



Broadcasting Public Notice CRTC 2006-119

Ottawa, 8 September 2006

Amendment to section 22 of the *Broadcasting Distribution Regulations*

The Commission has made amendments to section 22 of the Broadcasting Distribution Regulations as set out in the appendix to this notice. The amendments alter the requirements of that section to stipulate only that Class 1 broadcasting distribution undertakings (BDUs), and those Class 2 BDUs that elect to distribute audio programming services, must distribute local community, campus and native radio stations, as well as at least one Canadian Broadcasting Corporation (CBC) radio station operating in French and one in English. The amendments were published in Part II of the Canada Gazette on 9 August 2006 and came into effect on the date they were registered, 31 July 2006.

Background

1. In *Request to repeal section 22 of the Broadcasting Distribution Regulations*, Broadcasting Public Notice CRTC 2006-51, 19 April 2006 (Public Notice 2006-51), the Commission announced its intention to amend section 22 of the *Broadcasting Distribution Regulations* (the Regulations). The requirements of section 22 were that Class 1 broadcasting distribution undertakings (BDUs), and those Class 2 BDUs that elect to distribute at least one audio programming service, must distribute local radio stations, provincial educational radio services and at least one English- and one French-language Canadian Broadcasting Corporation (CBC) radio station. In Public Notice 2006-51, the Commission announced its determination to scale back the requirements of section 22 with respect to the distribution of local radio stations so as to require affected BDUs to carry only local community, campus and Native radio stations, as well as at least one CBC radio station operating in English and one operating in French. The Commission also decided to remove the requirement to distribute provincial educational radio services due to the fact that there were no longer any radio stations that meet that definition.
2. In *Call for comments – Proposed amendments to the Broadcasting Distribution Regulations*, Broadcasting Public Notice CRTC 2006-59, 8 May 2006 (Public Notice 2006-59) the Commission called for comments on proposed amendments to the Regulations to implement the determinations described above.

Positions of parties

3. The Commission received comments from Mr. Ian Angus, Mr. K. Vreeken and Shaw Communications Inc. (Shaw) in response to Public Notice 2006-59.

4. Mr. Angus argued that the determinations announced by the Commission in Public Notice 2006-51 did not take into consideration the “deadspots” in the coverage of radio stations that may occur in major cities. Mr. Angus noted that reception of commercial and CBC stations in his downtown Toronto apartment is “unreliable and often poor,” which has led to his choice to receive these radio stations via cable. Mr. Angus argued that, before removing distribution requirements, the Commission should consider whether all listeners in a radio station’s normal coverage area are able to receive the station’s over-the-air signal. Mr. Angus suggested that cable BDUs at least be required to inform subscribers and their customer service personnel regarding those radio stations that they will continue to distribute. Mr. Angus acknowledged, however, that, because he did not submit comments in the proceeding that led to Public Notice 2006-51, his comments in response to Public Notice 2006-59 may have come too late to influence the Commission’s determinations announced in the earlier notice.
5. In his comment, Mr. Vreeken addressed the difficulties associated with receiving AM stations indoors. Mr. Vreeken suggested that, in light of those difficulties, cable BDUs be required to distribute all AM stations, or at least those AM stations that operate at power levels below a certain level, such as 1,000 watts. Mr. Vreeken also argued that cable BDUs should be required to distribute all CBC radio stations, rather than just one such station operating in each official language.
6. Shaw considered that the additional capacity to be made available by the proposed removal of the requirement to distribute the signals of commercial radio stations may be eroded in the future should the number of licensed community, campus and Native stations, and hence the number of signals that BDUs would be required to distribute, increase. Accordingly, Shaw asked that the Commission continue to take cable capacity into account in its decisions when it considers the licensing of new community, campus and Native stations, as well when considering future applications by BDUs for relief from the requirements of section 22.
7. Shaw further argued that the Commission should either reconsider its decision to continue to require BDUs to distribute one English- and one French-language CBC radio station or consider granting BDUs with capacity constraints relief from this requirement, by condition of licence. In its view, requiring the distribution of CBC radio stations does little to advance the objectives of the *Broadcasting Act* (the Act) and actually conflicts with the objective set out in section 3(1)(t)(ii) of the Act, which states that “distribution undertakings ... should provide efficient delivery of programming at affordable rates, using the most effective technologies available at reasonable cost.”

Commission's analysis and determinations

8. The Commission notes that the comments filed by parties in response to Public Notice 2006-59 focused primarily on issues already dealt with in Public Notice 2006-51. In particular, the requests made by Mr. Angus and Mr. Vreeken that requirements to distribute commercial radio stations be retained and Shaw's request that the requirement to distribute CBC stations be removed are based on facts already considered and addressed by the Commission in making the determinations it announced in Public Notice 2006-51.
9. With respect to Mr. Angus' request that BDUs be required to inform subscribers about the radio stations that they would continue to distribute, the Commission notes that it does not generally involve itself in prescribing how BDUs should promote specific services or convey information to their subscribers. Further, the Commission notes that, in the proceeding leading up to the issuance of Public Notice 2006-51, while community, campus, native radio stations, and their representatives emphasized the importance of their distribution by BDUs, they did not indicate that they were dissatisfied with the manner in which their services were promoted or provided by BDUs.
10. With respect to Shaw's request that the Commission consider granting relief from section 22 requirements by condition of licence, the Commission notes that the ability to apply for such relief is already available to BDUs, and will continue to be available, unaffected by the amendments to section 22 of the Regulations.
11. With respect to Shaw's other concerns, the Commission considers it unlikely that its determinations in Public Notice 2006-51 would result in a significant increase in the number of applications it receives for the licensing of new community, campus or Native stations. In any event, the Commission will continue to examine future licence applications for new stations of these types pursuant to its current policies and procedures. In doing so, the Commission will take into consideration the capacity concerns of BDUs.

Implementation of the amendments

12. The Commission has adopted the amendments attached as an appendix to this notice, as proposed in Public Notice 2006-59. These amendments, which were published in Part II of the *Canada Gazette* on 9 August 2006, came into effect on the date they were registered, 31 July 2006.

Secretary General

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Appendix to Broadcasting Public Notice CRTC 2006-119

S.C. 1991, c. 11

Regulations amending the Broadcasting Distribution Regulations

AMENDMENT

1. Section 22 of the *Broadcasting Distribution Regulations*¹ is replaced by the following:

22. (1) Except as otherwise provided under a condition of its licence, a Class 1 licensee, and any Class 2 licensee that elects to distribute an audio programming service in a licensed area, shall distribute in the licensed area

(a) the programming services of each local radio station that is a radio programming undertaking licensed as a campus station, a community station or a native station; and

(b) the programming services of at least one radio station that broadcasts in English and at least one that broadcasts in French that are owned and operated by the Corporation.

(2) Despite subsection (1), a licensee is not required to distribute the programming service of a digital radio station that is licensed on a transitional basis.

COMING INTO FORCE

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

¹ SOR/97-555