



## Broadcasting Regulatory Policy CRTC 2017-279

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Reference: 2016-385

Ottawa, 4 August 2017

### ***Discretionary Services Regulations***

*The Commission announces that it has made the Discretionary Services Regulations (the Regulations). These Regulations merge the Pay Television Regulations, 1990 and the Specialty Services Regulations, 1990 into a single set of regulations to reflect the Commission's determination in the Let's Talk TV proceeding to streamline the licensing of programming services.*

*The Regulations will be published in the Canada Gazette, Part II, and will come into force on 1 September 2017, with the exception of the Schedules, which will come into force on 1 September 2018.*

### **Introduction**

1. The Commission announces that it has made, with some changes, the proposed *Discretionary Services Regulations* (the Regulations) set out in the appendix to Broadcasting Notice of Consultation 2016-385 (the Notice).
2. These Regulations merge the *Pay Television Regulations, 1990* (Pay TV Regulations) and the *Specialty Services Regulations, 1990* (Specialty Services Regulations) into a single set of regulations to reflect the Commission's determination in the Let's Talk TV proceeding to streamline the licensing of programming services.
3. The Regulations will be published in the *Canada Gazette*, Part II, and will come into force on 1 September 2017, with the exception of the Schedules, which will come into force on 1 September 2018. A copy of the Regulations is provided in the appendix to this regulatory policy.
4. The Commission received several interventions in response to its call for comments on a number of issues, including the following key issues:
  - the definition of “commercial message”;
  - Canadian content requirements;
  - undue preference provisions;
  - key figures; and
  - applicability of dispute resolution provisions.

The public record for this proceeding can be found on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca).

5. The Commission has reviewed the comments and has made changes to the Regulations to address some of the concerns raised by interveners, as well as to maintain internal consistency, correct errors and ensure consistent meaning between the English- and the French-language versions. The present regulatory policy sets out its determinations on the key issues, as well as its interpretation of certain sections of the Regulations to clarify any outstanding ambiguity.

## **Definition of “commercial message”**

### **Positions of parties**

6. The Canadian Broadcasting Corporation (CBC), the Independent Broadcasting Group (IBG) (supported by DHX Television Ltd. (DHX), Ethnic Channels Group Limited (ECGL)) and Blue Ant Media Inc. (Blue Ant) submitted that the deletion of the phrase “broadcast in a break within a program or between programs” from the definition of “commercial message” is problematic because it results in the definition capturing non-traditional advertising. They claimed that the logging requirements in section 8(1)(c)(iii) of the proposed Regulations appear to require licensees to log the time and duration of all advertising material, including non-traditional advertisements (i.e. those imbedded within a program), which would be inconsistent with the existing policy and create an undue administrative burden. They therefore proposed that the Commission continue to use the existing definition.

### **Commission's analysis and decisions**

7. The phrase “broadcast in a break within a program or between programs” is currently included in the definition of “commercial message” in both the Pay TV Regulations and Specialty Services Regulations, as well as in the *Television Broadcasting Regulations, 1987* (TV Regulations). This language captures traditional advertising, and the term is used in various places throughout these sets of regulations, including in the definition of “advertising material.”
8. In drafting the Regulations, the Commission proposed that, in some instances, commercial messages broadcast within the program itself (i.e. non-traditional advertising that is embedded in the program) should be included in the definition. Accordingly, in the notice, the Commission proposed that the definition of “commercial message” set out in the Regulations capture the broader intent and be limited to traditional advertising only where necessary.
9. As a result, the phrase “broadcast in a break within a program or between programs” has been removed from the definition of “commercial message” and placed within the relevant substantive provisions.

10. In the case of the logging requirements set out under section 8(1)(c) of the Regulations, it appears that what was proposed in the Notice inadvertently required licensees to log non-traditional advertising material. This requirement does not reflect the status quo and would be burdensome for licensees. Accordingly, the Commission has amended section 8(1)(c)(iii) to better reflect the intent to maintain the status quo.

## **Canadian content requirements**

### **Positions of parties**

11. In their interventions, Rogers Media Inc. (Rogers) and Corus Entertainment Inc. (Corus) submitted that the calculation of time devoted to programs has always included all advertising material as well as those elements that are excluded from the definition of advertising material. They also submitted that there is no indication that the Commission intends to amend the manner in which specialty services have historically calculated the time they devote to the broadcast of Canadian programs.
12. The IBG (supported by DHX and ECGL), Blue Ant and Knowledge-West Communications Corporation indicated that the timing of the implementation is problematic for independent Category B services since they are currently subject to conditions of licence relating to Canadian content, including in the evening broadcast period, and their licences will not be renewed until 2018. As such, Category B services belonging to large ownership groups will have a competitive advantage, given that their licences were renewed as of 1 September 2017 and will no longer be subject to those conditions of licence. As such, they proposed that independent Category B services be allowed to apply to amend their existing conditions of licence to remove these Canadian content requirements and be only subject to the Regulations.
13. ECGL and the IBG (supported by DHX) expressed concern that the Commission had removed evening broadcast requirements for Canadian content for English- and French-language services but had retained such a requirement for third-language services.

### **Commission analysis and decision**

14. Canadian content requirements for pay and specialty services were previously imposed by condition of licence. The calculation of the time devoted to the broadcast of Canadian programs has traditionally been treated as including advertising material, similar to the way it is calculated under the TV Regulations.
15. As part of the Let's Talk TV proceeding, the Commission decided to standardize the requirement for all discretionary services and require that 35% of the broadcast year be devoted to the broadcast of Canadian programs. It did not intend to alter the way in which the time devoted to the broadcast of Canadian programs was calculated. However, as published in the Notice, the proposed wording unintentionally altered that calculation such that it appeared that advertising material is excluded from the

calculation. To correct this oversight, the Commission has amended sections 2(1) and 2(3) of the Regulations to better reflect the intention to maintain the status quo.

16. With respect to the issue of licensees of independent Category B services being subject to additional Canadian content requirements, the Commission confirms that it will consider applications to amend or remove existing conditions of licence.
17. As regards the evening broadcast period for third-language services, it is clear that no distinction was made between English-language/French-language and third-language services in Broadcasting Regulatory Policy 2015-86. As such, the same framework should apply to both. To correct this oversight, the Commission has deleted section 2(2)(b) of the Regulations.

## **Undue preference provisions**

### **Positions of parties**

18. The CBC, Rogers, Shaw Communications Inc. (Shaw), Quebecor Media Inc. (Quebecor), Blue Ant, Corus and the IBG (supported by DHX and ECGL) submitted that pay and specialty services have always acquired exclusive rights to their programs. These interveners argued that restrictions on exclusive programming rights are inconsistent with the current program acquisition practices and would render them commercially unviable.
19. Further, they claimed that a provision in the Pay TV Regulations prohibited pay and on-demand licensees from acquiring exclusive rights to pay-per-view (PPV) programming and that this provision does not apply to linear discretionary services because they neither broadcast PPV programming nor distribute programs. According to these interveners, if it is the Commission's intent to prevent on-demand services from obtaining exclusive rights, there is no need to include the prohibition in the Regulations given that they are already subject to a condition of licence to that effect.

### **Commission analysis and decision**

20. The Pay TV Regulations include a provision whereby the acquisition of exclusive rights by PPV services constitutes an undue preference. Given the streamlining of categories of licences, in drafting the Regulations, this provision was extended to the broader categories of discretionary services and on-demand services.
21. Upon further reflection, it is clear that the underlying rationale for the original provision does not apply to linear discretionary services. The Commission considers that the general undue preference provision (section 11(1) of the proposed Regulations) is sufficient to address any concerns that may arise in respect of discretionary services, and the standard conditions of licence for on-demand services contain a provision prohibiting the acquisition of exclusive rights by those services.
22. Accordingly, the Commission has deleted sections 11(3) and 11(4) of the Regulations relating to the acquisition of exclusive rights by on-demand services.

## **Key figures**

### **Positions of parties**

23. Bell Media Inc. (Bell), Rogers, Quebecor and Corus expressed concern that they would not be able to implement the proposed changes to the key figures by 1 September 2017, citing issues regarding software, cost and time. Bell proposed that the amendments to the key figures come into force on 31 December 2017. Corus added that it might not be able to implement the changes until it is fully aware of the changes to be made to the TV Regulations, as television stations use the same reporting system.
24. Rogers indicated that adequate information is presently captured through the existing key figures for specialty and pay services, and that either of these sets of key figures could be made applicable to the new discretionary services category without the expense of a systems upgrade. In the alternative, Rogers requested that the Commission harmonize all newly developed logging practices for television and discretionary services and conduct an industry consultation to ensure changes are cost effective, streamlined, efficient and not administratively burdensome.
25. Several parties also raised other concerns with respect to the numbering and other specifics of the key figures.

### **Commission' analysis and decision**

26. Listed under the Schedules of the proposed Regulations, the key figures set out the alphanumeric characters that are to be used by discretionary services when completing their logs. In the interest of maximizing administrative efficiencies for undertakings, the Commission has attempted to ensure consistency between the key figures in the Regulations and those proposed for television stations under the TV Regulations.<sup>1</sup>
27. The Commission notes three distinctions between the key figures for the Regulations and those for the TV Regulations:
  - 1) With respect to the descriptive language used under Item 4 – Production Source, the Regulations use the term “Discretionary service (licensee),” while the TV Regulations use the term “TV station (licensee).”
  - 2) The key figures in the TV Regulations include a logging requirement related to locally relevant programming. This logging requirement has been excluded from the Regulations since it does not pertain to discretionary services.

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<sup>1</sup> See Broadcasting Notice of Consultation 2017-50 and Broadcasting Regulatory Policy 2017-278.

- 3) Category 15 – Filler programming, set out under Item 6 of the Regulations, has been excluded from the TV Regulations given that it is not relevant to television stations.
28. The Commission acknowledges that the changes to key figures are substantial, and that significant time and resources will be required to make the necessary changes. In light of the concerns raised by the interveners, the Commission finds it appropriate to delay the coming into force of the revised key figures until **1 September 2018**. In the meantime, undertakings should continue to use the key figures for pay and specialty services that they were using prior to the coming into force of these Regulations.
29. In addition, the Commission has made certain minor amendments to the key figures to respond to specific points raised, including:
- amending some of the numbering; and
  - deleting the phrase “which has been exhibited during the complete length of the program” from audio description set out in Part B of Schedule 2.

## **Applicability of dispute resolution provisions**

### **Positions of parties**

30. TELUS Communications Company (TELUS) expressed concern that no dispute resolution process is provided for disputes between on-demand services and programming undertakings. TELUS submitted that the omission of a reference to on-demand operators is inconsistent with Commission determinations flowing from Broadcasting Notice of Consultation 2016-225 and Broadcasting Decision 2011-48, and leaves negotiations for on-demand programming beyond the scope of Commission dispute resolution.

### **Commission’s analysis and decision**

31. Sections 14 and 15 of the proposed Regulations provide a formal dispute resolution process for disputes between BDUs and programming undertakings as is presently set out in the Pay TV Regulations and the Specialty Services Regulations. While the issue raised by TELUS is beyond the scope of this proceeding given that comments were not sought on extending the dispute resolution process in this manner, the Commission is of the view that TELUS may have a valid concern, particularly when an independent BDU is negotiating with a vertically integrated programming undertaking for content for the independent BDU’s on-demand service.
32. Accordingly, in Broadcasting Notice of Consultation 2017-280, also published today, the Commission has called for comments on whether it would be appropriate to add provisions to the Regulations to provide for dispute resolution between video-on-demand operators and programming services.

Secretary General

## Related documents

- *Amendments to the Broadcasting Distribution Regulations and the Television Broadcasting Regulations, 1987 regarding local and community television, and financial support, logging requirements and Canadian exhibition requirements for over-the-air television stations*, Broadcasting Regulatory Policy CRTC 2017-278, 4 August 2017
- *Call for comments on measures to provide for dispute resolution between video-on-demand operators and programming services*, Broadcasting Notice of Consultation CRTC 2017-280, 4 month 2017
- *Call for comments on proposed amendments to the Broadcasting Distribution Regulations and the Television Broadcasting Regulations, 1987*, Broadcasting Notice of Consultation CRTC 2017-50, 24 February 2017
- *Call for comments on Discretionary Services Regulations*, Broadcasting Notice of Consultation CRTC 2016-385, 26 September 2016
- *Renewal of television licences held by large English- and French-language ownership groups – Notice of hearing*, Broadcasting Notice of Consultation CRTC 2016-225, 15 June 2016
- *Let's Talk TV – The way forward – Creating compelling and diverse Canadian programming*, Broadcasting Regulatory Policy CRTC 2015-86, 12 March 2015
- *Complaint by TELUS Communications Company against Videotron Ltd. under section 6.1 of the Pay Television Regulations, 1990; Complaint by Bell Canada against Videotron Ltd. under section 6.1 of the Pay Television Regulations, 1990 and section 9 of the Broadcasting Distribution Regulations and against TVA Group Inc. under section 15 of Television Broadcasting Regulations, 1987*, Broadcasting Decision CRTC 2011-48, 26 January 2011
- *Definitions for television program categories*, Broadcasting Regulatory Policy CRTC 2010-808, 1 November 2010

# Appendix to Broadcasting Regulatory Policy CRTC 2017-279

## Discretionary Services Regulations

### Interpretation

#### Definitions

1 The following definitions apply in these Regulations.

*Act* means the *Broadcasting Act*. (*Loi*)

**advertising material** means any commercial message or programming that promotes a station, network or program but it does not include

- (a) a station or network identification;
- (b) the announcement of an upcoming program that is voiced over credits; or
- (c) a promotion for a Canadian program or a Canadian feature film, even if a sponsor is identified in the title of the program or film or as a sponsor of that program or film, as long as the identification is limited to the sponsor's name and does not include a description, representation or attribute of the sponsor's products or services. (*matériel publicitaire*)

**broadcast year** means the period that begins on September 1 of one year and ends on August 31 of the following year. (*année de radiodiffusion*)

**Canadian program** means a program

- (a) in respect of which a **Canadian film or video production certificate** as defined in section 125.4 of the *Income Tax Act* is has been issued; or
- (b) that qualifies as a Canadian program in accordance with the criteria established by the Commission in
  - (i) Appendix II to Public Notice CRTC [2000-42](#), dated March 17, 2000, entitled *Certification for Canadian Programs — A revised approach*,
  - (ii) the appendix to Broadcasting Regulatory Policy CRTC [2010-905](#), dated December 3, 2010, entitled *Revision of the definition of a Canadian program to include Canadian programs that have been dubbed in Canada and outside Canada*, or
  - (iii) paragraphs 128 to 130 of Broadcasting Regulatory Policy CRTC [2015-86](#), dated March 12, 2015, entitled *Let's Talk TV: The way forward – Creating compelling and diverse Canadian programming*. (*émission canadienne*)

**commercial message** means an advertisement that is intended to sell or promote goods, services, natural resources or activities, including by mentioning or displaying in a list of



prizes the name of a person that is selling or promoting the goods, services, natural resources or activities. (*message publicitaire*)

***exempt distribution undertaking*** means a distribution undertaking whose operator is exempt from one or more of the requirements of Part II of the Act by an order of the Commission made under subsection 9(4) of the Act. (*entreprise de distribution exemptée*)

***key figure*** means a figure formed by a combination of alphanumeric characters set out in column 2 of Schedule 1 that corresponds to the description of the program set out in column 1. (*chiffre clé*)

***licensed*** means licensed by the Commission. (*autorisé*)

***licensee*** means a person that is licensed to carry on discretionary programming undertaking or a discretionary services network. (*titulaire*)

***new programming service*** means a programming service that has not been previously distributed in Canada and includes a high definition version or a new multiplex of an existing programming service. (*nouveau service de programmation*)

***program*** means a program that falls into a category set out in item 6, column 1, of Schedule 1. (*émission*)

***programming*** means anything that is broadcast, but does not include visual images, whether or not combined with sounds, that consist predominantly of alphanumeric characters. (*programmation*)

## **Canadian Programs**

### **Obligation to broadcast Canadian programs**

**(1)** Subject to subsection (2) and except as otherwise provided under a condition of its licence, a licensee shall devote at least 35% of the time that it devotes to broadcasting in a broadcast year to the broadcast of Canadian programs.

### **Licensee that provides third language programming**

**(2)** Except as otherwise provided under a condition of its licence, a licensee that provides a third language service shall devote at least 15% of the time that it devotes to broadcasting in a broadcast year to the broadcast of Canadian programs.

### **Period of time devoted to broadcasting**

**(3)** For the purposes of subsections (1) and (2), the time devoted to the broadcasting of a program includes any time devoted to advertising material.

### **Definition of *third language service***

(4) In subsection (2), *third language service* means a programming service that provides at least 90% of its programming each broadcast week, the first day of which falls on a Sunday, in a language other than English or French exclusive of secondary audio programming and subtitles.

### **Programming Content**

#### **Prohibition — broadcasting of programming**

**3** A licensee shall not broadcast programming that contains

- (a) anything that contravenes an Act of Parliament or of the legislature of a province;
- (b) any abusive comment or abusive pictorial representation that, when taken in context, tends to or is likely to expose an individual or a group or class of individuals to hatred or contempt on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, age or mental or physical disability; or
- (c) any false or misleading news.

### **Commercial Messages**

#### **Obligation to comply with technical requirements**

**4** Except as otherwise provided under a condition of its licence, a licensee shall ensure that every commercial message that it broadcasts in a break within a program or between programs complies with the technical requirements set out in *ATSC Recommended Practice A/85: Techniques for Establishing and Maintaining Audio Loudness for Digital Television*, published by the Advanced Television Systems Committee Inc., as amended from time to time.

### **Alcoholic beverages**

**5 (1)** A licensee may broadcast a commercial message directly or indirectly advertising an alcoholic beverage if

- (a) the sponsor is not prohibited from advertising the alcoholic beverage by the laws of the province in which the commercial message is broadcast;
- (b) the commercial message is not designed to promote the general consumption of alcoholic beverages; and
- (c) the commercial message
  - (i) does not attempt to influence non-drinkers of any age to drink or to purchase an alcoholic beverage,

**(ii)** is not directed at persons under the legal drinking age, does not associate an alcoholic beverage with youth or youth symbols and does not portray persons under the legal drinking age or persons who could reasonably be mistaken for such persons in a context where any such product is being shown or promoted,

**(iii)** does not portray an alcoholic beverage in the context of, or in relation to, an activity that is attractive primarily to people under the legal drinking age,

**(iv)** does not contain an endorsement of the alcoholic beverage, personally or by implication, either directly or indirectly, by any person, character or group who is or is likely to be a role model for minors because of their past or present position of public trust, special achievement in any field of endeavour, association with charities or advocacy activities benefiting children, or reputation or exposure in the mass media,

**(v)** does not attempt to establish an alcoholic beverage as a status symbol, a necessity for the enjoyment of life or an escape from life's problems or attempt to establish that consumption of the product should take precedence over other activities,

**(vi)** does not imply directly or indirectly that social acceptance, social status, personal success, or business or athletic achievement may be acquired, enhanced or reinforced through consumption of alcohol,

**(vii)** does not imply directly or indirectly that the presence or consumption of alcohol is, in any way, essential to the enjoyment of an activity or an event,

**(viii)** does not portray an alcoholic beverage, or its consumption, in an immoderate way,

**(ix)** does not exaggerate the importance or effect of any aspect of an alcoholic beverage or its packaging,

**(x)** does not show or use language that suggests, in any way, product misuse or product dependency, compulsive behaviour, urgency of need or urgency of use,

**(xi)** does not use imperative language to urge people to purchase or consume an alcoholic beverage,

**(xii)** does not introduce an alcoholic beverage in such a way or at such a time that it may be associated with the operation of any vehicle or conveyance requiring skill,

**(xiii)** does not introduce an alcoholic beverage in such a way or at such a time that it may be associated with any activity requiring a significant degree of skill, care or mental alertness or involving an obvious element of danger,

**(xiv)** does not contain inducements to prefer an alcoholic beverage because of its higher alcohol content,

(**xv**) does not refer to the feeling and effect caused by alcohol consumption or show or convey the impression, by behaviour or comportment, that the people depicted in the message are under the influence of alcohol,

(**xvi**) does not portray any person with an alcoholic beverage in situations in which the consumption of alcohol is prohibited, and

(**xvii**) does not contain scenes in which an alcoholic beverage is consumed or scenes that give the impression, visually or in sound, that it is being or has been consumed.

### **Non-application**

(2) For greater certainty, paragraph (1)(b) does not apply in order to prohibit industry, public service or brand preference advertising.

### **Political Broadcasts**

#### **Obligation — allocation of broadcasting time**

**6 (1)** If, during an election period, a licensee provides time on its programming service for the broadcast of programs, advertisements or announcements of a partisan political character, the licensee shall allocate the time on an equitable basis to all accredited political parties and rival candidates represented in the election or referendum.

#### **Definition of *election period***

(2) In subsection (1), *election period* means

(a) in the case of a federal or provincial election or a federal, provincial or municipal referendum, the period that begins on the day on which the announcement of the election or referendum is made and that ends on the day on which the election or referendum is held; or

(b) in the case of a municipal election, the period that begins two months before the day on which the election is to be held and that ends on the day on which the election is held.

### **Non-Disclosure**

#### **Non-disclosure obligation — distribution of programming services**

**7 (1)** A licensee whose programming services are distributed by a licensed distribution undertaking or that is negotiating terms of carriage with such an undertaking for its programming services, including new programming services, shall sign and provide to the licensee of the distribution undertaking an agreement that

(a) reproduces the CRTC non-disclosure provisions; and

(b) contains its consent to comply with the CRTC non-disclosure provisions for the benefit of the licensee of the distribution undertaking.

### **Non-disclosure obligation — broadcasting of programs**

(2) A licensee whose programs are broadcast by a licensed video-on-demand undertaking or that is negotiating terms of carriage with such an undertaking for its programs shall sign and provide to the licensee of the video-on-demand undertaking an agreement that

- (a) reproduces the CRTC non-disclosure provisions; and
- (b) contains its consent to comply with the CRTC non-disclosure provisions for the benefit of the licensee of the video-on-demand undertaking.

### **Definition of *CRTC non-disclosure provisions***

(3) In this section, *CRTC non-disclosure provisions* means the non-disclosure provisions set out in the appendix to Broadcasting Regulatory Policy CRTC [2013-578](#), dated October 31, 2013 and entitled *Standard clauses for non-disclosure agreements*.

### **Logs and Records**

#### **Obligations — log or record**

**8 (1)** Except as otherwise provided under a condition of its licence, a licensee shall

- (a) keep a program log or record of its programming in a form that is acceptable to the Commission;
- (b) retain the log or record for a period of one year after the day on which the programming was distributed;
- (c) cause the following information to be entered in the log or record each day:
  - (i) the date,
  - (ii) an identification of the licensee or the service provided by the licensee,
  - (iii) the time at which advertising material begins, its duration and, in the case of a commercial message that it broadcasts in a break within a program or between programs, the name of the person that is selling or promoting goods, services, natural resources or activities,
  - (iv) in relation to each program other than a music video clip,
    - (A) its title and any additional information that is to be included in accordance with the appropriate subitem of Schedule 1,
    - (B) the key figure that describes the program,
    - (C) the time at which the program begins and ends,

- (D) if applicable, the code set out in column 1 of Part A, C or D of Schedule 2 that indicates the language, type or group of the program described in column 2,
- (E) if applicable, the code set out in column 1 of Part B of Schedule 2 that indicates the accessibility of the program described in column 2, and
- (F) if it is required by a condition of the licence, a brief description of the content of the program,
- (v) in relation to each music video clip,
  - (A) the title of the clip,
  - (B) the name of and language used by the performer,
  - (C) an indication as to whether the clip is a Canadian music video clip, as defined in section V of Appendix I to Public Notice [2000-42](#), dated March 17, 2000, entitled *Certification for Canadian Programs — A revised approach*,
  - (D) the key figure that describes the clip, and
  - (E) if applicable, the code set out in column 1 of Part B of Schedule 2 that indicates the accessibility of the clip described in column 2, and
- (vi) if the licensee distributes its programming in a multi-hour block, the time at which each block begins and ends; and
- (d) within 30 days after the last day of each month, provide to the Commission the log or record of its programming for the month and a certificate attesting to the accuracy of the contents of the log or record.

**If more than one subitem applies**

(2) For the purposes of clauses (1)(c)(iv)(B) and (1)(c)(v)(D), if more than one subitem of Schedule 1 applies to the program, a licensee may, in respect of that program, cause to be entered in its program log or record the key figures indicating the subitems that apply to each segment of the program, in the order in which the segments are distributed, and the starting time and duration of each segment of the program.

**Obligation to keep recording of programming**

- (3) A licensee shall retain a clear and intelligible audio-visual recording of all of its programming
  - (a) for a period of four weeks after the day on which the programming is distributed; or
  - (b) for a period of eight weeks after the day on which the programming is distributed, if the Commission receives a complaint from a person regarding any programming, or for

any other reason wishes to investigate the programming, and notifies the licensee of the investigation before the end of the four-week period.

### **Obligation to provide recording to Commission**

(4) If the Commission requests a clear and intelligible audio-visual recording of a licensee's programming from the licensee before the end of the applicable period referred to in paragraph (3)(a) or (b), the licensee shall, without delay, provide the recording to the Commission.

### **Requests for Information**

#### **Obligation to file statement of accounts**

9 (1) On or before November 30 of each year, a licensee shall file with the Commission, on the annual return form issued by the Commission, a statement of accounts for the previous broadcast year.

#### **Obligation to respond to complaint or request**

(2) At the Commission's request, a licensee shall respond to

(a) a complaint or request for resolution of a dispute filed by a person or a request for information regarding the programming that is originated by or is distributed by the licensee or regarding the licensee's technical operations, subscribership, financial affairs or ownership; and

(b) a request for information regarding the licensee's adherence to the conditions of its licence, the Act, these Regulations, industry standards, practices or codes or any other self-regulatory mechanism of the industry.

### **Transfer of Ownership or Control**

#### **Definitions**

10 (1) The following definitions apply in this section.

*associate*, when used to indicate a relationship with a person, includes

(a) a partner of the person;

(b) a trust or an estate in which the person has a substantial beneficial interest or in which the person serves as a trustee or in a similar capacity;

(c) the person's spouse or common-law partner;

(d) a child of the person or of their spouse or common-law partner, including a child adopted in fact by the person, spouse or common-law partner;

- (e) the spouse or common-law partner of the child;
- (f) a relative of the person, or of the person's spouse or common-law partner, if that relative has the same residence as the person;
- (g) a corporation of which the person alone has, or the person together with one or more associates described in this definition have, directly or indirectly, control of 50% or more of the voting interests;
- (h) a corporation of which an associate, as described in this definition, of the person has, directly or indirectly, control of 50% or more of the voting interests; and
- (i) a person with which the person has entered into an arrangement, a contract, an understanding or an agreement in respect of the voting of shares of a licensee corporation or of a corporation that has, directly or indirectly, effective control of a licensee corporation, except when that person controls less than 1% of all issued voting shares of a corporation whose shares are publicly traded on a stock exchange. (*lien*)

***common-law partner*** means an individual who is cohabiting with a person in a conjugal relationship having done so for a period of at least one year. (*conjoint de fait*)

***common shares*** means the shares that represent the residual equity in the earnings of a corporation, and includes securities that are convertible into such shares at any time at the option of the holder and the preferred shares to which are attached rights to participate in the earnings of the corporation with no upper limit. (*actions ordinaires*)

***person*** includes an individual, partnership, joint venture, association, corporation, trust, estate, trustee, executor or administrator, or a legal representative of any of them. (*personne*)

***voting interest***, in respect of

- (a) a corporation with share capital, means the vote attached to a voting share;
- (b) a corporation without share capital, means an interest that entitles the owner to voting rights similar to those enjoyed by the owner of a voting share;
- (c) a partnership, trust, association or joint venture, means an ownership interest in its assets that entitles the owner to receive a share of its profits, to receive a share of its assets on dissolution and to participate directly in its management or to vote on the election of the persons that are to be entrusted with the power and responsibility to manage it; and
- (d) a not-for-profit partnership, trust, association or joint venture, means a right that entitles the owner to participate directly in its management or to vote on the election of the persons that are to be entrusted with the power and responsibility to manage it. (*intérêt avec droit de vote*)



**voting share** means a share in the capital of a corporation to which one or more votes are attached that are exercisable at meetings of shareholders of the corporation, either under all circumstances or under a circumstance that has occurred and is continuing, and includes a security that is convertible into such a share at any time at the option of the holder. (*action avec droit de vote*)

### **Control of voting interest**

(2) For the purposes of this section, control of a voting interest by a person includes situations in which

(a) the person is, directly or indirectly, the beneficial owner of the voting interest;

or

(b) the person, by means of an arrangement, contract, understanding or agreement, determines the manner in which the interest is voted but the solicitation of proxies or the seeking of instructions with respect to the completion of proxies in respect of the exercise of voting interests is not considered to be such an arrangement, contract, understanding or agreement.

### **Effective control of licensee**

(3) For the purposes of this section, effective control of a licensee or its undertaking includes situations in which

(a) a person controls a majority of the voting interests of the licensee directly or indirectly, other than by way of security only;

(b) a person has the ability to cause the licensee or its board of directors to take a course of action; or

(c) the Commission, after a public hearing of an application for a licence or in respect of an existing licence, determines that a person has effective control of the licensee or its undertaking and sets that determination out in a decision or public notice.

### **Obligation to obtain Commission's prior approval**

(4) Except as otherwise provided under a condition of its licence, a licensee shall obtain the Commission's prior approval of any act, transaction or agreement that, directly or indirectly, would result in

(a) a change by any means of the effective control of its undertaking;

(b) a person that alone

(i) controls less than 30% of the voting interests of the licensee having control of 30% or more of those interests,

(ii) controls less than 30% of the voting interests of a person that has, directly or indirectly, effective control of the licensee having control of 30% or more of those interests,

(iii) owns less than 50% of the issued common shares of the licensee owning 50% or more of those shares but not having, directly or indirectly, effective control of the licensee, or

(iv) owns less than 50% of the issued common shares of a person that has, directly or indirectly, effective control of the licensee owning 50% or more of those shares but not having, directly or indirectly, effective control of the licensee; or

(c) a person together with an associate

(i) that control less than 30% of the voting interests of the licensee having control of 30% or more of those interests,

(ii) that control less than 30% of the voting interests of a person that has, directly or indirectly, effective control of the licensee having control of 30% or more of those interests,

(iii) that own less than 50% of the issued common shares of the licensee owning 50% or more of those shares but not having, directly or indirectly, effective control of the licensee, or

(iv) that own less than 50% of the issued common shares of a person that has, directly or indirectly, effective control of the licensee owning 50% or more of those shares but not having, directly or indirectly, effective control of the licensee.

### **Obligation to notify Commission**

(5) A licensee shall notify the Commission, within 30 days after the day on which the act or transaction occurs or the agreement is entered into, of the occurrence of any act or transaction or the entry into any agreement that, directly or indirectly, results in

(a) a person that alone

(i) controls less than 20% of the voting interests of the licensee having control of 20% or more but less than 30% of those interests,

(ii) controls less than 20% of the voting interests of a person that has, directly or indirectly, effective control of the licensee having control of 20% or more but less than 30% of those interests,

(iii) controls less than 40% of the voting interests of the licensee having control of 40% or more but less than 50% of those interests but not having, directly or indirectly, effective control of the licensee, or

(iv) controls less than 40% of the voting interests of a person that has, directly or indirectly, effective control of the licensee having control of 40% or more but less than 50% of those interests but not having, directly or indirectly, effective control of the licensee; or

(b) a person together with an associate

(i) that control less than 20% of the voting interests of the licensee having control of 20% or more but less than 30% of those interests,

(ii) that control less than 20% of the voting interests of a person that has, directly or indirectly, effective control of the licensee having control of 20% or more but less than 30% of those interests,

(iii) that control less than 40% of the voting interests of the licensee having control of 40% or more but less than 50% of those interests but not having, directly or indirectly, effective control of the licensee, or

(iv) that control less than 40% of the voting interests of a person that has, directly or indirectly, effective control of the licensee, having control of 40% or more but less than 50% of those interests but not having, directly or indirectly, effective control of the licensee.

### **Content of notification**

(6) The notification is to contain the following information:

(a) the name of the person and, if applicable, of the associate;

(b) the percentage of the voting interests controlled by the person or by the person and the associate; and

(c) a complete description of the act, transaction or agreement or a copy of the transaction or agreement.

### **Undue Preference or Disadvantage**

#### **Prohibition — undue preference or disadvantage**

**11 (1)** A licensee shall not give an undue preference to any person, including itself, or subject any person to an undue disadvantage.

#### **Burden of proof**

(2) In a proceeding before the Commission, the burden of establishing that any preference or disadvantage is not undue is on the licensee that gives the preference or subjects the person to the disadvantage.

#### **Tied Selling**

## **Prohibition**

**12** Except as otherwise provided under a condition of its licence, a licensee shall not offer its programming service for distribution as part of a package with other programming services unless it also makes its programming service available on a stand-alone basis.

## **Availability of New Programming Services for Distribution**

### **Obligation — distribution of new programming service**

**13** Except as otherwise provided under a condition of its licence, a licensee that is ready to launch a new programming service shall make that programming service available for distribution by all licensed broadcasting distribution undertakings or operators of exempt distribution undertakings, despite the absence of a commercial agreement.

## **Dispute Resolution**

### **Referral of dispute to Commission**

**14 (1)** If there is a dispute between a licensee and the operator of a licensed distribution undertaking or an exempt distribution undertaking concerning the carriage or terms of carriage of programming that originates from the licensee, including the wholesale rate and the terms of any audit referred to in section 15.1 of the *Broadcasting Distribution Regulations*, one or both of the parties to the dispute may refer the matter to the Commission for dispute resolution.

### **Mediation**

**(2)** If the Commission accepts a referral of a matter for dispute resolution, the parties to the dispute shall participate in a mediation with a person who is appointed by the Commission.

### **Additional information**

**(3)** During the dispute resolution process, the person who is appointed may require additional information from the parties.

### **Procedural requirements, rates, terms and conditions**

**(4)** If a licensed distribution undertaking or an exempt distribution undertaking distributes the licensee's programming service in the absence of a commercial agreement and the matter proceeds before the Commission for dispute resolution,

**(a)** the dispute shall be resolved in accordance with the procedural requirements established by the Commission in Broadcasting and Telecom Information Bulletin CRTC [2013-637](#), dated November 28, 2013 and entitled *Practices and procedures for staff-assisted mediation, final offer arbitration and expedited hearings*; and

(b) the rates, terms and conditions established by the Commission apply as of the day on which the programming service was first made available to the distributor in the absence of a commercial agreement.

**Rates, terms and conditions — new programming service**

(5) If the dispute relates to the rates, terms or conditions that relate to a new programming service that is being distributed in the absence of a commercial agreement and the matter proceeds before the Commission for dispute resolution, the parties will be bound by the rates, terms and conditions established by the Commission for the duration of the contractual term established by the Commission.

**Rates, terms and conditions — agreement**

(6) Despite subsections (4) and (5), the parties may reach an agreement that sets out rates, terms or conditions that differ from those established by the Commission.

**Obligations During Dispute**

**Obligation — rates, terms and conditions**

15 (1) During a dispute between a licensee and a person that is licensed to carry on a distribution undertaking or the operator of an exempt distribution undertaking concerning the carriage or terms of carriage of programming that originates from the licensee or concerning any right or obligation under the Act, the licensee must continue to provide its programming services to the distribution undertaking at the same rates and on the same terms and conditions as it did before the dispute.

**Period of dispute**

(2) For the purposes of subsection (1), a dispute begins when written notice of the dispute is provided to the Commission and is served on the other undertaking that is a party to the dispute and ends when an agreement settling the dispute is reached by the concerned undertakings or, if no such agreement is reached, when the Commission renders a decision concerning any unresolved matter.

**Transmission of Programming Service**

**Obligations — transmission of programming service**

16 Except as otherwise provided under a condition of its licence, a licensee shall, in respect of each programming service that is required to be distributed under section 18 of the *Broadcasting Distribution Regulations*, by the Commission under paragraph 9(1)(h) of the Act or by order of the Commission made under subsection 9(4) of the Act,

(a) ensure the transmission of the programming service from its production facilities to each broadcasting distribution undertaking's head end located within the area for which the licensee is licensed or to a satellite uplink centre located within that area; and

(b) bear the costs of the transmission.

#### **Transitional Provision**

**17 The holder of any licence for a pay television programming undertaking or a speciality services programming undertaking in effect on September 1, 2017 is considered to be a licensee for the purposes of these Regulations for the remainder of the term of the licence.**

**18 Until September 1, 2018, a reference to Schedule 1 or Schedule 2 in these Regulations is to be read as**

**(a) with respect to a licensee who, before September 1, 2017, held a licence for a pay television programming undertaking, a reference to Schedule I and Schedule II of the *Pay Television Regulations, 1990* as they read immediately before the coming into force of these Regulations; and**

**(b) with respect to a licensee who, before September 1, 2017, held a licence for a specialty services programming undertaking, a reference to Schedule I and Schedule II of the *Specialty Services Regulations, 1990* as they read immediately before the coming into force of these Regulations.**

#### **Repeal**

**19 The *Pay Television Regulations, 1990*<sup>2</sup> are repealed.**

**20 The *Specialty Services Regulations, 1990*<sup>3</sup> are repealed.**

#### **Coming into Force**

**21 These Regulations come into force on September 1, 2017 but if they are registered after that day, they come into force on the day on which they are registered.**

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<sup>2</sup> SOR/90-105

<sup>3</sup> SOR/90-106

**SCHEDULE 1**  
**(Sections 1 and 8)**

**Key Figures**

Item	Column 1	Column 2							
	Program Description	Alphanumeric Characters							
		1 <sup>st</sup>	2 <sup>nd</sup>	3 <sup>rd</sup>	4 <sup>th</sup>	5 <sup>th</sup>	6 <sup>th</sup>	7 <sup>th</sup>	8 <sup>th</sup>
1	<b>Origin</b>								
	Canada (other than Quebec)	1							
	United States	2							
	Other	7							
	Quebec	8							
2	<b>Time Credits</b>								
	A program for which 150 % credit is given under a condition of licence		4						
	A program for which 150 % credit is not given under a condition of licence		5						
3	<b>Exhibition</b>								
	Original exhibition of a program that has been broadcast or distributed by another licensed broadcasting undertaking			1					
	Original first-run program (original exhibition of a program that has not been broadcast or distributed by another licensed broadcasting undertaking)			2					
	Repeat exhibition of a program			3					
	Live broadcast			4					
4	<b>Production Source</b>								
	Discretionary service (licensee)				1				
	Related production company				2				







(13) Public service announcements						1	3	0
(14) Infomercials, promotional and corporate videos						1	4	0
(15) Filler programming						1	5	0

**SCHEDULE 2  
(Section 8)**

**Codes**

**PART A**

**Code Indicating Program Language**

Column 1		Column 2
Item	Code	Description
1	[Abbreviated name of language]	Language of the original production
2	[Abbreviated name of language]	Language of the program (for all programs of an ethnic station or for programs of a station if the language of the programs differs from the official language for which the station is principally licensed)

**PART B**

**Code Indicating Accessible Program**

Column 1		Column 2
Item	Code	Description
1	CC [to be inserted following key figure]	Program contains closed captioning for viewers who are deaf and hard of hearing, which has been exhibited during the complete length of the program
2	DV [to be inserted following key figure]	Program contains described video for viewers who are blind or have visual impairments, which has been exhibited during the complete length of the program
3	AD [to be inserted following key figure]	Program contains audio description for viewers who are blind or have visual impairments
4	CD [to be inserted	Program contains both closed captioning and described

	following key figure]	video, which has been exhibited during the complete length of the program
5	CA [to be inserted following key figure]	Program contains both closed captioning which has been exhibited during the complete length of the program and audio description

**PART C**

**Code Indicating Type**

Column 1		Column 2
Item	Code	Description
1	Type A	A program in a language other than English, French or a language of the Indigenous peoples of Canada
2	Type B	A program in English or in French that is directed toward a distinct ethnic group whose mother tongue is English or French or in whose country of origin a common language is English or French
3	Type C	A program in English or in French that is directed toward a distinct ethnic group whose mother tongue is included in Type A
4	Type D	A bilingual program in English or in French as well as in a language other than English, French or in a language of the Indigenous peoples of Canada that is directed toward a distinct ethnic group
5	Type E	A program in English or in French that is directed toward ethnic groups or toward the general public and that depicts Canada's cultural diversity through services that are multicultural, educational, informational or inter-cultural
6	Type X	Where the licensee is not required by a condition of licence to broadcast prescribed levels of Type A, B, C, D or E programming, an <i>ethnic program</i> , as defined in section 2 of the <i>Television Broadcasting Regulations, 1987</i>

**PART D****Code Indicating Group**

<b>Column 1</b>		<b>Column 2</b>
<b>Item</b>	<b>Code</b>	<b>Description</b>
1	[Abbreviated name of ethnic group]	The distinct ethnic group toward which an <i>ethnic program</i> , as defined in section 2 of the <i>Television Broadcasting Regulations, 1987</i> , is directed