



Broadcasting Public Notice CRTC 2004-18

Ottawa, 30 March 2004

Amendments to the *Broadcasting Distribution Regulations* – Implementation of the policy framework for community-based media

The Commission has made amendments to the Broadcasting Distribution Regulations as set out in the appendix to this notice. These amendments were registered and came into force on 17 December 2003, and were published in Part II of the Canada Gazette on 31 December 2003.

1. In *Policy framework for community-based media*, Broadcasting Public Notice CRTC 2002-61, 10 October 2002 (Public Notice 2002-61 or the policy), the Commission set out an integrated policy framework for community-based media. The framework includes a replacement for *Community channel policy*, Public Notice CRTC 1991-59, 5 June 1991, a new licensing framework for community-based television undertakings and a replacement for *A licensing policy for low-power radio broadcasting*, Public Notice CRTC 1993-95, 28 June 1993.
2. The Commission developed the policy following public processes initiated in *Call for comments on a licensing framework for low-power community television undertakings in urban areas, and in other markets not covered by existing policy*, Public Notice CRTC 2000-127, 1 September 2000, in *Review of community channel policy and low-power radio broadcasting policy*, Public Notice CRTC 2001-19, 5 February 2001, and in *Proposed policy framework for community-based media*, Public Notice CRTC 2001-129, 21 December 2001.
3. In *Call for Comments – Proposed Amendments to the Broadcasting Distribution Regulations*, Broadcasting Public Notice CRTC 2003-57, 16 October 2003 (Public Notice 2003-57), the Commission invited interested parties to present their comments as to whether the proposed amendments accurately reflected the Commission's framework set out in Public Notice 2002-61. The present notice sets out the Commission's determinations with respect to comments received in response to Public Notice 2003-57.

Overview of comments

4. The Commission received comments from the following 33 interested parties: Fédération des télévisions communautaires autonomes du Québec (the Fédération), Canadian Cable Television Association (the CCTA), Vidéotron ltée (Vidéotron), Access Communications Co-Operative Limited (Access), Ministère de la Culture et des Communications du Québec (the Ministère), Télévision communautaire de la région de L'Amiante, Société d'information Lac St-Jean, Télé Forillon, Télévision

communautaire Buckingham, Masson-Angers et L'Ange-Gardien, Télévision de la Mitis, Télévision communautaire TéléVag, Municipalité de Notre-Dame-du-Nord, Télévision communautaire de Notre-dame-du-Nord, Télé Rive-Sud, Télévision communautaire de la Vallée du Richelieu, TVC d'Argenteuil, David Whissell (MNA for Argenteuil), Société d'aide au développement de la collectivité Maria-Chapdelaine, R. Boivin (MRC de Maria Chapdelaine), Télévision communautaire de Télé-Sourire inc., Chambre de commerce district Dolbeau-Mistassini, Télévision communautaire CCTV-13 de Témiscaming, Municipalité régionale de comté de Témiscamingue, Télévision communautaire de Beauceville, Télécommunautaire Laurentides-Lanaudière, Corporation de télédiffusion du Grand Châteauguay, Télévision communautaire Vents et Marées, Télévision Rive-Nord, Télévision communautaire de l'Érable inc., Télévision communautaire de la Vallée de La Matapédia inc., Télévision communautaire des Bois-Francs inc., Community Media Education Society (the Society), and Brock MacLachlan.

5. The comments filed by the various Quebec community televisions organizations and municipalities expressed support for the comments filed by the Fédération without raising any additional issue.
6. The Society indicated that it strongly supported the proposed amendments to the *Broadcasting Distribution Regulations* (the Regulations) and did not suggest any change. Brock MacLachlan made no recommendation for any change to the proposed amendments.
7. The CCTA, Access, Vidéotron, the Fédération and the Ministère raised a number of issues related to the implementation of the framework for community-based media. Their specific comments are addressed below.

The CCTA and Access

8. The CCTA expressed the view that the proposed amendments largely reflected the intent of Public Notice 2002-61. Access indicated that it was confident that the framework proposed by Public Notice 2002-61 would achieve the objectives of ensuring the creation and exhibition of more community programming and enhancing the diversity of voices at the local level.
9. However, the CCTA and Access both submitted that section 27(1.1) of the proposed amendments, which relates to the limitation on the amount of time that may be devoted to the broadcast of promotional material on the community channel, did not accurately reflect the policy. Access was concerned that the manner in which the section was drafted appeared to make the time available for use only by an unrelated Canadian programming undertaking.

10. The CCTA and Access also expressed concern with respect to the requirement set out in section 27.1(3)(a) of the proposed amendments that a minimum of 30% of a licensee's weekly community channel schedule be devoted to community access television programming. They submitted that it might not be possible to achieve that minimum requirement in each broadcast week. They also suggested that this requirement may inadvertently result in a reduction in the amount of community television programming available in a given week. They submitted that licensees should be allowed the flexibility to achieve the 30% minimum requirement for community access television programming over the broadcast year, rather than over the broadcast week.
11. The CCTA and Access also indicated that the wording of section 27.1(3)(b) of the proposed amendments, in regard to the requirement that licensees make 50% of the community channel schedule available for community access television programming when demand exceeds the 30% requirement set out in section 27.1(3)(a), did not reflect the policy. They were concerned that the wording could be interpreted as meaning that, when the 30% requirement was reached, 50% of the community channel schedule must be made available.
12. In addition, Access expressed concerns with respect to sections 27.1(3)(c) and 27.1(3)(d) of the proposed amendments, relating to the time to be allocated to Community Television Corporations (Corporations) on the community channel. Access was concerned that the manner in which the sections were drafted would lead to a duplication of programming.

Vidéotron

13. Vidéotron suggested a modification to sections 18 and 33.3 of the proposed amendments which relate to the mandatory carriage of the programming of community-based low-power television stations and community-based digital undertakings. Vidéotron suggested that the services of these undertakings should be distributed by the licensee of a broadcasting distribution undertaking (BDU) on a digital basis only where the licensee does not operate a community channel.
14. Section 27.1 of the proposed amendments relates to the minimum broadcast requirements of local community television programming and of community access television programming. Vidéotron suggested that an addition be made to this section in order to take into consideration situations where a major urban center is divided into six or more licensed areas.

15. Vidéotron also suggested additional wording to the definition of community-based digital undertaking.

The Fédération

16. The Fédération stated that the proposed amendments, in general, reflected the framework set out in Public Notice 2002-61. The Fédération, however, submitted that the distribution by cable BDUs of local community television programming produced by Corporations should be mandatory, on both a digital and analog basis.
17. The Fédération also made submissions relating to the funding of the community channel operations. The Fédération requested that amendments be made to provide that funding be specifically directed to programming produced by the Corporations. Finally, the Fédération sought clarification as to whether the obligations relating to community access television programming provided in the proposed amendments applied to all classes of licensees.

The Ministère

18. The Ministère expressed disappointment that the proposed amendments did not provide for financial support of the Corporations by the BDUs. The Ministère also echoed the Fédération's comment in respect to the mandatory carriage on a digital basis of the programming of Corporations by BDUs.

Commission's analysis and determinations with respect to the comments by parties

The CCTA and Access

19. With respect to the comments of the CCTA and Access in regard to section 27(1.1) of the proposed amendments, the Commission considers that it was not the objective of the policy to make the time allocated at section 27(1.1) available for use solely by Canadian programming undertakings, other than related programming undertakings. The Commission is of the view that a drafting ambiguity was responsible for the concerns expressed by the CCTA and Access, and has made the appropriate modifications to the text of section 27(1.1).
20. The Commission, however, notes that the CCTA had proposed the use of the words "non-related Canadian programming undertakings" rather than "Canadian programming undertakings, other than related programming undertakings" at section 27(1.1). The Commission considers that for drafting purposes, the use of the latter expression is more appropriate, as it consists of terms defined in the Regulations.

21. Since it was not the Commission's intention in the policy to limit the broadcast of public service announcements, the Commission has also decided to omit the reference to Canadian public service announcements in section 27(1.1) of the proposed amendments. Further, the Commission notes that the Regulations, as they currently exist, provide for the unlimited broadcast of public service announcements at section 27(1)(c).
22. With respect to the request by the CCTA and Access that the minimum requirement for community access channel programming set out at section 27.1(3)(a) be achieved over the broadcast year, rather than over the broadcast week, the Commission considers that this would constitute a change to the policy framework set out in Public Notice 2002-61. The policy clearly provides for this minimum requirement to be measured over the broadcast week. Accordingly, the Commission considers that this change is outside of the scope of this proceeding, and that its implementation would not be appropriate.
23. However, the Commission notes that, if a licensee finds itself in the situation contemplated by the CCTA and Access, it could schedule re-runs of community access television programming in order to meet the 30% requirement. The Commission also notes that, if circumstances were such that a licensee could not meet this requirement, it could seek relief by applying for an appropriate condition of licence.
24. With respect to the comments of the CCTA and Access concerning section 27.1(3)(b) of the proposed amendments, the Commission agrees that the objective of the policy was that the community channel schedule be made available on an incremental basis, once the minimum requirement of 30% set out in section 27.1(3)(a) has been reached, rather than to create a requirement to make 50% of the community channel schedule available as soon as the 30% requirement was met. Accordingly, the Commission has made appropriate changes to section 27.1(3)(b).
25. With respect to Access' concern that the drafting of sections 27.1(3)(c) and (d) of the proposed amendments relating to the time to be allocated to Corporations on the community channel, the Commission is satisfied that the application of these sections would not result in a duplication of the programming. Rather, the programming would simply be broadcast by both the licensed community programming undertaking and the licensee on its community channel in their respective licensed areas.

Vidéotron

26. The Commission is of the view that Vidéotron's proposed modification to sections 18 and 33.3 of the proposed amendments would constitute a change to the policy. Public Notice 2002-61 contemplated that a BDU that distributes programming on a digital basis, regardless of whether it also operates a community channel, should distribute the service of a community-based low-power television station or community-based digital undertaking. The Commission considers that Vidéotron's proposal falls outside of this proceeding and that its implementation would be inappropriate.

27. The Commission is of the further view that implementation of Vidéotron's suggestion in relation to section 27.1 is not necessary. The Commission is satisfied that the application of this requirement in the situation contemplated by Vidéotron can be dealt with by the addition of a condition of licence, as was done in *Licence renewal of cable distribution undertakings serving part of Montréal and Terrebonne*, Broadcasting Decision CRTC 2003-523, 24 October 2003, which renewed the licence of CF Cable TV Inc.
28. Finally, the Commission considers that the definition of community-based digital undertaking is sufficiently precise and should remain unchanged.

The Fédération

29. The Commission is of the view that the Fédération raised a legitimate concern with respect to the carriage of the local community television programming on the community channel for subscribers receiving digital services only. Section 20(3) of the current Regulations provides that "If a licensee distributes community programming, the licensee shall distribute it as part of the basic service". The Commission notes, however, that Public Notice 2002-61 did not specify that carriage of the local community television programming was mandatory on analog and/or digital.
30. It was not the Commission's objective in Public Notice 2002-61 to prevent those who subscribe exclusively to a digital cable package from receiving local community television programming. The Commission considers that cable licensees, for the purpose of meeting the requirement set out at section 27.1 of the proposed amendments, are to make the local community television programming available to all subscribers as part of their basic service, whether they subscribe to analog and digital cable or digital cable exclusively.
31. With respect to the Fédération's comment concerning the funding of Corporations, the Commission notes that the purpose of the proceeding initiated by Public Notice 2003-57 was to solicit comments on whether the proposed amendments accurately reflected the Commission's policy. The Commission considers that the recommendation made by the Fédération implies changes to the policy. As such, the recommendation falls outside the scope of this proceeding, and its implementation would thus be inappropriate.

The Ministère

32. With respect to the comments by the Ministère, the Commission notes that the purpose of the proceeding initiated by Public Notice 2003-57 was to solicit comments on whether the proposed Regulations accurately reflect the Commission's policy framework set out in Public Notice 2002-61. The Ministère, in its submission relating to funding, did not comment on whether the proposed amendments accurately reflect the policy. Its comments on funding imply changes to the policy and are outside the scope of this proceeding.

33. The Commission is satisfied that the clarification at paragraphs 30 and 31, above, will remedy the Ministère's concern relating to the carriage of the Corporations' programming on a digital basis.

Implementation of the amendments

34. The Commission has made the amendments appended to this notice. These amendments, which reflect a number of the suggestions made by the interested parties, were registered and came into force on 17 December 2003, and were published in Part II of the *Canada Gazette* on 31 December 2003. The Commission reminds the licensees of BDUs and other interested parties that the amendments apply to the broadcast year beginning on 1 September 2003 and to each subsequent broadcast year.

Secretary General

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

REGULATIONS AMENDING THE BROADCASTING DISTRIBUTION
REGULATIONS

AMENDMENTS

1. (1) The definition "community channel" in section 1 of the *Broadcasting Distribution Regulations*¹ is replaced by the following:

"community channel" means the channel of a distribution undertaking that is used by a licensee or by a community programming undertaking for the distribution of community programming within a licensed area of the distribution undertaking. (*canal communautaire*)

(2) Paragraph (d) of the definition "community programming" in section 1 of the Regulations is replaced by the following:

(d) by a person licensed to operate a network for the purpose of producing community programming for distribution by the licensee on a community channel.

This definition includes community access television programming and local community television programming. (*programmation communautaire*)

(3) The definition "service sonore spécialisé" in section 1 of the French version of the Regulations is replaced by the following:

« service sonore spécialisé » Service de programmation fourni par une personne autorisée à exploiter une entreprise de programmation sonore spécialisée. (*specialty audio service*)

(4) Section 1 of the Regulations is amended by adding the following in alphabetical order:

"community access television programming" means programming produced by an individual, group or community television corporation residing within the licensed area of a cable distribution undertaking. (*programmation d'accès à la télévision communautaire*)

"community-based digital undertaking" means a programming undertaking whose service is distributed on a digital basis and that is licensed as a community-based digital undertaking. (*entreprise communautaire numérique*)

¹ SOR/97-555

"community-based low-power television station" means an analog or digital over-the-air programming undertaking that is licensed as a community-based low-power television station. (*station de télévision communautaire de faible puissance*)

"community programming undertaking" means a television programming undertaking operated by a not-for-profit organization that is licensed to operate a community channel. (*entreprise de programmation communautaire*)

"community television corporation" means a not-for-profit corporation that resides within a licensed area, that is incorporated by or under the laws of Canada or of a province and of which

(a) the primary activity is to produce local community television programming or to operate a community channel that is reflective of the community it represents;

(b) board members are drawn from the community; and

(c) all board members are entitled to participate and vote at an annual meeting. (*société de télévision communautaire*)

"local community television programming" means, in relation to a licensed area, programming that is reflective of the community served in the licensed area and that is produced

(a) by the licensee in the licensed area, by the members of the community served in the licensed area or by a community television corporation residing in the licensed area; or

(b) by another licensee in a licensed area within the same municipality as the licensee referred to in paragraph (a), by the members of the community served in that licensed area or by a community television corporation residing within that licensed area. (*programmation locale de télévision communautaire*)

"service area" means an area for which a community-based digital undertaking or a community-based low-power television station has been licensed. (*zone de service*)

2. (1) Section 18 of the Regulations is amended by adding the following after subsection (11):

(11.01) Except as otherwise provided under a condition of its licence, a licensee that delivers any programming service to any subscriber on a digital basis shall distribute, on a digital basis,

(a) the programming service of a community-based low-power television station to the subscribers of the distribution undertaking who reside within the service area of the community-based low-power television station; and

(b) the programming service of a community-based digital undertaking to the subscribers of the distribution undertaking who reside within the service area of the community-based digital undertaking.

(2) The portion of subsection 18(12) of the Regulations before the definition "affiliate" is replaced by the following:

(12) The definitions in this subsection apply in this subsection, subsection (14) and section 27.

3. (1) Paragraph 27(1)(b) of the Regulations is replaced by the following:

(b) a maximum of two minutes during each clock hour of announcements promoting broadcasting services that the licensee is authorized to provide;

(2) Paragraph 27(1)(h) of the Regulations is replaced by the following:

(h) an oral or written acknowledgement, that may include a moving visual presentation of no more than 15 seconds per message, contained in community programming that mentions no more than the name of a person, a description of the goods, services or activities that are being sold or promoted by the person, and their address and telephone number, if the person provided direct financial assistance for the community programming in which the acknowledgement is contained;

(3) Subsection 27(1) of the Regulations is amended by striking out the word "or" at the end of paragraph (i), by adding the word "or" at the end of paragraph (j) and by adding the following after paragraph (j):

(k) the programming of a community programming undertaking.

(4) Section 27 of the Regulations is amended by adding the following after subsection (1):

(1.1) At least 75% of the time for promotional announcements broadcast in each broadcast week under paragraph (1)(b) shall be made available for the promotion of the community channel and for the promotion, by Canadian programming undertakings other than related programming undertakings, of their respective services.

(1.2) A maximum of 25% of the time for promotional announcements broadcast in each broadcast week under paragraph (1)(b) may be made available for the promotion of the services of related programming undertakings, discretionary services and programming packages, cable FM service and additional cable outlets and for the distribution of information on customer services and channel realignments.

4. The Regulations are amended by adding the following after section 27:

27.1 (1) Except as otherwise provided under a condition of its licence, a licensee shall devote not less than 60% of the programming distributed on the community channel in the licensed area in each broadcast week to the distribution of local community television programming.

(2) The time allocated to the distribution of alphanumeric message services is excluded from the calculation of the programming requirement under this section.

(3) Except as otherwise provided under a condition of its licence, a licensee

- (a) shall devote not less than 30% of the programming distributed on the community channel in each broadcast week to community access television programming;
- (b) shall devote from 30% to 50% of the programming distributed on the community channel in each broadcast week to community access television programming, according to requests;
- (c) if one or more community television corporations are in operation in a licensed area, shall make available to them up to 20% of the programming distributed on the community channel in each broadcast week for community access television programming; and
- (d) if one or more community television corporations are in operation in a licensed area, shall make available to each of them, on request, not less than four hours of community access television programming in each broadcast week.

5. (1) Subparagraphs 28(1)(b)(i) to (v) of the Regulations are replaced by the following:

- (i) the title of the program,
- (ii) the date of distribution, time of commencement and completion, and duration of the program, which includes announcements and commercial messages referred to in paragraphs 27(1)(b) and (g),
- (iii) a brief description of the program, including a statement as to whether the program is local community television programming,
- (iv) the name of the undertaking for which the program was produced and the name of the producer,
- (v) a statement as to whether the program is community access television programming and the identification of the party having been provided access, and

(vi) the time of commencement of announcements and commercial messages referred to in paragraphs 27(1)(b) and (g), the duration and, in the case of a commercial message, the name of the person selling or promoting goods, services or activities.

(2) Paragraph 28(2)(b) of the English version of the Regulations is replaced by the following:

(b) eight weeks after the date of distribution of the program, if the Commission receives a complaint from a person regarding the program or, for any other reason, wishes to investigate, and so notifies the licensee before the end of the period referred to in paragraph (a).

6. The heading before section 29 of the Regulations is replaced by the following:

Contribution to Local Expression, Canadian Programming and Community Television

7. Subsections 29(3) to (6) of the Regulations are replaced by the following:

(3) Except as otherwise provided under a condition of its licence, if a licensee had fewer than 20,000 subscribers on August 31 of the previous broadcast year and does not distribute its own community programming on the community channel, and if a community programming undertaking is licensed in the licensed area, the licensee shall make, in each broadcast year, a contribution of 5% of its gross revenues derived from broadcasting activities in the broadcast year to the community programming undertaking.

(4) Except as otherwise provided under a condition of its licence, if a licensee had 20,000 or more subscribers on August 31 of the previous broadcast year and does not distribute its own community programming on the community channel, and if a community programming undertaking is licensed in the licensed area, the licensee shall make, in each broadcast year, a contribution of not less than 3% of its gross revenues derived from broadcasting activities in the broadcast year to Canadian programming and a contribution of 2% of its gross revenues derived from broadcasting activities in the broadcast year to the community programming undertaking.

(5) Except as otherwise provided by a condition of its licence, if a Class 1 licensee had fewer than 20,000 subscribers on August 31 of the previous broadcast year and distributes its own community programming on the community channel, the licensee shall make, in each broadcast year, a contribution of not less than 5% of its gross revenues derived from broadcasting activities in the year to Canadian programming, less any contribution to local expression made by the licensee in that year.

(6) Except as otherwise provided by a condition of its licence, if a Class 1 licensee had 20,000 or more subscribers on August 31 of the previous broadcast year and distributes its own community programming on the community channel, the licensee shall make, in each broadcast year, a contribution to Canadian programming not less than the greater of

(a) 5% of its gross revenues derived from broadcasting activities in the year, less any contribution to local expression made by the licensee in that year, and

(b) 3% of its gross revenues derived from broadcasting activities in that year.

(7) Except as otherwise provided by a condition of its licence, if a Class 2 licensee distributes its own community programming on the community channel, the licensee shall make, in each broadcast year, a contribution of not less than 5% of its gross revenues derived from broadcasting activities in the year to Canadian programming, less any contribution to local expression made by the licensee in that year.

(8) Except as otherwise provided by a condition of its licence, if a licensee does not distribute its own community programming on the community channel and if no community programming undertaking is licensed in the licensed area, the licensee shall make, in each broadcast year, a contribution of not less than 5% of its gross revenues derived from broadcasting activities in the year to Canadian programming.

8. Section 33.3 of the Regulations is amended by adding the following after subsection (1):

(1.1) Except as otherwise provided under a condition of its licence, a licensee that delivers any programming service to any subscriber on a digital basis, shall distribute, on a digital basis,

(a) the programming service of a community-based low-power television station to the subscribers of the distribution undertaking who reside within the service area of the community-based low-power television station; and

(b) the programming service of a community-based digital undertaking to the subscribers of the distribution undertaking who reside within the service area of the community-based digital undertaking.

9. Section 35 of the Regulations is replaced by the following:

35. (1) Except as otherwise provided under a condition of its licence, if a licensee elects to distribute community programming under paragraph 33(g) or if a community programming undertaking is licensed in the licensed area, the licensee shall distribute the community programming as part of the basic service.

(2) Except as otherwise provided under a condition of its licence, if a licensee elects to distribute community programming under paragraph 33(g), the licensee

(a) shall comply with the requirements of paragraphs 27(1)(a) to (i) and (k) and subsection 27(4);

- (b) may distribute a still image programming service as described in Public Notice CRTC 1993-51, entitled *Exemption Order Respecting Still Image Programming Service Undertakings*, if the service is produced by the licensee or by the members of the community served by the undertaking;
 - (c) may, if it provides service to an unserved community, distribute a maximum of 12 minutes of commercial messages during each clock hour of community programming;
 - (d) shall devote not less than 60% of the programming distributed on the community channel during each broadcast week to the distribution of local community television programming; and
 - (e) shall make available not less than 30% of the programming distributed on the community channel in each broadcast week to community access television programming.
- (3) The time allocated to the distribution of alphanumeric message services may be included in the calculation of the requirement under paragraph (2)(d).

COMING INTO FORCE

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