



## Broadcasting Notice of Consultation CRTC 2011-803

Route reference: 2011-584

PDF version

Ottawa, 22 December 2011

### **Call for comments on amendments to various regulations, standard conditions of licence and an exemption order to implement measures to control the loudness of commercial messages**

*Pursuant to Measures to control the loudness of commercial messages, Broadcasting Regulatory Policy CRTC 2011-584, 13 September 2011, the Commission calls for comments on proposed amendments to the Television Broadcasting Regulations, 1987, the Specialty Services Regulations, 1990 and the Broadcasting Distribution Regulations, as well as the standard conditions of licence for video-on-demand undertakings and the exemption order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers. The deadline for the receipt of comments is **13 February 2012**.*

#### **Introduction**

1. In Broadcasting Regulatory Policy 2011-584, the Commission responded to Canadians' concerns by determining that it would require the industry to limit the loudness of television commercials based on the *ATSC Recommended Practice A/85*<sup>1</sup> (the Recommended Practice), which sets out technical requirements to ensure that commercial messages are received at an even volume relative to regular programming.
2. In order to implement the determinations announced in Broadcasting Regulatory Policy 2011-584, the Commission proposes to amend the *Television Broadcasting Regulations, 1987*, the *Specialty Services Regulations, 1990* and the *Broadcasting Distribution Regulations*, as well as the standard conditions of licence for video-on-demand (VOD) undertakings set out in Broadcasting Regulatory Policy 2011-59 and the exemption order for terrestrial broadcasting distribution undertakings (BDUs) serving fewer than 20,000 subscribers set out in Broadcasting Order 2011-753.

---

<sup>1</sup> English and French versions of *ATSC Recommended Practice A/85: Techniques for Establishing and Maintaining Audio Loudness for Digital Television*, are found on the Advanced Television Systems Committee's website: <http://www.atsc.org>. Annex J and Annex K of the Recommended Practice set out the technical requirements for controlling the loudness of commercial messages.

3. Consistent with the technical requirements of the Recommended Practice, the proposed amendments require television programming undertakings<sup>2</sup> to ensure that the loudness of all programming, including described video, matches the audio metadata<sup>3</sup> or the loudness target value for content on the channel.
4. The *Broadcasting Distribution Regulations* do not permit a licensee to alter the content or format of a programming service unless authorized by condition of licence or regulation. Accordingly, BDUs must ensure that the loudness of content on Canadian programming services is unaltered in its distribution. In particular, BDUs must ensure the pass-through of accurate audio metadata.
5. However, if a BDU alters a Canadian programming service pursuant to a condition of licence or regulatory authorization and in so doing alters the audio format or content of the programming (e.g., audio encoding format, number of audio channels), it is responsible to ensure that the loudness of all programming matches the audio metadata or the loudness target value for content on the channel.
6. The proposed amendments further require BDUs to ensure that the loudness of programming from authorized non-Canadian programming services and programming that is broadcast on BDU-operated community channels is compliant with the technical requirements of the Recommended Practice. For example, this obligation would apply to the use of local availabilities<sup>4</sup> and simultaneous substitution.
7. The Commission invites comments on the wording of the various proposed amendments, which are scheduled to come into force on 1 September 2012. The proposed amendments to the *Television Broadcasting Regulations, 1987*, the *Specialty Services Regulations, 1990* and the *Broadcasting Distribution Regulations* are set out in Appendix 1. The proposed amendments to the exemption order for terrestrial BDUs serving fewer than 20,000 subscribers found in Broadcasting Order 2011-753 are set out in Appendix 2 (the proposed changes are in bold). The proposed amendment to the standards conditions of licence for VOD undertakings established in Broadcasting Regulatory Policy 2011-59 is set out in Appendix 3.

---

<sup>2</sup> Television programming undertakings include conventional over-the-air broadcasters, specialty services and video-on-demand undertakings.

<sup>3</sup> Specifically, in the context of AC-3 encoded audio, loudness-related metadata makes it possible to control the loudness of different content during distribution or upon reception at a subscriber's digital set-top box.

<sup>4</sup> Local availabilities are periods of time within the programming of non-Canadian services where BDUs may insert announcements or promotions, as per negotiated agreements between those BDUs and the programming services in question. BDUs are authorized to make use of local availabilities in accordance with the general authorization set out in Broadcasting Regulatory Policy 2011-522.

## Call for comments

8. The proposed amendments are appended to this notice. The Commission invites comments on the wording of the proposed amendments. The Commission will accept comments that it receives on or before **13 February 2012**.

## Procedure

9. The new *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure*, SOR/2010-277 (the Rules of Procedure), set out, among other things, the rules for content, format, filing and service of interventions. Accordingly, the procedure set out below must be read in conjunction with the Rules of Procedure and its accompanying documents, which can be found on the Commission's website under "CRTC Rules of Practice and Procedure."
10. In accordance with the Rules of Procedure, a document must be filed with, not merely sent to, the Commission by 5 p.m. Vancouver time (8 p.m. Ottawa time) on the date it is due. The Commission takes no responsibility for postal delays and will not notify a party whose submission is received after the deadline date. Late submissions will not be considered by the Commission and will not be made part of the public file.
11. The Commission will not formally acknowledge interventions. It will, however, fully consider all interventions, and they will form part of the public record of the proceeding, provided that the procedures for filing set out in the Rules of Procedure and this notice have been followed.
12. Submissions must be filed by sending them to the Secretary General of the Commission by only one of the following means:

**by using the**

[\[Intervention/comment/answer form\]](#)

or

**by mail to**

CRTC, Ottawa, Ontario K1A 0N2

or

**by fax at**

819-994-0218

13. Submissions longer than five pages should include a summary.
14. Each paragraph of the submission should be numbered. In addition, where the comment is filed by electronic means, the line **\*\*\*End of document\*\*\*** should be entered following the last paragraph of the document, as an indication that the document has not been altered during electronic transmission.

## **Important notice**

15. All information that parties provide as part of this public process, except information designated confidential, whether sent by postal mail, facsimile, e-mail or through the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca), becomes part of a publicly accessible file and will be posted on the Commission's website. This information includes personal information, such as full names, e-mail addresses, postal/street addresses, telephone and facsimile numbers, and any other personal information parties provide.
16. The personal information that parties provide will be used and may be disclosed for the purpose for which the information was obtained or compiled by the Commission, or for a use consistent with that purpose.
17. Documents received electronically or otherwise will be put on the Commission's website in their entirety exactly as received, including any personal information contained therein, in the official language and format in which they are received. Documents not received electronically will be available in PDF format.
18. The information that parties provide to the Commission as part of this public process is entered into an unsearchable database dedicated to this specific public process. This database is accessible only from the web page of this particular public process. As a result, a general search of the Commission's website with the help of either its own search engine or a third-party search engine will not provide access to the information that was provided as part of this public process.
19. The Commission encourages parties and interested persons to monitor the record of the proceeding, available on the Commission's website, for additional information that they may find useful when preparing their submissions.

## **Examination of documents**

20. A list of all interventions and answers will also be available on the Commission's website. The list is accessible by selecting "View all proceedings open for comment" from the "Public Proceedings" section of the Commission's website and clicking on the "Interventions/Answers" link associated with this notice.
21. The public may examine public interventions and related documents at the following Commission offices during normal business hours.

## **Location of Commission offices**

Toll-free telephone: 1-877-249-2782  
Toll-free TDD: 1-877-909-2782

Les Terrasses de la Chaudière  
Central Building  
1 Promenade du Portage, Room 206  
Gatineau, Quebec

J8X 4B1  
Tel.: 819-997-2429  
Fax: 819-994-0218

***Regional offices***

Metropolitan Place  
99 Wyse Road  
Suite 1410  
Dartmouth, Nova Scotia  
B3A 4S5  
Tel.: 902-426-7997  
Fax: 902-426-2721

205 Viger Avenue West  
Suite 504  
Montréal, Quebec  
H2Z 1G2  
Tel.: 514-283-6607

55 St. Clair Avenue East  
Suite 624  
Toronto, Ontario  
M4T 1M2  
Tel.: 416-952-9096

360 Main Street  
Suite 970  
Winnipeg, Manitoba  
R3C 3Z3  
Tel.: 204-983-6306  
Fax: 204-983-6317

2220 – 12<sup>th</sup> Avenue  
Suite 620  
Regina, Saskatchewan  
S4P 0M8  
Tel.: 306-780-3422

403 – 4<sup>th</sup> Avenue South-West  
Suite 100  
Calgary, Alberta  
T2P 3N2  
Tel.: 403-292-6660  
Fax: 403-292-6686

858 Beatty Street  
Suite 290  
Vancouver, British Columbia  
V6B 1C1  
Tel.: 604-666-2111  
Fax: 604-666-8322

Secretary General

**Related documents**

- *Amended exemption order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers – provision of community television channels*, Broadcasting Order CRTC 2011-753, 7 December 2011
- *Regulatory framework relating to vertical integration*, Broadcasting Regulatory Policy CRTC 2011-601, 21 September 2011
- *Measures to control the loudness of commercial messages*, Broadcasting Regulatory Policy CRTC 2011-584, 13 September 2011
- *General authorizations for broadcasting distribution undertakings*, Broadcasting Regulatory Policy CRTC 2011-522, 24 August 2011
- *Standard requirements for video-on-demand undertakings*, Broadcasting Regulatory Policy CRTC 2011-59, 31 January 2011

# **Appendix 1 to Broadcasting Notice of Consultation CRTC 2011-803**

## **REGULATIONS AMENDING CERTAIN REGULATIONS MADE UNDER THE BROADCASTING ACT**

### **TELEVISION BROADCASTING REGULATIONS, 1987**

**1. Section 11 of the *Television Broadcasting Regulations, 1987*<sup>1</sup> and the heading before it are replaced by the following:**

#### **COMMERCIAL MESSAGES**

**11.** Except as otherwise provided under a condition of its licence, a licensee shall ensure that every commercial message that it broadcasts complies with the technical requirements set out in *ATSC Recommended Practice A/85: Techniques for Establishing and Maintaining Audio Loudness for Digital Television*, published by the Advanced Television Systems Committee Inc., as amended from time to time.

### **SPECIALTY SERVICES REGULATIONS, 1990**

**2. The *Specialty Services Regulations, 1990*<sup>2</sup> are amended by adding the following after section 12:**

#### **COMMERCIAL MESSAGES**

**13.** Except as otherwise provided under a condition of its licence, a licensee shall ensure that every commercial message that it broadcasts complies with the technical requirements set out in *ATSC Recommended Practice A/85: Techniques for Establishing and Maintaining Audio Loudness for Digital Television*, published by the Advanced Television Systems Committee Inc., as amended from time to time.

### **BROADCASTING DISTRIBUTION REGULATIONS**

**3. The *Broadcasting Distribution Regulations*<sup>3</sup> are amended by adding the following after section 7:**

#### **COMMERCIAL MESSAGES**

**7.1** (1) Except as otherwise provided under a condition of its licence, a licensee that alters the audio content or audio format of a programming service under paragraph 7(a) or (g) shall ensure that every commercial message complies with the technical requirements set out in *ATSC Recommended Practice A/85: Techniques for Establishing and Maintaining Audio Loudness for Digital Television*, published by the Advanced Television Systems Committee Inc., as amended from time to time.

(2) Except as otherwise provided under a condition of its licence, a licensee that distributes an authorized non-Canadian programming service shall ensure that every

commercial message complies with the technical requirements set out in *ATSC Recommended Practice A/85: Techniques for Establishing and Maintaining Audio Loudness for Digital Television*, published by the Advanced Television Systems Committee Inc., as amended from time to time.

**4. Section 30 of the Regulations is amended by adding the following after subsection (5):**

(6) A licensee that distributes commercial messages or acknowledgments on the community channel under paragraph (1)(g), (h) or (i) shall ensure that those messages and acknowledgements comply with the technical requirements set out in *ATSC Recommended Practice A/85: Techniques for Establishing and Maintaining Audio Loudness for Digital Television*, published by the Advanced Television Systems Committee Inc., as amended from time to time.

**COMING INTO FORCE**

**5. These Regulations come into force on September 1, 2012.**

<sup>1</sup> SOR/87-49

<sup>2</sup> SOR/90-106

<sup>3</sup> SOR/97-555



## Appendix 2 to Broadcasting Notice of Consultation CRTC 2011-803

### Proposed amendments to the terms and conditions for the exemption order respecting terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers<sup>1</sup>

#### Description

The purpose of these broadcasting distribution undertakings is to provide programming services to fewer than 20,000 subscribers, using co-axial cable, fibre, digital subscriber line or multi-point distribution system technology.

#### A. Definition of terms

1. For the purpose of this order, the terms “affiliate,” “anglophone market,” “**authorized non-Canadian programming service**,” “broadcast year,” “Canadian production fund,” “Canadian programming service,” “community access television,” “community channel,” “**commercial message**,” “comparable,” “contribution to local expression,” “Corporation,” “educational television programming service,” “francophone market,” “independent production fund,” “licensed,” “licensed area,” “local television station,” “pay television service,” “programming service,” “regional television station,” “radiocommunication distribution undertaking,” “relay distribution undertaking,” “specialty service,” “station” and “subscriber” have the same meaning as that set out in the *Broadcasting Distribution Regulations*; “basic service” means the package of programming services provided to all subscribers for a single fee; “gross revenues derived from broadcasting activities” has the same meaning as that set out in *Guidelines respecting financial contributions by the licensees of broadcasting distribution undertakings to the creation and presentation of Canadian programming*, Circular No. 426, 22 December 1997; “local head end” means (a) in respect of an undertaking other than a radiocommunication distribution undertaking, the specific location at which the undertaking receives the majority of the programming services that are transmitted by local television stations or, if there are no such stations, by regional television stations, and that are distributed by the exempt undertaking in the service area, and (b) in respect of a radiocommunication distribution undertaking, the undertaking’s transmitter site;

---

<sup>1</sup> The Commission notes that in *Call for comments on proposed amendments to the terms and conditions of the exemption order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers*, Broadcasting Notice of Consultation CRTC 2011-804, also issued today, it called for comments on additional proposed changes to the exemption order for terrestrial BDUs serving fewer than 20,000 subscribers. The changes to the exemption order proposed in that notice will be reconciled with those proposed in the current notice following the close of the comment period for the respective proceedings.

“service area” means the area in which an exempt undertaking carries on a broadcasting distribution undertaking; and an undertaking that “serves more than 2,000 subscribers” means an undertaking whose subscriber base at the time it becomes exempt exceeds 2,000, or an undertaking whose subscriber base at the time it becomes exempt did not exceed 2,000 but has subsequently exceeded 2,200 for at least two consecutive broadcasting years as reported pursuant to paragraph 23, below.

## **B. Provisions applicable to exempt distribution undertakings**

### **General provisions**

2. The Commission would not be prohibited from licensing the undertaking by virtue of any Act of Parliament or any direction to the Commission by the Governor in Council.
3. The undertaking meets all the technical requirements of the Department of Industry (the Department) and has acquired all authorizations or certificates prescribed by the Department.
4. In total, the number of subscribers served by the individual undertaking is fewer than 20,000, and the undertaking either (a) does not serve all or part of the licensed area of a licensed terrestrial broadcasting distribution undertaking (BDU) that serves 20,000 or more subscribers within that licensed area, or (b) serves all or part of the licensed area of a licensed terrestrial BDU that serves 20,000 or more subscribers only by virtue of the fact that the licensed BDU expanded to operate within the service area of the undertaking at some time following the time at which the undertaking came into being. Once exempt, the undertaking does not have more than 21,000 subscribers in any two consecutive broadcasting years as reported pursuant to paragraph 23, below.

### **Distribution of the basic service**

5. The undertaking does not provide a subscriber with any programming services, other than licensed pay-per-view services, licensed video-on-demand services or the programming services of exempt programming undertakings, without also providing the basic service.

### **Distribution of conventional television stations**

6. In regard to the provision of a basic service:
  - a) The undertaking distributes as part of its basic service all services of local television stations, with no degradation of the signal received.
  - b) If the undertaking serves more than 2,000 subscribers, it distributes as part of its basic service all services of regional television stations, other than affiliates or members of the same network of which a local television station distributed pursuant to paragraph 6(a), above, is also an affiliate or member. These stations are distributed with no degradation of the signal received. If the programming services of the two or more regional television stations that are affiliates or members of the

same network are received at the local head end or equivalent, the undertaking is required to distribute only one of them.

c) If not otherwise distributed as a local or regional television station, the undertaking distributes at least one television station owned and operated by the Corporation, in each of the official languages, where the Corporation makes its signals available and pays the costs associated with the transport and reception of its signals to the undertaking's local head end or equivalent.

d) If the undertaking receives television stations that are identical, the undertaking is required to distribute only one of them under this section.

e) If the undertaking serves more than 2,000 subscribers, it distributes as part of its basic service, and with no degradation of the signal received, educational television programming services the operation of which is the responsibility of an educational authority designated by the province in which the service area of the undertaking is located.

### **Majority of Canadian programming services**

7. A majority of each of the video and audio channels received by each subscriber, other than the programming distributed on program repeat channels, are devoted to the distribution of Canadian programming services. For the purposes of this paragraph, each pay television service, television pay-per-view service, and video-on-demand service is counted as a single video channel.

### **Programming services in the language of the minority**

8. If the undertaking delivers any programming service on a digital basis, it distributes:

a) at least one French-language Canadian pay or specialty service, excluding the services that the undertaking may be required to distribute under paragraphs 14 and 15, below, for every ten English-language programming services distributed by the undertaking, if the undertaking is operating in an anglophone market; and

b) at least one English-language Canadian pay or specialty service, excluding the services that the undertaking may be required to distribute under paragraphs 14 and 15, below, for every ten French-language programming services distributed by the undertaking, if the undertaking is operating in a francophone market.

### **Distribution of adult programming services**

9. The undertaking does not package an adult programming service in such a way that subscribers are obliged to purchase the service in order to purchase any other programming service. The undertaking takes measures to fully block the reception of both the audio and video portions of any adult programming service to subscribers who request that it not be receivable in their home (in either unscrambled or scrambled mode).

## **Distribution of single point-of-view religious services**

10. The undertaking distributes a single or limited point-of-view religious pay or specialty service only on a “stand-alone basis” or in a package with other single or limited point-of-view religious services, and all such services are distributed only on a discretionary basis.

## **Alteration or deletion of a programming service**

11. The undertaking does not alter or delete a programming service in the course of its distribution except:

- a) for the purpose of complying with section 328(1) of the *Canada Elections Act*;
- b) for the purpose of deleting a programming service to comply with an order of a court prohibiting the distribution of the service to any part of the service area;
- c) for the purpose of altering a programming service to insert a warning to the public announcing:
  - i. any danger to life or property if the insertion is provided for in an agreement entered into by the undertaking with the operator of the service or the network responsible for the service; or
  - ii. an imminent or unfolding danger to life if there is no agreement with the operator of the service or the network responsible for the service
- d) for the purpose of preventing the breach of programming or underlying rights of a third party, in accordance with an agreement entered into with the operator of the service or the network responsible for the service;
- e) for the purpose of deleting a subsidiary signal, unless the signal is, itself, a programming service or is related to the service being distributed;
- f) for the purpose of deleting the described video programming of a service distributed on an analog basis; or
- g) for the purpose of inserting a commercial message in a Canadian programming service, excluding a video-on-demand service, if the insertion is in accordance with an agreement between the undertaking and the operator of the service or the network responsible for the service and that pertains to commercial messages that are directed to a target market of consumers.

**11.1 (1) An undertaking that alters the audio content or audio format of a programming service under paragraph 11(g) shall ensure that every commercial message complies with the technical requirements set out in *ATSC Recommended Practice A/85: Techniques for Establishing and Maintaining Audio Loudness for***

***Digital Television*, published by the Advanced Television Systems Committee Inc., as amended from time to time.**

**(2) An undertaking that distributes an authorized non-Canadian programming service shall ensure that every commercial message complies with the technical requirements set out in *ATSC Recommended Practice A/85: Techniques for Establishing and Maintaining Audio Loudness for Digital Television*, published by the Advanced Television Systems Committee Inc., as amended from time to time.**

### **Prohibited programming content**

12. The undertaking does not distribute a programming service that the undertaking originates and that contains:

- a) anything that contravenes any law;
- b) any abusive comment or abusive pictorial representation that, when taken in context, tends to or is likely to expose an individual or group or class of individuals to hatred or contempt on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, age or mental or physical disability;
- c) any obscene or profane language or pictorial representation; or
- d) any false or misleading news.

For the purpose of (b), sexual orientation does not include the orientation towards a sexual act or activity that would constitute an offence under the *Criminal Code*.

### **Other services distributed**

13. a) No service received over-the-air or by any other means is distributed over the undertaking, other than a service that the Commission, by regulation or otherwise, has authorized. If the Commission has authorized a service for distribution subject to terms and conditions intended to address the concerns addressed in paragraph 12, above, the undertaking distributes the service subject to those terms and conditions.

- b) The undertaking distributes no more than two sets of U.S. 4+1 signals, with the exception of signals receivable by the undertaking over the air, to its subscribers.
- c) The undertaking is authorized to undertake any activity authorized in the regulatory policy entitled General authorizations for broadcasting distribution undertakings, as amended from time to time, under the terms and conditions set out in that regulatory policy.

**Distribution of services subject to orders under section 9(1)(h) of the *Broadcasting Act***

14. If the undertaking serves more than 2,000 subscribers, it distributes, as part of the basic service,

- a) the Aboriginal Peoples Television Network programming service;
- b) the programming service of TVA Group Inc. (CFTM-TV Montréal or the programming service of one of its affiliates);
- c) if the undertaking is operating in a francophone market, the licensed public affairs programming service of the Cable Public Affairs Channel Inc. (CPAC) and the federal parliamentary 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;
- d) if the undertaking is operating in an anglophone market, the licensed public affairs programming service of CPAC and the federal parliamentary 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;
- e) if the undertaking is operating in a francophone market, a second version of the licensed public affairs programming service of CPAC and the federal parliamentary 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, which may be distributed as part of the basic service or on a discretionary basis;
- f) if the undertaking is operating in an anglophone market, a second version of the licensed public affairs programming service of CPAC and the federal parliamentary 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 French language, which may be distributed as part of the basic service or on a discretionary basis;
- g) where the undertaking elects to distribute, as part of its basic service, both an English-language and a French-language version of 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, it is relieved of the requirement to distribute an auxiliary audio channel for any of these services;

h) if the undertaking is operating in an anglophone market and distributes the Corporation's CBC News Network programming service on an analog basis, the programming service of the National Broadcast Reading Service (VoicePrint) as the secondary audio program of the former service; and

i) the undertaking does not distribute the Corporation's CBC News Network programming service on an analog basis, the programming service of the National Broadcast Reading Service (VoicePrint) on an audio channel.

15. If the undertaking serves more than 2,000 subscribers and delivers any programming service on a digital basis, it distributes to all digital subscribers:

a) The Accessible Channel;

b) if it operates in a francophone market, CBC News Network, La Magnétothèque and, until 31 August 2015, Météomedia;

c) if it operates in an anglophone market, le Réseau de l'information and, until 31 August 2015, The Weather Network; and

d) if it operates in the province of Quebec, Avis de Recherche.

16. An exempt undertaking is not required to distribute any of the programming services noted in paragraphs 14 and 15, above, with the exception of VoicePrint and La Magnétothèque, unless the licensee or operator of the programming service or a third party pays for the satellite uplink and transponder costs associated with the delivery of its programming service to the exempt undertaking.

## **Dispute resolution**

17. In regard to the resolution of disputes:

a) If a dispute concerning the terms and conditions under which programming services are distributed arises between the exempt undertaking and a programming undertaking, whether operating by licence or by exemption order, the undertaking submits to such mediation and/or dispute resolution process or processes as may be required by the Commission and to any decision that may ultimately result therefrom.

b) If a dispute concerning the terms and conditions under which programming services are provided to the undertaking arises between the undertaking and a relay distribution undertaking, whether operating by licence or by exemption order, the undertaking submits to such mediation and/or dispute resolution process or processes as may be required by the Commission and to any decision that may ultimately result therefrom.

## Programming service substitution

18. If the undertaking serves more than 2,000 subscribers, the undertaking deletes the programming service of a television station and substitutes the programming service of a local television station or, with the agreement of the broadcaster operating the local television station, has that broadcaster carry out the deletion and substitution, if

- a) the main studio of the local television station (i) is located within the service area of the undertaking, and (ii) is used to produce locally originated programming;
- b) the programming service to be deleted and the programming service to be substituted are comparable and simultaneously broadcast;
- c) in a case where the broadcaster operating the local television station is not to carry out the deletion and substitution under an agreement with the undertaking, the undertaking has, at least four days before the date on which the programming service is broadcast, received from the broadcaster operating the local television station a written request for the deletion and substitution; and
- d) if a substitution is requested by more than one broadcaster, the undertaking gives priority, in the following order, to (i) if the studios of the stations are located in the same province as the service area of the undertaking or in the National Capital Region, as described in the schedule to the *National Capital Act*, the programming service of the station whose main studio is closest to the local head end, or equivalent, of the service area; (ii) in any other case, the programming service of the station that has a studio located in the same province as the service area.

An undertaking may discontinue a deletion and substitution if the programming services in respect of which the deletion and substitution are made are not, or are no longer, comparable and broadcast simultaneously.

## Community channel

19. Subject to paragraph 20, if the undertaking serves more than 2,000 subscribers, it shall make a contribution to Canadian programming in each broadcast year of an amount not less than 5% of that undertaking's gross revenues derived from broadcasting activities in the year, less any contribution to local expression made by the undertaking in that year. Contributions to Canadian programming shall consist of:

- a) a contribution to the Canadian production fund of at least 80% of the undertaking's total required contribution; and
- b) to one or more independent production funds, the remainder of its total required contribution.

20. For the 2011-2012 broadcast year, the contribution to Canadian programming referred to in paragraph 19 above shall amount to not less than 5% of that undertaking's gross revenues derived from broadcasting during the period between 1 April 2012 and 31



August 2012, less any contribution to local expression made by the undertaking during that same period.

21. The undertaking is authorized to offer a zone-based community channel (where two or more exempt BDU service areas are combined to share local and community access television programming) under the following condition:

Exempt systems that make up a zone must be part of a community of interest. A community of interest would be determined by the following criteria:

A community of interest is one where its members share one or more of the following attributes:

- a) common social and economic interests;
- b) common heritage, culture or history;
- c) the same geographic or politically recognized boundary;
- d) access to the same local/regional media.

22. If the undertaking serves more than 2,000 subscribers and elects to offer a community channel or a zone-based community channel, the community channel offers programming that meets the following requirements:

- a) the programming offered consists of at least:
  - i. 60% local community television programs that are reflective of the community and produced in the undertaking's service area by the undertaking or by other members of the community served by the undertaking;
  - ii. 30% access programming consisting of programs produced by members of the community served by the undertaking;
- b) alternatively,
  - i. where an undertaking is an affiliate of a licensed cable undertaking, and the Commission has prescribed specific conditions of licence governing the offering of a community channel by that licensed undertaking, the undertaking may offer its community channel on the same basis as that approved for the licensed undertaking;
  - ii. where an undertaking is not an affiliate of a licensed cable undertaking, it may offer a community channel on the same basis as approved by condition of licence for any licensed undertaking that has a licensed area that includes any part of the same province or territory in which the undertaking operates;

- c) the programming includes no more than two minutes per hour of promotional messages and at least 75% of this promotional time is made available for the promotion of the community channel, non-related Canadian programming undertakings and for unpaid Canadian public service announcements;
- d) reasonable efforts are made to ensure that all the communities included within a zone-based community channel are proportionately represented; and
- e) the programming offered adheres to:
  - i. the *Cable television community channel standards*, as amended from time to time; and
  - ii. the Canadian Association of Broadcasters' *Violence Code*, as amended from time to time and approved by the Commission.

**(f) commercial messages or promotional messages on the community channel comply with the technical requirements set out in *ATSC Recommended Practice A/85: Techniques for Establishing and Maintaining Audio Loudness for Digital Television*, published by the Advanced Television Systems Committee Inc., as amended from time to time.**

### **Information requirements**

23. The undertaking or its representative submits the following information to the Commission by 30 November of each year:

- a) the name and contact information of the operator of the undertaking;
- b) the location of the undertaking and the communities served by the undertaking;
- c) the total number of basic subscribers served by the undertaking as of 31 August of that year;
- d) if the undertaking offers community programming exclusively through a video-on-demand service or provides community programming under a “zone based” approach, and does not operate separate head-end facilities or distribute a distinct local or regional television station, a statement as to its gross revenues derived from broadcasting activities in the past broadcast year and the amount and percentage of those revenues that have been contributed to community programming as described in paragraph 19(a); and
- e) whether any programming services are provided on a digital basis.

24. If the exempt undertaking serves more than 2,000 subscribers, the undertaking submits the simplified annual return for exempt broadcasting distribution undertakings by 30 November of each year.

25. The undertaking submits any information requested by the Commission in order to ascertain the undertaking's compliance with the terms of this order.

## **Appendix 3 to Broadcasting Notice of Consultation CRTC 2011-803**

### **Proposed amendment to the standard conditions of licence for video-on-demand undertakings**

The Commission proposes to amend the standard conditions of licence set out in *Standard requirements for video-on-demand undertakings*, Broadcasting Regulatory Policy CRTC 2011-59, 31 January 2011, by adding the following condition:

8. d) the commercial message complies with the technical requirements set out in *ATSC Recommended Practice A/85: Techniques for Establishing and Maintaining Audio Loudness for Digital Television*, published by Advanced Television Systems Committee Inc., as amended from time to time.