



Broadcasting Regulatory Policy CRTC 2012-481

PDF version

Route reference: 2011-363

Ottawa, 7 September 2012

Code of Best Practices for Community Television Access Programming

*The Commission **approves**, with some amendments, the Code of Best Practices for Community Television Access Programming (the Code) as developed by an industry working group.*

The Code provides guiding principles with respect to access programming for broadcasting distribution undertakings; sets expectations for individuals or groups that wish to produce access programming; and sets out best practices with respect to outreach, dispute resolution and program rights.

Background

1. In Broadcasting Regulatory Policy 2010-622 (the Community Television Policy), the Commission mandated a working group comprising representatives from the major broadcasting distribution undertakings¹ (BDUs) to develop a code of best practices on access programming (the Code).
2. In the Community Television Policy, the Commission stated that the purpose of the Code would be to ensure that a licensee's "decision-making with respect to access programming promotes fair and consistent practices at all times and throughout each individual system." The Commission also requested that the Code state what can be expected from individuals or groups that wish to produce access programming, as well as what types of access programming are acceptable.
3. The working group submitted a draft Code to the Commission in February 2011. The Canadian Association of Community Television Users and Stations (CACTUS) and the Fédération des télévisions communautaires du Québec (FTCAQ) were consulted and filed written comments, which were added to the public file.

The proceeding

4. In Broadcasting Notice of Consultation 2011-363, the Commission issued a call for comments in which it invited parties to comment on the draft Code (the call). In that

¹ Rogers Communications Inc., Shaw Communications Inc., Cogeco Cable Inc., Bragg Communications Incorporated, carrying on business as Eastlink, Quebecor Media Inc. and the Canadian Cable Systems Alliance Inc.

notice, the Commission also asked parties to propose an effective dispute resolution process.

5. The Commission received and considered a number of comments in response to the call. The public record for this proceeding is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Commission's analysis and decisions

6. After examining the public record for this proceeding in light of applicable regulations and policies, the Commission considers that the issues it must address are the following:
 - the overall approach of the Code;
 - the implementation of a dispute resolution process;
 - the allocation of program rights;
 - the applicability of the Code to outlets for community expression hosted by video-on-demand (VOD) services; and
 - whether the Code should be imposed as a condition of licence on BDUs operating a community channel.

Overall approach of the Code

7. In their response to the call for comments, CACTUS and others submitted that the Code as drafted is too general. In this regard, the Commission notes that the Community Television Policy introduced specific new regulatory requirements that define access programming and that determine the amount of access programming to be exhibited as well as the amount of programming expenditures to be allocated to access programming. The Commission is of the view that the Code should complement the Community Television Policy by setting out general principles accepted by all BDUs offering community programming. Further, the Commission considers that the Code should clearly indicate how BDUs will meet their regulatory obligations regarding access programming and what will be expected of access producers who wish to provide community programming.
8. The Commission is of the view that the Code drafted by the working group generally succeeds in meeting the above objectives. However, based on the comments received, the Commission considers that the Code should be amended in order to clarify the process for resolving any disputes regarding access programming; set out general principles with respect to rights to access programs; and ensure that the Code is applicable to all licensees that provide community programming.

Implementation of a dispute resolution process

Summary of comments

9. In their comments, several BDUs argued that there is no demonstrated need for complex and expensive dispute resolution mechanisms, since the number of complaints received remains very marginal. In this regard, BDUs stated that they are opposed to recourse involving the Canadian Broadcast Standards Council (CBSC). Instead, they suggested an approach whereby any disputes regarding access that cannot be resolved locally would be forwarded to the Commission for resolution.
10. For its part, Rogers Communications Inc. (Rogers), who filed comments on behalf of the working group, suggested that a local, licensee-funded arbitrator should be used if the complaint is not resolved satisfactorily between the licensee and the access producer.
11. CACTUS also opposed the use of the CBSC to resolve disputes, supporting instead the use of community advisory committees and/or a national body such as CACTUS or the FTCAQ.

Commission's analysis

12. The Commission agrees with the BDUs that there is no evidence of a significant number of access-related complaints over the past five years. In light of this fact, the Commission is of the view that setting up a complex or expensive system for resolving access disputes is not the most effective use of resources for community programming. Nevertheless, the Commission considers that the Code should set out a clear, fair and effective method for resolving disputes. In the Commission's view, Rogers' proposal is an effective and cost-effective method of dealing with disputes. Accordingly, the Code sets out the following dispute resolution process:

- *Step 1: Local Resolution*

In the event of a dispute regarding access programming, the parties should make every effort to resolve the matter through discussions between the local BDU licensee and the access producer. Mechanisms for resolving disputes locally may vary from licensee to licensee. In many cases, it may be appropriate for the parties to make use of existing feedback mechanisms, such as community advisory boards, to assist in resolving disputes. The licensee must initiate a local resolution process within 30 days of receiving a written complaint from an access producer.

- *Step 2: Local Arbitration*

In the event that Step 1 fails to resolve the matter within 90 days of receipt of a written complaint, the parties shall submit the unresolved dispute to local arbitration after the expiration of those 90 days, in accordance with the Local Arbitration Rules set out in Appendix 2 to *Code of Best Practices for*

Community Television Access Programming, Broadcasting Regulatory Policy CRTC 2012-481, 7 September 2012. A local arbitrator—acceptable to both parties—will be appointed. The arbitrator will be a neutral third party and the licensee will pay any expenses related to the arbitration process. The arbitrator will be empowered to issue a binding decision. Expenses related to local arbitration may not be used to fulfill the licensee’s expenditure obligations with respect to access programming under the *Broadcasting Distribution Regulations*.

13. The Commission intends to conduct, no sooner than five years from the date of the present regulatory policy, through a public process, a review of this dispute resolution process in order to evaluate its effectiveness and to determine whether changes are necessary.

Allocation of program rights

Summary of comments

14. Several parties commented that the Code as submitted by the working group made no reference to how rights to access programs would be allocated.
15. CACTUS and several other access producers proposed that the Code make it clear that access producers should retain all rights to their work, regardless of the extent to which the BDU has assisted with the production. CACTUS further recommended that while the BDU should have the unlimited right to replay the program locally, the access producer should have the rights to exhibit the finished production on any other platform without restriction. This approach was also supported by MTS Inc.² (MTS).

Commission’s analysis

16. The Commission is of the view that the Code should include a section addressing rights relating to access programming. The Commission considers that rights are an issue that may give rise to disputes and that the Code should therefore set out clear principles that will provide guidance in the case of arbitration. Specifically, the Code should address the following points:
 - Access producers should retain all rights to their work.
 - The contributions made by a licensee to an access production—whether financial or in kind—do not confer on the licensee any rights to the production other than the right to make it available to the public on its community channel(s) for unlimited broadcast or on its community VOD platform for unlimited play.

² On 1 January 2012, MTS Allstream Inc. changed its name to MTS Inc.

- The access producer should have the right to exhibit the production on any other platform without restriction, including other platforms that may provide service to viewers in the BDU's local service area.
- The licensee should not have the right to broadcast an access program on any affiliated television programming undertaking without the permission of the access producer.
- Any revenues earned by a licensee in relation to an access program should be invested in local expression within the same service area.

Applicability of the Code to outlets for community expression hosted by video-on-demand services

17. In its comments, MTS pointed out that community VOD services, such as the one that it offers, would not be covered by the draft Code as submitted by the working group since the proposed Code refers only to cable community channels.
18. The Commission is of the view that this exclusion was not intentional. It has therefore amended the wording so that it is clear that the Code's principles apply to all outlets for local expression offered by licensed BDUs.

Should the Code be imposed as a condition of licence on BDUs operating a community channel?

19. In the Community Television Policy, the Commission noted that adherence to the Code may be imposed as a condition of licence on all licensed BDUs operating a community channel.
20. In order to encourage the development and the continuation of cooperative relationships between BDUs and access programming producers, the Commission is of the view that a non-legally binding Code is appropriate. Accordingly, the Commission will not impose the Code by condition of licence at this time.

Conclusion

21. In light of the above, the Commission **approves** the amended Code of Best Practices for Community Television Access Programming. The amended Code is set out in Appendix 1 to the present regulatory policy. The Local Arbitration Rules noted in paragraph 12 above are set out in Appendix 2.

Secretary General

Related documents

- *Call for comments on a proposed code of best practices for access programming on cable community channels*, Broadcasting Notice of Consultation CRTC 2011-363, 7 June 2011
- *Community Television Policy*, Broadcasting Regulatory Policy CRTC 2010-622, 26 August 2010

Appendix 1 to Broadcasting Regulatory Policy CRTC 2012-481

Code of Best Practices for Community Television Access Programming

Objectives

- To pursue the commitment to fair and consistent practices in the spirit of the long-recognized best efforts of outlets for local expression to meet the legitimate aspirations of Canadians who wish to participate in community-based television production.
- To broadcast locally-reflective programming produced and presented by community and in-house sources, as well as by the co-operative efforts of the two.
- To ensure fair and equitable access policies for individuals and groups that wish to express their views on the community outlet for local expression within legal and regulatory guidelines.
- To reach out to community members in an effort both to publicize access opportunities and to offer training intended to better prepare volunteers to participate in all aspects of the development, preparation and presentation of high quality community programming.

Guiding Principles

Community outlets for local expression shall actively promote free access to community channels by community members.

While striving to maximize free access, community television operators must also comply with all laws, regulations and policies governing content, taste, community reflection and diversity of voices. As such, in addition to acting as advisors and facilitators, they will also be responsible for monitoring all content that airs on the broadcasting distribution undertaking (BDU) outlet for local expression.

In coordinating access to its facilities, community television operators will ensure compliance with the *Broadcasting Act*, Commission regulations and other relevant Canadian laws. Community television operators need not grant access to program proposals that could jeopardize the terms and conditions of their licences.

Community television operators shall further be guided by the following criteria, in combination with one another. No single criterion taken separately necessarily constitutes sufficient grounds for granting or refusing access.

- a. Program proposals must be within the capabilities of the human, technical and financial resources available and the licensee's desire to maximize access opportunities.

- b. Proposed programs should be relevant to some element of the community served. The licensee shall make reasonable efforts to ensure that access programming as a whole reflects the socio-cultural composition of the service area.
- c. The particular topic proposed for production should be such that television is an effective medium for presentation.
- d. Proposals should be such that programs can be produced and aired in timeframes that are reasonable in the circumstances.
- e. Criteria for access programming:
 - 1) The idea for an access program must originate from a community member not employed by the BDU.
 - 2) A 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 or writing).
- f. At any time, the licensee may assist in training and supporting community members in the production and distribution of access programming with the access producer exercising creative control within established parameters.
- g. The licensee will ensure access programs are scheduled in a reasonable manner throughout the broadcast day, including the peak viewing period (7:00 p.m.-11:00 p.m.).

Outreach

A community television service's unique identity and reputation are enhanced as it reaches out to involve local groups and individuals, and in the efforts it makes to provide them with access to its programming and production facilities.

Accordingly, interested individuals or groups within the community shall, to the extent possible, be given a fair and reasonable opportunity to access the community television service or use its facilities. Although this does not ensure an automatic right to enjoy such privileges, in an effort to encourage, develop and increase access, the terms and conditions set down by BDUs shall be as flexible as possible, keeping in mind community values, content accountability and the dictates of Canadian law and regulation in general.

To build public awareness of the community service, licensees shall regularly promote and publicize the availability and objectives of their community television service's access opportunities. Licensees can choose to do so through a variety of means, including but not limited to:

- televised public service announcements;
- social media campaigns;
- town hall meetings;
- “open house” days; or
- paid advertisements.

Consistent with their means, licensees will provide adequate training for volunteers to ensure they may more effectively participate in the production and presentation of high quality community programming. Training will be provided free of charge on a number of different levels, including but not limited to:

- workshops;
- internships and co-operative education placements;
- online seminars;
- job shadowing; or
- how-to videos.

These training opportunities will be promoted through various channels including those listed in the paragraph about public awareness tactics above.

Dispute resolution

It is mutually beneficial for BDUs and community access producers to work together cooperatively to create community television programming. If disagreements should arise, it is expected that both BDUs and producers would try to resolve the matters together. The resolution of any dispute must be consistent with the principles set out in this Code. Disputes with respect to access programming will be dealt with in two steps:

Step 1: Local Resolution

In the event of a dispute regarding access programming, the parties must make every effort to resolve the matter through discussions between the local BDU licensee and the access producer. Mechanisms for resolving disputes locally may vary from licensee to licensee. In many cases, it may be appropriate for the parties to make use of existing feedback mechanisms, such as community advisory boards, to assist in resolving

disputes. The licensee must initiate a local resolution process within 30 days of receiving a written complaint from an access producer.

Step 2: Local Arbitration

In the event that Step 1 fails to resolve the matter within 90 days of receipt of a written complaint, the parties shall submit the unresolved dispute to local arbitration after the expiration of those 90 days, in accordance with the Local Arbitration Rules set out in Appendix 2 to *Code of Best Practices for Community Television Access Programming*, Broadcasting Regulatory Policy CRTC 2012-481, 7 September 2012. A local arbitrator—acceptable to both parties—will be appointed. The arbitrator will be a neutral third party and the local licensee will pay any expenses related to the arbitration process. The arbitrator will be empowered to issue a binding decision. Expenses related to local arbitration may not be used to fulfil the licensee’s expenditure obligations with respect to access programming under the *Broadcasting Distribution Regulations*.

Rights to Access Programming

The production of access programming involves close cooperation between the independent access producer and the local BDU. Most access productions are intended for distribution only by the local BDU. Nevertheless, there may be circumstances where an access production could be made available to another distributor or programming undertaking, or on another platform other than that controlled by the local BDU. In such circumstances, the following principles should be adhered to:

- Access producers should retain all rights to their work.
- The contributions made by a licensee to an access production—whether financial or in kind—do not confer on the licensee any rights to the production other than the right to make it available to the public on its community channel(s) for unlimited broadcast or on its community video-on-demand platform for unlimited play.
- The access producer should have the right to exhibit the production on any other platform without restriction, including other platforms that may provide service to viewers in the BDU’s local service area.
- The licensee should not have the right to broadcast an access program on any affiliated television programming undertaking without the permission of the access producer.
- Any revenues earned by a licensee in relation to an access program should be invested in local expression within the same service area.

Appendix 2 to Broadcasting Regulatory Policy CRTC 2012-481

Local Arbitration Rules

Article 1 Arbitration under these Rules

1.1 The purpose of these Rules is to provide a cost-effective, simple procedure for parties to a dispute who wish to achieve a prompt, practical and just resolution.

1.2 Where these Rules require that a communication be in writing, email and facsimile correspondence are acceptable unless otherwise stated.

1.3 These Rules may be varied by agreement, in writing, of the parties to the dispute.

Article 2 Starting the Arbitration

2.1 If the parties do not resolve some or all of the issues in dispute through Local Resolution (Step 1) within 90 days of receipt of the complaint, the parties shall submit those issues to arbitration after the expiration of those 90 days.

2.2 The arbitration shall be commenced by a written request for arbitration by a party (the “Claimant”), served upon the other party (the “Respondent”).

2.3 Arbitral proceedings shall be deemed to commence on the date on which the request for arbitration is received by the Respondent.

2.4 The request for arbitration shall set out the nature of the claim(s) and the nature of the relief sought.

Article 3 Selection of Arbitrator(s)

3.1 There shall be one arbitrator, unless the parties agree to a panel of three arbitrators.

3.2 The parties are free to agree on a procedure of appointing the arbitrator(s). Failing such agreement, the procedures set out in 3.4 shall be followed.

3.3 The arbitrator(s) shall be selected jointly by the parties within five days of the receipt of the request for arbitration.

3.4 In the event the parties are unable to agree upon the arbitrator(s) within the time period specified in 3.3, each party shall prepare and submit to the other party a list of three preferred candidate arbitrators, in order of preference, within 10 days of receipt of the request for arbitration.

- (a) If there are one or more common candidates among the parties' lists, the parties shall mutually select one of them as the arbitrator, taking the

parties' order of preference into account, within five days of receipt of the parties' lists of arbitrators.

- (b) If there are no common candidates, or if the parties cannot agree on an arbitrator, the parties shall rank all candidates in order of preference, with a "1" indicating a party's first choice (highest ranking), a "2" indicating a party's second choice, and so on. The parties shall then tally the results and select, within five days of receipt of the parties' lists of arbitrators, the arbitrator ranked the highest by the parties.

3.5 In the event the parties fail to select an arbitrator within the time period specified in 3.4, either party may apply to a court of competent jurisdiction in the province or territory in which the community access producer is located to have an arbitrator appointed.

3.6 If a vacancy arises, the vacancy shall be filled by the method by which that arbitrator was originally appointed, provided that, if a vacancy arises during or after the hearing on the merits, the remaining arbitrator(s) may proceed with an arbitration and render an award.

Article 4 Independence and Impartiality

4.1 Unless otherwise agreed by the parties after full disclosure, every arbitrator shall not act as an advocate for any party to the arbitration, and shall be and shall remain at all times during the arbitration wholly independent, wholly impartial, and free of any personal interest or other conflict of interest in respect of the arbitration.

Article 5 Procedure

5.1 The procedure to be followed for the conduct of the arbitration shall be agreed to by the parties. This may include, without limitation, agreement as to:

- a) the time, date, and location of the arbitration, and the responsibilities for the arrangement of the premises for the proceedings;
- b) the language of the arbitration;
- c) whether the arbitrator will conduct the arbitration in writing only, or whether an oral hearing is needed;
- d) the estimated length of time the hearing might take;
- e) rules governing the communications between the arbitrator(s) and parties;
- f) the applicable rules of law to be applied by the arbitrator(s) to the merits of the dispute;

- g) the procedure for any exchange, by the parties, of the information upon which they intend to rely in any oral or written presentation during the arbitration;
- h) whether a stenographic record or any other type of recording should be kept, or if any particular services, such as interpreters, should be provided;
- i) the dates for the completion of all procedural matters; and
- j) any other matters relevant to the conduct of the arbitration.

5.2 Failing such agreement, the procedure to be followed for the conduct of the arbitration shall be determined by the arbitrator(s) after consultation with the parties.

Article 6 Arbitral Award

6.1 When there is a panel of arbitrators, an award shall be made by a majority decision.

6.2 The arbitral award shall be in writing and include the reasons upon which it is based.

6.3 The arbitral award shall be final and binding on the parties.

6.4 The parties undertake to carry out any award without delay.

Article 7 Fees and Expenses

7.1 Each party will be responsible for its own costs and expenses for participating in the arbitration, such as the cost of their own legal counsel and personal travel, unless otherwise agreed by the parties.

7.2 Fees and expenses of the arbitrator and all administrative costs of the arbitration, such as the cost of a meeting room, if any, shall be borne by the local licensee.

7.3 Fees and expenses related to the arbitration may not be used by a local licensee to fulfill its expenditure obligations with respect to access programming under the *Broadcasting Distribution Regulations* (SOR/97-555).

Article 8 Privacy and Confidentiality

8.1 The arbitration shall be private and confidential.

8.2 The arbitrator(s), the parties, and any other persons who accompany the parties to the arbitration shall keep confidential and shall not disclose to any non-party the information, documents, and communications that were created, disclosed, received, or made available in connection with the arbitration. The

arbitrator(s), the parties, and any other persons who accompany the parties to the arbitration shall sign a confidentiality and non-disclosure agreement, in writing, to this effect.