



Broadcasting Order CRTC 2011-536

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Route references: 2011-66 and 2008-100

Ottawa, 30 August 2011

Amendments to the distribution order for the Cable Public Affairs Channel and the House of Commons programming service

The Commission amends Distribution of the public affairs programming service of Cable Public Affairs Channel Inc. known as CPAC by persons licensed to carry on certain types of broadcasting distribution undertakings, *Distribution Order 2006-1, set out in Appendix I to Broadcasting Public Notice 2006-5.*

Background

1. Cable Public Affairs Channel Inc. (CPAC Inc.) broadcasts a licensed public affairs programming service known as the Cable Public Affairs Channel (CPAC) and an exempt service¹ that includes the House of Commons programming service. These services are broadcast on a time-shared basis on the same channel, with the licensed programming service providing the wrap-around programming that precedes and follows that of the exempt programming service.
2. In Appendix I to Broadcasting Public Notice 2006-5 (Distribution Order 2006-1), the Commission set out the requirement for broadcasting distribution undertakings (BDUs) to distribute both English- and French-language versions of CPAC and the service exempted pursuant to the *Parliamentary and Provincial or Territorial Legislature Proceedings Exemption Order* appended to Broadcasting Public Notice 2002-73 (the Legislature Proceedings Exemption Order). The Commission notes, however, that additional requirements to distribute the House of Commons programming service were set out in the *Broadcasting Distribution Regulations* (the Regulations).²
3. In Broadcasting Regulatory Policy 2011-455, the Commission announced that it had amended the Regulations. Included in those amendments was the removal of sections 17(1)(i) and (j) such that BDUs no longer have an obligation to distribute the House of Commons programming service pursuant to the Regulations. In light of these amendments, the Commission has sought to ensure that the requirements currently

¹ The programming service provided pursuant to the *House of Commons and Provincial or Territorial Exemption Order*. See the appendix to Broadcasting Public Notice 2002-73.

² See sections 17(1)(i) and (j) of the Regulations in effect prior to 1 September 2011.

contained in the distribution order for CPAC are maintained and updated where necessary.

4. Accordingly, in Broadcasting Notice of Consultation 2011-66, the Commission called for comments on the wording of a proposed amended distribution order for CPAC. In the call for comments, the Commission indicated that the requirements to distribute the House of Commons programming service were previously set out in the Regulations. Rather than maintaining these requirements in two separate regulatory mechanisms, the Commission announced that the latter requirements should be removed from the Regulations and added to Distribution Order 2006-1.
5. The Commission received comments on the proposed amendments to that distribution order from Media Access Canada, on behalf of the Access 2020 Coalition (MAC) and from CPAC Inc. These comments can be found on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Commission's analysis and determinations

6. After examining the comments received, the Commission considers that the issues to be addressed in making its determinations relate to the following:
 - accessibility requirements of CPAC, and
 - the wording of the amended distribution order.

Accessibility requirements of CPAC

7. MAC argued that CPAC is not in compliance with the Commission's closed captioning requirements set out in Broadcasting and Telecom Regulatory Policy 2009-430 (the Accessibility Policy). It contended that BDUs should not be required to distribute the service, or that CPAC should not receive any basic monthly fee, until the service provides access to subscribers who are deaf or hard of hearing.
8. The Commission notes that CPAC is meeting its current closed captioning requirements, set out in a condition of its licence, to achieve minimum captioning levels of 90% of all English-language programming, and 50% of all French-language programming. It further notes that consistent with Broadcasting Public Notice 2007-54 and the Accessibility Policy, CPAC will be required to adhere to the new standard 100% closed captioning requirement at its next licence renewal.
9. In light of the above, the Commission is of the view that there is no justification for denying the mandatory distribution of CPAC or its reception of a basic monthly fee on the basis of its current accessibility practices.

Wording of the amended distribution order

Definition of “House of Commons programming service”

10. In Appendix 1 to Broadcasting Notice of Consultation 2011-66, the Commission proposed to add the following terms to the second paragraph of the distribution order (proposed addition in bold):

the service exempted pursuant to the *Parliamentary and Provincial or Territorial Legislature Proceedings Exemption Order*, appended to *Parliamentary and Provincial or Territory Legislature Proceedings Exemption Order: Amendments to previous order in force*, Broadcasting Public Notice CRTC 2002-73, 19 November 2002, as may be amended from time to time, **which includes the programming service of an undertaking required by the Commission to cover the entire proceedings of the House of Commons (House of Commons programming service).**

11. CPAC Inc. proposed an amendment to the above definition that would, among other things, a) make the definition more consistent with CPAC’s nature of service, and b) simplify the definition by tracking the language used in the licensing decision for CPAC to describe the exempt service offered by CPAC Inc., as well as the language used in the Legislature Proceedings Exemption Order.³
12. Upon further review, the Commission considers that the existing wording of the distribution order adequately ensures that CPAC’s distribution remains unchanged despite the changes being made to the Regulations. In this regard, the Commission notes that Distribution Order 2006-1 currently requires the distribution of the service exempted pursuant to the Legislature Proceedings Exemption Order as well as the licensed programming service provided by CPAC. The Legislature Proceedings Exemption Order, in turn, exempts those persons carrying on a broadcasting undertaking who provide programming consisting of “coverage of the proceedings of Parliament or of the legislature of a province or territory of Canada, including its various committees, as provided by the Speaker or appropriate committee responsible for broadcasting matters.” The Legislature Proceedings Exemption Order further specifies that the service provided “covers the proceedings of the House of Commons, the Senate or the legislature involved from beginning to end [...]”
13. As a result, the Commission is of the view that the additional references to the “House of Commons programming services” in the revised distribution order are not necessary. The Commission considers that the Legislature Proceedings Exemption Order is sufficiently broad to encompass any programming service that covers the proceedings of the House of Commons or a provincial or territorial legislative proceedings.

³ See Broadcasting Public Notice 2002-73.

14. The Commission has nevertheless clarified the second paragraph of the distribution order such that it is clear that the obligation to distribute the exempted service applies in so far as it is operated by CPAC. The amended paragraph therefore reads as follows:

The Commission hereby orders, pursuant to section 9(1)(h) of the *Broadcasting Act*, persons licensed to carry on broadcasting distribution undertakings of the types identified in paragraph (a) below to distribute the licensed public affairs programming service of Cable Public Affairs Channel Inc. (CPAC Inc.) and the exempt service operated by CPAC Inc. pursuant to the *Parliamentary and Provincial or Territorial Legislature Proceedings Exemption Order* appended to *Parliamentary and Provincial or Territory Legislature Proceedings Exemption Order: Amendments to previous order in force*, Broadcasting Public Notice CRTC 2002-73, 19 November 2002, as may be amended from time to time. These services must be distributed in the manner and under the terms and conditions specified in paragraph (b) below:

Reference to basic monthly fee

15. CPAC Inc. also commented on the Commission's proposal to eliminate the direct reference to the basic monthly fee that BDUs are required to pay to CPAC, set out in paragraph (d) of the proposed distribution order. It acknowledged that replacing the express reference to CPAC's currently authorized monthly wholesale fee of \$0.11 per subscriber by a more general reference to the "maximum fee authorized under the terms of CPAC's licence" would make it possible for the Commission to modify CPAC's wholesale fee without being required to amend CPAC's distribution order. CPAC Inc. also stated, however, that confusion could be created if the elimination of the express reference to the basic monthly fee of \$0.11 was coupled with the retention of the express reference to the permitted \$0.08 pass-through portion that may be added to the basic monthly fee charged by BDUs to their subscribers. It therefore suggested that the distribution order should continue to refer expressly to the existing maximum authorized fee of \$0.11.
16. The Commission agrees with CPAC Inc. that combining the elimination of the direct reference to the basic monthly fee with the retention of the direct reference to the pass-through portion may lead to misunderstanding. It considers, however, that it is more appropriate for the provision to refer to CPAC's licence, rather than expressly refer to the currently authorized basic monthly fee or pass-through portion in the distribution order. This would prevent the Commission from having to amend both CPAC's licence and distribution order separately in the event that these fees were to be modified.
17. Further, since the Commission will no longer be regulating the basic monthly fee charged to subscribers by any BDU as of 1 September 2011, it considers that it is no longer appropriate to refer to the pass-through portion that may be added to the basic monthly fee in the amended distribution order.

18. Accordingly, the Commission replaces paragraph (d) of the proposed amended distribution order with the following:

Distribution licensees shall pay to CPAC the fee that it is authorized to charge under the terms of the broadcasting licence for CPAC.

Wording relating to financial responsibility for delivery of the services

19. Paragraph (e) of the proposed amended distribution order reads as follows:

(e) Notwithstanding the foregoing, distribution licensees shall not be required to distribute the CPAC and House of Commons programming services, unless CPAC or a third party pays for the satellite uplink and transponder costs with respect to the transmission of these programming services.

20. CPAC Inc. submitted that this wording is outdated and could lead to misunderstanding. It argued that it would be more appropriate to express this requirement in the same terms as for the signal delivery requirement for Category A services. It further argued that its proposed amendment (set out below) would reflect the Commission's findings set out in Broadcasting Information Bulletin 2010-718, where it was noted that the use of the bolded word "and" in section 8 of the *Pay Television Regulations, 1990* (the Pay Television Regulations), and section 12 of the *Specialty Services Regulations, 1990* (the Specialty Services Regulations) had caused some confusion in the industry:

Except as otherwise provided under a condition of its licence, a licensee shall, in respect of each programming service that is required to be distributed under section 18 of the *Broadcasting Distribution Regulations*, by the Commission under section 9(1)(h) of the Act or by order of the Commission made under subsection 9(4) of the Act,

(a) ensure the transmission of the programming service from its production facilities to each broadcasting distribution undertaking's head end **and** satellite uplink centre that is within the area for which the licensee is licensed; and

(b) bear the costs of the transmission.

21. In this regard, the Commission clarified in Broadcasting Information Bulletin 2010-718 that it was reasonable to require Category A services to bear the responsibility with respect to the costs of transmitting their signals to a BDU's head-end **or** uplink centre, and indicated accordingly that replacing the word "and" with "or" would provide the industry with added clarity.

22. CPAC Inc. further stated that services (such as CPAC) that have been granted mandatory distribution pursuant to section 9(1)(h) of the *Broadcasting Act* should be subject to the same responsibility for signal delivery as Category A services, which also benefit from access rights.

23. In light of the above, CPAC Inc. proposed to replace paragraph (e) of the proposed distribution order with the following:

Notwithstanding the foregoing, distribution licensees shall not be required to distribute the CPAC and House of Commons programming services, unless CPAC

- a) ensures the transmission of the CPAC and House of Commons programming services from its production facilities to the distribution licensees head end **or** satellite uplink centre; and
- b) bears the costs of the transmission.

24. The Commission agrees with CPAC Inc. that the wording used in the distribution order should reflect the Commission's clarifications set out in Broadcasting Information Bulletin 2010-718. However, as indicated in Broadcasting Information Bulletin 2010-718, the Commission called for comments on the proposed wording of section 8 of the Pay Television Regulations and section 12 of the Specialty Services Regulations. The final wording of these sections is slightly revised from the original language contained in Broadcasting Information Bulletin 2010-718. The Commission therefore adopts the revised wording of these sections as published in Appendix 2 to Broadcasting Regulatory Policy 2011-455 such that paragraph (e) of the distribution order will read as follows:

e) Notwithstanding the foregoing, distribution licensees shall not be required to distribute the licensed public affairs programming service of CPAC and the service exempted pursuant to the *Parliamentary and Provincial or Territorial Legislature Proceedings Exemption Order*, as may be amended from time to time, unless CPAC

- i) ensures the transmission of CPAC and the service exempted pursuant to the *Parliamentary and Provincial or Territorial Legislature Proceedings Exemption Order*, as may be amended from time to time, from its production facilities to each broadcasting distribution undertaking's head end located within the area for which the licensee is licensed or to a satellite uplink centre located within that area; and
- ii) bears the costs of the transmission.

25. The revised distribution order is set out in the appendix to the present regulatory policy.

Secretary General

Related documents

- *Amendments to the Broadcasting Distribution Regulations and other Commission Regulations*, Broadcasting Regulatory Policy CRTC 2011-455, 29 July 2011

- *Call for comments on a revised distribution order for the Cable Public Affairs Channel and the House of Commons programming service*, Broadcasting Notice of Consultation CRTC 2011-66, 3 February 2011
- *Clarifications regarding the interpretation of section 8 of the Pay Television Regulations, 1990 and section 12 of the Specialty Services Regulations, 1990, as they relate to the transmission of Category A services from their production facilities to broadcasting distribution undertakings' head ends and uplink centres*, Broadcasting Information Bulletin CRTC 2010-718, 28 September 2010
- *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009.
- *A new policy with respect to closed captioning*, Broadcasting Public Notice CRTC 2007-54, 17 May 2007
- *Changes to the distribution of the Cable Public Affairs Channel and the parliamentary programming service in response to a Direction from the Governor in Council*, Broadcasting Public Notice CRTC 2006-5, 19 January 2006
- *Licence renewal for CPAC; and issuance of a distribution order*, Broadcasting Decision CRTC 2002-377, 19 November 2002
- *Parliamentary and Provincial or Territory Legislature Proceedings Exemption Order: Amendments to previous order in force*, Broadcasting Public Notice CRTC 2002-73, 19 November 2002

Appendix to Broadcasting Order CRTC 2011-536

Distribution of the public affairs programming service of Cable Public Affairs Channel Inc. known as CPAC and of the exempt service operated by CPAC

This distribution order replaces *Distribution of the public affairs programming service of Cable Public Affairs Channel Inc. known as CPAC by persons licensed to carry on certain types of broadcasting distribution undertakings*, Distribution Order 2006-1, set out in Appendix I to *Changes to the distribution of the Cable Public Affairs Channel and the parliamentary programming service in response to a Direction from the Governor in Council*, Broadcasting Public Notice CRTC 2006-5, 19 January 2006.

The Commission hereby orders, pursuant to section 9(1)(h) of the *Broadcasting Act*, persons licensed to carry on broadcasting distribution undertakings of the types identified in paragraph (a) below to distribute the licensed public affairs programming service of Cable Public Affairs Channel Inc. (CPAC Inc.) and the exempt service operated by CPAC Inc. pursuant to the *Parliamentary and Provincial or Territorial Legislature Proceedings Exemption Order* appended to *Parliamentary and Provincial or Territory Legislature Proceedings Exemption Order: Amendments to previous order in force*, Broadcasting Public Notice CRTC 2002-73, 19 November 2002, as may be amended from time to time. These services must be distributed in the manner and under the terms and conditions specified in paragraph (b) below:

- a) This Order applies to all licensed broadcasting distribution undertakings serving more than 2,000 subscribers, including terrestrial and direct-to-home (DTH) distribution undertakings. These licensees are collectively referred to in this Order as distribution licensees.
- b) Distribution licensees shall distribute the licensed public affairs programming service of CPAC and the service exempted pursuant to the *Parliamentary and Provincial or Territorial Legislature Proceedings Exemption Order*, as may be amended from time to time, in the manner specified as follows:
 - i) Subject to paragraph v) and except as otherwise provided under a condition of its licence, each distribution undertaking, shall distribute, as part of its basic service, CPAC and the service exempted pursuant to the *Parliamentary and Provincial or Territorial Legislature Proceedings Exemption Order*, as may be amended from time to time, including the main audio channel of those services in the French language and an auxiliary audio channel of those services in the English language, if the licensee is operating in a francophone market.
 - ii) Subject to paragraph v) and except as otherwise provided under a condition of its licence, each terrestrial broadcasting distribution undertaking shall distribute, as part of its basic service, CPAC and the service exempted pursuant to the *Parliamentary and Provincial or*

Territorial Legislature Proceedings Exemption Order, as may be amended from time to time, including the main audio channel of those services in the English language and an auxiliary audio channel of those services in the French language, if the licensee is operating in an anglophone market.

iii) Each terrestrial broadcasting distribution undertaking shall distribute CPAC and the service exempted pursuant to the *Parliamentary and Provincial or Territorial Legislature Proceedings Exemption Order*, as may be amended from time to time, including the main audio channel of those services in the English language, if the licensee is operating in a francophone market.

iv) Each terrestrial broadcasting distribution undertaking shall distribute CPAC and the service exempted pursuant to the *Parliamentary and Provincial or Territorial Legislature Proceedings Exemption Order*, as may be amended from time to time, including the main audio channel of those services in the French language, if the licensee is operating in an anglophone market.

v) Where a terrestrial broadcasting distribution undertaking elects to distribute, as part of its basic service, both an English-language and a French-language version of CPAC and of the service exempted pursuant to the *Parliamentary and Provincial or Territorial Legislature Proceedings Exemption Order*, as may be amended from time to time, it is relieved of the requirement in i) and ii) above to distribute an auxiliary audio channel for any of these services.

vi) The requirements of iii) and iv) above do not apply to multipoint distribution system licensees.

vii) Except as otherwise provided under a condition of its licence, a DTH distribution undertaking shall distribute, as part of its basic service, the English- and French-language versions of CPAC and the service exempted pursuant to the *Parliamentary and Provincial or Territorial Legislature Proceedings Exemption Order*, as may be amended from time to time.

c) A distribution licensee shall not distribute CPAC and the service exempted pursuant to the *Parliamentary and Provincial or Territorial Legislature Proceedings Exemption Order*, as may be amended from time to time, on a restricted channel unless these services consent in writing to distribution on such a channel.

d) Distribution licensees shall pay to CPAC the fee that it is authorized to charge under the terms of the broadcasting licence for CPAC.

e) Notwithstanding the foregoing, distribution licensees shall not be required to distribute the licensed public affairs programming service of CPAC and the service exempted pursuant to the *Parliamentary and Provincial or Territorial Legislature*

Proceedings Exemption Order, as may be amended from time to time, unless CPAC

i) ensures the transmission of CPAC and the service exempted pursuant to the *Parliamentary and Provincial or Territorial Legislature Proceedings Exemption Order*, as may be amended from time to time, from its production facilities to each broadcasting distribution undertaking's head end located within the area for which the licensee is licensed or to a satellite uplink centre located within that area; and

ii) bears the costs of the transmission

f) Notwithstanding the foregoing, distribution licensees shall not be required to distribute the CPAC programming service if CPAC ceases to provide the service exempted pursuant to the *Parliamentary and Provincial or Territorial Legislature Proceedings Exemption Order*, as may be amended from time to time.

g) This Distribution Order shall remain in effect until such time as the Commission amends or rescinds it.

For the purposes of this Distribution Order, "anglophone market," "basic service," "DTH distribution undertaking," "francophone market," "licensed" and "programming service" carry the meanings assigned to them in the *Broadcasting Distribution Regulations*, as may be amended from time to time. The term "restricted channel" shall carry the meaning assigned to it in the *Broadcasting Distribution Regulations* as they read prior to 1 September 2011.