



Broadcasting Notice of Consultation CRTC 2009-176

Ottawa, 3 April 2009

Call for comments on proposed amendments to the *Broadcasting Distribution Regulations*, the *Television Broadcasting Regulations, 1987*, the *Pay Television Regulations, 1990* and the *Specialty Services Regulations, 1990*

1. The Commission proposes to amend the *Broadcasting Distribution Regulations* (the Regulations), the *Television Broadcasting Regulations, 1987*, the *Pay Television Regulations, 1990* and the *Specialty Services Regulations, 1990*, in order to implement certain elements of the proposed regulatory framework for broadcasting distribution undertakings (BDUs) and discretionary programming services set out in Broadcasting Public Notice 2008-100, and in order to implement changes relating to sections 29 and 44 of the Regulations to require that contributions to Canadian programming be remitted on a monthly basis and reconciled on an annual basis.
2. Specifically, the Commission proposes to amend the above-mentioned regulations in order to give effect to the following aspects of the new regulatory framework for BDUs and discretionary programming services:
 - it allows BDUs to make use of new forms of targeted advertising;
 - it establishes the evidentiary burden in cases of undue preference or disadvantage;
 - it requires that certain licensees make contributions to the Local Programming Improvement Fund (LPIF);
 - it provides that pay television and specialty television services cannot withhold their signals during a dispute;
 - it provides that pay television and specialty television services whose programming services are required to be distributed must ensure that their signals are transmitted to distribution undertakings; and
 - it provides that television broadcasting undertakings cannot give an undue preference to any person or subject any person to an undue disadvantage.
3. In article 5 of Appendix 1 to this notice, the Commission sets out a proposed amendment to section 29 of the Regulations. This amendment would result in the addition to the Regulations of section 29.1 and following relating to the LPIF. Specifically, a licensee would be required to contribute to Canadian programming, through the LPIF, 1% of its gross revenues derived from broadcasting activities in the broadcast year. In this regard, the Commission notes that, in Broadcasting Notice of Consultation 2009-70-1, it invited parties to provide comments as to whether that 1% contribution would provide sufficient

support for local programming in non-metropolitan markets, either on a short-term or longer-term basis. The same issue arises with respect to the proposed revised section 44 of the Regulations, relating to direct-to-home undertakings. As a consequence, the amount of 1% set out in the proposed sections 29.1 and 44 of the Regulations will be subject to review pending the comments and material received in the process initiated by Broadcasting Notice of Consultation 2009-113, the scope of which is clarified in Broadcasting Notice of Consultation 2009-70-1.

Call for comments

4. The proposed *Regulations Amending the Broadcasting Distribution Regulations* and the proposed *Regulations Amending Certain Regulations Made under the Broadcasting Act* are appended to this notice. The Commission invites comments on the wording of the proposed amendments set out in the appendices to this notice. The Commission will accept comments that it receives on or before **3 May 2009**.
5. The Commission will not formally acknowledge comments. It will, however, fully consider all comments, and they will form part of the public record of the proceeding, provided that the procedures for filing set out below have been followed.

Procedure for filing comments

6. Interested parties can file their comments to the Secretary General of the Commission:
 - **by using the**
[Broadcasting Intervention/Comments Form](#)
 - OR
 - **by mail to**
CRTC, Ottawa, Ontario K1A 0N2
 - OR
 - **by fax at**
819-994-0218
7. Submissions longer than five pages should include a summary.
8. Please number each paragraph of your submission. In addition, please enter the line ***End of document*** following the last paragraph. This will help the Commission verify that the document has not been damaged during transmission.

Important notice

9. Note that all information that you provide as part of this public process, except information granted confidentiality, whether sent by postal mail, facsimile, e-mail or through the Commission's website at www.crtc.gc.ca, becomes part of a publicly accessible file and will be posted on the Commission's website. This information includes your personal information, such as your full name, e-mail address, postal/street address, telephone and facsimile number(s), and any other personal information you provide.
10. The personal information you 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.
11. Documents received electronically or otherwise will be put on the Commission's website in their entirety exactly as you send them, 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.
12. Please note that the information you 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 webpage of this particular public process. As a result, a general search of our website with the help of either our own search engine or a third-party search engine will not provide access to the information which was provided as part of this public process.
13. The Commission encourages interested parties to monitor the public examination file and the Commission's website for additional information that they may find useful when preparing their comments.

Examination of public comments and related documents at the following Commission offices during normal business hours

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

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

Central Building
Les Terrasses de la Chaudière
1 Promenade du Portage, Room 206
Gatineau, Quebec K1A 0N2
Tel.: 819-997-2429
Fax: 819-994-0218

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

Kensington Building
275 Portage Avenue
Suite 1810
Winnipeg, Manitoba R3B 2B3
Tel.: 204-983-6306
TDD: 204-983-8274
Fax: 204-983-6317

Cornwall Professional Building
2125 - 11th Avenue
Room 103
Regina, Saskatchewan S4P 3X3
Tel.: 306-780-3422

10405 Jasper Avenue
Suite 520
Edmonton, Alberta T5J 3N4
Tel.: 780-495-3224

530-580 Hornby Street
Vancouver, British Columbia V6C 3B6
Tel.: 604-666-2111
TDD: 604-666-0778
Fax: 604-666-8322

Secretary General

Related documents

- *Licence renewals for private conventional television stations – Clarification of the scope of the proceeding – Distant signals and contributions to the LPIF*, Broadcasting Notice of Consultation CRTC 2009-70-1, 27 March 2009
- *Licence Renewals for Private Conventional Television Stations – Notice of hearing*, Broadcasting Notice of Consultation CRTC 2009-113, 3 March 2009
- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services – Regulatory policy*, Broadcasting Public Notice CRTC 2008-100, 30 October 2008

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

Appendix 1 to Broadcasting Notice of Consultation CRTC 2009-176

REGULATIONS AMENDING THE BROADCASTING DISTRIBUTION REGULATIONS

AMENDMENTS

1. Section 1 of the *Broadcasting Distribution Regulations*¹ is amended by adding the following in alphabetical order:

“Local Programming Improvement Fund” means the Local Programming Improvement Fund – established in Broadcasting Public Notice CRTC 2008-100 entitled, *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services* – or its successor. (*Fonds pour l’amélioration de la programmation locale*)

2. Section 7 of the Regulations is amended by striking out “or” at the end of paragraph (e), by adding “or” at the end of paragraph (f) and by adding the following after paragraph (f):

(g) for the purpose of inserting a commercial message, if the insertion is in accordance with an agreement between the licensee and the operator of the service or the network responsible for the service, and that agreement pertains to commercial messages directed at a target market of consumers.

3. Section 9 of the Regulations is renumbered as subsection 9(1) and is amended by adding the following:

(2) In any proceedings before the Commission, the burden of establishing that any preference or disadvantage is not undue is on the licensee that gives the preference or subjects the person to the disadvantage.

4. Subsections 29(3) to (8) of the Regulations are replaced by the following:

(3) 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 a community programming undertaking is licensed in the licensed area, the licensee shall make, for each broadcast year, a contribution of 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.

¹ SOR/97-555

(4) 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, for each broadcast year, a contribution of 5% of its gross revenues derived from broadcasting activities in the broadcast year to Canadian programming.

(5) Except as otherwise provided by a condition of its licence, if a licensee distributes its own community programming on the community channel, the licensee shall make, for each broadcast year, a contribution to Canadian programming that is the greater of

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

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

5. The Regulations are amended by adding the following after section 29:

29.1 Except as otherwise provided by a condition of its licence, a licensee shall make, for each broadcast year, a contribution of one per cent 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.

29.2 (1) The licensee shall separately calculate each contribution required under sections 29 and 29.1 on the basis of its gross revenues derived from broadcasting activities in the previous broadcast year.

(2) Each contribution shall be made separately by the licensee in 12 monthly instalments during the broadcast year, with an instalment being made on or before the last day of each month and equal to an amount that is 1/12 of the contribution to be made.

(3) However, if the licensee's gross revenues derived from broadcasting activities in the previous broadcast year are not known when the instalment is made, the instalment shall be equal to an amount that is 1/12 of the contribution to be made, calculated on the basis of an estimate of those gross revenues.

29.3 (1) If, as a result of the calculations performed under subsection 29.2(1), the contribution made by a licensee for a broadcast year is greater than the amount of that contribution required under section 29 or 29.1, the licensee may deduct the excess from the amount of that contribution that is required for the subsequent broadcast year.

(2) If, as a result of the calculations performed under subsection 29.2(1), the contribution made by a licensee for a broadcast year is less than the amount of that contribution required under section 29 or 29.1, the licensee shall make the balance of the contribution by December 31 of the subsequent broadcast year.

6. Section 44 of the Regulations is replaced by the following:

44. A licensee shall make, for each broadcast year, the following contributions to Canadian programming based on its gross revenues derived from broadcasting activities in that year:

(a) to the Canadian production fund, a contribution of 4% of those revenues;

(b) to one or more independent production funds, a contribution of one per cent of those revenues; and

(c) to the Local Programming Improvement Fund, a contribution of one per cent of those revenues.

44.1 (1) The licensee shall separately calculate each contribution required under section 44 on the basis of its gross revenues derived from broadcasting activities in the previous broadcast year.

(2) Each contribution shall be made separately by the licensee in 12 monthly instalments during the broadcast year, with an instalment being made on or before the last day of each month and equal to an amount that is 1/12 of the contribution to be made.

(3) However, if the licensee's gross revenues derived from broadcasting activities in the previous broadcast year are not known when the instalment is made, the instalment shall be equal to an amount that is 1/12 of the contribution to be made, calculated on the basis of an estimate of those gross revenues.

44.2 (1) If, as a result of the calculations performed under subsection 44.1(1), the contribution made by a licensee for a broadcast year is greater than the amount of that contribution required under section 44, the licensee may deduct the excess from the amount of that contribution that is required for the subsequent broadcast year.

(2) If, as a result of the calculations performed under subsection 44.1(1), the contribution made by a licensee for a broadcast year is less than the amount of that contribution required under section 44, the licensee shall make the balance of the contribution by December 31 of the subsequent broadcast year.

COMING INTO FORCE

7. These Regulations come into force on September 1, 2009.

Appendix 2 to Broadcasting Notice of Consultation CRTC 2009-176

REGULATIONS AMENDING CERTAIN REGULATIONS MADE UNDER THE BROADCASTING ACT

AMENDMENTS

TELEVISION BROADCASTING REGULATIONS, 1987

1. The *Television Broadcasting Regulations, 1987*¹ are amended by adding the following after section 14:

UNDUE PREFERENCE OR DISADVANTAGE

15. No licensee shall give an undue preference to any person, including itself, or subject any person to an undue disadvantage.

PAY TELEVISION REGULATIONS, 1990

2. Subsection 2(1) of the *Pay Television Regulations, 1990*² is amended by adding the following in alphabetical order:

“exempt distribution undertaking” means a distribution undertaking whose operator is, by order of the Commission made under subsection 9(4) of the Act, exempt from any or all of the requirements of Part II of the Act; (*entreprise de distribution exemptée*)

3. Section 7 of the Regulations and the heading before it are replaced by the following:

OBLIGATION DURING DISPUTE

7. During any dispute between a licensee and the licensee of a distribution undertaking or the operator of an exempt distribution undertaking concerning the carriage or terms of carriage of programming originated by the licensee or concerning any right or obligation under the Act, the licensee shall continue to provide the distributor or operator with its programming services on the same terms and conditions as it did before the dispute.

TRANSMISSION OF PROGRAMMING SERVICE

8. Except as otherwise provided under a condition of its licence, a licensee whose programming service is required to be distributed under section 18 of the *Broadcasting Distribution Regulations* or under an order of the Commission made under subsection 9(4) of the Act shall

¹ SOR/87-49

² SOR/90-105

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

(b) bear the costs of the transmission.

SPECIALTY SERVICES REGULATIONS, 1990

4. Section 2 of the *Specialty Services Regulations, 1990*³ is amended by adding the following in alphabetical order:

“exempt distribution undertaking” means a distribution undertaking whose operator is, by order of the Commission made under subsection 9(4) of the Act, exempt from any or all of the requirements of Part II of the Act; (*entreprise de distribution exemptée*)

5. Section 5 of the Regulations is repealed.

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

9. A licensee shall not enter into a program delivery agreement with a person who is a non-Canadian as defined in section 1 of the *Direction to the CRTC (Ineligibility of Non-Canadians)*.

7. Section 11 of the Regulations and the heading before it are replaced by the following:

OBLIGATION DURING DISPUTE

11. During any dispute between a licensee and the licensee of a distribution undertaking or the operator of an exempt distribution undertaking concerning the carriage or terms of carriage of programming originated by the licensee or concerning any right or obligation under the Act, the licensee shall continue to provide the distributor or operator with its programming services on the same terms and conditions as it did before the dispute.

TRANSMISSION OF PROGRAMMING SERVICE

12. Except as otherwise provided under a condition of its licence, a licensee whose programming service is required to be distributed under section 18 of the *Broadcasting Distribution Regulations* or under an order of the Commission made under subsection 9(4) of the Act shall

³ SOR/90-106

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

(b) bear the costs of the transmission.

COMING INTO FORCE

8. These Regulations come into force on September 1, 2009.