

March, 2015

CRTC Changes Policy on TV Channel Packages

The Canadian Radio-television and Telecommunications Commission (“CRTC”) recently announced a number of policy changes, resulting from its “Let’s Talk TV” proceeding. One of the upcoming changes involves the packaging of television channels by cable and satellite distributors of content (broadcasting distribution undertakings--“BDUs”). On March 19, 2015, the CRTC issued a policy notice entitled “A world of choice – A roadmap to maximize choice for TV viewers and to foster a healthy, dynamic TV market”¹ that will force BDUs to offer the choice and flexibility consumers have been demanding. These new distribution and linkage requirements will come into force in two phases, in March 2016 and in December 2016. BDUs and programming services need to understand these regulatory changes so that they can negotiate new arrangements to govern their relationships under the new packaging rules.

Summary of Regulatory Changes for Packaging by BDUs

Currently, BDUs are required to ensure that each subscriber receives a greater number of Canadian programming services than non-Canadian services. As of March 2016, the requirements will change: BDUs will be required only to *offer* more Canadian than non-Canadian services to subscribers. So long as that offering is made, individual subscribers may choose to receive packages of channels that include more non-Canadian than Canadian services.

The foundation of each subscriber’s package will be a “skinny basic” mandatory package of services, most of which are Canadian. By March 2016, BDUs *must* offer the following services, at a maximum retail cost of \$25/month:

- All local and regional TV stations for the applicable area;

¹ Broadcasting Regulatory Policy CRTC 2015-96, March 19, 2015, at <http://www.crtc.gc.ca/eng/archive/2015/2015-96.htm> (“A world of choice”).

- The provincial educational channels, where they exist;
- Those channels designated for mandatory distribution (the so-called “s. 9(1)(h) services”, which include Aboriginal Peoples Television Network, Cable Public Affairs Channel and The Weather Network/Météomedia); and
- The local community and provincial legislative assembly channels, where they exist.

In addition, BDUs *may* include in their basic service:

- Other Canadian stations, up to a maximum of 10 Canadian stations, where there are fewer than 10 local stations
- Educational channels from another province, if there is none in the particular province
- Local AM and FM radio stations
- The “4 +1” affiliates of the U.S. networks ABC, CBS, Fox, NBC, and PBS

No additional services will be permitted in the basic service. This is a major change to the existing requirements, which permit BDUs to create large “basic” packages.

BDUs will be permitted to offer a second “first-tier” offering that includes other discretionary services (e.g. children’s services, pay audio services, and mainstream sports services), so long as they also offer the mandatory entry-level service described above.

By March 2016, all discretionary services must be offered either on a pick-and-pay basis OR in small, reasonably priced packages created by the subscriber (e.g. pick-5 or pick-10) or pre-assembled (e.g. theme packs). By December 2016, all discretionary services must be offered on BOTH a pick-and-pay AND a small package basis.

In the pre-assembled packages, BDUs will not be permitted to require subscribers to buy any services other than those in the entry-level basic service, before buying another service.

Implications for Third Language Non-Canadian Services

The Let’s Talk TV proceeding had a particular focus on Canadian content and Canadian broadcasters, but the new policies also affect how non-Canadian services are marketing and distributed in Canada. Authorization of new non-Canadian programming services

will still be required. Before they can be distributed by BDUs, such services must be added to the CRTC's "Revised list of non-Canadian programming services authorized for distribution" (the "List").² In considering diversity of programming, the CRTC adopted measures to make ethnic and third-language programming more accessible and affordable,³ in particular:

- As noted above, the "preponderance" requirement has been changed, so that a BDU's subscribers may subscribe to more non-Canadian services than Canadian services. BDUs will only be required to *offer* a preponderance of Canadian services to the subscriber.
- The access and buy-through requirements for Canadian ethnic and third-language Category A services will be eliminated.
- For each non-Canadian third-language service a BDU *offers*, it will be required to *offer* one Canadian ethnic or third-language service in the same language, where available.
- BDUs that offer *pre-assembled packages* of such services will be required to ensure that each non-Canadian third-language service is offered in a 1:1 ratio with a Canadian ethnic or third-language service operating in the same language, where available⁴

The removal of the buy-through requirement that now requires subscribers to receive Canadian services with the purchase of non-Canadian services in the same third language gives consumers increased flexibility. However, if BDUs decide to create pre-assembled third-language packages, which seems likely, they will still be required to offer the two services together in the package.

If you have questions about the CRTC's Let's Talk TV proceeding, or any related matters, contact Carol Anne O'Brien at caob@caobrienlaw.com, or (416) 640-7270.

Carol Anne O'Brien's law practice is focused on regulatory matters including communications law (broadcasting and telecommunications), competition law, advertising and marketing, Internet domain names and privacy.

² The current version of the List: <http://www.crtc.gc.ca/eng/publications/satlist.htm>.

³ "A world of choice" 2016-96, paragraphs 133 - 144.

⁴ "A world of choice" 2016-96, paragraph 144.