



## Broadcasting Public Notice CRTC 2005-44

Ottawa, 5 May 2005

### Call for comments on proposed amendments to the distribution and linkage rules in response to issues raised in Broadcasting Decision CRTC 2005-188

1. In *Complaint by MTS Allstream Inc. regarding distribution of discretionary services as part of the “digital basic” package offered by certain Shaw cable systems*, Broadcasting Decision CRTC 2005-188, 5 May 2005 (Decision 2005-188), the Commission dismissed a complaint by MTS Allstream Inc. (MTS) with respect to the digital distribution of certain services by Shaw Cablesystems (SMB) Limited and Videon Cablesystems Inc. (collectively, “Shaw”). In its complaint, MTS alleged that, by distributing the pay television service Family Channel and various U.S. superstations to all subscribers who receive digital services, without a specific fee, Shaw was contravening paragraph 12 of the distribution and linkage rules (D&L Rules).<sup>1</sup>
2. Section 1 of the *Broadcasting Distribution Regulations* (the Regulations) defines a “discretionary service” as follows:

a programming service that is not included in the basic service and that is distributed to subscribers on a discretionary basis for a fee separate from and in addition to the fee charged for the basic service.
3. Paragraph 12 of the D&L rules requires that certain programming services be distributed exclusively as discretionary services, including pay television services and satellite services authorized for digital distribution. This paragraph, which appears in the section entitled “Rules regarding the distribution of programming services on a digital basis,” reads as follows:

Except as otherwise provided under a condition of its licence, where a Class 1 licensee distributes any of the following programming services, the licensee is required to distribute that service exclusively as a discretionary service:

  - a) any pay television service or any television pay-per-view service offered by a pay television undertaking;
  - b) any satellite service as set out in the list of Part 2, Part 3 and DTH Eligible Satellite Services for digital distribution as well as any non-Canadian religious satellite services.

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<sup>1</sup> The current distribution and linkage rules are contained in *Distribution and Linkage requirements for Class 1 and 2 licensees*, Broadcasting Public Notice CRTC 2004-56, 29 July 2004.

4. The intended purpose of this rule is to protect subscribers to the basic service from incurring increased costs due to the inclusion of certain programming services as part of the basic package; that is, these rules are intended to ensure that the subscriber may choose to incur additional costs to receive certain services, but that these costs are not imposed on the subscriber who wishes to receive only the basic service.
5. In Decision 2005-188, the Commission noted that Shaw does, in fact, offer a basic service on an analog basis that is provided to all subscribers. The services at issue in the complaint by MTS are available to all subscribers who purchase or rent specific equipment, i.e., a digital set-top box (DSTB). The Commission found that, for those subscribers who rent a DSTB, the rental fee is a fee that is separate from and in addition to the fee charged for the basic service, in accordance with section 1 of the Regulations. The Commission considered that customers who purchase the DSTB also pay a fee or discretionary sum, in addition to the cost of basic service, in the form of the purchase price. However, since the fee paid by the subscriber is a one-time fee, it does not appear to be directly linked to the on-going provision of the services received as a result of the additional disbursement and does not distinguish these services as clearly from those provided as part of the fee paid for basic service as is the case when the DSTB is rented. The Commission noted that, in either case, subscribers do not incur additional costs for basic service as a result of the manner of Shaw's distribution of the services in question, and that they retain discretion with respect to the reception of these services, as is intended by the D&L Rules.
6. In light of the above, the Commission found that Shaw's discretionary distribution of the services in question, although not expressly provided for in the D&L rules, was consistent with the purpose of the paragraph 12 rule. The Commission stated, however, that the arguments raised by MTS indicate that the clarity of the rule, as currently drafted, could be improved to better reflect its intended purpose. Consequently, the Commission stated that it was issuing a public notice seeking comment with respect to potential changes to the D&L rules, intended to remove any ambiguity that may exist in the definition of "discretionary" as it applies to the relevant sections of those Rules, and to ensure that they properly reflect the Commission's policy.
7. Consistent with the above, the Commission proposes that the following sentence be added to the end of each of paragraphs 9 and 12 of the D&L rules:

For the purposes of this rule, the term "a fee separate from and in addition to the fee charged for the basic service" in the definition of "discretionary service" in section 1 of the *Broadcasting Distribution Regulations* shall be deemed to include the amount charged for the rental or purchase of equipment in addition to that necessary for the reception of the basic service.
8. The full texts of the paragraph 9 and 12 rules, including the proposed amendments, are attached as an appendix to this notice.

## Call for comments

9. The Commission invites comments on the proposed amendments to the D&L rules. Parties should limit their comments to observations concerning the proposed amendments. The Commission will accept comments that it receives on or before **6 June 2005**.
10. The Commission will not formally acknowledge comments. It will, however, fully consider all comments and they will form part of the public record of the proceeding, provided that the procedures for filing set out below have been followed.

## Procedures for filing comments

11. Interested parties can file their comments to the Secretary General of the Commission:
  - **by using the**  
[Broadcasting Intervention/Comments Form](#)
  - OR
  - **by mail to**  
CRTC, Ottawa, Ontario K1A 0N2
  - OR
  - **by fax at**  
(819) 994-0218
12. Submissions longer than five pages should include a summary.
13. Please number each paragraph of your submission. In addition, please enter the line **\*\*\*End of document\*\*\*** following the last paragraph. This will help the Commission verify that the document has not been damaged during transmission.
14. The Commission will make comments filed in electronic form available on its web site at [www.crtc.gc.ca](http://www.crtc.gc.ca) but only in the official language and format in which they are submitted. Such comments may be accessed in the *Public Proceedings* section of the CRTC web site. Copies of all comments, whether filed on paper or in electronic form, will also be placed on the public examination file.
15. The Commission encourages interested parties to monitor the public examination file and the Commission's web site for additional information that they may find useful when preparing their comments.

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

Central Building

Les Terrasses de la Chaudière  
1 Promenade du Portage, Room G-5  
Gatineau, Quebec K1A 0N2  
Tel: (819) 997-2429 - TDD: 994-0423  
Fax: (819) 994-0218

Metropolitan Place

99 Wyse Road  
Suite 1410  
Dartmouth, Nova Scotia B3A 4S5  
Tel: (902) 426-7997 - TDD: 426-6997  
Fax: (902) 426-2721

205 Viger Avenue West

Suite 504  
Montréal, Quebec H2Z 1G2  
Tel: (514) 283-6607

55 St. Clair Avenue East

Suite 624  
Toronto, Ontario M4T 1M2  
Tel: (416) 952-9096

Kensington Building

275 Portage Avenue  
Suite 1810  
Winnipeg, Manitoba R3B 2B3  
Tel: (204) 983-6306 - TDD: 983-8274  
Fax: (204) 983-6317

Cornwall Professional Building  
2125 - 11<sup>th</sup> Avenue  
Room 103  
Regina, Saskatchewan S4P 3X3  
Tel: (306) 780-3422

10405 Jasper Avenue  
Suite 520  
Edmonton, Alberta T5J 3N4  
Tel: (780) 495-3224

530-580 Hornby Street  
Vancouver, British Columbia V6C 3B6  
Tel: (604) 666-2111 - TDD: 666-0778  
Fax: (604) 666-8322

Secretary General

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

## Appendix to Broadcasting Decision CRTC 2005-44

### Full text of paragraphs 9 and 12 of the distribution and linkage rules as proposed in this notice

9. Except as otherwise provided under a condition of its licence, where a Class 1 licensee distributes any of the following programming services, the licensee is required to distribute that service exclusively as a discretionary service on a digital basis:

- Sport/Specials Pay-Per-View; and,
- any other pay television, pay-per-view or specialty programming service that may be designated by the Commission for carriage exclusively as a discretionary service on a digital basis.

For the purposes of this rule, the term “a fee separate from and in addition to the fee charged for the basic service” in the definition of “discretionary service” in section 1 of the *Broadcasting Distribution Regulations* shall be deemed to include the amount charged for the rental or purchase of equipment in addition to that necessary for the reception of the basic service.

12. Except as otherwise provided under a condition of its licence, where a Class 1 licensee distributes any of the following programming services, the licensee is required to distribute that service exclusively as a discretionary service:

- a) any pay television service or any television pay-per-view service offered by a pay television undertaking;
- b) any satellite service as set out in the list of Part 2, Part 3 and DTH Eligible Satellite Services for digital distribution as well as any non-Canadian religious satellite services.

For the purposes of this rule, the term “a fee separate from and in addition to the fee charged for the basic service” in the definition of “discretionary service” in section 1 of the *Broadcasting Distribution Regulations* shall be deemed to include the amount charged for the rental or purchase of equipment in addition to that necessary for the reception of the basic service.