



## Broadcasting Circular CRTC 2008-4

Ottawa, 10 September 2008

### Information bulletin

#### **Guidelines for all licensees of broadcasting undertakings serving Canada – Federal general election**

1. The attached guidelines are provided in accordance with section 347 of the *Canada Elections Act* to advise broadcast licensees on the applicability of sections of the *Broadcasting Act* and the regulations made thereunder and on the conduct of licensees in relation to the upcoming federal general election.
2. Station managers are requested to distribute these guidelines to news departments, program departments, sales departments, traffic departments and any other affected personnel.
3. The writs were issued on 7 September 2008 and the election is to be held on Tuesday, 14 October 2008.
4. There are blackout and political message identification provisions in the *Canada Elections Act* that stipulate that election advertising in relation to this election is not permitted on polling day, i.e., Tuesday, 14 October 2008, and that election advertising by a candidate or a registered party must indicate that the message was authorized by the official agent of the candidate or by the registered agent of the party. Licensees requiring further details should consult the guidelines issued by the Broadcasting Arbitrator. These guidelines may be found on the Internet site of Elections Canada: [www.elections.ca](http://www.elections.ca).
5. These guidelines should be considered in conjunction with the *Canada Elections Act*; the guidelines issued by the Broadcasting Arbitrator that can be found on the Elections Canada website at [www.elections.ca](http://www.elections.ca); *A Policy with respect to Election Campaign Broadcasting*, Public Notice CRTC 1988-142, 2 September 1988; and *Election-period broadcasting: Debates*, Public Notice CRTC 1995-44, 15 March 1995.

6. Questions relating to the *Broadcasting Act* and regulations should be directed to:

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Secretary General

*This document is available in alternative format upon request and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>.*

## Appendix to Broadcasting Circular CRTC 2008-4

### Federal general election - Guidelines for broadcast licensees

#### Attention station managers

Please distribute to news department, program department, sales department, traffic department and any other affected personnel.

#### ***Broadcasting Act* and regulations**

The following material is drawn from the *Broadcasting Act* and regulations.

#### **I. The *Broadcasting Act* (the Act)**

##### **a) Sections 3(1)(j)(i) and 3(1)(j)(iv) of the Act declare that:**

the programming provided by the Canadian broadcasting system should:

- i) be varied and comprehensive, providing a balance of information, enlightenment and entertainment for men, women and children of all ages, interests and tastes,
- iv) provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern...

##### **b) Temporary network:**

The operations of a temporary network are subject to the Act and a request for such operations must be submitted to the Commission for prior approval. See section 2 of the Act.

#### **II. The broadcasting regulations**

The *Radio Regulations, 1986* and *Television Broadcasting Regulations, 1987* (sections 6 and 8 respectively) read as follows:

##### **Political broadcasts**

During an election period, a licensee shall allocate time for the broadcasting of programs, advertisements or announcements of a partisan political character on an equitable basis to all accredited political parties and rival candidates represented in the election or referendum.

## **Election period**

An election period is defined in the *Radio Regulations, 1986* and *Television Broadcasting Regulations, 1987* as:

- (a) in the case of a federal or provincial election, or of a federal, provincial or municipal referendum, the period beginning on the date of the announcement of the election or referendum and ending on the date the election or referendum is held.

Section 11(4) of the *Television Broadcasting Regulations, 1987* reads as follows:

In addition to the maximum of 12 minutes of advertising material set out in subsection (1), a licensee may broadcast partisan political advertising during an election period.

Section 6 of the *Specialty Services Regulations, 1990* reads as follows:

Where a licensee provides time on its service during an election period for the distribution of programs, advertisements or announcements of a partisan political character, the licensee shall allocate the time on an equitable basis to all accredited political parties and rival candidates represented in the election or referendum.

“Election period” has the same definition as that set out in the *Radio Regulations, 1986* and the *Television Broadcasting Regulations, 1987* above.

Section 27(4) of the *Broadcasting Distribution Regulations* states:

If a licensee provides time on the community channel during an election period for the distribution of programming of a partisan political character, the licensee shall allocate that time on an equitable basis to all accredited political parties and rival candidates.

“Election period” has the same definition as that set out in the radio and television regulations above.

### **III. A Policy with Respect to Election Campaign Broadcasting, Public Notice CRTC 1988-142, 2 September 1988 – Excerpts applicable to federal and provincial general elections**

#### **Underlying rationale**

Throughout the history of broadcasting in Canada, licensees, as part of their service to the public, have been required to cover elections. Moreover, where licensees have allocated paid or free campaign time, they have been required to do so in a manner that is equitable to all political parties and rival candidates.

The purpose of these requirements is to ensure the public's right to be informed of the issues involved so that it has sufficient knowledge to make an informed choice from among the various parties and candidates. This right is a quintessential one for the effective functioning of a democracy, particularly at election time. The broadcaster's obligation as a trustee of the public airwaves is seldom greater than it is in respect to this exercise of the most fundamental democratic freedom.

As the Commission noted in *Political Broadcasting – Complaints re: free time and editorial time allocations*, Circular No. 334:

It is the broadcaster's duty to ensure that the public has adequate knowledge of the issues surrounding an election and the position of the parties and candidates. The broadcaster does not enjoy the position of a benevolent censor who is able to give the public only what it "should" know. Nor is it the broadcaster's role to decide in advance which candidates are "worthy" of broadcast time.

From this right on the part of the public to have adequate knowledge to fulfill its obligations as an informed electorate, flows the obligation on the part of the broadcaster to provide equitable - fair and just - treatment of issues, candidates and parties. It should be noted that "equitable" does not necessarily mean "equal" but, generally, all candidates and parties are entitled to some coverage that will give them the opportunity to expose their ideas to the public.

The question of equitable treatment applies to parties and to candidates; to programs, advertisements and announcements; to federal, provincial and municipal elections, as well as to referenda. Equity also applies to the duration of broadcasts, to scheduling, to potential audience, to the choice of which electoral districts and offices to cover, to language of broadcast, to issue coverage and approach, to conditions under which an appearance may be made, and - in the case of paid-time programming - to price.

The Commission acknowledges that each licensee's situation is unique. The Commission has no firm rules to cover all aspects of election campaign broadcasting; to some extent it will have to deal with situations on a case-by-case basis.

#### **Equity in various categories of broadcast**

Political campaign broadcasts generally fall into four categories:

- i) **Paid-time** - Time bought and paid for by or on behalf of parties or candidates or advocacy groups, and largely under the editorial control of the advertiser.

- ii) **Free time** - Time given free of charge by the licensee to the party or candidate, and largely under the editorial control of the party or candidate.
- iii) **News** - Coverage of the campaign by licensee's news department, and under the editorial control of the licensee.
- iv) **Public Affairs** - In-depth examinations of candidates and issues, profiles of candidates, debates, and under the editorial control of the licensee.

There may be some "blurring" of the latter two categories given that, for example, they may be part of the station's "news package" and may involve the same station personnel.

If one party or candidate receives free time, all rival parties and candidates must be offered equitable time.

Similarly, if paid advertising time is sold to any party or candidate, advertising time must be made available on an equitable basis to rival parties and candidates.

In the case of conflicts between requirements for equity with respect to paid advertising time and sold-out commercial schedules, it is the Commission's view that such conflicts should be resolved in favour of the electoral process and in accordance with the principle of equity:

*Equity in news coverage*

The Commission agrees with the arguments put forward that news coverage should generally be left to the editorial judgement of the broadcast licensee.

However, section 3 of the Act requires that "the programming originated by broadcast undertakings should be of high standard" and "the programming provided by the Canadian broadcasting system should provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern." Licensees have an obligation under this section to ensure that their audiences are informed of the main issues and of the positions of all candidates and registered parties on those issues.

*Equity in Public Affairs Programming*

Section 3 of the Act must also be applied when presenting public affairs programs, such as party or candidate profiles, features on certain issues or panel discussions.

Equity requirements will apply within each of the categories of paid-time, free time, news and public affairs programs.

Licensees who program in more than one language should take into consideration that a political broadcast in one language cannot be construed as balancing a political broadcast in another language.

The equitable time requirement is triggered at the later of (a) the date a candidate is nominated or (b) the date on which an election is called.

Not all candidates are nominated at the same time; some, for strategic or other reasons, may not be nominated until well into a campaign. In the Commission's view, there is no obligation on the part of licensees to compensate late entrants for time previously afforded other candidates following the election's call. Late-entry candidates should receive equitable coverage from the time they enter the campaign.

For some licensees the provision of equitable coverage to all the candidates running for office in all of the electoral districts reached by the station could amount to an unwieldy proposition.

In the Commission's view, the decision should be made by the licensee, in consideration of three principal factors: the station's service area (i.e., the area it is licensed or committed to serve), its signal coverage area, and the practical aspect based on the number of electoral districts and candidates.

The Commission remains persuaded that on-air personalities, whether they are employed on radio or television or community programming channels of cable systems, even if their exposure is solely in the role of commercial announcer, have an unfair advantage over their opponents.

Accordingly, the licensee has the responsibility to ensure that such candidates be removed from their on-air duties during the election campaign period as defined in the regulations (the *Radio Regulations, 1986*, the *Television Broadcasting Regulations, 1987*, the *Broadcasting Distribution Regulations* and the *Specialty Services Regulations, 1990*) or on the date their candidacies are announced, whichever is later. Offering similar on-air opportunity to an on-air candidate's opponents is no longer an option.

In *Election-period broadcasting: Debates*, Public Notice CRTC 1995-44, 15 March 1995, the Commission announced that it will no longer require that so-called "debates" programs feature all rival parties or candidates in one or more programs. The licensee will have satisfied the balance requirement of the Act if reasonable steps are taken to ensure that their audiences are informed on the main issues and of the positions of all candidates and registered parties on those issues through their public affairs programs generally.

#### IV. Advertising content

Licensees shall log as advertising material any paid program, advertisement or announcement of a partisan political character which, including the partisan identification of the sponsor and the party, if any, is two (2) minutes or less in duration.

Television licensees are reminded that under the *Television Broadcasting Regulations, 1987*, partisan political advertising, including advocacy advertising, is excluded from the calculation of the amount of advertising they broadcast. The Commission advises other licensees that, for this election, any advertising material of a partisan political character with regard to the election, regardless of length, may be treated as program material by licensees who are not prohibited from carrying advertising material by regulation or condition of licence.

To circumvent certain logging software problems that have occurred in the past, television licensees should continue to log such material as “COM”. However, to distinguish election advertising material from other television commercials, licensees should insert “ELE” at the beginning or end of the field that is used to identify the advertiser or the title of the advertisement. For FM radio, such material may be logged as category “6” instead of category “5”.

#### V. Of special interest to broadcasting distribution undertakings – Community channels

No licensee of a broadcasting distribution undertaking is obliged to engage in political programming.

However, if the licensee of a broadcasting distribution undertaking decides to engage in political programming, then the Commission suggests that the following criteria be respected for the two types of political programming normally distributed:

##### **Free access political programming**

In this type of programming, time is made available for use, freely and without the intervention of the licensee, whether as moderator or in terms of the production process, provided that the laws governing libel and slander, and the broadcasting guidelines respecting equitable treatment, are respected. As with all community programming, while the licensee is ultimately responsible for the program content, the candidate or party is afforded the widest possible latitude and control.

##### **Political programming under the editorial control of the licensee**

Programs produced under the editorial control of the licensee of a broadcasting distribution undertaking are those programs **over which the licensee retains control** as to format, participants, and in which the licensee directly intervenes in the production process as a moderator or otherwise.



These programs can be likened to public affairs programs. Such programming **must be done on an equitable basis for all political parties and rival candidates**, and must conform to the Commission's regulations and policies respecting community programming.

## **VI. Premature publication of election poll results and the publication of opinion surveys**

Section 329 of the *Canada Elections Act* reads as follows:

No person shall transmit the result or purported result of the vote in an electoral district to the public in another electoral district before the close of all of the polling stations in that other electoral district.

Section 328 of the *Canada Elections Act* reads as follows:

- (1) No person shall knowingly cause to be transmitted to the public, in an electoral district on polling day before the close of all of the polling stations in that electoral district, the results of an election survey that have not previously been transmitted to the public.
- (2) No person shall transmit to the public, in an electoral district on polling day before the close of all of the polling stations in that electoral district, the results of an election survey that have not previously been transmitted to the public.
- (3) For the purpose of this section a person includes a group within the meaning of Part 17.

Subsection 7(b) of the *Broadcasting Distribution Regulations* reads as follows:

A licensee shall not alter or delete a programming service in the course of its distribution except:

- (b) for the purpose of complying with subsection 328 (1) of the *Canada Elections Act*. (Note that subsection 328 (1) of the *Canada Elections Act* is now section 329.)