



TAKING STOCK OF ALL THE TALK

A synopsis of the CRTC decisions
flowing from *Let's Talk TV*

We've poured through hundreds of pages to prepare a summary of all the decisions flowing from the CRTC's Let's Talk TV process. The Regulatory Affairs team looks forward to meeting with you and your teams to discuss these issues in greater detail and help identify opportunities for the future.

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April 13, 2015.

 regulatory affairs
affaires réglementaires



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Introduction

By way of background, the CRTC initiated the process in October 2013 beginning with an extended public consultation and ending with a formal oral public hearing in September 2014. Given the very wide range of issues under consideration the CRTC has released its conclusions in stages.

There have been a total of seven CRTC decisions (and hundreds of pages) associated with this process. The first four decisions – released in November 2014 and January 2015 – focus on a limited set of issues (i.e., termination of consumer contracts, over-the-air television and local programming, simultaneous substitution, and the Bell MobileTV service). These decisions are discussed in the first section below.

The next two decisions were released on 12 March 2015 and 19 March 2015. These decisions are much broader in scope and relate to issues such as Cancon, genre protection, set top boxes, national news services, VOD, simplified licensing, basic service, pick-and-pay and other access and packaging issues. These two decisions are discussed in separate sections below.

A seventh decision was released on 26 March 2015. This decision focused on accessibility issues and the BDU-consumer relationship. This decision is discussed in the fourth section.

The final section sets out the most significant elements of the seven CRTC decisions, from a CBC/Radio-Canada perspective.

The appendix sets out when each of these new rules come into effect.



1. The First Four Decisions

On 6 November 2014 the Commission released a consumer-focused decision that prohibits BDUs from requiring subscribers to provide 30 days notice of cancellation of a BDU service. This decision has no direct impact on CBC/Radio-Canada.

On 29 January 2015 the Commission released three decisions relating to the *Let's Talk TV* process. The first two decisions deal with over-the-air and local television services and with simultaneous substitution. The third decision relates to the terms under which Bell Mobility offers the Bell MobileTV service.

OTA and local television services

During the *Let's Talk TV* proceeding it was proposed by CBC/Radio-Canada and other parties that conventional television broadcasters should not be required to broadcast over-the-air and instead should be permitted to simply provide direct feeds to BDUs. The CRTC rejected this suggestion stating that over-the-air remained an effective broadcasting technology for the near to mid term, although the CRTC recognized that conventional television will have to change over the longer term. Consequently, CBC/Radio-Canada will not be permitted to shift to a direct feed model for conventional television at this time. It is unclear when such a shift might be permitted by the CRTC.

The second part of the decision dealt briefly with local programming and concluded that there is enough funding in the system for local programming but it is possible that the existing funding may not be optimally allocated. The Commission indicated that it would initiate a proceeding in the 2015 to 2016 timeframe to examine issues related to locally relevant, locally reflective and community access programming. We intend to participate in this proceeding.

Simultaneous Substitution

During the *Let's Talk TV* process the CRTC highlighted the issue of simultaneous substitution, at least partly in response to negative input received in the initial stages of the public consultation process. In an attempt to respond to this input, the Commission will eliminate the possibility of simultaneous substitution for specialty services and will prohibit simultaneous substitution for the Super Bowl beginning in 2017. It also imposes new requirements with respect to simultaneous substitution errors. Given the nature of our programming, this policy has no direct implications for CBC/Radio-Canada. However, it is worth noting that Bell is concerned



about the impact of the Commission's policy on its services and is seeking leave to appeal at the Federal Court of Appeal.

Bell Mobility and Videotron Decision

The third decision released on 29 January 2015 did not arise directly from the *Let's Talk TV* process but was expressly linked to the *Let's Talk TV* issues by the CRTC. In this decision, the Commission concluded that Bell Mobility and Videotron were in breach of the *Telecommunications Act* when reducing the monthly data charges normally applicable to data services in respect of their own mobile TV services. The Commission ordered Bell Mobility to cease this practice by 29 April 2015 (Videotron had already agreed to stop this practice).

Bell is seeking leave to appeal and a stay of the decision at the Federal Court of Appeal. This decision has no immediate implications for CBC/Radio-Canada other than to eliminate any disadvantage for CBC/Radio-Canada's Internet services arising from Bell Mobility's treatment of data charges. On March 23, 2015 the Federal Court of Appeal denied Bell's application to stay the effect of the CRTC's decision pending the outcome of their application to appeal the decision. As a result, Bell cannot keep the pricing model it uses for its mobile television application in place pending the outcome of the court challenge. On April 4th, 2015 the same court granted Bell leave to appeal the CRTC's decision.

2. The Way Forward – Creating compelling and diverse Canadian programming

On 12 March 2015 the Commission released its policy which addresses a wide range of issues relating to the creation and availability of Canadian programming. The following are the key elements of the decision from CBC/Radio-Canada's perspective.

First, the CRTC will no longer require broadcasters to enter into terms of trade agreements. This is a welcome recognition that such arrangements are commercial matters best left to the parties involved. Broadcasters will be able to apply to have the relevant COL lifted 29 April 2016.

Second, the standard conditions of licence of national news services (i.e.. *CBC NN, ICI RDI, CTV NN and LCN*) will be modified so that the licensee must:

- broadcast 16 hours per day of original programming, 7 days a week, averaged over the broadcast year. This original programming need not be first-run.



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- not less than 95% of all programming broadcast during the broadcast month must be drawn from program categories: (1) News, (2)(a) Analysis and interpretation, (2)(b) Long-form documentary and (3) Reporting and actualities.
- operate a live broadcast facility and maintain news bureaus in at least three regions other than that of the live broadcast facility (i.e., that it has demonstrable news gathering capabilities in several regions).
- comply with additional journalistic and ethical codes (no change for CBC/Radio-Canada services)
- be able to report on international events from a Canadian perspective.

In addition, national news service licensees will be permitted to count the maximum 12 minutes of advertising allowed per hour as an average over the broadcast day. This will allow the service to offer continuous news coverage during a special event.

For existing services, the new criteria will be applied at the time of licence renewal and will be used to determine whether the service will continue to benefit from mandatory distribution as a national news service. The new criteria will also be used in the assessment of applications for a broadcasting licence to operate a new national news service. Applicants will further need to provide evidence of demand for a new national news service and demonstrate that the proposed service will add programming diversity to the system. These changes to the standard conditions of licence of national news services should have little, if any, impact on *CBC NN* and *ICI RDI*.

Third, some specialty services currently operate in a protected space (i.e. there is only one "*History Channel*", one "*documentary channel*", one "*Télétoon*" etc.) The CRTC is eliminating genre exclusivity for these specialty services. However, the Commission will maintain the nature of service limitations for 9(1)(h) services so that these broadcasters do not alter the character of their service and thereby undermine the rationale for their 9(1)(h) distribution orders. These changes will permit specialty and subscription VOD ("SVOD") services to compete in previously protected areas of programming. In particular, the *documentary channel* and *ICI ARTV* could face direct competition from existing or new services. At the same time, the *documentary channel* could modify the nature of its programming in response to any such challenges or for any other reason. The elimination of genre protection takes effect immediately.



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This change also means that *Explora*, which never had genre protection, can modify the nature of its programming and become directly competitive with any service. However, as discussed above, the Commission is maintaining the nature of service limitations on national news services, as they benefit from mandatory distribution due to the importance of the programming offered.

Fourth, in an attempt to encourage greater online competition, the CRTC is creating a new class of VOD service – a hybrid online/BDU service which would be free of all regulatory obligations except those set out in the Digital Media Exemption Order (“DMEO”). Specifically, the new hybrid VOD services will be authorized to i) offer exclusive programming in the same manner as services operating under the DMEO; and (ii) offer their services on a closed BDU network in the same manner as traditional VOD services without the regulatory requirements relating to financial contributions to and shelf space for Canadian programming. However, to be eligible for exemption, (iii) a hybrid VOD service must also be offered on the Internet to all Canadians without authentication to a BDU subscription. This change has no direct implications for CBC/Radio-Canada’s existing services.

Fifth, the CRTC is reducing the Canadian content (“Cancon”) obligations for almost all licensed services. The changes for conventional television will not affect CBC/Radio-Canada but the reduction for specialty services – to 35% Cancon across the day – will have an impact on our non-news specialty services. This change will take effect at the time of the service's licence renewal, in our case 1 September 2018.

Sixth, the CRTC is requiring the industry to set up a working group with the goal of developing a set-top-box (“STB”) based audience measurement system. Such a system will include technical standards, privacy protections, governance structure and cost sharing. The working group is to begin meeting by 13 April 2015 and report to the CRTC on its progress by 10 June 2015. We will be actively participating in this process and working closely with independent broadcasters on this file.

Seventh, the CRTC will initiate a proceeding to look at sub-categories of children's programming. The implications of the creation of such sub-categories are unclear but this is an area that will be of significant interest to CBC/Radio-Canada.

Eighth, the CRTC is looking at the funding, promotion and discoverability of Canadian programming in a number of ways:



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- The CRTC will hold an invitation-only summit in the fall of 2015 to look at ways to enhance the profile of Canadian programs. CBC/Radio-Canada intends to participate.
- In addition, to encourage governments and partner agencies to consider more flexible and forward-looking approaches to the production and financing of Canadian programs in the future, the CRTC is modifying the regulatory criteria for what constitutes “Canadian programming” in two pilot projects: Pilot project 1: Live-action drama/comedy productions based on the adaptation of best-selling, Canadian-authored novels will be recognized as Canadian; Pilot Project 2: Live-action drama/comedy productions with a budget of at least \$2 million/hour will be recognized as Canadian. Both will be subject to the following criteria: (i) the screenwriter is Canadian; (ii) one lead performer is Canadian; and (iii) the production company is Canadian, which means that least 75% of the service costs and the post-production costs are paid to Canadians. While these programs will be considered Canadian for CRTC purposes, they don't qualify for most Canadian program funds under the current funding criteria.
- The rules with respect to local avails on US specialty channels will be modified so that BDUs will now be required to devote at least 75% of local avails in each broadcast day for use by licensed Canadian television programming services, in an equitable manner and on a cost recovery basis, to promote first-run original Canadian programs.
- Finally, independent licensed services will be permitted to count, for regulatory purposes, marketing and promotional expenses (up to 10%) towards the cost of Canadian programming.

All of these changes will be of interest to our television services.

3. A World of Choice – A Roadmap to Maximize Choice for TV Viewers

On 19 March 2015 the Commission released its widely anticipated [pick and pay decision](#) which addresses a range of issues relating to the distribution of services including terms of carriage and packaging. The key points from our perspective are as follows.

First, the CRTC is mandating a small basic package of local/regional OTA stations, section 9(1)(h) basic services, provincial educational services, the community channel and the provincial legislature channel. BDUs will be permitted to add to the basic package distant OTA signals up to a total of 10 OTA stations, as well as US networks (at no cost to consumers). This change



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means that *CBC NN* and *ICI RDI* will not be in the small basic package except in their respective minority-language markets where they benefit from a section 9(1)(h) order. This change must be implemented by March 2016.

It is important to note that the CRTC has stated that BDUs can maintain the existing “basic” package provided that it includes all of the services in the new small basic and provided that the new small basic is offered separately. Subscribers who want to stay with the existing “basic” would be permitted to do so. It is reasonable to expect that many subscribers will stay with the status quo. This should mitigate the impact of the new smaller basic on *CBC NN* and *ICI RDI*.

Second, the CRTC is eliminating the access rights of discretionary services, except those which benefit from a section 9(1)(h) order. This will directly impact the *documentary channel* which, in theory, could be dropped by some BDUs. It could also impact the availability of *ICI ARTV* in French-language markets, as its current “must-offer” distribution rights under a 9(1)(h) order only applies to terrestrial BDUs in English-language markets. This change will take effect at licence renewal time for each service.

Third, the CRTC is requiring BDUs to offer discretionary services either on a pick-and-pay or in a small package (pick-a-pack or small theme package) basis by March 2016. All discretionary services must be offered both on a pick-and-pay and in a small package by December 2016. The CRTC is maintaining its current regime for national news services so the small package aspect of this change will not directly affect *CBC NN* and *ICI RDI*, although subscribers will have the opportunity to take any national news service on its own as of March 2016.

Fourth, the CRTC is eliminating the existing preponderance rule and is instead requiring that the majority of services *offered* by a BDU be Canadian. This will take effect March 2016 and should have no direct impact on the Corporation.

Fifth, the CRTC is maintaining the existing 1:10 rule for Official Language Minority Communities (OLMCs) and extending it to DTH BDUs. This means all BDUs serving OLMCs will be required to offer at least one service in the minority language for every ten in the majority language. This rule will continue to support the distribution of our French-language services across the country.

Sixth, the CRTC is enhancing the protections for independent programming services, which include *CBC/Radio-Canada's* services.



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The Commission strengthening the existing Wholesale Code, and it will be imposed on all licensed undertakings as a regulatory requirement. The Commission is proposing amendments to the existing Code to enhance the protections for independent programming services. Proposed changes include: requiring BDUs to offer independent services in at least one pre-assembled package, in addition to offering them on a standalone basis, requiring VI BDUs to ensure that independent services are given packaging and marketing support that is comparable to that given to their own services, and ensuring that programming services are able to more fully exploit their programming rights on all platforms. To facilitate its intervention in the marketplace, the CRTC also determined that it would be appropriate to add a provision to the Wholesale Code requiring all licensees to submit to dispute resolution 120 days before the expiry of an affiliation agreement. This would enable the CRTC to intervene without any need for a small undertaking to file a complaint, risking its relationship with a larger business partner. A new proceeding was announced to address these proposed changes with comments due on 4 May and 14 May 2015. CBC/Radio-Canada intends to file written comments in this proceeding. The enhanced Code will be implemented by September 2015.

In addition, as of September 2018 vertically integrated BDUs will be required to distribute one independent programming service for every affiliated programming service that they distribute. This should provide some protection to our discretionary services.

4. Navigating the Road Ahead - Making informed choices about television providers and improving accessibility to television programming

The CRTC released another decision in the *Let's Talk TV* process on 26 March 2015 that addresses the consumer-BDU relationship and accessibility issues.

Accessibility

As far as accessibility is concerned, the CRTC is introducing several changes. The key changes from the Corporation's perspective are as follows.

First, by September 2019, broadcasters currently subject to described video requirements as well as those that belong to vertically integrated entities will be required to provide described video for programming broadcast between 7 p.m. and 11 p.m. (prime time), seven days a week. This requirement will apply to programs that fall into existing program categories that have been identified for described video. This will be an increase from the current conditions of



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licence requiring these services to provide at least four hours of described video per broadcast week, two hours of which must be original to the service.

Second, by the fourth year of their respective next licence terms, all other non-exempt broadcasters (e.g. *Explora*) will be required to provide four hours of programming with described video per week.

Third, the current requirement to provide two hours of programming with described video that are original to the service will be discontinued, as the increased described video requirements will ensure that a greater diversity of content featuring described video is continually available.

Fourth, in respect of closed captioning, licensed broadcasters will be required to adhere to an annual reporting requirement relating to the provision of closed captioning on non-linear online platforms. This requirement will be imposed by condition of licence at licence renewal in 2018. The Commission will maintain the existing approach to the quality of closed captioning and may engage the French-language working group and reinstate the English-language working group to discuss quality issues.

Finally, the CRTC indicated that it will issue a call for comments on proposed amendments to the *Broadcasting Distribution Regulations* to require BDUs to make accessible set-top boxes and remote controls available to subscribers, where they are available for procurement and compatible with BDUs' distribution systems.

A New Consumer Code

The CRTC has developed a proposed Television Service Provider Code of Conduct ("TVSP Code of Conduct") and is also proposing the establishment of an industry ombudsman to adjudicate the TVSP Code of Conduct. The new Code would apply to BDUs and would set out standards with respect to such things as clarity in agreements, notice of changes in rates or packages, cancellation fees, etcetera. The CRTC has initiated a follow-up proceeding to gather comments on the proposed TVSP Code of Conduct.



Conclusion

From our perspective, the most significant elements of the seven CRTC decisions issued are:

- **Obligation to maintain over-the-air television:** While recognizing that conventional television will have to change over the longer term, the CRTC is requiring conventional television broadcasters to broadcast over-the-air for the “near to mid-term”. It is unclear when, if ever, conventional broadcasters will be permitted to shift to a direct feed model. In addition, funding for local programming will be examined in the 2015 to 2016 timeframe.
- **Mandated entry level basic service:** The CRTC is requiring BDUs to offer a small basic package for no more than \$25 which must include *CBC Television* and *ICI Radio-Canada Télé*, and *CBC NN* and *ICI RDI* in their respective minority language markets where they benefit from a section 9(1)(h) order. This rule will come into effect March 2016.
- **Status quo for big basic:** BDUs can maintain the existing “basic” package, provided that it includes all of the services in the mandated small basic package and provided that the new small basic is offered separately. It is reasonable to expect that many subscribers will stay with the status quo, particularly once they see the cost of the individual services and packages. This should mitigate the impact of the new smaller basic on *CBC NN* and *ICI RDI* in majority language markets.
- **Pick & Pay framework:** All discretionary services must eventually be offered on a stand-alone basis and in small packages. This rule will be implemented in two stages to allow BDUs to adjust: March 2016 and December 2016.
- **Removal of genre protection:** Currently, some specialty services have the opportunity to operate in a protected space. Known as “genre protection” this rule is being eliminated immediately and could impact *the documentary channel* and *ICI ARTV*. These changes will permit services to compete in previously protected areas of programming. In particular, *the documentary channel* and *ICI ARTV* could face direct competition from existing or new services. At the same time, *the documentary channel* and *ICI Explora* could modify its programming. These changes take effect immediately.
- **Removal of access rights:** Access rights are being eliminated for discretionary services, except those which benefit from a mandatory distribution order. This means that there will be an increased reliance on market forces for the distribution of such services. This will



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directly impact *the documentary channel* and *ICI ARTV* (in French markets only) which, in theory, could be dropped by some BDUs. This change will take effect at licence renewal time in 2018. At the same time, enhanced protections will be provided for independent services. The CRTC will require vertically integrated companies to offer one English and French-language independently owned channel for each of their own English and French-language channels (the 1:1 rule).

- **Beefed up Wholesale Code:** The CRTC is strengthening the Code of Conduct between BDUs and broadcasters to enhance the protections for independent programming services. The Wholesale Code will be implemented by Regulations by September 2015.
- **Terms of trade** will no longer be a condition of licence for any broadcaster.
- **Accessibility issues:** Our conventional television services, *documentary channel* and *ICI ARTV* will be required to provide described video for programming broadcast between 7 p.m. and 11 p.m. (prime time), seven days a week. This requirement will apply to programs that fall into existing program categories that have been identified for described video. This rule will come into effect September 2019. *ICI Explora* will be required to provide four hours of programming with described video per week by the fourth year of its next licence term.



Appendix – Key Dates

Immediately	<p>Genre protection – Eliminated for discretionary services that previously had this protection, with the exception of national news services and 9(1)(h) services.</p> <p>Terms of Trade - Broadcasters are no longer required to enter into terms of trade agreements and can apply to have the relevant condition of licence lifted 29 April 2016.</p> <p>Marketing and promotion - Independent broadcasters (including <i>CBC/R-C</i>) can count third-party marketing and promotional expenses (capped at 10%) towards the cost of Canadian programming.</p>
10 June 2015	Set-top-box based audience measurement system - Working group must file report with CRTC.
September 2015	Wholesale Code – Implementation of New Wholesale Code, enforceable by regulation.
Fall 2015	Discoverability Summit – Invitation-only summit to look at ways to enhance the profile of Canadian programs.
Before 2016 (TBD)	<p>Hybrid VOD – Implementation of the new hybrid online/BDU distribution service.</p> <p>Local availabilities – Implementation of the rule requiring that 75% of local avails be used to promote first-run original Canadian programs.</p>
TBD – (likely 2015-16)	<p>Children’s programming – CRTC proceeding to consider new programming sub-categories.</p> <p>Local Programming – Proceeding will review funding for local programming.</p>
March 2016	<p>New small basic – BDUs must offer new small basic.</p> <p>Pick-and-pay - BDUs will have to offer discretionary services either on a pick-and-pay basis <u>or</u> in a small package.</p> <p>Preponderance rule – Existing rule will be eliminated. Instead a majority of services a BDU <u>offers</u> must be Canadian.</p>
December 2016	Pick-and-pay – BDUs will have to offer discretionary services on both a pick-and-pay basis <u>and</u> in a small package.
September 2018	<p>1:1 linkage rule – Vertically integrated BDUs will be required to distribute one independent programming service for every affiliated programming service.</p> <p>1:10 rule re: OLMCs – To be extended to DTH BDUs.</p>
Next licence term	Cancon – It will be reduced for discretionary services to 35% over the broadcast day with the exception of 9(1)(h) services and national news services.
Next licence term	<p>National news services – New standard conditions of licence will be applied.</p> <p>Access rights – Access rights for discretionary services with the exception of 9(1)(h) services and national news services will be eliminated.</p> <p>Accessibility – Broadcasters will be required to report annually regarding closed captioning on-line.</p>
September 2019	Accessibility – Broadcasters that are currently subject to described video requirements will be required to provide described video programming for programming broadcast between 7pm and 11pm seven days a week.