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New Policies for Canadian Television

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On October 30, 2008, the Canadian Radio-television and Telecommunications Commission (CRTC) announced new policies “to prepare the Canadian broadcasting industry for the transition to a fully digital environment.” The new policies affect all players in Canadian television – conventional over-the-air broadcasters; cable, satellite and telco broadcast distribution undertakings (BDUs); and pay and specialty television services.

Most changes will come into effect on August 31, 2011, coinciding with the mandatory transition from analog to digital over-the-air broadcasting.

The following is a summary of the key aspects of the new policies.

Regulatory Framework for BDUs

- **Streamlined licensing and regulatory requirements.** The CRTC has adjusted the different regimes that apply to cable and satellite undertakings to harmonize them as much as possible.
- **Access.** BDUs will still be required to distribute, as applicable, certain local and regional over-the-air stations; community, legislature and educational channels; and services mandated for distribution by the CRTC.

Category A pay and specialty services, previously referred to as analog and Category 1 services, will continue to have guaranteed access rights. The CRTC will consider applications for new Category A services until April 1, 2010. Applicants will have to demonstrate that the proposed service is unique and of sufficient importance to subscribers. Their success will also depend on Canadian content and program expenditures and the level of non-subscription revenue.

- **Subscription packaging.** Most of the packaging rules have been eliminated, providing BDUs with greater flexibility to customize subscriber packages. Canadian services must make up at least 50% + 1 of a subscription. Certain other existing restrictions on packaging will remain in effect.
- **New forms of advertising.** When it announced the new policies, the CRTC also published two notices of consultation to consider (i) the possibility of BDUs inserting commercial advertising, particularly “targeted advertising,”¹ in “local

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¹ Targeted advertising refers to ads that are tailored to the interests of different audience segments.

availabilities”;² and (ii) a proposed framework for video-on-demand services to, among other things, allow for advertising, including targeted advertising, in Canadian programming.

Pay and Specialty Services

- **Non-Canadian services.** Except for non-Canadian news services, the CRTC will maintain its approach of not authorizing a non-Canadian service that is directly competitive with an existing Canadian service. The CRTC will be predisposed to authorize non-Canadian news services unless the relevant service violates Canadian regulations, such as those regarding abusive content.
- **Genre exclusivity.** Generally, the CRTC will maintain its approach of one service per genre for Category A. In determining whether a genre should be opened up to competition, the CRTC will consider the following criteria: (i) the economic health of existing services; (ii) the popularity of existing services; (iii) the availability of programming; (iv) the current diversity within the genre; and (v) other consequences of introducing competition. On the basis of the above criteria, the CRTC has determined that mainstream sports and national news should be immediately opened up to competition.
- **New programming flexibility.** Category A services will be able to draw programming from all program categories, subject to a limit of 10% of the broadcast month for certain categories.

Fees for Conventional Broadcasters

- **Fee for carriage.** The CRTC denied the broadcasters’ request to charge BDUs for their over-the-air signals.
- **Distant signals.** Broadcasters will be allowed to negotiate payment from BDUs for retransmitting the signals of their local stations as distant signals.³
- **Local Programming Improvement Fund.** The CRTC will establish a Local Programming Improvement Fund to support local programming in markets with a population of less than one million. Each BDU will be required to contribute 1% of its gross broadcasting revenues to the Fund, which is estimated to total approximately \$60 million in the first year. This is in addition to the 5% of gross broadcasting revenues that BDUs are currently required to contribute to Canadian programming.

The objectives of the Fund are to (i) ensure that viewers in smaller markets receive a diversity of local programming, particularly news; (ii) improve the quality and diversity of local programming in these markets; and (iii) ensure that viewers in French-language markets are not disadvantaged by the smaller size of those markets. ■■

² “Local availabilities” are periods of time (usually two minutes per hour) available within the programming of non-Canadian services. The CRTC’s policy has been to permit BDUs to use this time to promote Canadian programming and other services they offer.

³ Through time-shifting, whereby distant signals of the same network are retransmitted from a different time zone, a BDU subscriber can watch a program earlier or later than it is broadcast in the subscriber’s own time zone.