



Broadcasting Regulatory Policy CRTC 2012-181-1

PDF version

Route reference: Part 1 application posted on 2 May 2012

Additional Reference: 2012-181

Ottawa, 7 August 2012

BCE Inc. and the Public Interest Advocacy Centre

Application 2012-0512-0

Broadcasting Participation Fund – Amendments

This regulatory policy deals with amendments to documents for establishing the Broadcasting Participation Fund, (BPF) Inc. proposed by BCE Inc. and the Public Interest Advocacy Centre (BCE and PIAC) related to eligibility criteria for the Jointly Appointed Director and remuneration of Directors.

The Commission directs BCE and PIAC to file signed and dated executed copies of the requested documents as well as the agreements amended according to the Commission's directions set out in the appendix within 30 days of the date of this regulatory policy.

Introduction

1. In Broadcasting Regulatory Policy 2012-181, the Commission approved the BCE Inc. and the Public Interest Advocacy Centre (BCE and PIAC) proposal for the establishment and operation of the Broadcasting Participation Fund (BPF), Inc. (BPF). The approval was subject to the requirement that BCE and PIAC file signed and dated executed copies of requested documents as well as the agreements amended according to the Commission's directions set out in the appendix to Broadcasting Regulatory Policy 2012-181 within 30 days.
2. On 2 May 2012, BCE and PIAC filed an application to amend Broadcasting Regulatory Policy 2012-181 with respect to the eligibility criteria for the Jointly Approved Director and remuneration of Directors.
3. The Commission received no interventions concerning this application. The public record of this proceeding is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

The proposal

4. With respect to the eligibility criteria for the Jointly Approved Director, BCE and PIAC were of the view that amendments required by the Commission to sections 30(a)(ii) and (vi) and section 30(b) of By-Law No. 1 (see the appendix to Broadcasting Regulatory Policy 2012-181) impaired rather than strengthened the

impartiality and independence of the BPF. They argued that changes should be made to those sections to reinstate the text of the original proposal or to add “Jointly Approved Director” to the fourth sentence of section 29, which would result in the Jointly Approved Director being subject to the same conflict of interest safeguards as the other two Directors.

5. With respect to remuneration of Directors, BCE and PIAC argued that a prohibition on remuneration may impact the operations of the BPF and cited a number of examples of similar organizations approved by the Commission that provide for Director remuneration above and beyond covering disbursements. They noted that the Directors would have considerable responsibilities in light of the BPF employing only one part-time staff member – the Costs Officer. In light of the level of responsibilities the Directors would have, BCE and PIAC argued that a moderate level of Director remuneration, such as a \$5,000 annual retainer and \$500 for each day of meetings or teleconferences (pro-rated for part-day meetings or calls) would be appropriate and would only represent a fraction of one percent of the Fund’s capital annually.

Commission’s analysis and decisions

Eligibility criteria for the Jointly Approved Director

6. In Broadcasting Decision 2011-163, the Commission established representation criteria for the Board so that no more than one third of the members casting no more than one third of the votes in a meeting may be Board members representing broadcasting distribution undertakings (BDUs) or broadcasters. The amendments to the documents required by the Commission and described in Broadcasting Regulatory Policy 2012-181 are meant to ensure that the Jointly Approved Director respects the aforementioned representation criteria.
7. When the Commission made its initial determination with respect to eligibility requirements for the Jointly Approved Director, it was concerned that the pool of consumer representative candidates was limited. It therefore put into place conditions to ensure that qualified consumer representatives would be available for consideration. However, upon further examination, the Commission recognizes that there is some merit with respect to the concerns related to impartiality and conflict of interest. Accordingly, the Commission directs BCE and PIAC to amend the documents, as described in the appendix to this Regulatory Policy, to ensure that any individual representing the consumer/public interest perspective who may be selected for the Jointly Approved Director position, is not currently:
 - a director, officer or employee of a consumer/public interest, advocacy, lobbying or service group whose mandate and activities include broadcasting issues;
 - an individual who provides goods or services to and receives direct significant compensation from a consumer/public interest, advocacy, lobbying or service group whose mandate and activities include broadcasting issues; or

- an employee or a partner of an entity that receives significant revenue from services the entity provides to consumer/public interest, advocacy, lobbying or service group whose mandate and activities include broadcasting issues.

Remuneration of Directors

8. The Commission notes that Broadcasting Decision 2011-163 did not include provisions regarding the remuneration of Directors and that in the original joint proposal from BCE and PIAC, there were no details provided as to what would constitute a reasonable level of remuneration of Directors.
9. The Commission is satisfied that what is currently being proposed by BCE and PIAC is reasonable and is consistent with the approach taken in similar circumstances.
10. Accordingly, Commission directs BCE and PIAC to amend the documents, as described in the appendix of this Regulatory Policy, to allow for the limited remuneration of Directors as proposed.

Conclusion

11. The Commission directs BCE and PIAC to file signed and dated executed copies of the requested documents as well as the agreements amended according to the Commission's directions set out in the appendix within 30 days of the date of this regulatory policy. The Commission further directs BCE and PIAC to amend the other documents, including the Articles of Incorporation, the Costs Officer Services Agreement, and the Stakeholder Agreement to reflect all amendments to the By-law and Articles of Incorporation set out in the appendix to Broadcasting Regulatory Policy 2012-181. At that time, the Commission requires Bell and PIAC to file accurate verified French versions of the above-mentioned documents. The Commission further directs BCE and PIAC to begin immediately the process of setting up the BPF, including the process of replacing the Provisional Board, so that the BPF becomes operational to provide costs support to public interest groups and consumer groups within 60 days of the date of this regulatory policy.
12. The Commission expects that any costs incurred as of 26 March 2012, the publication date of Broadcasting Regulatory Policy 2012-181, could be included in a costs application to the BPF.

Secretary General

Related documents

- *Broadcasting Participation Fund*, Broadcasting Regulatory Policy CRTC 2012-181, 26 March 2012
- *Change in effective control of CTVglobemedia Inc.'s licensed broadcasting subsidiaries*, Broadcasting Decision CRTC 2011-163, 7 March 2011

Appendix to Broadcasting Regulatory Policy CRTC 2012-181-1

List of amendments required by the Commission

Broadcasting Participation Fund (BPF), Inc. – Application for Incorporation of a Corporation without share capital under Part II of the Canada Corporations Act (Articles of Incorporation)

By-Law No. 1

Amendment Required in Broadcasting Regulatory Policy 2012-181	Amendment (Elements in bold to be added)
<p>30(a)(ii): Amend</p> <p>a current director, officer or employee of any broadcasting industry business or BDU, or in the three (3) years prior to election as the Jointly Approved Director, a director, officer or employee of any broadcasting industry business or BDU;</p>	<p>30(a)(ii)</p> <p>a current director, officer or employee of any broadcasting industry business, BDU or consumer/public interest, advocacy, lobbying or service group whose mandate and activities include broadcasting issues, or in the three (3) years prior to election as the Jointly Approved Director, a director, officer or employee of any broadcasting industry business or BDU;</p>
<p>30(a)(vi): Amend</p> <p>an individual who provides or, in the three (3) years prior to election as the Jointly Approved Director, provided goods or services to and receives or received direct significant compensation from, or an individual who is or, in the three (3) years prior to election as the Jointly Approved Director, was an employee or a partner of an entity that receives significant revenue from services the entity provides to, a broadcasting industry business or BDU, and, for the purposes of this paragraph, “significant compensation” and “significant revenue” means compensation or revenue the loss of which would have a material impact on the individual or entity; or</p>	<p>30(a)(vi)</p> <p>an individual who provides or, in the three (3) years prior to election as the Jointly Approved Director, provided goods or services to and receives or received direct significant compensation from, or an individual who, in the three (3) years prior to election as the Jointly Approved Director, was an employee or a partner of an entity that receives significant revenue from services the entity provides to a broadcasting industry business or BDU, or consumer/public interest, advocacy, lobbying or service group whose mandate and activities include broadcasting issues, or an individual who provides goods or services to and receives direct significant compensation from, or an individual who is an employee or a partner of an entity that receives significant revenue from services the entity provides to a</p>

	<p>broadcasting industry business or BDU, and, for the purposes of this paragraph, “significant compensation” and “significant revenue” means compensation or revenue the loss of which would have a material impact on the individual or entity; or</p>
<p>30(b): Amend the Jointly Approved Director shall be a consumer/public representative at all times, and to the greatest extent possible, be an individual known and respected on a regional and national basis, either in their own right or by virtue of an appointment or office held;</p>	<p>Idem Amendment as required in Broadcasting Decision 2012-181</p>
<p>45: Remove first sentence and amend second sentence Directors shall be entitled to be paid only their reasonable expenses that are directly related to the business of the Corporation pursuant to an expense policy established by resolution of the Board, from time to time.</p>	<p>45: Restore and amend first sentence. Amend second sentence. The Directors shall be paid such remuneration as may be decided from time to time by Special Resolution at any annual general meeting or special general meeting of the Members, provided that no more than one percent of the BPF annual capital may be allocated to Directors’ remuneration. In addition, Directors shall be entitled to be paid their reasonable expenses that are directly related to the business of the Corporation pursuant to an expense policy established by resolution of the Board, from time to time.</p>