming services

122. As discussed earlier, specialty services currently operate within specific genres as a condition of licence. They cannot operate outside those genres without a licence amendment. In the event of changes to the current system, these services may be allowed to change their programming as they see fit. Even under the current system, specialty and pay services have frequently rebranded their services in ways that substantially alter the type and subject matter of programming offered by the service. In some cases, these changes may be consistent with the expectations of Canadians subscribing to the service and those of the Commission in licensing the service; in other cases, these changes may be entirely inconsistent with those expectations.

123. Further, BDUs frequently make changes to the services offered in particular packages and the retail price of subscribing to those packages. In 2013, for example, the Commission received 306 complaints relating to BDUs that take some channels and remove them from a specific package and repackage them into separate paid tiers.

124. The Commission wishes to explore possible strategies to keep consumers informed of the programming offered to them and how the services to which they subscribe are packaged and priced. The intention of such strategies would be to give Canadians a clear understanding of their subscription and the information they need to gain control and make informed choices as to the programming services for which they are paying.

Questions

125. The Commission invites parties to respond to the following questions, making reference to the English- and French-language markets as appropriate.

Q67. How can Canadians best be informed of changes to the programming of services to which they subscribe and the ways in which they are packaged?

Q68. Does the Commission need to intervene to ensure Canadians are better informed?

Q69. How should the Commission measure success with respect to ensuring that Canadians are adequately informed of changes to programming and how services are packaged?

Enhancing safeguards and controls relating to programming content

126. Participants in Phase 1 expressed varying views on programming standards and codes relating to matter such as the depiction of violence and sexuality. Comments ranged from a call for better regulation of programming content to a preference for self-regulation and identification of a need for tools that permit viewers to choose programming that they want to watch. Some considered that parental guidance features could be buttressed by the ability not to subscribe to channels within a package that viewers find offensive. In this regard, it was suggested that the electronic programming guide (EPG) should provide better information on the channels offered and the programming that is broadcast. Others considered that web content and social media would help them make informed choices about the content they receive. Parties suggested that reviews and a move to greater on-demand consumption of programming would facilitate informed choice of content going forward.

127. The Commission considers that better information and tools would provide viewers with enhanced safeguards and controls relating to programming content. For example, EPGs could become more user-friendly and informative, including accessibility-related information, so Canadians can make more informed choices.

Questions

128. The Commission invites parties to respond to the following questions, making reference to the English- and French-language markets as appropriate.

Q70. Is there a need for better information and tools to provide viewers with enhanced safeguards and controls relating to programming content?

Q71. What additional program information should be available to viewers?

Q72. What are the technical issues and costs associated with improving the provision of program information to viewers?

Q73. How should the Commission and Canadians measure success with respect to enhancing safeguards and controls relating to programming content?

Enabling a more dynamic market for BDUs

129. Participants in Phases 1 and 2 noted that BDUs have made strides toward meeting consumer needs in an effort to maintain their patronage. Some BDUs offer solutions that allow consumers to stream audiovisual content from their television subscriptions on a number of devices such as laptops, tablets and smartphones. However, some submitted that this flexibility often involves additional costs to purchase different receivers or decoders as well as when broadband cap limits are exceeded.
130. To ensure that Canadians have a greater number of providers to choose from, the Commission proposes, among other things, to consider broadening the BDU exemption order to include BDUs with fewer than 20,000 subscribers that wish to enter and compete in markets with licensed BDUs. This would facilitate the entry of new services in the system by eliminating the long period to get a licence and encourage competition among BDUs.

Questions

- 131. The Commission invites parties to respond to the following questions, making reference to the English- and French-language markets as appropriate.**

Q74. Are any measures needed to promote a more dynamic market for BDUs?

Q75. Would measures such as broadening the BDU exemption order be effective in fostering a more dynamic marketplace? What are the challenges associated with these measures and how can they be overcome?

Q76. How should the Commission and Canadians measure success with respect to enabling a more dynamic market for BDUs?

Adopting guidelines for BDU-subscriber relationships and creating recourse mechanisms in the case of disputes

132. Some participants in Phases 1 and 2 stated that the pricing and packaging information that BDUs provide can be inaccurate, misleading or confusing. Others were concerned about seemingly arbitrary price increases and additional fees imposed by service providers, such as fees for paper bills, as well as other service changes. Barriers that participants identified with regard to changing packages or services fell into three broad categories: the lack of meaningful choice, contracts, and technology. All of these relate to the costs associated with switching BDUs.
133. In 2013, the Commission received 1,159 complaints from Canadians on billing disputes. More specifically, the complaints were about clients being overbilled, disconnection fees, billing errors and contract interpretation. The Commission also received 369 complaints from cable and satellite subscribers about rates that keep

increasing while their subscription remains the same. Moreover, the Commission received complaints from cable and satellite subscribers who were unaware that they had a contract until they made changes to their subscription or wanted to cancel their account and were charged termination fees. Some of these complaints were also about rate increases, where subscribers assumed that because they have a contract that their rates should not increase. Lastly, the Commission received 124 complaints from cable and satellite subscribers who were not aware that they had to give 30 days' notice when they terminate their account. As a result, these subscribers had to pay an extra month's subscription to their current provider even though they had already switched to another provider.

134. To ensure that Canadians are better informed about the services they receive and that they have the flexibility to easily change service providers, the Commission may consider the adoption of guidelines for BDU-subscriber relationships, including guidelines for contract clarity and termination of service.
135. Some participants in Phases 1 and 2 were of the view that, at times, complaining to the Commission did not produce satisfactory results. Accordingly, to ensure that Canadians are empowered in their choices and have proper recourse mechanisms in case of disputes, the Commission may consider measures, such as the creation of an ombudsman and the introduction of a code of conduct for BDUs.

Questions

- 136. The Commission invites parties to respond to the following questions, making reference to the English- and French-language markets as appropriate.**

- Q77. Do Canadians who wish to change service providers face challenges in making that change? If so, what are these challenges? What should be the Commission's role, if any, in addressing these issues?**
- Q78. Should guidelines or a code of conduct addressing issues, such as early termination fees, similar to what was established in the Wireless Code²⁵ be applicable to the BDU market? If so, what specifically should be included?**
- Q79. Is an industry ombudsman with, for example, a mandate similar in principle to that of the Commissioner for Complaints for Telecommunications Services (CCTS) necessary or desirable? If so, what are the costs associated with creating and maintaining an industry ombudsman?**
- Q80. How should the Commission and Canadians measure success with respect to empowering Canadians and enabling better BDU-subscriber relationships?**

²⁵ See Telecom Regulatory Policy 2013-271

Other Matters

137. While the Commission has identified a number of issues and a broad scope for this review, it is nevertheless open to considering other issues and concerns. Comments must be limited to matters falling within the Commission's jurisdiction and powers under the Act. Further, parties should discuss such matters in the context of the various cultural, economic, social and technological policy objectives set out in the Act.

Procedure

138. The Commission will hold a public hearing commencing on **8 September 2014 at 9 a.m. at the Conference Centre, Phase IV, 140 Promenade du Portage, Gatineau, Quebec**, to address the matters set out in this notice.

139. The *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the 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, the procedure for filing confidential information and requesting its disclosure, and the conduct of the public hearing. 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 "Statutes and Regulations." The *Guidelines on the CRTC Rules of Practice and Procedure*, set out 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.

140. The Commission invites interventions that address the issues and questions set out above. The Commission will accept interventions that it receives on or before **25 June 2014**. Interventions must be filed in accordance with section 26 of the Rules of Procedure.

141. 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.

142. Interveners are permitted to coordinate, organize and file, in a single submission, interventions of other interested persons who share their position but who do not wish to appear at the hearing as a "Joint Supporting Intervention." More information on how to do so and a [template](#) for the covering letter to be filed by the parties can be found in Broadcasting Information Bulletin 2010-28-1.

143. Following the public hearing, parties may have an opportunity to file brief final submissions.

144. Parties wishing to appear at the public hearing, either in person, by Skype or by video conference from one of the Commission's regional offices, and parties requiring communications support must state their request on the first page of their intervention. Parties requesting appearance must provide clear reasons, on the first page of their intervention, as to why the written intervention is not sufficient and why an appearance is necessary. Only those parties whose requests to appear have been granted will be contacted by the Commission and invited to appear at the public hearing. While interventions will not otherwise be acknowledged, they will be considered by the Commission and will form part of the public record of the proceeding, provided the procedures set out in the Rules of Procedure and this notice have been followed.
145. Persons requiring communications support such as assistance listening devices and sign language interpretation are requested to inform the Commission at least twenty (20) days before the commencement of the public hearing so that the necessary arrangements can be made.
146. Submissions must be filed by sending them to the Secretary General of the Commission using **only one** of the following means:

by completing the
[\[Online form\]](#)

or

by mail to
CRTC, Ottawa, Ontario K1A 0N2

or

by fax at
819-994-0218

147. Submissions longer than five pages should include a summary.
148. 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

149. 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.

150. 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.
151. 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.
152. 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.
153. 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.

Availability of documents

154. Electronic versions of the interventions and of other documents referred to in this notice, are available on the Commission's website at www.crtc.gc.ca by visiting the "Participate" section, selecting "Submit Ideas and Comments," and then selecting "our open processes." Documents can then be accessed by clicking on the links in the "Subject" and "Related Documents" columns associated with this particular notice.
155. Documents are also available from Commission offices, upon request, during normal business hours.

Location of Commission offices

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

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

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**Note that effective 30 April 2014, the Saskatchewan office will be located at the following address (telephone and fax numbers remain unchanged):*

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Fax: 403-292-6686

British Columbia

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

Secretary General

Related documents

- *Maximizing the ability of Canadian consumers to subscribe to discretionary services on a service-by-service basis – Response to Order in Council 2013-1167*, 24 April 2014
- *Distribution of Canadian Category C national news specialty services*, Broadcasting Order CRTC 2013-735, 19 December 2013
- *Distribution of Canadian Category C national news specialty services*, Broadcasting Regulatory Policy CRTC 2013-734, 19 December 2013
- *Applications for mandatory distribution on cable and satellite under section 9(1)(h) of the Broadcasting Act*, Broadcasting Regulatory Policy CRTC 2013-372, 8 August 2013
- *Amendments to the Broadcasting Distribution Regulations to implement the exemption order applicable to Category B services that serve fewer than 200,000 subscribers and that operate under an approved nature of service*, Broadcasting Regulatory Policy CRTC 2013-292, 18 June 2013
- *The Wireless Code*, Telecom Regulatory Policy CRTC 2013-271, 3 June 2013
- *Conditions of licence for competitive Canadian specialty services operating in the genres of mainstream sports and national news – Definition of “broadcast day” for mainstream sports services*, Broadcasting Regulatory Policy CRTC 2009-562-2, 25 May 2012

- *Regulatory framework relating to vertical integration*, Broadcasting Regulatory Policy CRTC 2011-601, 21 September 2011
- *Exemption order for small video-on-demand undertakings*, Broadcasting Order CRTC 2011-60, 31 January 2011
- *Guidelines on the CRTC Rules of Practice and Procedure*, Broadcasting and Telecom Information Bulletin CRTC 2010-959, 23 December 2010
- *Changes to certain practices for filing interventions – Expansion of filing practices to include the filing of joint supporting comments for broadcasting policy proceedings*, Broadcasting Information Bulletin CRTC 2010-28-1, 10 December 2010
- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services – Regulatory Policy*, Broadcasting Public Notice CRTC 2008-100, 30 October 2008
- *Exemption order respecting certain third-language television undertakings*, Broadcasting Public Notice CRTC 2007-33, 30 March 2007