



Broadcasting Regulatory Policy CRTC 2009-543

Route reference: 2009-176

Additional reference: 2009-176-1

Ottawa, 31 August 2009

Amendments to the *Broadcasting Distribution Regulations*, the *Television Broadcasting Regulations, 1987*, the *Pay Television Regulations, 1990*, and the *Specialty Services Regulations, 1990* – Implementation of certain elements of the regulatory framework for broadcasting distribution undertakings and discretionary services, and changes to contributions to Canadian programming

Introduction

1. The Commission hereby announces that it has made amendments to the *Broadcasting Distribution Regulations* (the BDU Regulations), the *Television Broadcasting Regulations, 1987* (the Television Broadcasting Regulations), the *Pay Television Regulations, 1990* (the Pay Television Regulations) and the *Specialty Services Regulations, 1990* (the Specialty Services Regulations). These amendments implement certain elements of the regulatory frameworks for broadcasting distribution undertakings (BDUs) and discretionary services set out in Broadcasting Public Notice 2008-100. These amendments also introduce a requirement that contributions to Canadian programming be remitted on a monthly basis and reconciled on an annual basis.
2. Specifically, the amended regulations:
 - allow BDUs to make use of new forms of targeted advertising;
 - establish the evidentiary burden to be applied when assessing complaints of undue preference or disadvantage against BDUs;
 - require certain BDU licensees to make contributions to the Local Programming Improvement Fund (LPIF);
 - establish that contributions by BDUs to the LPIF and other funds are made on a monthly basis, with an annual adjustment;
 - provide that pay television and specialty television undertakings whose programming services BDUs are required to distribute cannot withhold their signals during a dispute;

- provide 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
 - provide that television broadcasting undertakings cannot give an undue preference to any person or subject any person to an undue disadvantage.
3. The amendments were registered on 30 July 2009 and come into force on 1 September 2009. The amendments were published in the *Canada Gazette*, Part II Vol. 143, No. 17 pages 1678 to 1684 (SOR/2009-234 and 2009-235), on 19 August 2009, and a copy is appended to this notice.
 4. The Commission issued a call for comments on the proposed amendments in Broadcasting Notice of Consultation 2009-176. In Broadcasting Notice of Consultation 2009-176-1, the Commission extended the deadline for the reception of comments, originally set for 3 May 2009, to 11 May 2009. The Commission has considered all comments received as part this proceeding, and they can be found on its website at www.crtc.gc.ca under “Public Proceedings.” In all cases, the Commission’s concern has been that the various amendments to the regulations serve to implement certain elements of the new policy frameworks in a way that is as efficient and as simple as possible.

Summary of changes from what was proposed in Broadcasting Notice of Consultation 2009-176

5. In this section, the Commission focuses on the substantive changes between the proposed regulations appended to Broadcasting Notice of Consultation 2009-176 and those that have been adopted, as appended to this Regulatory Policy.

BDU Regulations

Targeted advertising

6. The proposed section 7(g) of the BDU Regulations stipulated that BDUs could alter or delete a programming service in order to insert a commercial message, provided that 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 the agreement pertains to commercial messages directed at a target market of consumers.
7. Representatives of programming undertakings expressed concern that this new provision was premature given that the Commission is currently conducting proceedings with respect to the insertion of new forms of advertising in the local availabilities of U.S. programming services and in the programming offered by video-on-demand (VOD) undertakings.¹ Programmers were concerned that the proposed section 7(g) could allow BDUs to insert commercial messages in the local availabilities of U.S. programming

¹ See Broadcasting Public Notice 2008-102 for local availabilities and 2008-101 for video-on-demand.

services as well as in the programming of VOD services. The Canadian Association of Broadcasters (CAB) suggested that the provision be removed, or alternatively, clarified to ensure that it apply only to Canadian programming services such as conventional, pay or specialty programming services.

8. The Commission agrees with the CAB's suggestion and has accordingly amended section 7(g) of the proposed regulations to indicate that insertion of a commercial message directed to a targeted market of consumers must be in accordance with an agreement between the licensee and the operator of a Canadian programming service.
9. With respect to VOD programming services, the Commission notes that VOD operators are precluded, by way of conditions of licence, from inserting commercial messages in their programming services. As noted by some parties, as a result of the proceeding initiated by Public Notice 2008-101, the Commission is currently examining whether any changes to its current VOD framework are warranted. The Commission also notes that any further changes regarding the insertion of advertising can ultimately be effected through conditions of licence, as permitted under section 7(a) of the BDU Regulations, or by additional amendments to the BDU Regulations following completion of the proceedings initiated by Broadcasting Public Notices 2008-101 and 102.

Contributions to the Local Programming Improvement Fund (LPIF)

10. The proposed sections 29.1 and 44(c) of the BDU Regulations appended to Broadcasting Notice of Consultation 2009-176 provided that BDUs, including direct-to-home (DTH) licensees, must contribute 1% of their gross annual revenues derived from broadcasting activities in the broadcast year to the LPIF. Broadcasting Notice of Consultation 2009-176 noted, however, that the Commission had, in Broadcasting Notice of Consultation 2009-70-1, 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.
11. In Broadcasting Regulatory Policy 2009-406, the Commission found that a contribution of 1.5% of gross revenues to the LPIF would be appropriate for the upcoming broadcast year. However, in Broadcasting Notice of Consultation 2009-411, the Commission indicated that it intends to review whether a contribution level of 1.5% is appropriate on a longer term basis or whether it should be reduced to the 1% level set out in Broadcasting Public Notice 2008-100.
12. Accordingly, the Commission has amended the proposed sections 29.1 and 44(c) of the BDU Regulations to increase the level of the contribution to the LPIF from 1.0% to 1.5% of gross revenues derived from broadcasting activities. Should the Commission decide to change the level of contribution to the LPIF as a result of the proceeding initiated by Broadcasting Notice of Consultation 2009-411, it will propose another amendment to the BDU Regulations.

13. As stated in Broadcasting Regulatory Policy 2009-406, the Commission has accepted the CAB's recommendation of McCay, Duff LLP as the LPIF fund administrator, and has requested that the CAB establish a governance structure for the fund. The Commission will provide further notice in the future regarding the administration of payments, which will commence in September 2009.

Contribution rules for smaller BDUs

14. When the Commission proposed, in Broadcasting Notice of Consultation 2009-176, to replace sections 29(3) to (8) of the BDU Regulations, the Commission removed the distinction between those BDUs that serve 20,000 or more subscribers and those BDUs that serve fewer than 20,000 subscribers. This change reflected the Commission's determination, in Broadcasting Public Notice 2008-100, that henceforth BDUs with fewer than 20,000 subscribers would generally be exempt from licensing requirements, while those with 20,000 subscribers or more would remain licensed.
15. Moreover, the Commission, in Broadcasting Notice of Consultation 2009-173, called for comments on a proposed exemption order for BDUs serving fewer than 20,000 subscribers, intended to come into effect in the near future. BDUs serving fewer than 20,000 subscribers, once exempt from licensing requirements, would not be subject to the BDU Regulations with respect to contributions to Canadian programming or to the LPIF but would rather be subject to the conditions set out in the exemption order.
16. The proposed amendments had the effect of eliminating the distinction between BDUs that are entitled to direct 2% of their required contribution to Canadian programming toward community programming and BDUs that serve fewer than 20,000 subscribers, which are entitled to direct the entire 5% of their required contribution toward community programming.
17. Rogers Cable Communications Inc. (Rogers) and parties associated with local community programming undertakings expressed concern with the proposed changes, submitting that Class 2 BDUs should continue to make contributions as allowed under the current regulations so long as they remained licensed. They were particularly concerned that support by licensed Class 2 BDUs to community channels and local community programming undertakings be maintained.
18. Today, in Broadcasting Order 2009-544, the Commission has issued an exemption order for BDUs with fewer than 20,000 subscribers. As was the case for previous exemption orders, BDUs with fewer than 20,000 subscribers (including licensed Class 2 BDUs) remain licensees and subject to all requirements set out in the *Broadcasting Act* (the Act) and associated regulations until those eligible for exemption have applied for and been granted a revocation of their licences.
19. Accordingly, until such applications are processed and approved, BDUs with fewer than 20,000 subscribers will be required to continue to make contributions to Canadian programming. As discussed in paragraphs 23 to 25, such contributions will be required on a monthly basis until the licences of such undertakings are revoked and their operations are governed by the applicable exemption order.

20. The Commission has therefore added section 29(6) to the BDU Regulations, which is similar to existing provisions. This new section 29(6) generally requires BDUs with fewer than 20,000 subscribers to continue to contribute 5% of gross revenues derived from broadcasting activities to Canadian programming for the broadcast year that begins 1 September 2009. Section 29(6) includes provisions for the continued support of community channels and local community programming undertakings that continue those set out in the current regulations.
21. In summary, sections 29(3) to (6) of the BDU Regulations, as enacted and attached hereto, continue existing contribution requirements of BDU undertakings and allow for contributions to community channels and local community programming undertakings. For those BDUs that serve fewer than 20,000 subscribers, the new section 29(6) continues existing requirements (on a monthly basis) for the broadcast year of 1 September 2009 to 31 August 2010. For those whose licences are revoked during that broadcast year, the obligation will continue on a monthly basis until revocation. For undertakings that may not qualify for exemption, licensees may apply to the Commission for a condition of licence that would allow them to be relieved of the new requirements governing contributions to Canadian programming and the LPIF. For those BDUs with fewer than 20,000 subscribers that remain licensed and whose licences have not been amended, all the other regulatory requirements set out in sections 29(1) to (5) will apply as of 1 September 2010.
22. Under section 29.1(2), licensed BDUs with fewer than 20,000 subscribers as of 31 August 2009 will not be required to make LPIF payments for the 2009-2010 broadcast year. Thereafter, subject to the result of the proceeding announced in Broadcasting Notice of Consultation 2009-411, BDUs with fewer than 20,000 subscribers will be required to make contributions unless exempted or they receive a condition of licence relieving them of such requirements, under section 29.1(1).

Monthly instalments for contributions

23. The proposed sections 29.2 and 44.1 of the BDU Regulations provided that contributions to both Canadian programming and to the LPIF be made in twelve monthly instalments during the broadcast year, with an instalment being made on or before the last day of each month that is equal to an amount that is 1/12 of the total contribution to be made. Amounts will be calculated on the basis of gross revenues derived from broadcasting activities in the previous broadcast year. If the total gross revenues from broadcasting activities are not known at the time of the contribution, payments are to be made on the basis of an estimate of those gross revenues. Under the proposed sections 29.3 and 44.2, any underpayment must be made up by 31 December of the subsequent broadcast year, while any overpayment may be deducted from the amount paid in the subsequent broadcast year. Under this approach, the Commission considers that any underpayments for the 2008-2009 broadcast year must be made up by 31 December 2009.
24. Rogers suggested that the proposed sections 29.2 and 29.3 be replaced with an obligation for BDUs to adhere to the contribution guidelines set out in Circular No. 426. The Commission notes, however, that Circular No. 426 does not require that payments be

equal and is of the view that the approach announced in Broadcasting Notice of Consultation 2009-176 would best ensure that contributions by BDUs to Canadian programming are provided evenly over the broadcast year.

25. Accordingly, the Commission has retained the proposed approach to sections 29.2, 29.3, 44.1 and 44.2 with minor wording changes.

Pay Television Regulations and Specialty Service Regulations

Obligations to distribute services during disputes

26. The proposed section 7 of the Pay Television Regulations and section 12 of the Specialty Services Regulations stated that a licensee of a pay or specialty service shall, during disputes, continue to provide its programming service to distributors or operators on the same terms and conditions as it did before the dispute. Representatives of programming undertakings argued that this provision should not apply to those programming services that do not benefit from mandatory distribution. They were of the view that, in these circumstances, a programming service that does not have the benefit of mandatory distribution must have the ability to remove its service.
27. The Commission agrees that it is appropriate to limit the prohibition on withholding a programming service to those programming services that benefit from mandatory distribution. Accordingly, the Commission has amended section 7 of the Pay Television Regulations and section 12 of the Specialty Services Regulations to specify that the obligation to continue to provide a programming service applies only to services that are required to be distributed under section 18 of the BDU Regulations, by the Commission under section 9(1)(h) of the Act, or by order of the Commission under section 9(4) of the Act.

Transmission of programming services

28. The Commission has amended the proposed section 8 of the Pay Television Regulations and the proposed section 12 of the Specialty Services Regulations to clarify that the obligation of licensees to transmit services and bear the costs of transmission applies not only to programming services that are required to be distributed under section 18 of the BDU Regulations and by order of the Commission under section 9(4) of the Act, but also to services that the Commission has required to be distributed under section 9(1)(h) of the Act.

Other matters

29. There are a few other matters that prompted substantial comments. However, with regard to those matters, the Commission has decided not to change the proposed amendments but rather adopt the amendments in the proposed regulations attached to Broadcasting Public Notice 2009-176. These are discussed below.

Reverse onus provision in the BDU Regulations

30. The proposed section 9(2) of the BDU Regulations set out a reverse onus provision. It provides that, in any proceeding 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.
31. Bell Aliant and Bell ExpressVu Limited Partnership argued that the provision was too broad and should be limited to matters relating to the terms and conditions of distribution of a programming service. The Commission, however, considers that the language of the provision is appropriate given that disputes are not necessarily limited to matters concerning distribution. It also remains of the view that it is appropriate to shift the onus to BDUs to demonstrate that a preference or disadvantage is not undue, given that in most cases BDUs are in sole possession of key information without which complainants cannot fully argue their cases. The Commission further notes that the provision mirrors language found in the reverse onus provision set out in the *Telecommunications Act*. Accordingly, the Commission has adopted section 9(2) of the BDU Regulations as proposed.

Undue preference provision of the Television Regulations

32. The proposed section 15 of the Television Broadcasting Regulations set out an undue preference provision.
33. The CAB argued that the provision could lead to situations whereby persons other than entities regulated by the Commission may file complaints. The Commission notes, however, that, while the Act does not address which parties may file complaints, the Commission can only deal with aspects of complaints that fall within its jurisdiction. The Commission further notes that the Pay Television Regulations, the Specialty Services Regulations and the BDU Regulations already contain undue preference provisions. Accordingly, the Commission has adopted section 15 of the Television Broadcasting Regulations as proposed.

Secretary General

Related documents

- *Exemption order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers*, Broadcasting Order CRTC 2009-544, 31 August 2009
- *Policy proceeding on a group-based approach to the licensing of television services and on certain issues relating to conventional television*, Broadcasting Notice of Consultation CRTC 2009-411, 6 July 2009

- *Policy determinations resulting from the 27 April 2009 public hearing, Broadcasting Regulatory Policy CRTC 2009-406, 6 July 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, Broadcasting Notice of Consultation CRTC 2009-176, 3 April 2009, as amended by Correction – Extension of deadline for comments, Broadcasting Notice of Consultation CRTC 2009-176-1, 24 April 2009*
- *Licence renewals for private conventional television stations, Clarification of scope of the proceeding – Distant signals and contributions to the LPIF, Broadcasting Notice of Consultation CRTC 2009-70-1, 27 March 2007*
- *Call for comments on a proposed exemption order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers, Broadcasting Notice of Consultation CRTC 2009-173, 1 April 2009*
- *Regulatory framework for broadcasting distribution undertakings and discretionary programming services – Regulatory policy, Broadcasting Public Notice CRTC 2008-100, 30 October 2008*
- *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*

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 Regulatory Policy CRTC 2009-543

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 a Canadian programming service or the network responsible for that Canadian programming 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.

(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

¹ SOR/97-555

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.

(6) Despite subsections (3) to (5) and except as otherwise provided by a condition of its licence, a licensee that has less than 20,000 subscribers on August 31, 2009 shall make, for the broadcast year beginning on September 1, 2009, a contribution of

(a) if the licensee does not distribute its own community programming on the community channel, 5% of its gross revenues derived from broadcasting activities in the broadcast year to

(i) the community programming undertaking, if a community programming undertaking is licensed in the licensed area, or

(ii) Canadian programming, if a community programming undertaking is not licensed in the licensed area; or

(b) if the licensee distributes its own community programming on the community channel, 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 year, to Canadian programming.

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

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

(2) However, a licensee that has less than 20,000 subscribers on August 31, 2009 is not required to make the contribution for the broadcast year beginning on September 1, 2009.

29.2 (1) The licensee shall separately calculate the contributions 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 equal monthly instalments during the broadcast year, with an instalment being made on or before the last day of each month.

(3) Despite subsections (1) and (2), if the licensee's gross revenues derived from broadcasting activities in the previous broadcast year are not known when an instalment is to be made, that 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 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 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; however, if it is less than the amount required, 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 1.5% of those revenues.

44.1 (1) The licensee shall separately calculate the contributions 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 equal monthly instalments during the broadcast year, with an instalment being made on or before the last day of each month.

(3) Despite subsections (1) and (2), if the licensee's gross revenues derived from broadcasting activities in the previous broadcast year are not known when an instalment is to be made, that 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 If, as a result of the calculations performed under subsection 44.1(1), a contribution made by a licensee for a broadcast year is greater than the amount required under section 44, the licensee may deduct the excess from the amount of that contribution that is required for the subsequent broadcast year; however, if it is less than the amount required, 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.

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

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, if the services are required to be distributed

(a) under section 18 of the *Broadcasting Distribution Regulations*;

(b) by the Commission under paragraph 9(1)(h) of the Act; or

(c) by order of the Commission made under subsection 9(4) of the Act.

¹ SOR/87-49

² SOR/90-105

TRANSMISSION OF PROGRAMMING SERVICE

8. Except as otherwise provided under a condition of its licence, a licensee shall, in respect of each programming service that is required to be distributed under section 18 of the *Broadcasting Distribution Regulations*, by the Commission under paragraph 9(1)(h) of the Act or by order of the Commission made under subsection 9(4) of the Act,

(a) ensure the transmission of the programming service from its production facilities to each broadcasting distribution undertaking's head end and 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, if the services are required to be distributed

(a) under section 18 of the *Broadcasting Distribution Regulations*;

(b) by the Commission under paragraph 9(1)(h) of the Act; or

³ SOR/90-106

(c) by order of the Commission made under subsection 9(4) of the Act.

TRANSMISSION OF PROGRAMMING SERVICE

12. Except as otherwise provided under a condition of its licence, a licensee shall, in respect of each programming service that is required to be distributed under section 18 of the *Broadcasting Distribution Regulations*, by the Commission under paragraph 9(1)(h) of the Act or by order of the Commission made under subsection 9(4) of the Act,

(a) ensure the transmission of the programming service from its production facilities to each broadcasting distribution undertaking's head end and 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.