



Broadcasting Regulatory Policy CRTC 2010-622

PDF version

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Community television policy

In this document, the Commission sets out its determinations on the following issues relating to community television:

- *access programming, including exhibition requirements and financing;*
- *funding of community channels;*
- *accountability and reporting requirements relating to the amounts broadcasting distribution undertakings (BDUs) are allowed to direct to community television and relating to community outreach and access programming initiatives;*
- *the use of video-on-demand and new media as platforms for community programming;*
- *the provision of community programming by direct-to-home BDUs; and*
- *other matters.*

Aspects of the policy for community television set out in Policy framework for community-based media, Broadcasting Public Notice CRTC 2002-61, 10 October 2002 (Broadcasting Public Notice 2002-61), not addressed in this document are adopted as originally set out in that notice. Accordingly, in the appendix to this document, the Commission has replaced that part of Broadcasting Public Notice 2002-61 that applies to community television in order to integrate its determinations on the above-noted issues.

A dissenting opinion by Commissioner Michel Morin is attached.

Introduction

1. Section 3(1)(b) of the *Broadcasting Act* (the Act) recognizes community as one of the three elements of the Canadian broadcasting system alongside the private and the public. Section 3(1)(e) specifies that “each element of the Canadian broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming.” Section 3(1)(i)(iii) further states that the programming provided by the Canadian broadcasting system should include community programs.
2. Over the past three years, the Commission has conducted extensive reviews of the policy frameworks governing the private element of the broadcasting system – commercial radio, broadcasting distribution undertakings (BDUs), discretionary services and conventional television. In its Diversity of Voices policy (Broadcasting Public Notice 2008-4), the Commission announced that it would undertake a comprehensive review of its policies with respect to community-based radio and

television. The Commission stated that the objective of this review would be “to ensure that the Commission’s regulatory policy supports the development of a healthy community broadcasting sector.” The Commission reviewed the framework for community radio earlier this year. Accordingly, this review of the policy for community television is an opportunity to ensure that the Commission’s policies for the community element referred to in the Act are appropriate to fulfill the Act’s objectives in the digital communications environment.

3. When the Commission last reviewed its policy for community television in 2002, it noted that access by citizens to the community channel has always been a cornerstone of its policy. To underscore this principle, the Commission reiterated the view it had expressed in Public Notice 1991-59, namely that “[t]he factor that most distinguishes the content of community programming from conventional television services is the ability of community programming to turn the passive viewer of television into an active participant. From this participation flows programming of a nature that is as varied as the imagination and skills of the participants.” As such, the Commission indicated the following in Broadcasting Public Notice 2002-61 (the 2002 community TV framework):

The Commission expects licensees to give the community the widest opportunity for self-expression by actively encouraging groups and individuals to present program ideas, produce their own programs with or without the help of the licensee’s staff and submit videotapes and films produced by them for broadcast by the licensee.

4. The Commission’s two key objectives in implementing the 2002 community TV framework were:
 - to ensure the creation and exhibition of locally produced, locally reflective community programming; and
 - to foster a greater diversity of voices and alternative choices by facilitating new entrants at the local level.
5. In order to meet these objectives, the 2002 community TV framework introduced quantified requirements for community channels operated by terrestrial BDUs and established classes of licence for independently operated community-based television services (independent community services), as described in the appendix to this document.
6. Since 2002, the communications environment has changed considerably. Digital technologies, such as the Internet, portable wireless devices and video-on-demand (VOD), have caused and continue to cause major shifts in audience expectations and demands. Accordingly, the Commission issued Broadcasting Notice of Consultation 2009-661 (the Notice), in which it sought comments on general questions relating to the objectives of the 2002 community TV framework, as well as specific questions relating to the mechanisms introduced to achieve those objectives. Further, as

announced in its review of the regulatory frameworks for BDUs and discretionary services (Broadcasting Public Notice 2008-100), the Commission also considered it appropriate to seek comment on whether authorizing direct-to-home (DTH) undertakings to operate community channels would contribute to the achievement of its objectives for community television and whether independent community services should have access to the Local Programming Improvement Fund (LPIF).

7. At the hearing commencing 26 April 2010 in the National Capital Region, the Commission discussed the role of community television in the new communications environment with interested parties. Having reviewed the record of this proceeding, the Commission is convinced that the broad objectives set out in the 2002 community TV framework remain valid, but that certain aspects of its policy warrant re-examination, as follows:
 - Has the current approach to access programming been successful in fulfilling its objectives and if not, what additional measures or changes are needed?
 - Is the current funding model for community television appropriate?
 - Is there sufficient accountability regarding the amounts terrestrial BDUs are allowed to direct to community television?
 - Can VOD and new media provide an appropriate platform for community programming?
 - Should DTH undertakings be authorized to provide community programming and if so, under what conditions?
8. Aspects of the former policy not addressed in this document are adopted as originally set out in Broadcasting Public Notice 2002-61. The complete text of the new policy is set out in the appendix to this document.

Access programming

Issues

9. Access to the community channel by members of the community has been the cornerstone of the Commission's community television policy since 1971. The Commission's 1971 *Policy statement on cable television* made a distinction between community programming, "which involves local citizens in the planning and production process," and local origination, "which involves the coverage of organized local activities under the direct supervision of the cable television system staff." The Commission's view at the time was that priority should be given to the former.
10. The 2002 community TV framework set out specific objectives relating to community programming reiterated in the appendix to this policy. In order to implement the policy's objectives on access, the Commission required community channels operated by BDUs to devote a minimum of 30% of the programming aired during each

broadcast week to the broadcast of access programming. Where requests for access exceed the 30% minimum requirement, the licensees must make available a minimum of 50% of the programming aired during each broadcast week for the broadcast of access programming.

11. In the Notice, the Commission sought comment regarding the achievement of the above-noted objectives given changes to the media environment since 2002. Among other things, it asked parties to comment on whether these objectives were being met or whether changes were needed to meet them. The Commission also sought comment on whether a portion of BDUs' contribution to local expression should be directed to facilitating the production of access programming.

Definition of access programming

12. The *Broadcasting Distribution Regulations* (the Regulations) define community access television programming as “programming produced by an individual, group or community television corporation residing within the licensed area of a cable distribution undertaking.”

Positions of parties

13. The Commission notes that BDUs gave various interpretations of the current definition of access programming. For example, Cogeco Cable Inc. (Cogeco) stated that access programming consisted of the creation of content by community members. According to Cogeco, although the final product can be made either with or without the support of the BDU, it is mandatory that community members be involved in the original idea and participate in the production phase. For Rogers Communications Inc. (Rogers), a program would qualify as access programming when the idea for the program came from a member of the community.
14. For its part, Quebecor Media Inc. (Quebecor) proposed to define access programming as follows: “Programming that is either produced by or the content and expression of which reflect an individual, a group or a community television corporation residing within the cable BDU’s licensed area” [translation].
15. The Canadian Association of Community Television Users and Stations (CACTUS) stated that Rogers and Shaw Communications Inc. (Shaw) define access programming as programming that showcases anything occurring in the community, but do not necessarily require that the program be produced by a community member. This view was shared by the Fédération des télévisions communautaires autonomes du Québec (FTCAQ), the Canadian Broadcasting Corporation (CBC) and Télé-Mag inc., which noted that BDUs tend to place less emphasis on access in favour of more professional programming. Similarly, Metro Vancouver, the Independent Media Arts Alliance and OpenMedia.ca claimed that the existing policy has not led to the expected outcomes in terms of access. OpenMedia.ca submitted that there has been a steady decline in volunteer opportunities, including those relating to production, creative decision-making and producer and management roles.

Commission's analysis and determinations

16. The Commission considers, as did most interveners, that the current definition of access programming contained in the Regulations remains appropriate. However, the Commission recognizes that there is uncertainty surrounding the interpretation of the definition of access programming. To provide greater clarity the Commission considers that a more detailed interpretation of the definition of access programming would help ensure a common application of the policy by BDUs. For this reason, the Commission establishes the following criteria to be used in determining whether a program qualifies as access programming:

Criteria for access programming

The Commission considers that the key criterion for defining access programming is that creative control is in the hands of a community member, i.e. an individual or group residing within the licensed area of a terrestrial BDU. Creative control consists of two elements:

- 1) The idea for an access program must originate from a community member not employed by a BDU; and
- 2) The community member must be involved in the production team:
 - a. in an on-camera role (e.g., a personality or actor that appears in a predominant portion of the production); and/or
 - b. as a creative member of the production crew (e.g., directing, producing, writing).

When a project meets these criteria, the Commission will consider that creative control is in the hands of the community member and consequently that the project qualifies as access programming.

At any time, the BDU may assist in training and supporting community members in the production and distribution of access programming.

In addition to the access programming produced by community members, the Commission will consider programming produced by independent community services and programming produced by local not-for-profit community television corporations (TVCs)¹ as access programming.

Exhibition of access programming

17. As noted above, BDUs that choose to operate a community channel must devote at least 30% of the programming to access programs. Where demand exists, that minimum rises to 50%. In other words, under the current policy, a BDU may not refuse

¹ TVCs are defined in the appendix to this document.

access requests that meet the terms and conditions set out in Public Notice 1992-39 until it has met the 50% minimum requirement.

Positions of parties

18. Most of the major BDUs, including Rogers, Cogeco, Shaw, Quebecor, Bell and TELUS Communications Company (TELUS), stated that the current policy was effective and did not require significant change. Quebecor, however, submitted that existing access policies did not reflect the widespread availability of video production equipment and Internet-based distribution platforms. According to Quebecor, in light of technological developments, there is no longer a need for strong requirements related to the exhibition of access programs.
19. CACTUS, Metro Vancouver, the Independent Media Arts Alliance and OpenMedia.ca argued that the existing policies had failed to ensure that BDUs offer sufficient access to community members. CACTUS submitted that some major BDUs failed to meet the 30% access requirement in 2008 and 2009. The FTCAQ noted that in the policy proceeding initiated in Public Notice 2001-129, the Commission had advocated a minimum 50% exhibition requirement. The FTCAQ considered such a requirement appropriate. The FTCAQ also submitted that the Commission should strengthen its ability to monitor and enforce exhibition requirements. Similarly, the CBC took the view that the Commission's requirements for access programming need to be strengthened and that BDUs' support for access should be more transparent. Specifically, according to the CBC, BDUs should be required to make public annually details regarding the exhibition of access programs and their expenditures on those programs.

Commission's analysis and determinations

20. The Commission notes that most BDUs stated that they were meeting or exceeding the existing requirements based on their interpretation of the current definition of what constitutes access programming. Specifically, Cogeco and Shaw stated that 54% and 48% respectively of their community programming in 2009 was devoted to access programs. Quebecor indicated that the average amount of access programming aired on its community channels was 39% (although it acknowledged that it may be less than 30% in certain markets), while Rogers indicated the average amount of community programming it devoted to access programming in Ontario was 37%. The Commission received few complaints about access programming from groups or individuals served by Quebecor, Rogers, Cogeco, Bragg Communications Incorporated, carrying on business as EastLink (EastLink), and smaller BDUs. Most concerns about access came from interveners served by Shaw, in particular those residing in the Vancouver area, such as the Association of Chinese Canadians for Equality and Solidarity Society (ACCESS), Metro Vancouver, Tri-Cities Community Society and W2 Community Media Arts Society (W2).
21. The Commission reaffirms its view that the role of the community channel should be primarily of a public service nature, facilitating self-expression through free and open access by members of the community. It further considers that there is a need for

greater accountability on the part of BDUs with respect to their activities in meeting access requirements. In the Commission's view, the record demonstrates that demand for access to the community channel remains strong in many markets. Further, the Commission considers that BDUs are capable of increasing that demand through a greater investment in community outreach, promotion of access opportunities and training of volunteers.

22. Accordingly, in combination with a more precise interpretation of access, the Commission has determined that BDUs are capable of ensuring that at least 50% of the community channel programming is devoted to access programs. As noted in the 2002 community TV framework, the Commission further expects that licensees ensure that access programs are scheduled in a reasonable manner throughout the broadcast day, including the peak viewing period (7 p.m.-11 p.m.), and that the ratio of original to repeat programs be the same for access programs as for licensee-produced community programming.
23. In order to provide licensees with adequate time to prepare to meet this minimum requirement, the Commission will implement the new 50% exhibition requirement through amendments to the Regulations that will take effect on 1 September 2014. Until that date, the existing exhibition requirements will remain in effect. Further, as set out in more detail later in this policy, the Commission will require licensees to file annual reports that provide specific information regarding the broadcast of access programs during the broadcast day and in peak viewing hours. These reports, which the Commission will make public, will provide interested parties with a greater detail regarding the licensees' activities.

Financing of access programming

24. As noted above, under the current community television policy, BDUs are subject to an exhibition requirement for access programming. However, the current framework does not set out any expenditure requirement for access programming.

Positions of parties

25. BDUs were generally opposed to any form of expenditure requirement for access programming. Most stated that access obligations were being met and that the current requirements were appropriate. Conversely, CACTUS argued that allowing large for-profit corporations to be the gatekeepers of access was inappropriate. CACTUS proposed that BDUs direct all of their local expression contributions to a new third-party fund to support access programming on a new class of community undertakings, while the FTCAQ proposed a similar fund to be administered by the Department of Canadian Heritage.
26. For its part, the CBC proposed that the Commission mandate BDUs to direct a percentage of their local expression contributions to access programming. According to the CBC, this would provide financial support for the production of a greater diversity of programs.

Commission's analysis and determinations

27. The Commission recognizes the important role of BDUs in promoting local expression through their contributions to community channels and feels that a balance must be struck to address interveners' concerns while not unduly harming community channels or negatively impacting viewers who appreciate these services. For this reason, the Commission considers that it cannot justify withdrawing all of the BDU contributions to local expression from the community channels to fund a new form of independently-run access programming undertaking. The Commission also considers that an exhibition requirement alone is insufficient to ensure adequate and stable funding for access programming initiatives and is of the view that an expenditure requirement on access programming would help support the increased production of such programming throughout communities.
28. As part of the current process, the largest BDUs were asked to provide a breakdown of community programming expenditures for the most recent broadcast year. According to the data submitted, Shaw and Videotron dedicate approximately 45% of their programming-related expenditures to access programming, while Cogeco reported a proportion of approximately 65%. Rogers and EastLink were unable to provide the data requested. While the Commission acknowledges that the interpretation of what constitutes access programming may not be consistent across all BDUs, it nonetheless considers the information submitted to be evidence that BDUs allocate significant expenditures to access programming.
29. Given that access programming is a defining element of community television and that numerous community members expressed concern regarding funding for access programming, the Commission deems it appropriate to introduce an expenditure requirement for access programming equivalent to at least 50% of programming-related expenditures, as reported under the revised reporting requirements in the appendix to this document. The Commission considers that such a requirement is an appropriate threshold that will contribute to the production of more and better access programming.
30. The Commission recognizes some interveners' concerns that the demand for access may not be sufficient to meet a 50% expenditure requirement immediately. To ease these concerns, the access expenditure requirement will take effect in the 2014 broadcast year under the following conditions:
 - During the licence term, the licensee shall expend on access programming, at a minimum, an amount equal to 50% of community programming-related expenditures.
 - The 50% access expenditure requirement will apply to the programming portion of community expenditures only. As such, technical, sales and promotion and administration and general expenses will not be included.

- Given the importance of volunteer participation and development and community outreach as core elements of community television, the Commission considers expenditures for volunteer training and development and community outreach to generate access programming as eligible access programming expenditures.
- The Commission will grant up to 5% flexibility per year on required access expenditures, as follows:
 - In each year of the licence term, excluding the final year, a licensee may expend an amount on access programming that is up to 5% less than the minimum required expenditure for that year; in such case, the licensee shall expend in the next year of the licence term, in addition to the minimum required expenditure for that year, the full amount of the previous year's under-spending.

Support of independent community services

31. The Commission notes that the 2002 community TV framework sought to encourage the provision of other forms of community programming in addition to the BDU-operated community channel through the establishment of new classes of licence. However, the relatively modest take-up of these licences led the Commission to inquire in the Notice whether changes needed to be made to the existing framework.

Positions of parties

32. In general, most parties, including independent community services such as Neepawa Access Community TV (NAC TV), Telile Community TV (Telile TV) and Valemount Entertainment Society (Valemount), agreed that the reason behind the modest take-up was the lack of funding and financial resources.

Commission's determination

33. As a result, the Commission encourages BDUs that operate community channels to financially support independent community services by acquiring programming from these services. The acquisition of this programming would be negotiated between the BDU and the independent community services. The programming acquired and expenses related to its acquisition qualify as access programming and expenditures for BDUs.

Funding of community channels

BDU contributions to local expression

Issue

34. Under the Regulations, licensed BDUs must contribute 5% of their gross broadcasting revenues to support Canadian programming. Licensees are authorized to allocate up to 2% of those revenues to local expression. In the Notice, the Commission requested

comments on whether BDU contribution levels remain appropriate for the operation of a community channel.

Positions of parties

35. The majority of interveners supported the current levels. However, some BDUs proposed changes that would allow them to increase the eligible local expression percentage within their 5% contribution to Canadian programming. For example, Shaw proposed that BDUs be allowed to contribute up to 3% of gross revenues derived from broadcasting activities to local expression, while Quebecor suggested that they be allowed to contribute 5% of such revenues for the first 20,000 subscribers to local expression. Similarly, TELUS submitted that BDUs with fewer than 50,000 subscribers should be allowed to devote more of their contributions to local expression.
36. The FTCAQ submitted that some of the local expression funding should be directed to independent community services through the establishment of an independent fund. Similarly, CACTUS proposed that BDU contributions be used to create a third-party community-access media fund for not-for-profit community-based programming services. CACTUS's proposal was supported by producers of community content such as MTSET Productions, NAC TV, ACCESS and OpenMedia.ca, as well as the Communications, Energy and Paperworkers Union of Canada, the Directors Guild of Canada and the Canadian Conference of the Arts (CCA).

Commission's analysis and determinations

37. The Commission notes that between 1998 and 2009, contributions to local expression by Class 1 BDUs increased from \$67 million to \$119 million, a 78% increase over this period. The Commission further notes that the total increase of \$52 million has largely exceeded the growth of \$17 million that can be attributed solely to inflation. As the current contribution model is based on a percentage of BDU gross broadcasting revenues, any growth in these revenues will generate proportional increases in contributions to local expression. In this regard, the Commission notes that BDU gross broadcasting revenues grew at a compound annual rate of 8.5% over the past four years.
38. The Commission considers that the community television sector has benefited significantly from the growth in total contributions to local expression that has resulted from increases in BDU revenues and recognizes the improvements in community programming over the last decade. Further, although the Commission acknowledges that various metrics can be used to evaluate the success of community channels, it nonetheless considers that overall viewing to community channels remains modest relative to the growth in contributions to this sector.
39. Based on the above, the Commission determines that the current level of contributions to local expression is sufficient to allow the community sector to attain its objectives. As a result, the Commission considers that local expression contribution levels should remain stable for the foreseeable future and that further increases to total contributions to local expression are not warranted at this time. Accordingly, the Commission has

issued today Broadcasting Notice of Consultation 2010-623, which sets out for public comment detailed questions with respect to the following determination relating to the most effective mechanism to maintain the current contribution levels to local expression:

The maximum dollar contribution to local expression by each terrestrial BDU licensee will be based on the amount contributed by the licensee during the broadcast year ending 31 August 2010 (the 2010 contribution level). This amount will be adjusted yearly for inflation based on the annual Canadian consumer price index (CPI), as reported for the period ending 31 December of the preceding calendar year.

Given the likelihood that the revenues of terrestrial BDUs will continue to grow, once the 2010 contribution level (adjusted annually for inflation) represents 1.5% of the licensee's gross revenues derived from broadcasting activities, the allowable allocation to local expression will revert to a percentage formula (i.e., 1.5% of a BDU's gross revenues derived from broadcasting activities).

The difference will be directed to Canadian programming initiatives.

40. BDUs will continue to fund community channels according to the current regulatory requirements until the Commission reaches its determination in the proceeding initiated by Broadcasting Notice of Consultation 2010-623.

Community television in exempt cable systems

Issue

41. In Broadcasting Order 2009-544 (the Order), the Commission set out the terms and conditions for exemption from regulation for terrestrial BDUs serving fewer than 20,000 subscribers. Among these terms and conditions, the Commission chose not to impose a requirement that these exempt BDUs contribute to Canadian programming.

Positions of parties

42. During the course of the current proceeding, several parties, including CACTUS and the FTCAQ, expressed concern that because exempt BDUs were no longer required to contribute to Canadian programming, they would discontinue funding to community television. These parties noted that community channels are more important in smaller communities because they are often the only source of local information. They argued that in order to protect community television in these communities, the Commission should require BDUs to contribute to community television, even if they are exempt.
43. For their part, BDUs that operate exempt systems generally stated that their community channels provided them with an important link to the community and that they had no intention of discontinuing the funding of community television. EastLink opposed the reinstatement of any requirement to contribute to community television for exempt BDUs because it would, in its view, remove any financial flexibility granted to them in

the Order that would allow them to better serve communities. Smaller BDUs, including Access Communications Co-operative Limited (Access Communications) and the Canadian Cable Systems Alliance Inc. (CCSA), requested that the Commission permit exempt systems to form zone-based community channels. They argued that this would bring about the same benefits enjoyed by BDUs operating larger systems, including programming and other synergies, as well as keeping subscribers informed about activities and events in a community of interest.

Commission's analysis and determinations

44. The Commission notes that since the Order, it has conducted several proceedings where the viability of local television stations was an issue and has expressed concern regarding the provision of local programming in smaller communities. In those proceedings, the Commission noted the closing of some conventional television stations and an overall reduction in local programming content. The Commission also noted that over the course of the recent economic downturn, broadcasters were more likely to reduce local programming, which usually entails significant infrastructure costs, rather than purchase less foreign programming.
45. The Commission considers that although exempt BDUs have indicated that they have not eliminated and have no intention of eliminating their funding to community television, there is still a risk. The Commission is guided by the objectives of diversity of voices and local reflection that stem from the Act and must ensure that these objectives are supported by its policies. As noted by several parties in this proceeding, there are typically no conventional local television stations in communities served by exempt BDU systems, and consequently community television is almost always the only source of local programming.
46. Moreover, because exempt BDUs directed almost all of their required Canadian programming contribution to community television prior to the Order and given that there is no evidence that the contribution level has diminished since the Order, the Commission considers that reinstating the requirement that exempt BDUs with more than 2,000 subscribers contribute to Canadian programming would have little financial impact on these BDUs. Accordingly, the Commission is of the view that it would be appropriate to reintroduce this requirement under the same terms and conditions as those in force prior to the Order. The Commission will publish a proposed amended exemption order to that effect for comment.
47. With regard to the request that exempt BDUs be allowed to form zone-based community channels, the Commission notes that only licensed BDUs can apply to operate such community channels. The Commission considers these applications on a case-by-case basis. The Order only provides a limited mechanism that would allow exempt BDUs to form zone-based community channels. Zone-based community channels in exempt systems would provide the same benefits as those in licensed systems, which include informing subscribers of activities and events in a community of interest and providing greater economies of scale. Given that exempt BDU serving areas do not always coincide with communities that share civic, economic and social

interests, a zone-based approach to community programming would serve the public interest by allowing larger areas comprising two or more exempt service areas to share local and community access programming.

48. The Commission considers that in certain cases, the benefit to the broadcasting system of allowing BDUs to form zone-based community channels outweighs any possible shortcomings. Accordingly, as part of the revised Order, the Commission will issue for comment specific conditions that would allow exempt BDUs to form zone-based community channels. The Commission will also consider additional measures for providing small systems with flexibility in programming and advertising.

Local Programming Improvement Fund

Issue

49. In Broadcasting Public Notice 2008-100, the Commission announced the establishment of the LPIF to support local programming, and local news in particular, by conventional television stations in non-metropolitan markets and subsequently established eligibility criteria. Currently, no portion of BDU contributions to Canadian programming is directed to the LPIF. Furthermore, community channels and independent community services are not eligible for LPIF funding under the current criteria. In Broadcasting Public Notice 2008-100, the Commission stated that it would consider whether community television broadcasters should have access to the LPIF in the context of its review of the community-based media policy framework. Accordingly, in the Notice, the Commission requested comments on whether a portion of the BDU contributions should be directed to the LPIF for the community sector.

Positions of parties

50. Large BDUs, which generally consider the LPIF to be a temporary measure to support local programming by conventional television stations in smaller markets, opposed using the LPIF for community television. Shaw argued that since it is too early to determine the LPIF's effectiveness, it would be premature to consider expanding its use. Conversely, EastLink, along with some small BDUs such as Westman Communications Group (Westman), argued that BDUs that provide local programming should be entitled to access the LPIF as they generally meet the objectives set out for LPIF funding. The CCSA submitted that a set percentage of the total LPIF should be earmarked for community channels and that funding should be tied to incremental expenditures on local Canadian programming, with no guaranteed allocation given to stations. Finally, the CBC indicated that it may be appropriate for community-based television undertakings to have access to LPIF under two conditions: local programming must be produced and broadcast in non-metropolitan markets and eligibility conditions must be the same as those for conventional broadcasters.

Commission's analysis and determinations

51. As noted above, the Commission established the LPIF as a means of supporting the provision of local programming by conventional television broadcasters in

non-metropolitan markets. Although the Commission recognizes the important role that community television plays in delivering locally relevant content to communities across Canada, it views the objectives of community television as being fundamentally different from those of conventional television, particularly with regard to access programming and volunteer participation and development. Further, while the Commission recognizes that the LPIF's objectives are not necessarily incompatible with those of community television, it is nonetheless of the view that allowing the community sector access to the LPIF would likely require changes to the eligibility criteria.

52. In Broadcasting Regulatory Policy 2009-406, the Commission provided an estimate of total LPIF funding of approximately \$102 million based on a 1.5% contribution by BDUs. Based on the LPIF's size, the Commission agrees with parties who consider the LPIF insufficient to provide funding to each of the public, private and community elements. Further, the Commission agrees with broadcasters that allocating LPIF funding to community television would significantly dilute the funding for local conventional television.
53. The LPIF was introduced because the business case for local conventional television had changed significantly through the expansion of Canadian and non-Canadian viewing choices offered by DTH undertakings, digital terrestrial BDUs and other digital media, contributing to the fragmentation of viewing audiences. Given the non-commercial nature of community television and its existing funding, the Commission is of the view that community television does not share the same realities as local conventional television.
54. The Commission therefore determines that community television funding should remain distinct from the LPIF and that community television should not be permitted to access the LPIF.

Advertising on community channels

Issue

55. Under the current framework, with some exceptions,² licensed BDUs and community programming undertakings, as defined in the appendix, are prohibited from broadcasting commercial advertising. However, the Commission does allow them to generate funding through sponsorship messages and contra advertising,³ all of which must be reinvested in the operation of the community channel. In the Notice, the Commission requested comments on whether circumstances or other factors had arisen

² Pursuant to section 35(c) of the Regulations, Class 3 BDU licensees who provide service to unserved communities (i.e. communities not served by a local radio or television broadcaster) are permitted to distribute a maximum of 12 minutes of commercial messages per hour on their community channels. Similarly, community-based television programming undertakings are self-funded through local advertising, which is limited to 12 minutes per hour.

³ A sponsorship message is when a community program acknowledges that it has received direct financial assistance. Contra advertising is when a community program acknowledges that it has received free goods or services to use in connection with producing the program.

that would warrant a change in this policy. Furthermore, in the event that the Commission were to allow BDU-operated community channels to air commercial advertising, the Commission sought comments as to whether a portion of the revenues should be directed to other initiatives, such as the Canada Media Fund.

Positions of parties

56. BDUs were divided on the issue. Those who supported the removal of restrictions, such as Shaw, EastLink, TELUS and Westman, were generally of the view that local businesses should not be restricted in their ability to advertise on community channels, which they regarded in some cases as the only true source of local television. Other BDUs, including Rogers, Quebecor and Cogeco, argued that restrictions should remain in place to preserve the non-commercial mandate of community channels. The Canadian Association of Broadcasters and commercial broadcasters such as RNC MÉDIA inc. and Télé Inter-Rives ltée argued that removing restrictions would permit BDUs to compete for advertising revenues when many broadcasters are struggling to remain viable. In this respect, Canwest Television Limited Partnership submitted that BDUs would attempt to maximize advertising revenues by favouring programming with large audience appeal, while benefiting from near-universal basic carriage, preferred dial position and significant promotional opportunities.

Commission's analysis and determinations

57. As indicated in the 2002 community TV framework, the Commission has traditionally considered that the public service orientation of the community channel could be best achieved through stable funding provided by licensed BDU, with limited reliance on advertising revenues. The Commission continues to be of the view that the removal of such restrictions would alter the public service orientation of community television and have an impact on the non-commercial nature of its programming. The Commission also agrees with CACTUS that the removal of advertising restrictions would introduce commercial pressures that could alter the access programming and volunteer development objectives which are the cornerstones of community television.
58. Accordingly, the Commission maintains its existing policy concerning commercial advertising on community television.

Accountability and reporting

Issue

59. Licensed BDUs are required to submit annual returns, which provide the Commission with the data it requires to ensure ongoing regulatory compliance. Licensed BDUs must report the following information regarding their expenditures on local expression: direct operating expenses summary (direct and indirect expenses), depreciation expenses, funding of community programming expenses (financial contributions from gross broadcasting revenues and reinvestment from community channel sponsorship revenues), and program hours broadcast on a weekly basis.

60. Under the Order, exempt BDUs electing to operate community channels must meet the same community programming requirements as licensed BDUs. The Order subjects exempt BDUs with more than 2,000 subscribers to information requirements through a simplified annual return, which does not include reporting requirements for contributions to Canadian programming.
61. Although the Notice did not solicit comments on reporting requirements related to BDU local expression contributions and expenditures, a number of interveners raised concerns in this regard in their written submissions. Given the significant funding directed by BDUs to community channels, the Commission deemed it appropriate to further explore the issue at the hearing in order to determine whether additional reporting requirements or other mechanisms were necessary to ensure accountability regarding BDU expenditures on local expression.

Positions of parties

62. Most parties indicated that current reporting requirements relating to local expression expenditures were insufficient. In their final comments, Rogers and Shaw stated that they were not opposed to reviewing current reporting requirements, but Rogers added that it preferred to do so within the context of an additional consultation to determine a final set of revised reporting requirements.
63. The CBC recommended that BDUs and community programming undertakings be required to file an annual report on access programming to allow the Commission and interested parties to verify compliance. In the CBC's view, this report would make how BDUs allocate their contributions to community channels more transparent. This proposal was supported by many parties from various sectors, including Crossroads Television Systems, Access Communications and the English-language Arts Network (ELAN).
64. CACTUS noted that it has generally been unsuccessful in finding basic information on how BDUs allocate resources to their community channels. Quebec's Ministère de la Culture, des Communications et de la Condition féminine (MCCCF) also acknowledged the lack of data with respect to community channels, specifically, the number of community channels, their structure, their revenues and expenses, the number of volunteers and the training offered. To increase the knowledge of this sector, the MCCCF recommended that the Commission collect this data and make it public.

Commission's analysis and determinations

65. The Commission agrees with many parties that there is a lack of accountability and transparency regarding how BDU contributions to local expression are spent. The Commission also recognizes that insufficient reporting requirements have likely contributed to a general lack of trust between many community stakeholders, to the detriment of the relationships that the community element was intended to foster.

Annual returns

66. In light of the above, the Commission has determined that beginning in the 2011 broadcast year (1 September 2011 to 31 August 2012), both licensed and exempt BDUs with more than 2,000 subscribers will be required to report the information related to local expression set out in the appendix to this document as part of their annual returns.

Annual reports

67. With respect to the provision of community programming to official language minority communities (OLMCs), the Commission notes that the FTCAQ, the BDUs and French-language interveners outside Quebec, including the Senior Advisor for Strategic Relations (New Brunswick) and the Société de l'Acadie du Nouveau-Brunswick, stated that they were generally satisfied with the community programming in their region. However, English-language interveners from Quebec expressed dissatisfaction with their lack of reflection in community programming. Specifically, organizations representing Montréal's Anglophone producers, including the Quebec chapter of the Alliance of Canadian Cinema, Television and Radio Artists (ACTRA), MTSET Productions and ELAN, noted that although Videotron serves 93% of Quebec Anglophones, there are very few English-language programs broadcast on its community channels. Cogeco and Quebecor stated that the lack of English-language community programming in Quebec was due to the lack of demand. In reply to ELAN, Quebecor stated that it would examine the situation in Montréal and the Outaouais.
68. To ensure that the OLMCs benefit from community television services that reflect their realities, needs and concerns, beginning in the 2010 broadcast year (1 September 2010 to 31 August 2011), the Commission will require licensed BDUs that operate a community channel to indicate in their annual reports the number of requests for access received from OLMC groups or members.
69. Additionally, the Commission recognizes that little information is publicly available on BDU community outreach and access programming initiatives. To provide these details and to strengthen the new access programming requirements discussed above, beginning in the 2010 broadcast year, the Commission will require licensed BDUs that operate community channels to file an annual report with their annual returns containing the information set out in the appendix to this policy.
70. The Commission is satisfied that the new reporting requirements will make the operation of community channels more transparent and will serve as a solid foundation for future policy development. The Commission also considers that enhanced reporting will help restore an element of trust among community stakeholders that has been adversely affected by the shortcomings of the current reporting structure.
71. Furthermore, the Commission considers that the revised reporting requirements generally reflect those required of commercial television broadcasters as well as commercial and community radio broadcasters. As such, the Commission will not solicit additional comments on this matter at this time.

Code of “best practices” on access programming

72. As previously noted, many interveners, including CACTUS, ICTV Victoria and W2, raised concerns regarding access programming opportunities. Accordingly, the Commission is of the view that the creation of an industry working group to develop a code of “best practices” for access programming to guide BDUs in decision-making would be beneficial to all BDUs, as well as members of the public who wish to produce access programming. Once the working group has submitted its proposed code, the Commission will issue a call for comments. The Commission may impose adherence to the approved code as a condition of licence on all licensed BDUs operating a community channel.

New platforms for community programming

Video-on-demand

Issue

73. The Commission has approved applications by BDUs to provide an outlet for local expression on their VOD services, subject to conditions of licence establishing requirements for community programming that essentially parallel those for the linear community channels. These BDUs include Saskatchewan Telecommunications (Broadcasting Decision 2006-490), MTS Allstream Inc. (Broadcasting Decision 2007-86) and TELUS (Broadcasting Decision 2008-135). In the Notice, the Commission sought comment on the future for community programming available on demand, on VOD-only community programming and on the benefits to a VOD presence for community television.

Positions of parties

74. Most parties argued that the offer of community programming by VOD services was complementary to, rather than a replacement for, that provided by BDUs on their community channels. The Commission considers that there are a number of benefits to the provision of community programming by VOD services. In addition to receiving access to such programming, VOD subscribers would benefit from the ability of the digital distribution platform to provide virtually unlimited shelf space for community programming and diversity of choice on an on-demand basis.

Commission’s determination

75. In light of the above, the Commission encourages licensed BDUs to make the programming on their community channels and other community programming available on their VOD services.

New media

Issue

76. In the Notice, the Commission also sought comment regarding the role of community television in new media.

Positions of parties

77. In general, BDUs stated that they viewed new media as a complementary platform to linear broadcasting and as a promotional and interactive tool used to communicate with community members. In addition, Shaw mentioned its goal to expand the distribution of community programming to all platforms. Quebecor stated that a portion of the contributions to local expression should be aimed at new media initiatives. Rogers argued that the Internet is probably the most cost-effective media with respect to spectrum use, but that production costs are platform-agnostic. Bell considered it inevitable that BDUs would move to an online- and perhaps a mobile-based service as programming is made available on-demand.

78. Various organizations, including Community Media Education Society (CMES) and Valemount, were of the view that the Internet could not be considered a viable replacement for the linear broadcasting of community programming. One of the reasons cited was that it was challenging to find local information on the Internet. Other parties such as Saint Andrews Community Television (Saint Andrews) and Telile TV noted additional challenges, including lack of both adequate resources and universal access to high speed. However, CACTUS, with the support of various parties, such as ACTRA, the CCA, the Independent Media Arts Alliance, the National Campus and Community Radio Association and NAC TV, emphasized the importance of the new media tools and proposed scenarios under which communities could benefit from them.

Commission's analysis and determinations

79. As the Commission noted in Broadcasting Regulatory Policy 2010-167, there is significant opportunity to deliver programming from both within and outside the regulated broadcasting system. The Commission recognizes that models for distributing Canadian content to Canadians increasingly include non-linear platforms, such as VOD and the Internet. Canadians' expectations for the delivery of content have evolved considerably since the Act came into force in 1991. The desire to view content at any time on any platform is changing Canadians' viewing habits, yet the Act clearly enjoins programming undertakings to be responsive to the public's evolving demands. Therefore, attractive Canadian content available at anytime and on any platform represents a goal towards which the Canadian broadcasting system should strive to remain not only responsive to the public's demands, but also relevant and competitive in the new digital era.

80. In light of the above, the Commission will consider at licence renewal proposals by BDUs to allocate a portion of their local expression contributions to community programming to new media.

Direct-to-home satellite services

Issue

81. In the 2002 community TV framework, the Commission denied DTH undertakings the authorization to operate a community channel, stating that it did not consider the concept of DTH community channels to be in keeping with its proposed objectives to ensure more locally produced and locally reflective community programming. In Broadcasting Public Notice 2008-100, the Commission indicated that it would reconsider the question of whether DTH undertakings should be authorized to operate a community channel as part of its review of the 2002 community TV framework. Accordingly, the Commission sought comments on this issue in the Notice.

Positions of parties

82. Bell and Shaw were of the view that their DTH undertakings should be permitted to offer a community television service under similar terms and conditions as terrestrial BDUs. They argued that their community television proposal would further community broadcasting objectives by providing their subscribers with access to a community channel, increasing the amount of community programming and thereby fostering greater diversity of voices and choices, and showcasing local programming from communities across Canada.
83. Most other parties, including Access Communications, EastLink and Rogers, opposed the concept of a DTH community channel, submitting that unless it could provide services on a community-by-community basis, a DTH community channel would not advance community broadcasting objectives. Some parties, such as the CBC and the S-VOX Group of Companies, also argued that DTH undertakings should not be allowed a community channel until they distribute all local channels, as is required of terrestrial BDUs.

Commission's analysis and determinations

84. The Commission notes that Bell and Shaw each proposed a DTH community channel that would be an omnibus or "community of communities" channel. Although the proposed community channels would offer the benefits noted by Bell and Shaw above, based on the record and in light of the number of communities in Canada, the Commission considers that only in rare instances would DTH subscribers tuning into the proposed channels find any programming specific to their community.
85. Accordingly, the Commission remains of the view that allowing the operation of DTH community channels would not be in keeping with its objectives to ensure more locally produced and locally reflective community programming.

Other matters

Closed captioning

Issue

86. Section 3(1)(p) of the Act states that as part of the broadcasting policy for Canada, “programming accessible by disabled persons should be provided within the Canadian broadcasting system as resources become available for the purpose.” An important aspect of fulfilling this objective is the provision of closed captioning to enable the full participation of Canadians with hearing impairments as audiences of television programming. In its 2007 policy on closed captioning (Broadcasting Public Notice 2007-54), the Commission established 100% captioning of English- and French-language programming as the regulatory norm for all broadcasters. In its Accessibility Policy (Broadcasting and Telecom Regulatory Policy 2009-430), the Commission reiterated the importance of its 100% captioning goal for all broadcasters.
87. Historically, the Commission has determined appropriate commitments to captioning on community television commensurate with the resources of each licensee, while seeking to be as consistent as possible with its overall policy objective for captioning.

Positions of parties

88. The Canadian Hard of Hearing Association (CHHA) argued that all community channels should be required to provide 100% closed captioning for all programming. It suggested that such a goal should be met as soon as possible, but that it could be implemented gradually over the licence term if necessary. BDUs and independent community services expressed their commitment to accessibility of community programming. However, they also expressed concern about the financial impact of a blanket obligation to provide closed captioning.

Commission’s analysis and determinations

89. The Commission notes that the average costs for captioning have fallen considerably since it first made captioning a regulatory requirement in 1995. However, given that budgets for community programming are typically smaller than those for private and public broadcasting, captioning costs can be proportionally higher.
90. The Commission agrees with the CHHA that accessibility of community television is just as important to those Canadians who rely on captioning as is accessibility of other programming in the system. At the same time, the Commission is mindful that community channels and independent community services vary in terms of size, program offerings and resources available for the purpose of providing captions for all programs. Therefore, the Commission deems it more appropriate to direct community channels and independent community services to prioritize accessibility efforts towards programming over which operators have most control. Accordingly, the Commission determines that its general policy on closed captioning applies to community television in the following manner:
- The Commission intends to impose conditions of licence requiring licensed BDUs that operate community channels to caption at a minimum 100% of original licensee-produced programming by the end of their next licence term. The Commission also expects licensed BDUs to ensure that 100% of original access programming is captioned by the end of the next licence term.

- The Commission encourages independent community services to caption as much programming as possible. However, given the more stable financial situation of Télé-Mag inc., licensee of a low-power community-based television undertaking in Québec, the Commission expects this licensee to caption 100% of its programming by the end of the next licence term.

91. The Commission notes that licensed BDUs that operate community channels have the same opportunity to request amendments to the above requirements afforded to all licensees under the 2007 policy on closed captioning.

Technical issues

92. The Canadian television industry is creating more high definition (HD) content to meet consumer demand for higher quality audio and video. In particular, the private commercial sector has taken significant steps to create HD content to remain competitive. The community sector stated that while it has begun to take the necessary steps to create HD content, its transition will be more gradual. The Commission is satisfied that the community sector is well positioned to produce HD content.

93. In the 2002 community TV framework, the Commission created a licence class for community-based television programming undertakings, which include over-the-air low-power television. While limiting these undertakings to low power due to spectrum constraints in urban areas, the Commission stated that it was prepared to allow relief from the requirement to operate at a low power upon application from undertakings serving remote areas. CACTUS, NAC TV, Saint Andrews and other parties stated that limitation to low power was inhibiting the viability of independent community services, particularly in rural areas where the low-density population requires an independent community service to cover more than one community to be sustainable. The Commission is still prepared to allow relief from this requirement for independent community services in remote areas upon application, to the extent that their operation is consistent with the Commission's policies regarding the transition to digital television.

Key dates for new requirements

Annual report on access programming

- Beginning in the 2010 broadcast year (1 September 2010 to 31 August 2011), licensed BDUs that operate community channels shall file an annual report on access programming with their annual returns.

Annual returns

- Beginning in the 2011 broadcast year (1 September 2011 to 31 August 2012), both licensed and exempt BDUs with more than 2,000 subscribers will be required to report the information related to local expression set out in the appendix to this document as part of their annual returns.

Exhibition and expenditure requirements

- The new requirements will take effect on 1 September 2014 through amendments to the Regulations.

Secretary General

Related documents

- *Call for comments on contributions by broadcasting distribution undertakings to local expression*, Broadcasting Notice of Consultation CRTC 2010-623, 26 August 2010
- *A group-based approach to the licensing of private television services*, Broadcasting Regulatory Policy CRTC 2010-167, 22 March 2010
- *Review of community television policy framework*, Broadcasting Notice of Consultation CRTC 2009-661, 22 October 2009
- *Exemption order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers*, Broadcasting Order CRTC 2009-544, 31 August 2009
- *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009
- *Policy determinations resulting from the 27 April 2009 public hearing*, Broadcasting Regulatory Policy CRTC 2009-406, 6 July 2009
- *Report to the Governor in Council on English- and French-language broadcasting services in English and French linguistic minority communities in Canada*, 30 March 2009
- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services – Regulatory policy*, Broadcasting Public Notice CRTC 2008-100, 30 October 2008
- *Diversity of voices – Regulatory policy*, Broadcasting Public Notice CRTC 2008-4, 15 January 2008
- *Licence amendments related to the provision of an outlet for local expression by video-on-demand*, Broadcasting Decision CRTC 2008-135, 30 June 2008
- *A new policy with respect to closed captioning*, Broadcasting Public Notice CRTC 2007-54, 17 May 2007
- *Licence amendments related to the funding and provision of an outlet for local expression*, Broadcasting Decision CRTC 2007-86, 16 March 2007

- *Licence amendments related to the funding and provision of an outlet for local expression*, Broadcasting Decision CRTC 2006-490, 8 September 2006
- *Policy framework for community-based media*, Broadcasting Public Notice CRTC 2002-61, 10 October 2002
- *Proposed policy framework for community-based media*, Public Notice CRTC 2001-129, 21 December 2001
- *Cable television community channel standards*, Public Notice CRTC 1992-39, 1 June 1992
- *Community channel policy*, Public Notice CRTC 1991-59, 5 June 1991
- *Policy statement on cable television*, 16 July 1971

Appendix to Broadcasting Regulatory Policy CRTC 2010-622

Community television policy

General

This policy replaces that part of *Policy framework for community-based media*, Broadcasting Public Notice CRTC 2002-61, 10 October 2002, that applies to community television.

Objectives

The Commission has established the following objectives for its community television policy:

- to ensure the creation and exhibition of more locally produced, locally reflective community programming.
- to foster a greater diversity of voices and alternative choices by facilitating new entrants at the local level.

Standards and codes

Where appropriate, licensees will be expected to adhere to the following industry codes as conditions of licence:

- the Canadian Association of Broadcasters' *Equitable Portrayal Code*, as amended from time to time and approved by the Commission;
- the Canadian Association of Broadcasters' *CAB Violence Code*, as amended from time to time and approved by the Commission;
- the *Broadcast Code for Advertising to Children*, as amended from time to time and approved by the Commission; and
- the *Cable television community channel standards*, Public Notice CRTC 1992-39, 1 June 1992 (Public Notice 1992-39).

BDU-operated community channels

Licensees will be expected to fulfil all the applicable provisions of the policy set out below. The performance of licensees in this regard will be examined at the time of licence renewal.

Role and objectives

The role of the community channel should be primarily of a public service nature, facilitating self-expression through free and open access by members of the community.

The community channel should:

- engender a high level of citizen participation and community involvement in community programming;
- actively promote citizen access to the community channel and provide and promote the availability of related training programs;
- provide feedback mechanisms, such as advisory boards, to encourage viewer response to the range and types of programs aired;
- seek out innovative ideas and alternative views;
- provide a reasonable, balanced opportunity for the expression of differing views on matters of public concern;
- reflect the official languages, ethnic and Aboriginal composition of the community;
- provide coverage of local events; and
- publicize the program schedule.

Local community television programming

If a licensee elects to distribute community programming services, it shall devote not less than 60% of the programming aired during each broadcast week to the broadcast of local community television programming.

For the purpose of this policy, the Commission considers local community television programming to consist of programs, as defined in the *Broadcasting Act* (the Act), that are reflective of the community and produced by the licensee in the licensed area or by members of the community from the licensed area. Programs produced in another licensed area within the same municipality will also be considered local community television programming.

The licensed areas of terrestrial broadcasting distribution undertakings (BDUs) are set out in the licence in effect as of the date of this policy. Where a terrestrial BDU obtains the Commission's approval for a regional licence, the Commission will generally retain the existing licensed area set out in the terrestrial BDU's current licence and require that local community television programming continue to be reflective of the community within that licensed area.

Class 3 terrestrial licensees⁴ may utilize alphanumeric bulletin boards to achieve the 60% requirement for local community television programming, except as otherwise specified by condition of licence.

Community programming

Pursuant to the *Broadcasting Distribution Regulations* (the Regulations), licensees that elect to distribute community programming shall not distribute on the community channel any programming service other than those set out in section 27(1) and 27(2).

Licensees are not permitted to distribute foreign or commercial programs on the community channel.

Licensees are not permitted to receive financial payment in exchange for the distribution of government or public service information material.

Licensees are expected to adhere to the principle that local community television programs be given scheduling priority.

Professional major league sports programming

The broadcast of programs featuring professional major league sports, produced by companies generally engaged in the production of such programs, does not fulfil the objectives of this policy and will generally not be allowed on the community channel.

Community television programming in Toronto, Montréal and Vancouver

Licensees that provide community programming in the greater Toronto, Montréal and Vancouver areas will be expected to set out their plans and commitments at licence renewal as to how they will reflect the various communities within their licensed areas.

Access programming

For the purpose of this policy, access programs are programs produced by members of the community served by the undertaking, either assisted or unassisted by the licensee.

Criteria for access programs

The key criterion for defining access programming is that creative control is in the hands of a community member, i.e. an individual or group residing within the licensed area of a terrestrial BDU. Creative control consists of two elements:

- 1) The idea for an access program must originate from a community member not employed by a BDU; and

⁴ Consistent with *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services* – Regulatory policy, Broadcasting Public Notice CRTC 2008-100, 30 October 2008, the Commission will be amending the *Broadcasting Distribution Regulations* to create a single class of licence for terrestrial BDUs.

- 2) The community member must be involved in the production team either:
 - a. in an on-camera role (e.g., a personality or actor that appears in a predominant portion of the production); and/or
 - b. as a creative member of the production crew (e.g., directing, producing, writing).

When a project meets these criteria, the Commission will consider that creative control is in the hands of a community member and consequently that the project qualifies as access programming.

At any time, the BDU may assist in training and supporting community members in the production and distribution of access programming.

Exhibition

- Licensees shall devote a minimum of 30% of the programming aired during each broadcast week to the broadcasting of access programs.
- Effective 1 September 2014, licensees shall devote a minimum of 50% of the programming aired during each broadcast week to the broadcast of access programs.
- Until 1 September 2014, where requests for access exceed the 30% minimum requirement, licensees shall make available a minimum of 50% of the programming aired during each broadcast week to the broadcast of access programs. The access requests must conform to the terms and conditions for access set out in Public Notice 1992-39.
- Where there is one or more local not-for-profit community television corporations (TVCs) in a given licensed area, up to 20% of the programming aired during each broadcast week by licensees shall be made available for access programs from these TVCs. Where more than one TVC is in operation in a licensed area, each must be guaranteed a minimum of four hours of access programs per broadcast week, upon request. This 20% is considered part of the access program requirements set out above.

For the purpose of this policy, TVCs are defined as:

Not-for-profit corporations, incorporated under a provincial or federal charter which provides that the primary activity of the corporation is to produce community television programming and/or operate a community television channel that is reflective of the community they represent. Board members must be drawn from the local community and the corporation must hold an annual meeting where all members of the corporation are invited to participate and to vote.

In addition, the Commission will consider programming produced by independently operated community-based television services (independent community services) as access programming.

The Regulations shall be amended to implement the access requirements set out above.

Access programming should be scheduled in a reasonable manner throughout the broadcast day, including the peak viewing period (7 p.m. to 11 p.m.), and the ratio of original to repeat programs should generally be the same for access programs as it is for other community programming.

Licensees should consult members of the community to determine the mix, scope and types of programs that best serve the community's needs and interests through advisory boards and/or feedback from volunteers.

Expenditures

At least 50% of all programming-related expenditures, as reported under the revised reporting requirements set out below, shall be directed to access programming.

The expenditure requirement on access programming will take effect in the 2014 broadcast year under the following conditions:

- During the licence term, the licensee shall expend on access programming, at a minimum, an amount equal to 50% of community programming-related expenditures.
- The 50% access expenditure requirement will apply to the programming portion of community expenditures only. As such, technical, sales and promotion and administration and general expenses will not be included.
- Expenditures for volunteer training and development and community outreach to generate access programming will be considered as eligible access programming expenditures.
- The Commission will grant up to 5% flexibility per year on required access expenditures, as follows:
 - In each year of the licence term, excluding the final year, a licensee may expend an amount on access programming that is up to 5% less than the minimum required expenditure for that year; in such case, the licensee shall expend in the next year of the licence term, in addition to the minimum required expenditure for that year, the full amount of the previous year's under-spending.

Funding of community channels

The current level of BDU contributions is sufficient to provide an appropriate level of funding to the community television sector. Further increases to total contributions to local expression are not warranted at this time.

In Call for comments on contributions by broadcasting distribution undertakings to local expression, Broadcasting Notice of Consultation CRTC 2010-623, 26 August 2010, the Commission has set out for public comment detailed questions with respect to the most effective mechanism to maintain the current contribution levels to local expression.

Accountability and reporting

Annual returns

Beginning in the 2011 broadcast year (1 September 2011 to August 2012), licensed and exempt BDUs with more than 2,000 subscribers shall report the following information related to local expression as part of their annual returns:

Exhibition

Total hours broadcast and produced

- Produced by the licensee
- Produced by community members (access programming)
- Produced by TVCs and independent community services (access programming)
- Produced by other licensees (non-access)
- Alphanumeric messages
- Other (to be specified)

Expenditures

1. Programming expenses (direct and indirect)
 - Produced by the licensee
 - Produced by community members (access programming – can include volunteer training and community outreach expenses)
 - Produced by TVCs and independent community services (access programming)
 - Produced by other licensees (non-access)
 - Alphanumeric messages
 - Other (to be specified)
2. Technical expenses
3. Sales and promotion expenses

4. Administration and general expenses
5. Depreciation
6. Total broadcasting-related revenues (basic and non-basic revenues)
7. Total community television expenditures as a percentage of total broadcasting revenues

Furthermore, the Commission maintains the requirement of a preponderance of direct expenses over indirect expenses.

Volunteer participation and development and community outreach

Expenditures related to the training and development of volunteers, as well as those related to community outreach for the purpose of promoting and generating access programming, should be included within eligible access programming expenditures. For this reason, beginning in the 2011 broadcast year, licensed and exempt BDUs with more than 2,000 subscribers shall report on the following aspects related to volunteer participation and community outreach initiatives:

Volunteer participation and development

- Total volunteers in reporting year (# of individual volunteers)
- Total volunteer hours (hours worked by volunteers)
- Total volunteer training hours (received by volunteer participants)
- Total volunteer training expenses (can be included in applicable access programming expenditures)

Community outreach

- Total expenditures on community outreach (can be included in applicable access programming expenditures)

Report on access programming

Beginning in the 2010 broadcast year (1 September 2010 to 31 August 2011), licensed BDUs that operate community channels shall file an annual report with their annual returns containing the following, based on a reporting year:

- Community outreach initiatives
 - Number of meetings with the public
 - Communication tools used to promote access opportunities (e.g., billing inserts, website, on-air announcements, participation at community events, visits to schools/colleges/universities, social media)
 - Number of training sessions offered to volunteers
- Access programming initiatives
 - Number of hours of access programming broadcast during broadcast day and peak hours
 - Percentage of access programming broadcast

- Number of requests for access programs by individuals and groups representing official language minority communities
- Access programming available on other platforms
 - Number of hours of access programming available on video-on-demand (VOD), website, etc.

The annual reports will be made available on the Commission's website.

Code of "best practices" on access programming

BDUs shall establish an industry working group to develop a code of "best practices" on access programming.

Specifically, the Commission mandates that the working group:

- include one representative from each of the following: Rogers, Shaw, Cogeco, EastLink, Quebecor and the CCSA;
- develop a code of "best practices" for access programming; and
- submit this code to the Commission for approval no later than 6 months from the date of this policy.

The code shall include guiding principles such as, but not limited to:

- what can be expected from and by an individual, group or community television corporation residing within the licensed area of a terrestrial BDU that is producing access programming; and
- what types of access program proposals are acceptable.

The term "best practices" refers to the means by which licensed BDUs can achieve the overall objective of ensuring that their decision-making with respect to access programming promotes fair and consistent practices at all times and throughout each individual system.

Promotion of access opportunities

Licensees are expected to actively promote citizen access to the community channel and to provide and promote the availability of related training programs. All terrestrial licensees are expected to distribute a billing insert describing the availability of access programming and methods by which proposals can be made. Such billing inserts should be distributed annually. The Commission will review the efforts of licensees in this regard as part of the licence renewal process.

The Commission recognizes that BDUs publicize access programming opportunities in other ways, such as on-air announcements, website, social media, participation to community events and visits to schools/colleges/universities. BDUs are encouraged to use these alternative methods to promote access opportunities.

Video-on-demand and new media

Licensed BDUs are required to report the following as it relates to the use of VOD and new media as platforms for local expression:

Video-on-demand

- Program hours made available through VOD during the reporting year
- Expenditures related to community programs broadcast through video-on-demand (can be included in applicable programming expenditures)

New media

- Program hours broadcast on new media during the reporting year
- Expenditures related to community programs broadcast on new media (can be included in applicable programming expenditures)

Service to persons with disabilities*Closed captioning*

The Commission intends to impose conditions of licence requiring licensees to caption at a minimum 100% of original licensee-produced programming by the end of their next licence term. Licensed BDUs will be expected to ensure that 100% of original access programming is captioned by the end of the next licence term.

Audio description

Consistent with *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009 (the Accessibility Policy), the Commission intends to impose conditions of licence requiring licensed BDUs that operate a community channel to provide audio description for all information programs and for news programming (that is, the voice-over of key textual, graphic design and still image elements, such as phone numbers, stock information or weather maps that are posted on the screen).

Licensees with fewer than 20,000 subscribers

Consistent with the Regulations, licensees with fewer than 20,000 subscribers on 31 August 2009 may allocate the full 5% of their contribution to Canadian programming to local expression for the 2009 broadcast year. For the 2010 and subsequent broadcast years, such licensees may allocate a maximum of 2% of their required 5% contribution to Canadian programming to local expression.

Licensees shall report their levels of community programming expenses and are expected to dedicate the large majority of their expenditures to the direct expense category. Direct expenses are defined in *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.

Two community channels in a given market

Licensees that elect to distribute two community channels in a given market, one in each official language, may apply under section 29 of the Regulations for a condition of licence in order to allocate up to 2% of their required contribution to Canadian programming to each of the community channels.

Advertising and sponsorship

Community channels will continue to be limited to sponsorship advertising as prescribed under section 27 of the Regulations.

In accordance with *Sponsorship messages on the community channel*, Circular No. 348, 27 July 1988, words promoting goods or services are not acceptable and descriptions that promote a favourable image of the sponsor will be examined on a case-by-case basis to determine if they depart from what is permitted in the Regulations.

Licensees must not deny, restrict or reduce access opportunities if a member of the community is unable or unwilling to attract a sponsor.

Under no circumstances should a licensee charge a fee for providing access programs, or insist that access programs have sponsorship.

All revenues generated by sponsorship advertising must be reinvested in the operation of the community channel. Licensees must identify these revenues and associated expenditures separately when reporting their community programming expenses to the Commission.

Revenues associated with the rental of production facilities for external commercial and industrial productions should also be reinvested in the community channel, thus avoiding the requirement for cost separation procedures.

Promotional messages

Consistent with the Regulations, except as otherwise provided in subsections 27(2) and 27(3) or under a condition of its licence, a licensee must limit the broadcast of promotional messages on the community channel to two minutes per hour.

Further, the Regulations require that the time allocated for promotional messages be divided as follows:

- At least 75% of promotional time during each broadcast week must be made available for use by non-related Canadian programming undertakings for the promotion of their respective services, for the promotion of the community channel and for unpaid Canadian public service announcements.

- A maximum of 25% of promotional time during each broadcast week may be made available for the promotion of related programming undertakings, discretionary programming services and programming packages, customer service information, channel realignments, cable FM service and additional cable outlets.

For the purpose of this policy, a related programming undertaking is defined as one in which a BDU licensee or an affiliate, or both, controls more than 10% of the total shares issued and outstanding.

Independently-operated community-based television services (independent community services)

Community programming undertakings

Terrestrial BDUs have the option of distributing a community channel as part of their distribution licences. In situations where the terrestrial BDU does not provide a community channel or does not operate a community channel in accordance with the provisions of this policy, community groups may apply for a community programming undertaking licence.

In order to obtain a community programming undertaking licence, applicants will have to demonstrate that the proposed undertaking would be operated in accordance with this policy, the relevant provisions of the Regulations and Public Notice 1992-39.

Community programming undertakings will be not-for-profit organizations, the structure of which provides for membership, management, operation and programming primarily by members of the community.

Pursuant to the Regulations, community programming undertakings are accorded mandatory carriage as part of the basic service where a terrestrial BDU does not elect to distribute a community channel or does not operate a community channel in accordance with the provisions of this policy. The Regulations also specify the applicable percentage of the terrestrial BDU's gross revenues to be allocated to the community programming undertaking.

Community-based television programming undertakings: Low-power and digital services

The licensing framework for community-based television programming undertakings includes two sub-categories:

- community-based low-power television undertakings and
- community-based digital services.

Objectives

Community-based television programming undertakings will provide a high level of locally-produced, locally-reflective programming that complements the programming provided by conventional television and community channels. Such services should

enrich the variety of local and community programming available to the public, as well as provide opportunities for new voices to participate in the Canadian broadcasting system.

Community-based television programming undertakings should not replicate the programming offered by existing television services.

Licensing criteria

In its assessment of applications for community-based television programming undertakings, the Commission will take into consideration the number of community-based services already licensed in the proposed service area, the availability of over-the-air channels and/or the available capacity of the affected BDUs and the impact on local radio and television licensees operating in small markets.

Ownership

The Commission will consider applications by both for-profit and not-for-profit applicants to operate community-based television programming undertakings.

The Commission does not intend to grant this class of licence to established licensees to extend their reach or to provide additional types of service. In assessing applications for community-based television programming undertakings, the Commission will give preference to locally-based new entrants.

Canadian content

Licensees of community-based television programming undertakings shall devote not less than 80% of the broadcast year to the broadcast of Canadian programs.

Local programming

Licensees of community-based television programming undertakings shall devote not less than 60% of the broadcast year to the broadcast of local programming.

For the purpose of this policy, local programming means station productions or programming produced by community-based independent producers that reflects the particular needs and interests of residents of the area that the community-based television programming undertaking is licensed to serve.

In the case of a community-based low-power television programming undertaking, this area will be defined by the Grade B contour of the antenna. In the case of a community-based digital service, the Commission will require a detailed description of the geographic area to be served, which will form part of a condition of licence on the nature of service.

Service to persons with disabilities

Closed captioning

The Commission encourages independent community services to caption as much programming as possible. However, in the case of TéléMag inc., licensee of the low-power community television station in Québec, the Commission expects the licensee to caption 100% of its programming by the end of the next licence term.

Audio description

Consistent with the Accessibility Policy, the Commission intends to impose conditions of licence requiring independent community services to provide audio description for all information programs and for news programming (that is, the voice-over of key textual, graphic design and still image elements, such as phone numbers, stock information or weather maps that are posted on the screen).

Citizen participation

Licensees of community-based television programming undertakings are encouraged to:

- facilitate citizen access to the production of programming; and
- provide training to those within the community wishing to participate in the production of programming.

Advertising and financing

Licensees of community-based television programming undertakings shall not broadcast more than 12 minutes of local advertising material in any clock hour in a broadcast day.

Policies specific to community-based low-power television undertakings

Definition of low-power television

The Department of Industry (the Department) defines low-power analog television stations in Part IV of its *Broadcasting Procedures and Rules* as those stations operating with a transmitter power of 50 watts or less on the VHF band or 500 watts or less on the UHF band. Due to their limited effective radiated power, their Grade B service contour does not exceed 12 kilometres in any direction from the antenna site. The coverage that they provide is therefore much more limited than that of regular class television stations.

The Department defines low-power digital television stations in Part X of its *Broadcasting Procedures and Rules* as those stations with service not extending beyond a distance of 20 kilometres in any direction from the antenna site.

The Department considers low-power television stations as secondary assignments and establishes them on an unprotected basis with respect to the frequency band that they occupy. This means that they have no protection from interference by primary assignments (e.g. regular class stations). However, in the event that a secondary

assignment causes interference to a primary assignment, the secondary assignment station could be required to change its assigned channel or to cease operation if no replacement channel can be found. Secondary assignment stations are, however, entitled to protection from other secondary assignment stations that are established at a later date.

Carriage by broadcasting distribution undertakings

Consistent with the Regulations, BDUs are required to carry licensed community-based television programming undertakings on the digital band throughout the area reached by the over-the-air signals or the service area authorized by the Commission.

Under the Regulations, local television stations must be distributed on an analog channel as part of the basic service. However, where capacity is limited, the Commission considers that the mandatory analog distribution of community-based low-power television stations by terrestrial BDUs may not be appropriate. Accordingly, in such circumstances, the Commission will be prepared to allow relief from these carriage requirements upon application for a condition of licence by terrestrial BDUs.

However, terrestrial BDUs that are granted relief from this requirement and distribute digital services will be required to distribute community-based low-power television undertakings on a digital basis within the area served by the over-the-air signals of those stations.

Policy for remote stations

The provisions of this policy apply to both urban and remote community-based low-power television undertakings.

However, the Commission will be prepared to allow relief from the logging requirements set out in section 10 of the *Television Broadcasting Regulations, 1987*, the Canadian content and local programming requirements set out in this policy and the requirement to operate at a low power upon application from licensees of community-based television undertakings serving remote areas, to the extent that their operation is consistent with the Commission's policies regarding the transition to digital television.

The Commission will expect terrestrial BDUs operating in remote areas to carry any remote community-based television programming undertaking licensed to serve that area on their analog basic service.

For the purpose of this policy, a remote community-based television station is defined as a community-based television programming undertaking serving a community that has no competing regional or local television service or local community cable operating on a regular basis.

Policies specific to community-based digital services

Carriage by broadcast distribution undertakings

Community-based digital services will not be accorded mandatory analog distribution by terrestrial BDUs.

A terrestrial BDU that distributes services on a digital basis will be required to distribute community-based digital services on the digital band throughout the service area authorized by the Commission.

Nature of service and proposed service area

In order to clearly define the proposed community or communities to be served, applications for a community-based digital service licence must include a detailed description of the nature of the proposed service and the geographic area to be served.

Dissenting opinion by Commissioner Michel Morin

In its review of its policy on Canadian community television, the Canadian Radio-Television and Telecommunications Commission (the Commission) has once again chosen to do without greater transparency for the millions of broadcasting distribution undertaking (BDU) subscribers. These subscribers paid \$120 million last year to fund community television. Not only is the Commission refusing to keep subscribers well informed by not requiring BDUs to indicate the cost of this funding on their monthly bill, but it is also creating an impasse over the need to issue community access programming licences to groups that could oversee or take full responsibility for access programming, which, thanks to the new rules, will be better financed. It is because of this lack of transparency for subscribers and this paternalism toward community groups, which will continue to be chaperoned by BDUs, that I have decided to dissent once again and write my eleventh minority opinion since my appointment in August 2007.

No transparency for consumers

a) They pay the bill, even if it lacks transparency

Although the overwhelming majority are unaware of this, all subscribers to licensed terrestrial BDUs that operate a community channel already contribute every month to the funding of BDU community programming. Since the services offered by Videotron, Rogers and Shaw (Canal Vox, Rogers TV and Shaw TV) are included in the basic service, they all seem to be free. However, they are not. They are funded by a levy amounting to up to 2% of the gross annual revenues derived by BDUs from their broadcasting activities, out of the 5% envelope of BDU gross annual revenues that must be allocated to Canadian programming and local expression. In other words, unlike the television service CPAC, which broadcasts, among other things, parliamentary debates and Commission hearings and which constitutes a voluntary contribution to Canadian democracy by cable and satellite service operators, BDU-operated community channels are funded entirely by their subscribers and represent, even according to the BDUs, a competitive advantage over satellite BDUs, which remain unable, due to capacity issues, to provide a community service that is as local as that provided by BDUs to their subscribers.

Although the audience share to such “local expression” is generally very low (less than 1% of all viewers), this provision is applicable to almost all of the 8 million cable subscribers.

b) Increased transparency for all funding

Last fall, I was the first to applaud when several terrestrial and satellite BDUs opted for transparency and decided to indicate on every subscriber’s bill the 1.5% of the amount billed to fund the Local Programming Improvement Fund (LPIF). For the first time Canadian consumers of BDU services knew the exact amount of their share of the cost of a Commission regulatory measure.

But why stop there? Currently, subscribers to licensed BDUs still do not know about the other portion of the 5% that has been charged to them since the 1990s to fund Canadian content. The recent community television policy review provided an excellent opportunity to take a step forward with respect to transparency in subscriber billing.

This was the thrust of my questions to the BDUs during last spring's week of hearings. Moving forward on the issue seemed all the more key to me because it was the same BDUs that had paved the way for us the previous fall. In the present decision, the Commission is announcing a ceiling for subscriber contributions to community programming at 1.5% of gross revenues rather than the 2% allocated to the support of community channels for the last two decades.

In addition, in its Broadcasting Notice of Consultation 2010-623, the Commission is inviting suggestions on what might be done with the 0.5% of gross revenues to be "directed to Canadian programming initiatives." I would have wished that we would have taken this opportunity to break down Canadian content funding on subscriber bills, since it ends up totalling 6.5% of BDUs' gross revenues and is ultimately passed down to subscribers, as follows: 1.5% for the LPIF; 1.5% for the community channels; 3%, of which four fifths is allocated to the Canada Media Fund (CMF) and one fifth to BDU private funds; and the last 0.5% going who knows where.

Of course, the Commission was able to give up the hope of returning these revenues to subscribers since it deregulated the basic service at the beginning of 1998, and who could say whether the BDU has actually returned the revenues to subscribers through contribution discounts rather than simply taking them back through rate increases. But would it not be possible to at least inform subscribers about this? Why is the Commission not in favour of full transparency on the bill of each subscriber regarding the 6.5% of gross revenues allocated to Canadian programming? Why is it ruling out all possibility that the 0.5% allocated to community programming up to now could be officially deducted from subscriber bills? Since the 1.5% increase for the LPIF in September 2009, Canadian content has effectively become a lobster trap for subscribers: once you're in, you can't get out. And yet, the 6.5% to fund Canadian content has come to add up to a considerable amount – it's 1.5% more than the GST on all BDU subscriber bills!

Overall, subscriber contributions to community programming, the LPIF, the CMF and BDU private funds now total over \$450 million a year, nearly half of the Canadian government's contribution to funding the Canadian Broadcasting Corporation. Given the amounts in question, it was the right time to recognize the importance of transparency in the present decision.

c) Why them and not us?

All you need to do is look at a monthly bill from an American BDU to see how the cost of all regulatory measures by the Federal Communications Commission and similar state entities or certain large municipalities is clearly indicated for the client. Why is this not the case in Canada? What makes us so different that we ignore our duty to Canadian subscribers to be transparent? What is preventing us from breaking down this cost of

6.5% for Canadian content funding? Whether it's done in dollars or as a percentage hardly matters to me. What does matter is that consumers know the impact regulatory measures are having on their monthly bill.

It should be noted that during the last year, the Commission has increased this lack of transparency by creating the LPIF, a pool of over \$100 million funded at a rate of 1.5% by BDU subscribers and earmarked to support local programming by conventional television stations in markets with populations under a million. However, twelve months after the LPIF was established, the funding has been allocated, but we still do not know how much or to whom. That is simply unacceptable. There is no other case like it in the Canadian broadcasting system. Just look at how CMF budgets are allocated: everything is transparent and all broadcasters know the amounts to which they are entitled.

Some of those players who are committed to "Made in Canada" productions are already calling for at least 10% of gross revenues generated by services to subscribers to be eventually allocated to various funds devoted to funding Canadian content. And we should be hiding it from terrestrial and satellite BDU customers? How can we have a debate when we don't even know the numbers in question? There is a risk that the Commission's proposal will result in the 0.5% of gross revenues ending up in BDUs' private funds for Canadian content funding. Is this the way to do things? Given the community television model proposed by the Commission, once consumers have been accurately informed, I would prefer to put all the options on the table, including the ceiling at 1.5% of subscriber contributions to community television.

The Commission's paternalistic community model

a) Now that access programming receives adequate funding

Everyone can easily subscribe to the Commission's proposition, as stated in its 1971 *Policy statement on cable television*, that "public access to the community channel is a 'cornerstone' of the Commission's community television policy." But this needs to be translated into strong action! The Commission is not doing this, in my view, in this decision.

The Commission has attempted to bring order to BDU community services accounting, has increased the minimum threshold for so-called "access" programming to 50%, and most importantly, has for the first time allocated to access programming half of the revenues from the percentage retained by terrestrial BDUs, i.e. 1% of gross revenues from BDU subscribers. This undoubtedly constitutes a step forward for community programming produced or overseen by BDUs.

This time, contrary to what occurred during the last community television policy review in 2002, revenues (1%) will be allocated to access programming, separate from conventional programming. In practice, it will be necessary to see whether the groups already working with BDUs will take full advantage of this Commission decision. Far be it for me to propose creative accounting that would deprive them of this new, clearly identified and attributable source of funding! It constitutes a clear advantage for the entire

broadcasting system, and from this point of view, I fully agree with the majority decisions.

b) On the need for community access programming licences

I would have liked us to go farther and truly let groups that so desire become solely responsible for access programming. This could have been done by setting up a process for awarding community access programming licences, which was proposed by the Fédération des télévisions communautaires autonomes du Québec, a model student of the system. In this context, the Commission would have simply had to hold hearings to award community access programming licences on a competitive, one-off basis in each service area identified by the applicant, just as it does when awarding commercial or community radio frequencies and for discretionary television services. Just as it has done in the past – although, I agree, with limited success – for the thirteen community television stations holding licences in Canada under the 2002 framework. Why should it be any different for community undertakings devoted to access programming? Was it too much to ask? Is it not the role of the regulator to issue licences, especially when licensees can theoretically count on revenues of over \$60 million (i.e. half of the cumulative amount generated by the 2% from subscriber revenues) associated for the first time with access programming?

On April 27, in response to a question by Commission Chairman Konrad von Finckenstein, Gérald Gauthier of the Fédération des télévisions communautaires autonomes du Québec indicated that “we could, with the 1% the BDUs would give us for access programming, produce programs from this community, but the funding would be a lot more structured, adequate and predictable than it is at the moment, since it depends on what each cable company has decided in its budgets, without any scrutiny in this respect.” [translation]

Predictability was exactly what Chairman von Finckenstein said he was seeking when he was appointed in the winter of 2007. Predictability and transparency are also two of my guiding principles. If predictability is important to the industry, it is even more so for community groups, and only the awarding of community access programming licences could have allowed this goal to be achieved.

Naturally, community groups would have competed or would have grouped together in such a way as to be more inclusive to convince the Commission to give them the single licence in a service area. Given the sums in question, the definition of this service area would have been the subject of interventions by participants, applicants, BDUs and cable subscribers. Considering their invaluable experience, BDUs would have brought forward their point of view regarding whether a particular community licence would be realistic or desirable in a particular area. They could have even convinced the Commission to deny a licence to a particular group! Finally, the Commission would have been forced to set a certain number of parameters to prepare the ground for the awarding of this new category of community television licences.

That scenario is very different from the one proposed by the Commission in this decision! Instead, community groups or individuals must rely on Shaw, Rogers, Eastlink or

Videotron, to name a few, to produce access programming. Despite all the good intentions of distributors, arbitrary decisions and lack of predictability could stifle initiatives that could have given a boost to the Canadian broadcasting system. I can already see the Commission being forced to mediate a dispute over the content of an access program and the difficulty of obtaining the necessary funding for it. However, everything would have been so simple and, I stress, would have probably required less regulation with the awarding of licences and the revenues that would have been associated with it. Not only would the process have been more transparent, but community access programming would have gained recognition as a BDU partner. All this in order to reinvigorate, stimulate, support and above all give a sense of responsibility to licensees intending to produce truly distinct citizen programs! Groups holding community television licenses that fall under the 2002 policy could have obtained dual status by means of these new licences associated specifically with access programming. Given the current decision, they have no guarantee of ever receiving any amount from the BDUs. The same is true for Quebec's independent television stations, even if relations between Cogeco and Videotron have greatly improved in the last few years.

During the three-year "adjustment" period proposed by the Commission to meet the 50% quota, the Commission could have awarded community access programming licences in cities with populations of 100,000 or more and covered more than 80% of the country's population in under three years. These renewable licences would have been issued for an initial period of seven years, as is the case with other licences in the broadcasting system.

In my opinion, the Commission's position is tantamount to a denial of adult status to community groups, since it is still the BDUs that will be determining the content of access programming. Under these circumstances, where decisions are ultimately made by BDUs, how can the Commission talk about "diversity of voices" and "independent community services"? After forty years of community television, was it not time to recognize the maturity of the sector by establishing an access programming licensing program? To structure this sector, just as other sectors in the Canadian broadcasting sector are structured? Why continue giving stewardship solely to the BDUs?

What more can I say other than to quote Mr. Alain Pineau, National Director of the Canadian Conference of the Arts, in his closing remarks at the end of the hearing: "In the context of high concentration of ownership and high competition for revenue, it is unrealistic to expect for-profit companies like BDUs to fulfill the ideals of democratization and participation at the root of community-access or community-driven television."

c) The use of community access licences

After hearing the arguments and the level of commitment by groups across the country for five days, it seemed to me that a leap forward was called for. Digital technologies, coupled with mobile and on-demand devices, have evolved in a way that now more than ever favours local expression by community groups, which could have been given responsibility for this expression and thus been freed from BDU supervision.

The role of BDUs would have been to distribute this access programming, which represents 50% of total BDU community channel programming. I would not have had any objection to community channels' continuing to bear, in the spirit of a true partnership, the names "Rogers TV," "Shaw TV" or "Canal Vox" in Quebec. What mattered to me was that access programming licensees have a place in such partnerships, be fully responsible for access programming and be held fully accountable through the holding of annual meetings and the filing of audited annual returns.

In this vein, membership in the Canadian Broadcast Standards Council (CBSC) seemed desirable to me. In fact, this membership should have been a condition of licence imposed on all community access programming licensees. While I'm at it, the BDUs would not have been able, as is currently the case, to invoke their editorial control to block certain less conventional community programs. Conversely, subscribers and BDUs would have been able to file complaints with the CBSC if licensees decided to disregard the codes of conduct adopted 15 years ago by this independent national organization that brings together 739 broadcasting licensees from one end of the country to the other.

In this decision, the Commission is counting on BDUs to create access programming, even if in some areas the community groups might not even be at the table. The testimony of Lucie Bergeron of Cogeco showed that it is not always easy to solicit community groups and get them to produce access programming. Although Cogeco is a Canadian champion of community access television, one can wonder whether this is a BDU's role. Under the circumstances, would it not have been better to show more flexibility with respect to BDUs and to let them define their community channel until groups submit a formal community access licence application for their area? Why force matters in the absence of any true demand on the part of citizens or community groups for community programming produced by the community? In my opinion, asking BDUs to generate participation by citizens is forcing the undertakings to go against the grain. BDUs can very easily accommodate, support and encourage community programming, but from there to "generating" it to meet the quota of 50% of total programming is a step that I would not take.

In a previous life, I actively participated in the setting up of two citizen committees. Not once did I ever count on private-sector assistance or government subsidies. Similarly, community programming should come from the desires, ideas and interests of citizens. The Commission should be a partner and provide platforms and reliable assistance funding. However, it seems unreasonable to me to impose programming production quotas on BDUs, since their purpose is primarily to distribute content. Our role as regulator is to issue licences, in return for which licensees will assume responsibility, as a condition of licence, for 50% of the BDU community channel programming.

Moreover, although it is not ideal, I recognize that in some areas BDUs can provide community programming that fully meets the needs of citizens. Why then should the Commission impose an access programming quota as high as 50% on them? In my view, this amounts to micro-management. And I repeat, awarding community programming licences would have avoided this impasse. Once a community programming licence had been granted in a given area, revenues would have been allocated to that community

access programming licensee, subject to a requirement to produce programming equivalent to half of the total programming on the community channel. Further, in the absence of an access programming licensee, the BDU would have had the option of continuing to manage its community programming channel with less demanding access programming minimums.

With its new model of 50% of community programming devoted to access programming, the Commission is making itself feel good (and garnering good press) by convincing itself that it is favoring community programming presumably initiated by citizens, while in reality the true solution would have been to ensure that this access programming be fully left to recognized, duly incorporated groups holding community programming licences.

The first thirteen candidates for such access programming and its funding would have, without a doubt, been the thirteen independent community television undertakings created following the 2002 community policy review. These same television undertakings are currently attaining only partial success because we did not, at the time, make sure to provide them with the necessary financial means, as will now be the case, we hope, for access programming.

Despite the fixed 50% quota for access programming, these independent community television stations, just like Quebec's 46 independent television stations, have no guarantee that they will obtain a significant portion of this access programming funding, let alone the total funding in a service area. Given the efforts made since the 2002 community policy review, this is absurd. All our efforts should have gone toward consolidating a sector that is, by definition, fragile.

d) What a licence would have made possible

In the summer of 2010, Bell will develop television services using IPTV (Internet Protocol Television) technology in the large markets of Toronto and Montréal. TELUS is already providing such services in Vancouver, Edmonton and Calgary. Bell Alliant is doing the same in New Brunswick and Nova Scotia. Sasktel, MTS Allstream and small distributors are adopting this distribution technology in other regions. Without a doubt the deployment of this technology will allow new providers to wage fierce competition against conventional BDUs. In fact, 2% of Canadian households (i.e. 240,000 out of a total of approximately 12 million households) and 5% of American homes have already adopted the technology.

Like conventional BDUs, these new operators are all regulated by the Commission. Currently, like the other BDUs, they dedicate 6.5% of their gross revenues to the development of Canadian content (in fact, they will be doing so as of 1 September 2010). The establishment of a community access programming licence would have allowed new licensees belonging to this class to distribute their product not only on the BDUs' conventional platform, but also on that of IPTV service providers. We would have avoided the possible duplication of community access programming, and community access programming licensees would have had access to additional revenue sources.

From this point of view, community access programming would have been technologically neutral and accessible to all distributors of television products. Is this not what we are enjoined to do by the *Broadcasting Act* as amended by the government of the Right Honourable Brian Mulroney in 1991? Not only was the “community element” then added, but in 1991 the *Broadcasting Act* itself was widely held to be “technologically neutral.” Section 3(1)(d)(iv) states that the Canadian broadcasting system should “be readily adaptable to scientific and technological change.” True competition between conventional BDUs and IPTV service providers could have been played out with the other 50% of programming. As well as being competitive, conventional BDU community channel programs would have eventually prompted IPTV service providers to imitate the conventional BDU community channel, which would have led to an equivalent improvement in the entire broadcasting system, all while allowing IPTV service consumers to benefit from the same community access programming as conventional BDU clients.

In the current system, everyone will remain in their corner, and IPTV service subscribers will not be able to benefit from access programming as defined in this decision, even if, like other BDU subscribers, they will be contributing to the funding of Canadian content and local expression (5%)! This decision does not provide a global framework for access programming and blocks the way forward for all parties in the system, including BDUs whose subscribers would have benefited from programming improved by new sources of revenues from IPTV service providers. The same formula could have eventually been applied to satellite BDUs once they resolve their capacity issues. In sum, the community access programming licence was a way forward. A community perspective would have been guaranteed on all platforms, and we would have eventually relieved volunteers of the need to provide two or three different access programs to as many distributors. Let’s never forget that these contributions to community channels come from the public. That’s why I believe the public’s interest should take precedence over all others. Finally, I agree with the following view expressed by Bell: “All Canadians should have access to community programming, regardless of their choice of BDU. A community channel is publicly funded to serve the public good and should not be used by BDUs as a competitive differentiator. It is not an efficient use of public funds to operate competing community channels within a given market.”

During the hearings, I publicly questioned myself over the need to increase the sources of community television funding to include municipalities or individual or collective memberships. The American network PBS provides examples of this every day when it asks us for contributions. Armed with a community access television licence, licensees could have been more aggressive by calling upon viewers and could have also asked municipalities in their service area to make substantial contributions to the funding of community access television. This is not a revolutionary idea. It is already the case in a number of countries all over the world (source: *Community Television Policies and Practices around the World*, prepared by TimeScape Productions). After all, isn’t community television community-based television? And doesn’t community begin in municipalities and neighbourhoods? The federal government has set the example since the 1930s by funding the Canadian Broadcasting Corporation. The provinces have

followed suit by establishing educational television stations. Why would this third level of government – which is so much at the heart of everyday citizen life – not do its part?

Only well-established, accountable businesses holding community access programming licences would have been able to claim these municipal subsidies as public, not-for-profit broadcasters. This, along with the revenues generated by IPTV service providers, could have also helped to strengthen the Canadian community television system. At the end of the day, everyone would have come out a winner, thanks to the establishment of a community access programming licence.

Conclusion

The Commission has decided: it wants to make BDU community channels accountable. This seems fundamental to me, considering the \$119 million that is billed to Canadian subscribers. However, I believe that by placing a ceiling on subscriber contributions to community television services, the Commission is revealing a great deal about how it views the future of community television in this country.

The community channels are already the poor offspring of the system: \$120 million a year is 12 times less than the revenues of commercial radio (\$1.5 billion), 46 times less than the advertising revenues of public and commercial television (\$5.5 billion) and 63 times less than the revenues generated by terrestrial and satellite BDUs (\$7.5 billion). Given the widely perceived failure of the 2002 community policy and the still paternalistic model proposed today, we can understand the Commission's decision to make a bold move and to set a ceiling on community television funding. But we must not forget that we are also responsible for the application of section 3(1)(b) of the *Broadcasting Act*. It was up to us to set more ambitious objectives for community television.

I hope that I am mistaken. I hope that the community groups I heard – from Vancouver, the rest of British Columbia, Nunavut, Calgary, Saskatoon, Winnipeg and Ottawa – benefit from the new rules put in place by the Commission and the 50% access programming expenditure quota, because this provides for all those who, in the age of the Internet and social networks, still believe in the need for a linear community channel. As for the 46 independent, incorporated television stations in Quebec, the new rules, although far from perfect, will be without a doubt easier to apply, given the harmonious relations that seem to have developed over the years between Cogeco and Videotron.

As in the case of emerging performers and children's programs, community television is a real training ground for talent in the broadcasting system. How many producers, researchers, editors, camera operators, journalists and program hosts earned their stripes there? In my opinion, the new accountability and the access programming targets set by the Commission cleared the way for and required the establishment of community access programming licences. As the saying goes, it followed naturally.

The majority were cautious and decided otherwise. But there is also a price to pay for caution. In this case, it has left the BDUs in control, at the risk of maintaining the same level of uncertainty for access programming creators and providers.

The issuing of licences would not have been done in a harmful context. The program would have been drawn up, the parameters set and the service areas defined, and everyone, including BDUs, would have been able to participate in the public hearings. Community access television would have gradually acquired, across the entire country, equal standing with other broadcasters.

It is unfortunate for the Canadian system that we have not allowed one of its offspring to reach its full potential. The history of community television is intimately tied to the policies put in place by the Commission, which in the early 1970s dared to stray from the beaten path and establish community television policies that have helped to build its reputation throughout the world.

As for cable subscribers, I hope that their bills will contain data that adequately informs them of their contribution to the development of Canadian content, since after all it does add up to \$354 million.

THE COST OF CANADIAN CONTENT FOR SUBSCRIBERS

Percentage of BDU Revenues	Cumulative Amount	Recipient Funds
5%	\$354 million	Canada Media Fund, private BDU funds, community television
1.5%	\$102 million	Local Programming Improvement Fund

(These estimates are based on aggregate subscription revenues for all BDUs (excluding satellite BDUs that do not contribute to community television). In 2009, these revenues totalled \$4,742,772,000 and the number of subscribers was 8,093,483. These figures are posted on the Commission's website in the financial summaries that can be consulted on pages 7 and 27 of the following document: <http://www.crtc.gc.ca/eng/publications/reports/BrAnalysis/dist2009/bdu.pdf>.

Considering that the average cable subscriber bill in a non-exempt area is approximately \$48 a month, then the contributions represent over \$2.80 a month and approximately \$1 a month per subscriber, which are devoted respectively to the development of Canadian content and to the production of community television. During the hearings, some BDUs claimed that it would be quite complicated to give all consumers a breakdown on their bill. But finally, I quote Rogers, which wrote in section 43 of its closing remarks: "It would not be impossible." Thank you, Rogers, for your transparency! Thanks on behalf of Canadian consumers, who, I hope, will one day be accurately informed through a document that matters and that keeps coming up again and again: their monthly bill.

We cannot keep on ignoring the need for transparency forever, both insofar as it concerns Canadian consumers and the debates that must inform the application of the *Broadcasting Act*. To this end, subscribers, who are very rarely included in the decision-making process, must be properly informed of their contribution to the development of Canadian

content on the monthly bill they receive from their terrestrial or satellite BDU. It is a step that the Commission has refused to take in the present decision, just as it has refused to set up a new community access programming licensing regime. For these two reasons, I am submitting my eleventh dissenting opinion, which follows the 10 dissenting opinions listed below:

- [*AUX TV – Category 2 specialty service*](#), Broadcasting Decision CRTC 2010-223, 21 April 2010
- [*The implications and advisability of implementing a compensation regime for the value of local television signals: A report prepared pursuant to section 15 of the Broadcasting Act*](#), 23 March 2010
- [*Reconsideration of Broadcasting Decision 2008-222 pursuant to Orders in Council P.C. 2008-1769 and P.C. 2008-1770*](#), Broadcasting Decision CRTC 2009-481, 11 August 2009
- [*Video-on-demand service*](#), Broadcasting Decision CRTC 2008-366, 23 December 2008
- [*Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services*](#) – Regulatory Policy, Broadcasting Public Notice CRTC 2008-100, 30 October 2008
- [*Licensing of new radio stations to serve Ottawa and Gatineau*](#), Broadcasting Decision CRTC 2008-222, 26 August 2008, corrected by [*Licensing of new radio stations to serve Ottawa and Gatineau – correction*](#), Broadcasting Decision CRTC 2008-222-1, 28 August 2008
- [*Change in the effective control of TQS inc. and licence renewals of the television programming undertakings CFJP-TV Montréal, CFJP-DT Montréal, CFAP-TV Québec, CFKM-TV Trois-Rivières, CFKS-TV Sherbrooke, CFRS-TV Saguenay and of the TQS network*](#) – Broadcasting Decision CRTC 2008-129, 26 June 2008
- [*CRTC Report to the Minister of Canadian Heritage on the Canadian Television Fund*](#) (Annex 2), announced in [*The CRTC presents its report on the Canadian Television Fund*](#), News Release, 5 June 2008
- [*Licensing of new radio stations to serve Kelowna, B.C.*](#), Broadcasting Decision CRTC 2008-62, 14 March 2008
- [*CIGR-FM Sherbrooke – Acquisition of assets*](#), Broadcasting Decision CRTC 2007-435, 24 December 2007

Appendix to the dissenting opinion by Commissioner Michel Morin

Sources of community television funding in larger countries around the world

(Source : *Community Television Policies and Practices around the World*, prepared by TimeScape Productions)

As can be seen, municipalities contribute directly to community television funding in many countries.

Country	Licence Category	Source of Funding	Distribution
Australia	National satellite community television	Members, ads, federal	OTA analog, UHF, satellite, some Internet
Austria	Private cable television	Municipal	Cable, Internet
Belgium	Public, non-profit television	Municipal	Cable
Benin	Local public television	NGOs	OTA transmission
Bolivia	Private community television	Advertising, audience donations, video sales, international aid	OTA analog, UHF and VHF, screenings
Brazil	Community television	Members, NGOs	Cable, screenings
Columbia	Community television	Cable subscriptions	Cable
Denmark	Shared (commercial, community) television	Federal	OTA analog, UHF
Fiji	Community television	NGOs, donations	OTA analog, VHF
Finland	Cable distribution	Municipal, advertising, audience donations	Digital cable, some Internet, cellular telephone
France	Local, non-profit television, national cable and satellite television	Donations, employment programs	OTA digital, UHF, cable, satellite, Internet
Germany	Open channel	State	Cable, some Internet
Israel	Community television (local cable television and national satellite television)	Federal, municipal	Cable distribution, satellite
Italy	No licence (pirate)	NGOs, hobbyists	OTA analog, UHF
Japan	Cable distribution	Municipal occasionally	Cable
Mexico	Licence denied	NGOs, video sales	Screenings
Nepal	Cable distribution	Cable subscriptions	Cable
Netherlands	Local public television	Mostly federal	Cable, some Internet
New Zealand	Community television	Members, ads, federal	OTA analog, UHF, satellite
Norway	Cable distribution, university, national non-profit	Federal, advertising	Cable, OTA analog, OTA digital
Peru	Local commercial television	Advertising	OTA analog
South Africa	Community television	Federal, ads	OTA analog, UHF
South Korea	National public television, private television, cable distribution	Federal	OTA digital, VHF, cable, satellite, Internet
Spain	Local non-profit television	Municipal, ads, donations	OTA analog, UHF
Sweden	Open channel	Members	Cable, Internet
U.K.	Restricted service licence (RSL), cable distribution, national satellite television	Municipal, cultural	OTA analog (UHF), cable distribution, Internet, digital satellite

Uruguay	Community television, municipal, closed-circuit cable	Cable subscriptions	OTA analog, OTA digital, UHF, cable distribution, screenings
U.S.A.	PEG (public, educational, government access), national satellite	Cable subscriptions	Cable, satellite, some Internet
Venezuela	Community television	Federal, municipal, advertising	OTA analog, UHF