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Update

Communications

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CRTC Revisits Compensation for Carriage and Local Programming and Announces a Structural Review of Conventional Television and Discretionary Services

On July 6, 2009 the CRTC released: (a) its policy determinations on the short-term licence renewals for the major conventional television broadcasters; (b) its short-term licence renewal decisions for those broadcasters; and (c) a notice of consultation for a public hearing to consider a group-based approach to the licensing of conventional television and discretionary services and certain policy issues related to conventional television (the "Structural Review"). Comments on the Structural Review are due August 10, 2009 and the public hearing will commence September 29, 2009.

As the CRTC announced on May 15, 2009, it has renewed for one-year licence terms the conventional TV stations operated by CTV, Canwest, Quebecor (Sun TV) and Rogers (Citytv) and will consider these stations at a group-based (conventional and discretionary services) licence renewal hearing to take place in the Spring of 2010. The licences for TVA have been renewed for a two-year period, in order to allow the CRTC to examine these stations as part of a group-based licence renewal at the same time as TQS and CBC's French-language network.

Revenue Support For Conventional Broadcasters

The CRTC has indicated that it "is confident that conventional broadcasters can develop successful business models if supported by revenue streams that are predictable and that reflect the value of the programming they broadcast".

Compensation for Carriage of Local and Distant Signals

In a sharp reversal of its October 2008 denial of fee-for-carriage for local stations, the CRTC has indicated it is now of the view that a negotiated solution for compensation for the value of local conventional television signals (as well as distant signals as established by the Commission in October 2008) is appropriate.

The CRTC will not advance the August 31, 2011 date for implementation of its new policy on compensation for carriage of distant signals. As part of the Structural Review, it is calling for comments on issues relating to combining negotiations regarding the value of local signals with those regarding distant signals.

The CRTC has indicated that it expects that negotiations related to the distribution of local and distant signals will be completed before the long-term renewal of licences next Spring and that they will take place in a way that ensures that Canadians will not lose access to programming services. In the absence of negotiated agreements, the Commission will provide resolution through binding arbitration.

As part of the Structural Review, the CRTC is seeking comments on what mechanism should be used for establishing a negotiated, fair value for conventional signals. It will also be examining measures to ensure fair negotiations between broadcasters and distributors for the compensation for carriage for local and distant signals.

Preserving Signal Integrity

The CRTC notes that the distribution of non-Canadian conventional signals throughout the Canadian broadcasting system poses challenges to maintaining the integrity of the Canadian program rights market and to the ability of broadcasters to contribute to the objectives of the *Broadcasting Act*. As part of the Structural Review, the Commission will be examining whether other mechanisms (in addition to simultaneous substitution and mandatory carriage) could be implemented to ensure the integrity of Canadian broadcaster signals. In particular, it will be examining whether the carriage of the U.S. 4+1 signals (CBS, NBC, ABC, FOX and PBS) should be contingent on the successful negotiation of fair market value for Canadian signals.

Local Programming Improvement Fund (LPIF)

The LPIF is a new fund established by the CRTC in October 2008 that is designed to improve the quality of local programming in non-metropolitan television markets across Canada.

In light of the financial challenges facing conventional broadcasters, the CRTC has determined that for the 2009-2010 broadcast year, the LPIF will be temporarily increased from 1% to 1.5% of distributors' gross revenues. While this is lower than the increase to 2.5% recommended by the Standing Committee on Canadian Heritage in its June 2009 Report, *Issues and Challenges Related to Local Television*, this increased LPIF is estimated to generate approximately $102 million to broadcasters in aggregate (versus $68 million at a 1% contribution) in the 2009-2010 broadcast year. The requirement that funding be used for new programming will be waived for the upcoming broadcast year, allowing TV stations in smaller markets to use LPIF funds to maintain their existing spending on local programming. The CRTC has indicated that its intention is to revert to the LPIF original criteria as of 1 September 2010 and is seeking comment on the appropriateness of this approach during the Structural Review.

One third of the overall LPIF funding will be allocated equally to stations across both francophone and anglophone markets. The remaining two thirds of funding will be divided such that 30% is directed to francophone markets and 70% is directed to anglophone markets. These amounts will be allocated on the basis of a broadcaster's three-year historical spending on local programming.

In order to access LPIF funding, local English-language TV stations will be required to broadcast a minimum of 7 hours and French-language TV stations will be required to broadcast a minimum of 5 hours of local programming per broadcast week, where local programming obligations have been harmonized (as described below). Where local programming requirements have not been harmonized, local TV stations will be required to maintain their existing local programming levels. Only those expenses that are directly associated with the production of programming will be considered eligible expenses for LPIF funding.

Support For Canadian Programming

Harmonized Local Programming Conditions of Licence

To improve fairness within markets and predictability for industry players, local programming levels will be imposed as conditions of licence and harmonized for stations that are owned and operated by the largest multi-station ownership groups. For the 2009-2010 broadcast year, conventional broadcasters in English-language markets will be required to broadcast a minimum of 14 hours per broadcast week in metropolitan markets and 7 hours per broadcast week in non-metropolitan markets.

The CRTC notes that while this may represent a decrease in required local programming (current local programming obligations range anywhere from 1.5 to over 40 hours per week); it expects the amount of local programming to be adjusted upward to reflect market conditions where appropriate. The CRTC will be revisiting these local programming levels in the context of the group-based licence renewals in Spring 2010 to determine whether or not they are still appropriate.

Maintenance of Priority Programming and Independent Production Requirements

Conventional TV stations owned and operated by the largest multi-station ownership groups are currently required to broadcast, at a minimum, an average of 8 hours per broadcast week of Canadian priority programs over the broadcast year, such as drama and documentaries, between 7-11 p.m. Large English-language television groups are also expected to ensure that at least 75% of the priority programming they broadcast is produced by independent production companies. The CRTC has denied the requests for relief or elimination of these requirements in the short-term licence renewals. It will be re-examining these policies during the Structural Review.

"Hands Off" Approach to Terms of Trade

In a reversal of its earlier position, the CRTC has determined that, although it appears negotiations between independent producers and television broadcasters have stalled, the establishment of appropriate terms of trade agreements is best directly negotiated by the parties involved without Commission intervention. To encourage these negotiations, the Commission will only consider renewal applications for seven years with finalized terms of trade agreements in place.

Potential Group-Based Canadian Programming Expenditure (CPE) Requirement

The CRTC has determined that the imposition of a 1:1 ratio requirement for spending on Canadian and U.S. programming at this time would be impracticable and inappropriate, given that spending commitments for the next year are already in place. However, it will be examining whether a 1:1 requirement, a CPE requirement, or another method should be implemented in order to increase future expenditures on Canadian programming. In particular, as part of the Structural Review, the CRTC will be considering how a single CPE requirement would be applied to a broadcasting ownership group.

Potential Group-Based Canadian Content Requirement

Currently, Canadian content exhibition requirements differ across the various classes of programming undertakings. As part of the Structural Review, the CRTC will be considering group-based Canadian content requirements that would be applied across the services owned by one ownership group, including how the various Canadian content requirements currently in effect can be simplified, streamlined or amalgamated.

Conceptual Model for Group Based Licensing

The CRTC has set out a conceptual model for group-based licensing, with requirements for exhibition and expenditure on Canadian programming, programming of national interest and independent production for the various classes of programming undertakings held by corporate groups and independent broadcasters. Parties are asked to comment on the model by August 10, 2009, including whether it is a feasible framework to apply to groups or to make alternative proposals.

Hybrid Digital Transition Model

August 31, 2011 is slated as the date for the transition from analog to digital over-the-air (OTA) television in Canada. In recognition of the cost of implementing OTA digital transmitters, the current economic climate, and high distributor penetration in most markets, the CRTC has endorsed a hybrid digital transition model, whereby conventional broadcasters are expected to convert their full-power, OTA analog transmitters to digital in major markets (i.e., the national capital and all provincial and territorial capital cities, as well as markets either served by multiple originating stations, including CBC stations, or with populations greater than 300,000). Smaller markets will receive conventional signals via distributors.

As part of the Structural Review, the Commission will be examining specific digital transition implementation measures. It will also be examining proposals by Bell Canada and Shaw Communications for alternative satellite delivery models that would ensure that consumers receive at least five local and regionally-relevant, standard definition signals representing major broadcast groups at no monthly charge.

If you would like to know more about this matter or have any questions with respect to the forego-ing, please do not hesitate to contact any member of our Communications Law Group:

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