



## Broadcasting Regulatory Policy CRTC 2010-476

PDF version

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Additional reference: 2009-797-1

Ottawa, 14 July 2010

### **Amendments to the *Broadcasting Licence Fee Regulations, 1997***

*In this regulatory policy, the Commission announces that, with Treasury Board's approval, it has amended the Broadcasting Licence Fee Regulations, 1997 relating to Part II licence fees.*

#### **Introduction**

1. In *Call for comments on proposed amendments to the Broadcasting Licence Fee Regulations, 1997*, Broadcasting Notice of Consultation CRTC 2009-797, 22 December 2009<sup>1</sup> (the Notice of Consultation), the Commission called for comments on proposed amendments to the *Broadcasting Licence Fee Regulations, 1997* (the Regulations) relating to Part II licence fees.
2. More specifically, the Commission proposed to introduce a cap of \$100 million for the calculation of Part II licence fees and to calculate the fees using the formula  $X/Y \times Z$  where:
  - X is the licensee's fee revenues for the return year terminating during the previous calendar year, less that licensee's exemption level for that return year;
  - Y is the aggregate fee revenues for the return year terminating during the previous calendar year of all licensees whose fee revenues exceed the applicable exemption levels, less the aggregate exemption level for all those licensees for that return year; and
  - Z is the lesser of:
    - a) \$100 million adjusted annually on a compound basis after 2010 in accordance with the percentage increase or decrease, as the case may be, to the Consumer Price Index (CPI) and
    - b) 1.365% multiplied by the amount determined for Y.
3. The Commission notes that the proposed formula used to calculate Part II licence fees requires a determination by the Commission of the lesser amount of two sums and the

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<sup>1</sup> As amended by Broadcasting Notice of Consultation CRTC 2009-797-1, 23 December 2009.

proportion of the total to be paid for each licensee. Henceforth, the Commission will have to make these determinations and publish the lower figure for the Z factor in the *Canada Gazette*.

4. Given that licensees' financial information for a return year is not available on 1 November following the end of that return year, the Commission proposes to use the financial information of the previous return year in the calculation of the X and Y variables. For example, for the Part II licence fees that are payable on 1 December 2010, the Commission would use the financial information submitted by licensees for the 2008-2009 broadcast year.
5. Beginning in 2011, the amount set out in paragraph *a)* of the variable Z shall be adjusted annually on a compound basis in accordance with the percentage increase or decrease to the CPI for the calendar year prior to the year of the adjustment. The CPI is the annual average all-items CPI for Canada (not seasonally adjusted) that is published by Statistics Canada, as set out in Catalogue No. 62-001-XWE, Table 5, CANSIM vector number v41690973. This information is publicly available on the Statistics Canada website.
6. For administrative reasons, the Commission also proposed to amend the Regulations so that Part II licence fees would be payable on or before 1 December of each year.

## **Comments**

7. The Commission received comments from Shaw Communications Inc., Quebecor Media Inc., Corus Entertainment Inc., MTS Allstream Inc., the Canadian Association of Broadcasters, Bell Canada/Bell Aliant Regional Communications, limited partnership, Rogers Communications Inc. and 0859291 BC Ltd. (CHEK TV). The public record of this proceeding is available on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Public Proceedings."
8. The interested parties unanimously supported the proposed amendments to the Regulations. CHEK TV, however, suggested that the provisions make reference to "the portion of that return year in which the licensee held the licence," as set out in section 11 of the Regulations.

## **Commission's analysis and determinations**

9. With regard to CHEK TV's submission, and more specifically the suggestion that the new provisions make reference to the "portion of that return year in which the licensee held the licence," the Commission considers that this statement is not needed. The Regulations, as amended, contain a definition of "fee revenues," which makes reference to the "licensed activity of the licensee" and, in the case where a licensee has not filed a licence fee return for a full return year, to the estimated annual revenue of the undertaking, as provided for in the *b)* component of the definition.

10. The Commission will calculate licence fees due and payable by 1 December 2010 at the latest and send out invoices on or about 1 November 2010 to undertakings that are licensees on the billing date for which the fee revenues for the broadcast year ending 31 August 2009 exceed the applicable exemption. As noted above, where the licensee has not filed a licence fee return covering the 12 months of the applicable completed return year, the Commission intends, in the calculation of the X and Y variables, to continue using component *b*) of the existing definition of “fee revenues,” which reads as follows: “the estimated annual revenue, based on the trends of the market in which the undertaking is licensed to operate, the previous financial performance of the undertaking, and, where applicable, the licensee’s business plan for the first 12 months of operations.”
11. As set out in the Notice of Consultation, each year licensees will be able to estimate the amount that they will have to pay on 1 December for the Part II licence fee based on the Part I licence fee invoice sent to them by the Commission at the end of February of the same calendar year. Thus, in situations where a licensee has acquired broadcasting assets during a return year and where the Commission consequently needed to use fee revenue component *b*) to calculate Part I licence fees, the Commission will use this same factor for Part II licence fees. For sales and acquisitions of broadcasting assets, parties should take into account the above when calculating the adjustments due at the closing of the transaction.
12. The Commission intends to send all accounts for Part II licence fees that are overdue by more than 30 days to a collection agency for recovery action.

## **Conclusion**

13. In light of the above, the Commission adopts the proposed amendments to the Regulations as proposed in the Notice of Consultation.
14. Pursuant to section 11 of the *Broadcasting Act*, the Commission received Treasury Board approval in order to enact the amendments to the *Broadcasting Licence Fee Regulations, 1997* (the amended Regulations). The amended Regulations were registered on 23 June 2010 and were published in the *Canada Gazette*, Part II, Vol. 144, No. 14, pages 1409 to 1410, on 7 July 2010 (SOR/2010-157). The amended Regulations came into effect on the date of registration. A copy of the amended Regulations is attached to this regulatory policy.

Secretary General

# Appendix to Broadcasting Regulatory Policy CRTC 2010-476

## REGULATIONS AMENDING THE BROADCASTING LICENCE FEE REGULATIONS, 1997

### AMENDMENTS

**1. Paragraph 3(b) of the *Broadcasting Licence Fee Regulations, 1997*<sup>1</sup> is replaced by the following:**

(b) a Part II licence fee, payable on or before December 1 in each year.

**2. Section 11 of the Regulations is replaced by the following:**

**11. (1)** A Part II licence fee is equal to the amount determined by the formula

$$X/Y \times Z$$

where

X is the licensee's fee revenues for the return year terminating during the previous calendar year, less that licensee's exemption level for that return year;

Y is the aggregate fee revenues for the return year terminating during the previous calendar year of all licensees whose fee revenues exceed the applicable exemption levels, less the aggregate exemption level for all those licensees for that return year; and

Z is the lesser of

(a) \$100,000,000, and

(b) 1.365% multiplied by the amount determined for Y.

(2) Commencing in 2011, the amount set out in paragraph (a) of the description of Z in subsection (1) shall be adjusted annually on a compound basis in accordance with the percentage increase or decrease, as the case may be, to the Consumer Price Index for the calendar year prior to the year of the adjustment. The Consumer Price Index is the annual average all-items Consumer Price Index for Canada (not seasonally adjusted) that is published by Statistics Canada.

(3) The Commission shall publish the amount determined for Z each year in a public notice in the *Canada Gazette*, Part I.

(4) The Commission shall invoice a licensee for the Part II licence fee no later than November 1 of the year in which the fee is due.

(5) For the purposes of this section, the reference to "most recently completed return year" in paragraph (b) of the definition "fee revenue" in section 1 shall be read as a reference to the "return year terminating during the previous calendar year".

### COMING INTO FORCE

**3. These Regulations come into force on the day on which they are registered.**

<sup>1</sup> SOR/97-144