



Broadcasting Information Bulletin CRTC 2010-333

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Ottawa, 31 May 2010

Local Programming Improvement Fund

This information bulletin addresses matters related to the Local Programming Improvement Fund announced in Broadcasting Public Notice 2008-100. It supplements information provided in Broadcasting Information Bulletin 2009-686 and Broadcasting Regulatory Policy 2010-167.

Introduction

1. In Broadcasting Public Notice 2008-100, the Commission announced the creation of the Local Programming Improvement Fund (LPIF), a new fund designed to improve the quality of local programming in non-metropolitan television markets across Canada. Broadcasting Regulatory Policy 2009-406 subsequently outlined the model for the allocation of LPIF funding, appropriate contribution levels by broadcasting distribution undertakings (BDUs) to the LPIF for the 2009-2010 broadcast year, eligibility criteria for LPIF funding, expenses eligible for LPIF funding, and the administration of the LPIF.
2. In Broadcasting Regulatory Policy 2009-543, the Commission announced amendments to the *Broadcasting Distribution Regulations* to require licensees to make contributions to the LPIF. Broadcasting Information Bulletin 2009-686 provided information on the establishment and operation of the LPIF. Broadcasting Regulatory Policy 2010-167 identified further procedural requirements with respect to the LPIF and maintained the contribution level of 1.5% of the prior broadcast year's gross revenues derived from broadcasting activities. This Information Bulletin provides further clarification on compliance with LPIF conditions, direct local programming expenses, and reporting requirements.

Oversight Panel

3. In Broadcasting Public Notice 2008-100, the Commission established an oversight panel to ensure that the LPIF is operated in a manner consistent with the Commission's objectives.. All matters related to the LPIF are first referred to Commission staff. The Oversight Panel may, with the assistance of staff, address matters where a resolution could not otherwise be achieved.

Reporting on the use of LPIF funds

4. Broadcasting Regulatory Policy 2010-167, paragraph 136, states that the Commission expects recipients of LPIF monies to demonstrate, taking into consideration the indicators of success set out in paragraph 377 of Broadcasting Public Notice 2008-100, how these monies have been used to make measurable improvements to the on-screen local programming available to audiences in their local markets. Paragraph 136 also indicates that evidence demonstrating such improvements should be provided in the LPIF annual reports that broadcasters are required to submit to the Commission. The indicators of success include:
 - evidence of audience success and viewer satisfaction;
 - increases in local advertising revenues;
 - increases in original local news stories;
 - the number of local news stories that are picked up nationally;
 - expansion of news bureaus;
 - increases in the quantity of local programming broadcast.
5. Accordingly, each station that receives LPIF monies shall submit an annual report to the Commission addressing the indicators of success. This annual report must be included as part of the information provided by licensees during the normal annual return process and must be submitted by 30 November each year. The annual report should be submitted with the statement of direct local programming expenses discussed below.

Statement of direct local programming expenses

6. To ensure accountability and transparency in the allocation of LPIF funding, the Commission has directed that each station eligible to receive funds from the LPIF be required to submit an annual Statement of Direct Local Programming Expenses (the Statement). Broadcasting Regulatory Policy 2010-167, paragraph 140, requires that this statement be submitted by 30 November each year, commencing with the 2009-2010 broadcast year. The Statement:
 - must be accompanied by the licensee's external auditor's report attesting to the fairness of the Statement, in accordance with the definition of "direct expenses" set out in paragraph 33 of Broadcasting Regulatory Policy 2009-406;
 - be prepared in accordance with generally accepted accounting principles, including accompanying notes explaining any allocation methods applied; and
 - identify direct costs by programming category, as defined in Schedule I of the *Television Broadcasting Regulations, 1987*.

Calculation of net average local programming expenses (LPEs)

7. Broadcasting Regulatory Policy 2010-167, paragraph 137, states that LPIF payments to eligible stations will be calculated using a three-year average of a licensee's local programming expenditures net of monies that were received from the LPIF. To ensure appropriate matching of expenditures to the LPIF monies received, the net expenditure for each broadcast year will be computed by deducting LPIF monies received in a broadcast year from the direct LPEs of that year as referred to in paragraph 6 above.

Specific exclusions from LPEs

8. Broadcasting Information Bulletin 2009-686 set out the Commission's determinations with respect to local programming expenditures as well as the Commission's view that only those expenses that are directly associated with the production of local programming will be considered eligible expenses. Broadcasting Regulatory Policy 2009-406 refers to Circular No. 426 to define "direct expenses." Circular No. 426 defines direct expenses as those expenses solely attributable to the acquisition or production of programming. This includes, for example, salaries and benefits paid to staff who work exclusively in the programming department, non-staff talent fees, films, tapes, props, sets, program vehicle operating costs, and any other program-related materials and supplies.
9. For LPIF purposes, LPEs do not include
 - indirect costs as referred to in Circular No. 426;
 - depreciation of capital assets; or
 - costs related to digital transition.
10. Furthermore, where the Commission has directed that tangible benefits be paid and these tangible benefits include direct expenses related to local programming, such tangible benefits shall not form part of LPEs for LPIF purposes unless specifically provided for by Commission decision.

Continuity of fulfillment of local programming obligations

11. Stations eligible to receive LPIF funding must fulfill all local programming obligations as set out in conditions of licence or otherwise while in receipt of funds. Where stations are identified as not fulfilling local programming obligations, Commission staff will investigate. Following such an investigation, the Oversight Panel may request that these stations explain why they have not fulfilled their local programming obligations. The Oversight Panel may direct the Fund Administrator to withhold further disbursement of LPIF monies to stations until the Oversight Panel is satisfied that the station is meeting its local programming obligations or there is just cause for the non-fulfillment of such obligations.

Regional broadcasters

12. Paragraph 44 of Broadcasting Public Notice 2009-406 recognizes that some television stations operate under a regional arrangement. Television stations operating as a regional group are treated as one station for the purpose of participating in the LPIF, with aggregated direct LPEs.

Regional distribution licensees

13. Under sections 29.1 and 44(c) of the *Broadcasting Distribution Regulations*, licensed distributors must contribute 1.5% of gross annual broadcasting revenues to the LPIF. However, section 29.1(2) temporarily relieves terrestrial licensees with fewer than 20,000 subscribers from the requirement to contribute to the LPIF during the 2009-2010 broadcasting year. As explained in Broadcasting Regulatory Policy 2009-543, such licensees can apply to have their licence revoked to operate under the new exemption order. Alternatively, they can apply for a condition of licence to address LPIF contributions.
14. In some cases, distributors hold regional licences that include operations in a number of service areas. In Broadcasting Regulatory Policy 2009-543 and in Broadcasting Order 2009-544, the Commission indicated that regional licensees can apply to “carve out” certain service areas from their licences so as to operate as exempt undertakings in those areas, provided that they can demonstrate that their operations in that area meet the criteria for exemption and constitute a discrete undertaking under one of the tests set out in that order.
15. The total number of subscribers in all the service areas that remain part of the same regional licence is used to determine whether the exemption in section 29.1(2) for the 2009-2010 broadcast year applies. Therefore, where total subscribers under the regional licence exceeds 20,000, the LPIF obligation is based on total revenue of all service areas under the regional licence.

Proration of liability for exempt BDUs

16. Where a distribution licensee is subject to LPIF contributions and the Commission subsequently revokes its licence or carves out a service area from a regional licence in order to operate as an exempt undertaking under Broadcasting Order 2009-544, the obligation to make LPIF contributions for the exempted service areas will generally cease on the date of the Commission’s decision revoking the licence or carving out the service area in question. Contribution amounts due for the broadcast year are to be prorated to the date of that decision.

Administrative changes

17. The terms and conditions of the LPIF have been established based on the current structure and financial model of the Canadian broadcasting industry. As a result of future deliberations or financial exigencies within the industry, it may be necessary for the Commission to alter the financial model of the LPIF in future years. Any future changes will be subject to any additional consultation that may be considered necessary by the Commission.

Enquiries

18. Specific questions or concerns regarding the administration of the LPIF should be directed to the Fund Administrator:

Jason Howarth, CA
Vice-President
McCay, Duff & Company Management Ltd.
141 Laurier Ave. West, 6th Floor
Ottawa, ON K1P 5J3
Phone: 613-236-2367 ext. 229
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19. Enquiries regarding LPIF policy application should be addressed to:

Paul Godin
Director General - Industry and Market Analysis
Policy Development and Research Sector
Canadian Radio-television and Telecommunications Commission (CRTC)
Phone: 819-997-4677

Secretary General

Related documents

- *A group-based approach to the licensing of private television services*, Broadcasting Regulatory Policy CRTC 2010-167, 22 March 2010
- *Local Programming Improvement Fund*, Broadcasting Information Bulletin CRTC 2009-686, 2 November 2009
- *Exemption order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers*, Broadcasting Order CRTC 2009-544, 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, Broadcasting Regulatory Policy CRTC 2009-543, 31 August 2009*
- *Policy determinations resulting from the 27 April 2009 public hearing, Broadcasting Regulatory Policy CRTC 2009-406, 6 July 2009*
- *Regulatory frameworks 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*