



Broadcasting Decision CRTC 2011-789

PDF version

Route reference: 2011-326

Ottawa, 19 December 2011

Access Communications Co-operative Limited
Regina, Saskatchewan

Application 2011-0614-6, received 31 March 2011

Terrestrial broadcasting distribution undertaking serving Regina – Licence amendment

*The Commission **denies** the application by Access Communications Co-operative Limited to amend the broadcasting licence for its terrestrial broadcasting distribution undertaking serving Regina to be relieved from the requirement set out in section 35 of the Broadcasting Distribution Regulations to contribute to the Local Programming Improvement Fund.*

Introduction

1. The Commission received an application by Access Communications Co-operative Limited (ACCL) to amend the broadcasting licence for its terrestrial broadcasting distribution undertaking (BDU) serving Regina. Specifically, the licensee requested the addition of a condition of licence that would relieve it from the requirement of section 35 (formerly section 29.1(1)) of the *Broadcasting Distribution Regulations* (the Regulations) to contribute to the Local Programming Improvement Fund (LPIF). Section 35 of the Regulations reads as follows:

Except as otherwise provided under a condition of its licence, a licensee shall make, for each broadcast year, a contribution of 1.5% of its gross revenues derived from broadcasting activities in the broadcast year to Canadian programming. The contribution shall be made to the Local Programming Improvement Fund.

2. In support of its application, ACCL submitted the following:
 - As a community-owned not-for-profit cooperative, its BDU serving Regina has a unique corporate structure when compared to that of other commercially operating BDUs.
 - In light of vertical integration, the LPIF provides funding to Canada's largest media companies, a subsidy that those companies do not need.

- The economic downturn that threatened the viability of conventional television stations has passed.
 - Its BDU is a relatively small distributor, with approximately 45,000 subscribers.
 - Its LPIF contribution could instead be spent on its local community programming.
3. The Commission received several interventions in support of this application as well as interventions offering general comments, from Novus Entertainment Inc. (Novus), MTS Allstream, Saskatchewan Telecommunications (SaskTel) and the Canadian Communication Systems Alliance, among others. It also received interventions in opposition to the application from the Coalition of Small Market Independent Television Stations, which represents 19 conventional television stations, Bell Canada, and the Canadian Broadcasting Corporation. The public record for this application can be found on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Commission's analysis and decisions

4. After examining the public record for this application in light of applicable regulations and policies, the Commission considers that the issue it must address is whether it would be appropriate to grant ACCL an exemption from the requirement regarding contributions to the LPIF.

Interventions

5. Interveners who supported the proposed licence amendment stated, among other things, the following:
- ACCL competes in one of the most competitive landscapes in the country, with SaskTel as one of its competitors, but does not have the same ability as for-profit cable distributors, such as those located in other jurisdictions, to access significant funds from capital markets.
 - ACCL's contribution to the LPIF is significant and adversely impacts its ability to fund its own local community programming efforts.
 - With vertical integration and the favourable economic climate, especially in Saskatoon, it is unfair for a local not-for-profit cooperative to be required to give money to vertically integrated companies in order for them to develop programming that is largely irrelevant on a local or regional level.
 - Local broadcasters in Regina have significantly reduced their local programming over the years while ACCL's community channel has increased its local content.

6. For its part, Novus noted that an application it submitted for relief from contributing to the LPIF in regard to its Class 1 terrestrial BDU serving Metro Vancouver, British Columbia, was denied in 2010,¹ and that it intends to apply once again for relief from the requirement to contribute to the LPIF. It argued that since vertically integrated entities are considerably larger than ACCL and Novus, it and ACCL should not be required to help support activities of conventional television stations operating in Canada.
7. Interveners who opposed the proposed licence amendment argued, among other things, that:
 - ACCL's application is premature given that the Commission intends to review the LPIF in 2012.
 - The LPIF is extremely positive, as it allows small market stations to remain open, maintain jobs and ensure local programming remains at historical levels.
 - Approval of the proposed licence amendment could undermine the success of the LPIF.
 - Approval of the proposed licence amendment would trigger similar requests.
 - Approval of the proposed licence amendment would set a dangerous precedent and could result in BDUs adopting corporate structures that would alleviate their regulatory obligations.
 - The argument put forth by ACCL that its contribution to the LPIF comes at the expense of its community channel is specious, given that this contribution constitutes a separate obligation under the Regulations.

ACCL's reply

8. In its reply to the interventions, ACCL reiterated its initial arguments and contended that the concerns raised by opposing interveners are not valid and should be dismissed. Noting that section 35 of the Regulations provides the Commission with the authority to grant exceptions to the requirement for BDUs to contribute to the LPIF, ACCL submitted that it defies logic for the Commission to provide itself authority to grant relief and then refuse to grant such an exception for fear of a flood of similar applications or because a BDU is operating in a unique set of circumstances. It further submitted that its LPIF contribution could instead be spent on its local community programming and network upgrades. In this regard, ACCL noted that the Commission previously recognized its unique corporate structure in 2000² and approved its request to devote the entire 5% of its gross revenues derived

¹ See Broadcasting Decision 2010-821.

² See Decision 2000-77.

from broadcasting activities and directed to Canadian programming to its community channel.

Commission's decisions

9. The Commission notes that ACCL's BDU serves close to 45,000 subscribers, and that the licensee's LPIF contribution for the 2009-2010 broadcast year amounted to \$426,000. As noted above by the licensee, since 2000, ACCL has been authorized by condition of licence to dedicate to its community channel the entire 5% of its gross revenues that is derived from broadcasting activities and directed to Canadian programming, whereas the standard amount in this regard, as prescribed by the Regulations, is 2%. Therefore, this licensee already benefits from additional funds for its community channel.
10. In Broadcasting Regulatory Policy 2009-543, the Commission stated that BDUs that did not qualify for exemption under Broadcasting Order 2009-544 could apply for a condition of licence for relief from the requirement to contribute to the LPIF. In the present case, the Commission considers that ACCL does not qualify for an exception to this requirement since relief by condition of licence was to be considered on a case-by-case basis and only for those BDUs with less than 20,000 subscribers that cannot qualify for exemption since they compete in the same service area as a larger BDU. Furthermore, Broadcasting Regulatory Policy 2009-543 does not differentiate among BDUs based on type of incorporation or business structure.
11. Moreover, in Broadcasting Regulatory Policy 2010-622, the Commission determined that funding for community television should remain distinct from LPIF funding, and that community television should not be permitted to access the LPIF. In the Commission's view, relief from the requirement to contribute to the LPIF for the purposes of allocating these funds to its community channel would be tantamount to a community channel having access to the LPIF.
12. The Commission notes that previous applications for similar relief have been denied. In Broadcasting Decision 2010-821, the Commission denied an application by Novus to add a condition of licence exempting its Class 1 terrestrial BDU serving Metro Vancouver from making contributions to the LPIF, since such a condition of licence would have resulted in an overall reduction in contributions to Canadian programming.
13. Further, in Broadcasting Decision 2010-61, the Commission denied an application by FreeHD Canada Inc., a national direct-to-home satellite distribution undertaking, for relief from the requirement to contribute to the LPIF for the first five years of its licence term. In that decision, the Commission determined that it was premature to grant the requested relief given that its determinations regarding the policy proceeding for a group-based approach to the licensing of television services and for certain issues relating to conventional television had yet to be made.

14. In addition, the Commission is concerned that granting ACCL the requested relief from its requirement to contribute to the LPIF would set a precedent for other BDUs serving less than 45,000 subscribers, resulting in similar, possibly numerous applications for relief being submitted to the Commission.
15. In light of the above, the Commission considers that approval of the present application would result in a reduction in overall contributions to Canadian programming, as well as an increase in the submission of similar applications, which could have an even greater impact on overall contributions to Canadian programming. The Commission notes that additional funds are already allocated to ACCL's community programming through its condition of licence permitting a full 5% of gross revenues from broadcasting activities to be dedicated to such programming. It is also the Commission's view that approval of the present application would not be consistent with past decisions, such as those cited above. Finally, the Commission considers that approval of the present application would be premature given the upcoming review proceeding for the LPIF announced in Broadcasting Notice of Consultation 2011-788, also issued today. Accordingly, the Commission does not consider it appropriate to approve the application for the licence amendment proposed by ACCL.

Conclusion

16. In light of the above, the Commission **denies** the application by Access Communications Co-operative Limited to amend the broadcasting licence for its terrestrial BDU serving Regina so as to be relieved from the requirement set out in section 35 of the Regulations to contribute to the LPIF.
17. The Commission notes that ACCL, in its application, raised certain issues in regard to the LPIF. As noted above, the Commission has announced a proceeding to review the LPIF, as contemplated in Broadcasting Public Notice 2008-100. The Commission invites ACCL to submit, in the context of that proceeding, comments it may have relating to the LPIF, including issues it raised in this regard in the present application.
18. The Commission further notes that a number of issues were raised in the interventions to the present application that relate to who should contribute to the LPIF, who should benefit from the LPIF, and for what the funds should be used. The Commission considers that these issues lie outside the scope of the present proceeding and should be addressed in the context of the above-mentioned proceeding to review the LPIF. Accordingly, the Commission invites interveners to the present application who wish the issues they raised to be addressed in the context of the upcoming LPIF proceeding to resubmit their interventions in response to Broadcasting Notice of Consultation 2011-788.

Secretary General

Related documents

- *Review of the Local Programming Improvement Fund*, Broadcasting Notice of Consultation CRTC 2011-788, 19 December 2011
- *Class 1 terrestrial broadcasting distribution undertaking serving Metro Vancouver – Licence renewal and amendments*, Broadcasting Decision CRTC 2010-821, 5 November 2010
- *Community television policy*, Broadcasting Regulatory Policy CRTC 2010-622, 26 August 2010
- *Direct-to-home satellite distribution undertaking and satellite relay distribution undertaking*, Broadcasting Decision CRTC 2010-61, 8 February 2010
- *Exemption order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers*, Broadcasting Order CRTC 2009-544, 31 August 2009
- *Amendments to the Broadcasting Distribution Regulations, the Television Broadcasting Regulations, 1987, the Pay Television Regulations, 1990, and the Specialty Services Regulations, 1990 – Implementation of certain elements of the regulatory framework for broadcasting distribution undertakings and discretionary services, and changes to contributions to Canadian programming*, Broadcasting Regulatory Policy CRTC 2009-543, 31 August 2009
- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services – Regulatory policy*, Broadcasting Public Notice CRTC 2008-100, 30 October 2008
- Decision CRTC 2000-77, 20 March 2000