



Broadcasting Public Notice CRTC 2004-64

Ottawa, 25 August 2004

Call for comments on possible requirements for the provision of notice to programming services by distributors of their plans to change packages

The Commission invites comment with respect to the measures that may be required to ensure that negotiations between distributors and programmers are conducted in accordance with good commercial practices. Comments must be submitted on or before 6 October 2004.

Introduction

1. In two broadcasting decisions issued on 4 June 2004,¹ the Commission stated that it continued to view commercial arrangements between distributors and programmers as matters best determined by negotiations between them, without its intervention. The Commission expressed concern, however, based upon its review of the matters that were under consideration in the two decisions and in other, similar cases, that the negotiation process between parties had not consistently been characterized by good commercial practices.
2. In the above-noted decisions, the Commission expressed the further view that good commercial relations were essential to the ability of parties to fulfil their respective responsibilities under the *Broadcasting Act* (the Act). Accordingly, the Commission announced that it would conduct a process to examine the measures that may be required to ensure that negotiations between distributors and programmers are conducted in accordance with good commercial practices.
3. This public notice seeks comment on measures aimed at ensuring that distributors and programmers conduct their negotiations in accordance with good commercial practices. The Commission's objective in this proceeding is to ensure the presence of an effective environment for negotiations, thereby reducing the incidence of those disputes and complaints that the Commission is called upon to arbitrate.

¹ *Request by Pelmorex Communications Inc. for an order under section 9(1)(h) of the Broadcasting Act regarding the distribution of The Weather Network and MétéoMédia by Star Choice Communications Inc.*, Broadcasting Decision CRTC 2004-197; and *Request by the licensees of The Sports Network, Talk TV and Le Réseau des sports for an order under section 9(1)(h) of the Broadcasting Act regarding the distribution of these services by Star Choice Communications Inc.*, Broadcasting Decision CRTC 2004-198, both dated 4 June 2004.

Context

4. The Commission's general position on disputes involving channel placement and realignment was set out in *Access rules for broadcasting distribution undertakings*, Public Notice CRTC 1996-60, 26 April 1996 (Public Notice 1996-60). In that notice, the Commission concluded that channel placement issues should properly be the subject of negotiation between the parties concerned and that, generally, it would not be prepared to apply its dispute resolution powers in matters that were essentially commercial in nature.
5. Existing methods for dispute resolution include sections 12 to 15 of the *Broadcasting Distribution Regulations* (the Regulations), which provide that, should a dispute arise between the licensee of a broadcasting distribution undertaking (BDU) and the licensee of a programming undertaking or the operator of an exempt programming undertaking concerning the carriage or terms of carriage of programming, including the wholesale rate, one or both of the parties may refer the matter to the Commission for dispute resolution. In addition, section 9 of the Regulations, section 6.1(1) of the *Pay Television Regulations* and section 10.1 of the *Specialty Services Regulations, 1990* provide that no licensee shall give an undue preference to any person, including itself, or subject any person to an undue disadvantage. Other regulatory mechanisms available to the Commission include the issuance of orders pursuant to section 9(1)(h) of the Act, and enforcement proceedings leading to the issuance of mandatory orders pursuant to section 12(2) of the Act.
6. At present, Class 1 and Class 2 BDUs are required, under section 26 of the Regulations, to notify a Canadian programming service at least 60 days prior to the proposed date of a change to the channel on which that service is distributed (notice of channel realignment).
7. There currently are no regulatory requirements for direct-to-home (DTH) satellite BDUs to provide prior notification of changes to the packaging of a programming service offered or the channel on which it is offered.

Call for comments

8. The Commission invites detailed comments with respect to the following proposed measures and issues:

Provision of notice measures

- Should a mandatory notice period be introduced requiring all BDUs, including DTH BDUs, to provide programming services with notice of changes to terms of carriage (including packaging changes) before changes may be made? If the Commission were to introduce such a measure, should it be implemented as part of the Regulations or in some other manner?

- If the Commission were to introduce such a requirement, is 60 days an appropriate and sufficient notification period, or would a longer or shorter period be preferable?
- What information should accompany any notice provided to programmers? For example, in addition to providing timely notice, should distributors be required to provide programmers with comprehensive information concerning such matters as the proposed new terms of carriage and the estimated financial impact on the affected specialty service of any packaging changes, if any?

Other possible measures

- What measures, instead of or in addition to the provision of detailed and timely notice, may be required to foster the conduct of negotiations between distributors and programmers in accordance with good commercial practices?

Implication of any new requirements and the existing Commission complaint and dispute resolution processes

- The Commission's policy is that negotiations should be left to the parties themselves, with Commission involvement occurring only as a last resort. In light of this policy, at what point, if any, should any proposed measure nevertheless allow recourse to the Commission's existing mechanisms for dealing with disputes and complaints? Are there certain types of disputes that the Commission should not involve itself in? Please explain in detail for each type of dispute identified.
- If the Commission were to accept a dispute for expeditious resolution concerning proposed packaging or other changes to terms of carriage (pursuant to sections 12 to 15 of the Regulations), should implementation of the proposed change be suspended pending such resolution? If so, what would be the appropriate period of such a suspension?
- In view of the potential volume of disputes, should there be some method developed for prioritizing disputes so that those of highest priority are dealt with first? If so, what elements should be taken into consideration for prioritizing the disputes?

9. Comments should be filed on or before **6 October 2004**.

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 ONE of the following formats:
 - Intervention/Comments form
available from the Commission's web site by indicating and selecting the public notice number under the *Decisions, Notices and Orders* section

OR

 - **by electronic mail to**
procedure@crtc.gc.ca

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 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
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Metropolitan Place

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55 St. Clair Avenue East

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275 Portage Avenue
Suite 1810
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Secretary General

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