



Broadcasting and Telecom Notice of Consultation CRTC 2011-344

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Ottawa, 25 May 2011

Fact-finding exercise on the over-the-top programming services in the Canadian broadcasting system

In Broadcasting Regulatory Policy 2009-329, the Commission set out the results of its review of broadcasting in new media. This was followed by Broadcasting Order 2009-660, which amended, clarified and affirmed the continued appropriateness of the New Media Exemption Order applied to new media broadcasting undertakings. Since then, there has been an acceleration of technological, market and consumer behaviour trends that may influence the Canadian broadcasting system's ability to achieve the policy objectives of the Broadcasting Act. Increasingly, programming is being provided by entities on multiple platforms and separate from the physical infrastructure over which it is delivered. These "over-the-top" entities are both foreign and domestic.

The Commission considers that developments in the broadcasting system and related developments in telecommunications, combined with accelerating changes, warrant investigation of the nature of those changes and their impact on the Canadian broadcasting system.

*In this notice, the Commission begins a fact-finding mission to provide parties an opportunity to provide data and to comment with respect to the implications of growing over-the-top programming in the Canadian broadcasting system. The deadline for the receipt of comments is **27 June 2011**.*

Background

1. At the time of the issuance of Broadcasting Regulatory Policy 2009-329 (the Regulatory Policy), the Commission determined that:

[B]roadcasting in new media creates opportunities for the broadcasting system to better serve Canadians and commends parties for their willingness to embrace the new media environment. Based on the record of the Proceeding, the Commission does not consider that broadcasting in new media currently poses a threat to traditional broadcasting licensees' ability to meet their obligations. In fact, new media is being used in a complementary manner by many broadcasters for activities such as providing audiences with the ability to catch up on missed programs, promoting broadcast offerings and building brand loyalty. As such, the Commission is satisfied that broadcasters have the tools to adapt to the challenges posed by technological change and the motivation to incorporate new platforms and formats into their business models.

For the reasons above, the Commission concludes that traditional broadcasting frameworks should not be imposed in the new media environment without evidence that intervention is warranted.

2. Since the Commission issued the Regulatory Policy, there has been increasing evidence that broadcasting in new media may have an impact on the Canadian broadcasting system in the near future.
3. Increasingly, programming is delivered via the Internet and can be accessed without a subscription to a broadcasting distribution undertaking (BDU).¹ The Commission considers that Internet access to programming independent of a facility or network dedicated to its delivery (via, for example, cable or satellite) is the defining feature of what have been termed “over-the-top” (OTT) services.
4. OTT programming is increasingly available at attractive price points using technological means that are available to consumers (using, for example, personal computers, game consoles, tablets, smartphones and televisions) over commonly available Internet access connections.
5. As barriers to serving Canadians with OTT programming fall, both domestic and foreign providers are taking advantage of the opportunity to do so, experimenting with online delivery of programming to a variety of platforms, and using a variety of subscription, advertising, and other revenue models. These activities are considered within the scope of the New Media Exemption Order set out in Broadcasting Order 2009-660.
6. Since the issuance of the Regulatory Policy, the Commission has monitored the development of broadcasting in new media. It considers on a preliminary basis that the following trends appear to be emerging:
 - greater consumption by Canadians of programming, particularly audiovisual programming but also audio programming, delivered by both foreign and domestic undertakings using the Internet;
 - increasing substitutability of broadcasting in new media for traditional services including conventional, pay and specialty, pay-per-view and video-on-demand television, as well as terrestrial, pay audio, and satellite radio broadcasting;
 - an increase in the number of entities and volume of audiovisual programming delivered to Canadians by foreign entities that have obtained Canadian broadcast rights for programming that would potentially have been purchased by domestic traditional broadcasters;

¹ “Programming” in this Notice refers to broadcasting programming and does not include material created by individual Canadians in a personal capacity. “Internet access” refers to Internet access obtained by either fixed or wireless technologies.

- increasing consumption of programming accessed using cellular networks;
 - a potential increase in programming costs as a result of a more competitive marketplace; and
 - increasing network capacity requirements as a result of growing OTT programming consumption.
7. The Commission notes that the Standing Committee of the 40th Parliament, 3rd session on Canadian Heritage, issued a report in March 2011 on *Impacts of Private Television Ownership Changes and the Move Towards New Viewing Platforms*. This report recommended “that the Canadian Radio-television and Telecommunications Commission examine the growing emergence of non-Canadian broadcast players in the new digital realm and initiate a public consultation process to determine whether and how such non-Canadian companies should support Canadian cultural programming.”
 8. Further, the Commission received a letter dated 1 April 2011 from the “Over-the-Top Services Working Group.” The working group describes itself as “35 private sector executives from the distribution, telecommunications, broadcasting, production and creative sectors in Canada.” The group has noted a growing role for foreign OTT services in Canada. It has suggested that the Commission should initiate a public consultation as recommended by the Standing Committee on Canadian Heritage as described above. A copy of this letter has been placed on the record of this proceeding.

Call for comments

9. In light of the trends described above, and to gain an accurate understanding of the evolving role played by OTT services, the Commission seeks input with respect to the nature and implications of growing over-the-top broadcasting activity for the achievement of the policy objectives of the *Broadcasting Act* and the policies adopted under that Act.
10. The Commission is therefore seeking submissions from parties on the impact of OTT services on the Canadian broadcasting system, and related developments in telecommunications. As such, the Commission requests that parties provide submissions on the following topics, **together with any applicable data supporting their findings and/or assertions**, with specific consideration for the English-language and French-language markets where applicable:
 - the capabilities of measurement and analytical tools to enable a better understanding of OTT programming trends over time;
 - trends in consumer behavior, including the current and projected consumption of programming in the next five years, including Canadian and non-Canadian programming;

- technological trends in consumer devices and network capabilities that will influence the development of OTT programming;
- the possibility that, in the near term, OTT services may cause replacement or reductions in BDU subscriptions;
- the opportunities and challenges for the Canadian creative industries associated with OTT services;
- the impact that OTT services might have on the acquisition and exhibition of programming available to Canadians;
- the impact of the growth of OTT services on consumers;
- any additional issues or evidence relevant to the contribution of OTT programming services to the achievement of the policy objectives of the *Broadcasting Act*.

Procedure

11. The *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure*, SOR/2010-277 (the Rules of Procedure), set out, among other things, the rules for filing, content, format and service of interventions as well as the procedure for filing confidential information and requesting its disclosure. Accordingly, the procedure set out below must be read in conjunction with the Rules of Procedure and its accompanying documents, which can be found on the Commission's website under "CRTC Rules of Practice and Procedure."
12. The Commission invites interventions that address the issues and questions set out above. The deadline for filing interventions is **27 June 2011**. The Commission will only accept interventions that it receives on or before that date. It cannot be held responsible for postal delays and will not notify a party whose intervention is received after the deadline date. The intervention will not be considered by the Commission and will not be part of the public file.
13. The Commission will not formally acknowledge interventions. It will, however, fully consider all submissions, which will form part of the public record of the proceeding.
14. Parties are reminded that, in accordance with the Rules of Procedure, if a document is to be filed or served by a specific date, the document must be actually received, not merely sent, by that date. A document must be filed with the Commission by 5 p.m. Vancouver time (8 p.m. Ottawa time) on the date it is due.
15. Interested persons must file their interventions to the Secretary General of the Commission in **only one** of the following formats:

by using the
[[Intervention/comment/answer form](#)]

or

by mail to
CRTC, Ottawa, Ontario K1A 0N2

or

by fax at
819-994-0218

Submissions longer than five pages should include a summary.

16. 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

17. 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.
18. 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.
19. 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.
20. 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.

21. The Commission encourages parties and interested persons to monitor the record of the proceeding, available on the Commission's website, for additional information that they may find useful when preparing their submissions.

Examination of documents

22. A list of all interventions will also be available on the Commission's website. The list is accessible by selecting "View all proceedings open for comment" from the "Public Proceedings" section of the Commission's website and clicking on the "Interventions/Answers" link associated with this notice.

23. The public may examine public interventions and related documents at the following Commission offices during normal business hours.

Location of Commission offices

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

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

Les Terrasses de la Chaudière
Central Building
1 Promenade du Portage, Room 206
Gatineau, Quebec
J8X 4B1
Tel.: 819-997-2429
Fax: 819-994-0218

Regional offices

Metropolitan Place
99 Wyse Road
Suite 1410
Dartmouth, Nova Scotia
B3A 4S5
Tel.: 902-426-7997
Fax: 902-426-2721

205 Viger Avenue West
Suite 504
Montréal, Quebec
H2Z 1G2
Tel.: 514-283-6607

55 St. Clair Avenue East
Suite 624
Toronto, Ontario
M4T 1M2
Tel.: 416-952-9096

Kensington Building
275 Portage Avenue
Suite 1810
Winnipeg, Manitoba
R3B 2B3
Tel.: 204-983-6306
Fax: 204-983-6317

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

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

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

Secretary General

Related documents

- *Review of broadcasting in new media*, Broadcasting Regulatory Policy CRTC 2009-329, 4 June 2009
- *Amendments to the Exemption order for new media broadcasting undertakings (Appendix A to Public Notice CRTC 1999-197); Revocation of the Exemption order for mobile television broadcasting undertakings*, Broadcasting Order CRTC 2009-660, 22 October 2009