



Broadcasting Regulatory Policy CRTC 2012-392

PDF version

Route reference: 2012-288

Ottawa, 19 July 2012

Amendments to the *Broadcasting Distribution Regulations* – Provisions relating to local expression

The Commission announces that it has made amendments to the Broadcasting Distribution Regulations (the Regulations). These amendments implement the Commission's determinations set out in Broadcasting Regulatory Policy 2012-154 relating to the mechanism for the funding of local expression by broadcasting distribution undertakings.

The amended Regulations were registered on 4 July 2012 and published in the Canada Gazette, Part II, Vol. 146, No. 15 on 18 July 2012 (SOR/2012-143). They come into force on 1 September 2012. A copy of the amended Regulations is attached to this regulatory policy.

Introduction

1. In Broadcasting Regulatory Policy 2012-154, the Commission established a new mechanism for the funding of local expression by broadcasting distribution undertakings (BDUs). In Broadcasting Notice of Consultation 2012-288, the Commission called for comments on proposed amendments to the *Broadcasting Distribution Regulations* (the Regulations) to implement this new mechanism.

Comments

2. The Commission received comments from MTS Allstream Inc. (MTS Allstream) and Rogers Communications Partnership (Rogers). The complete record for this proceeding is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."
3. MTS Allstream supported the proposed amendments, while Rogers expressed concerns with the policy set out in Broadcasting Regulatory Policy 2012-154 as it relates to funding for closed captioning and funding in markets experiencing revenue declines.
4. Specifically, Rogers recommended that the Commission revise section 34(7) of the Regulations to extend the funding mechanism for closed captioning indefinitely, rather than until the end of the current licence term. Rogers argued that if this funding were not available in subsequent licence terms, BDU licensees would be

required to redirect a significant portion of their programming budgets to support the cost of closed captioning, which would result in less community programming.

5. Rogers also recommended that the Commission revise section 34(6) of the Regulations to ensure that contribution levels to community channels remain stable. Rogers argued that locking contributions at 1.5% once a BDU crosses the threshold would not accomplish the stated goal of providing stable funding for community channels because of the potential for a decline in revenues.

Commission's analysis and decision

6. The Commission notes the concerns raised by Rogers, but considers that they are outside the scope of the proceeding initiated by Broadcasting Notice of Consultation 2012-288, given that it was not intended to seek comments on the policy itself.
7. Based on the record of this proceeding, the Commission considers that the proposed amendments set out in Broadcasting Notice of Consultation 2012-288 are appropriate and has accordingly adopted them.
8. The amendments give effect to the following aspects of Broadcasting Regulatory Policy 2012-154:
 - The maximum dollar contribution to local expression by each licensed terrestrial BDU will be based on the amount contributed by the licensee during the broadcast year ending 31 August 2010. This amount will be adjusted yearly for inflation based on the annual Canadian consumer price index, as reported for the period ending 31 December of the preceding calendar year (the adjusted 2010 contribution).
 - Once the adjusted 2010 contribution represents 1.5% of the licensee's gross revenues derived from broadcasting activities, the allowable contribution to local expression will move to a percentage formula of 1.5% of a BDU's gross revenues derived from broadcasting activities.
 - If a BDU's revenues remain at or below the 2010 levels, the maximum allowable contribution of the licensee to local expression would represent the lesser of 2% of the licensee's current year's gross revenues derived from broadcasting activities or the adjusted 2010 contribution.
 - The allowable contribution to local expression for BDUs licensed to serve a licensed area in or after 2010 (i.e., new entrants) will be 1.5% of gross annual revenues from broadcasting activities.
 - During the licence term in effect on the date the regulations come into force, BDUs may direct the difference between the adjusted 2010 contribution and 1.5% of the licensee's gross revenues derived from broadcasting activities, to a

maximum of 0.5% of the licensee's gross revenues derived from broadcasting activities, to the following initiatives:

- certified independent production funds of their choice, the Canada Media Fund or both, as currently provided for under section 34 of the Regulations; and
 - the closed captioning of local expression.
9. In the case of BDUs that have undergone changes in structure and size, the Commission will consider factors such as the current allowable contribution levels and the subscriber levels of the undertaking in determining the allowable contribution level.
 10. BDUs will continue to be required to make their contributions under the proposed amendments, in accordance with sections 36 and 37 of the Regulations.
 11. In light of the above, the Commission has adopted the proposed amendment to section 34(4) of the Regulations as published in Broadcasting Notice of Consultation 2012-288. The amended Regulations were registered on 4 July 2012 and published in the *Canada Gazette*, Part II, Vol. 146, No. 15 on 18 July 2012 (SOR/2012-143). They come into force on 1 September 2012. A copy of the amended Regulations is attached to this regulatory policy.

Secretary General

Related documents

- *Call for comments on proposed amendments to the Broadcasting Distribution Regulations – Provisions relating to local expression*, Broadcasting Notice of Consultation CRTC 2012-288, 14 May 2012
- *Revised approach regarding contributions by broadcasting distribution undertakings to local expression*, Broadcasting Regulatory Policy CRTC 2012-154, 15 March 2012

Appendix to Broadcasting Regulatory Policy CRTC 2012-392

Regulations Amending the Broadcasting Distribution Regulations

AMENDMENT

1. Subsection 34(4) of the *Broadcasting Distribution Regulations*¹ is replaced by the following:

(4) The following definitions apply in this subsection and in subsections (5) to (7).

“adjusted 2010 contribution” means the lesser of the following amounts adjusted yearly for inflation based on the Consumer Price Index, as reported for the period ending December 31 of the previous calendar year:

(a) 2% of the licensee’s gross revenues derived from broadcasting activities in the 2010 broadcast year, and

(b) the licensee’s actual contribution to local expression in the 2010 broadcast year.

(contribution 2010 rajustée)

“Consumer Price Index” means the annual average all-items Consumer Price Index for Canada (not seasonally adjusted) that is published by Statistics Canada. *(indice des prix à la consommation)*

“threshold year” means the first broadcast year after August 31, 2012, in which 1.5% of a licensee’s gross revenues derived from broadcasting activities is equal to or greater than the licensee’s adjusted 2010 contribution. *(année de seuil)*

“2010 broadcast year” means the broadcast year ending August 31, 2010. *(année de radiodiffusion 2010)*

“2010 licensee” means a licensee that held a licence in respect of a licensed area for the entire 2010 broadcast year. *(titulaire de 2010)*

(5) Except as otherwise provided under a condition of its licence, if a licensee distributes its own community programming on the community channel in the licensed area, the licensee shall make, for each broadcast year, a contribution to Canadian programming that is equal to 5% of its gross revenues derived from broadcasting activities in the broadcast year less any allowable contribution to local expression made by the licensee in that broadcast year.

(6) In subsection (5), “allowable contribution to local expression” means

¹ SOR/97-555

(a) in respect of a 2010 licensee,

(i) for each broadcast year before the threshold year, a maximum contribution to local expression that is equal to the lesser of

(A) 2% of the licensee's gross revenues derived from broadcasting activities in the broadcast year, and

(B) the licensee's adjusted 2010 contribution, and

(ii) for the threshold year and for each subsequent broadcast year, a maximum contribution to local expression that is equal to 1.5% of the licensee's gross revenues derived from broadcasting activities in the broadcast year; and

(b) in respect of a licensee other than a 2010 licensee, for each broadcast year, a maximum contribution to local expression that is equal to 1.5% of the licensee's gross revenues derived from broadcasting activities in the broadcast year.

(7) For each broadcast year in the remainder of the term of any licence that is in effect on September 1, 2012, the allowable contribution to local expression referred to in subsection (5) may include an additional contribution if it is directed to closed captioning for local expression and

(a) in the case of a 2010 licensee, that additional contribution does not exceed the lesser of

(i) 2% of the licensee's gross revenues derived from broadcasting activities in the broadcast year less the licensee's adjusted 2010 contribution, and

(ii) 0.5% of the licensee's gross revenues derived from broadcasting activities in the broadcast year; and

(b) in the case of a licensee other than a 2010 licensee, that additional contribution does not exceed 0.5% of the licensee's gross revenues derived from broadcasting activities in the broadcast year.

COMING INTO FORCE

2. These Regulations come into force on September 1, 2012.