



Broadcasting Notice of Consultation 2023-280

PDF version

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Call for comments – Proposed new *Broadcasting Fees Regulations*

Summary

The Commission calls for comments on its proposed new *Broadcasting Fees Regulations*, (proposed new Fees Regulations), which are set out in the appendix to this notice of consultation. The Commission will accept interventions that it receives on or before **22 September 2023**.

On 27 April 2023, the *Online Streaming Act* came into force. This Act amends the *Broadcasting Act* (the amended Act) and empowers the Commission to make regulations, with Treasury Board approval, regarding broadcasting fees. The current *Broadcasting Licence Fee Regulations, 1997* (the current Fee Regulations) impose fees on “licensed” broadcasting undertakings. Part I of those regulations, which remains in force under the amended Act, recovers the Commission’s costs of regulating the broadcasting industry, while Part II licence fees, which were abolished when the amendments to the *Broadcasting Act* came into force, were collected by the Commission but were remitted to the Government of Canada. The amended Act broadens the pool of potential feepayers from licensed broadcasting undertakings to all broadcasting undertakings, including online undertakings (undertakings “for the transmission or retransmission of programs over the Internet”), a newly defined class of undertakings in the amended Act. It also eliminates some of the fees paid by broadcasting undertakings by abolishing Part II licence fees imposed under the current Fee Regulations.

The proposed new Fees Regulations have been designed with a view to ensuring that feepayers are treated equitably and that there continues to be a relationship between the fees charged and the costs associated with the level of regulatory activity that the Commission performs with respect to each feepaying undertaking or group of undertakings. In line with these objectives, the current criterion for fixing the amount of fees in relation to the size of broadcasting undertakings’ revenues is continued in the proposed new Fees Regulations.

Many of the provisions set out in the proposed new Fees Regulations are similar to those in the current Fee Regulations.

One important change, however, is that the proposed new Fees Regulations require broadcasting ownership groups to pay broadcasting fees, rather than individual broadcasting undertakings. Other changes include setting a threshold exemption level of \$10 million (Canadian) for the broadcasting ownership groups, and providing for an upper limit to the amount of fees.

Since online undertakings will now be liable for fees under the amended Act, the Commission needs to define which online undertakings will be required to pay these fees. To identify which online undertakings should be subject to regulatory obligations, on 12 May 2023, the

Commission issued Broadcasting Notice of Consultation 2023-139, in which it sought comments on its proposed *Online Undertakings Registration Regulations* and on the undertakings that should be exempt from those regulations. The proposed new Fees Regulations refer to that proceeding, with a view to incorporating the results of it into the final *Broadcasting Fees Regulations*.

Similarly, a mechanism to require online undertakings to file fee returns that can be used in a timely manner to calculate fees is also necessary. In Broadcasting Notice of Consultation 2023-140, the Commission sought comments in regard to certain exemption orders and the transition from conditions of exemption to conditions of service for broadcasting online undertakings. A condition of service was proposed in that notice to require online undertakings to file fee returns by 30 November 2023. The proposed new Fees Regulations refer to that proceeding, with a view to incorporating its results into final *Broadcasting Fees Regulations*.

Given certain common elements between the present proceeding and the above-noted proceedings, interested persons to the present proceeding may wish to examine submissions and monitor developments that have taken place during these other proceedings.

Background

1. On 27 April 2023, the *Online Streaming Act* came into force.¹ This Act includes, among other things, amendments to the *Broadcasting Act* that account for the impact Internet audio and video² services have had on the Canadian broadcasting system. The amended *Broadcasting Act* (the amended Act) provides the Commission with powers to, among other things, regulate online audio and video undertakings (online undertakings) operating in whole or in part in Canada, regardless of their country of origin. As set out in the amended Act, “online undertaking” means “an undertaking for the transmission or retransmission of programs over the Internet for reception by the public by means of broadcasting receiving apparatus.”
2. Both the *Broadcasting Act* before the amended Act came into force and the amended Act empower the Commission to make regulations, with Treasury Board approval, regarding broadcasting fees. The current *Broadcasting Licence Fee Regulations, 1997*³ (the current Fee Regulations) impose fees on licensed broadcasting undertakings. The amended Act broadens the pool of potential feepayers from licensed broadcasting undertakings to all broadcasting undertakings, including online undertakings.
3. The current Fee Regulations divide the fees being charged to licensees into two parts. Part I of the current Fee Regulations recover the Commission’s costs of regulating the broadcasting industry. Part II licence fees were collected by the Commission but were remitted to the Government of Canada. Part II fees were abolished when the amendments to the

¹ *An Act to amend the Broadcasting Act and to make related and consequential amendments to other Acts*, SC 2023, c. 8.

² The term “video” is used in this notice of consultation, whereas the term “audio-visual” is used in the new *Broadcasting Act*.

³ SOR/97-144.

Broadcasting Act came into force on 27 April 2023.⁴ The obligation of licensees to pay Part I fees remains in force, until the current Fee Regulations are replaced by the final version of the proposed new Fees Regulations.

Current Part I licence fee regime

4. The Part I licence fees apportion liability for fees to licensed undertakings as per the formula, $A/B \times C$. “A” represents the individual undertaking’s “fee revenue” (i.e., the licensee’s gross broadcasting revenue for the previous 1 September to 31 August return year⁵), less the “exemption level” for that undertaking (i.e., the threshold revenue amount over which licensees are liable for fees⁶). “B” represents the sum of all “fee revenues” of licensees in the formula, less the aggregate “exemption levels” for these undertakings. “C” represents the Commission’s estimated costs of regulating broadcasting.
5. Each year, licensees with revenues over the threshold level must file a fee return disclosing these revenues. The definition of “fee revenue” in section 1 of the current Fee Regulations is broad, and includes “the gross revenue derived during a return year from the licensed activity of the licensee, whether received by the licensee or by an associated corporation [...]”
6. Part I licence fees are also subject to an annual “true-up” formula of $A/B \times D$. “A” and “B” in this formula are the same as for the initial payments outlined above. “D” represents the actual amount of the Commission costs for the fiscal year. The “true-up” ensures that the Commission recovers its actual costs for the year. Any shortfall is added to a licensee’s subsequent bill; any over-recovery is credited to a licensee’s subsequent bill.
7. Since the fees are based on financial results, the current Fee Regulations require feepayers to file, on a confidential basis, annual financial returns by 30 November, for the period that ended on 31 August of the same year. Thus, bills for each upcoming fiscal year are based on financial results from returns filed the previous 30 November.

Changes to the licence fee regime brought about by the *Online Streaming Act*

8. Although the amended Act contemplates the continuation of current licensing regimes, in broadening the pool of potential feepayers, the licensing of broadcasting undertakings is no longer an essential component of broadcasting regulation. The Commission can continue to exempt broadcasting undertakings from licensing requirements (under subsection 9(4) of the amended Act), but require such undertakings to adhere to conditions of service (and regulations, including fees regulations).

⁴ This was accomplished by adding subsection 11(3.1) to the Act, reading: “The only fees that may be established with respect to a broadcasting undertaking shall be fees that relate to the recovery of the costs of the Commission’s activities under this Act.”

⁵ “Return year” is defined below.

⁶ For broadcasting distribution undertakings, the threshold amount is \$175,000; for television undertakings and discretionary services, it is \$1.5 million. For single radio stations, the threshold amount is \$2 million, and for joint (AM and FM) radio stations, it is \$4 million. For both single radio stations and joint radio stations, if the threshold amount is exceeded, the current Fee Regulations prescribe an exemption level of \$500,000.

Proceeding Launched – Features of the proposed new Fees Regulations

9. To implement changes to the current fee regime brought about by amendments to the *Broadcasting Act*, the Commission has prepared proposed new *Broadcasting Fees Regulations* (proposed new Fees Regulations), set out in the appendix to this notice, for public comment. The Commission is launching this proceeding to seek comments on the proposed new Fees Regulations, and in this regard, is providing descriptions of the following features:

- the objectives of the proposed new Fees Regulations;
- the application of the proposed new Fees Regulations;
- definitions of “return year,” “fee return” and “fiscal year”;
- fee revenue and an anti-avoidance provision;
- the application of the proposed new Fees Regulations to “broadcasting ownership group”;
- the exemption level and the upper limit to the broadcasting fees;
- the rule against duplicate imposition of the same revenue; and
- the coming into force – transition, and the “true-up” provision.

Objectives of the proposed new Fees Regulations

10. The proposed new Fees Regulations integrate online undertakings into a fee regime originally designed to collect fees from licensed broadcasting undertakings. The approach taken has been to adapt the current Fee Regulations as much as possible to incorporate the changes brought about by the amended Act, in order to ensure equity overall among feepayers.

11. The proposed new Fees Regulations have been designed to achieve several objectives:

- (a) that all existing feepaying groups of undertakings end up paying no more, in percentage terms, than the totality of all Part I licence fees that they currently now pay;
- (b) that the obligation to pay fees falls on the “broadcasting ownership group,” rather than on individual undertakings, and group exemption levels are set and raised from current individual undertaking levels. In turn, this should have several results:
 - (i) the number of feepaying undertakings would become vastly reduced, it being noted that the top several corporate groups pay the greatest amount of the Commission’s fees;

- (ii) by merging Canadian-owned online undertakings with traditional fee-paying broadcasting undertakings and by requiring ownership groups, rather than individual undertakings, to pay fees, opportunities for broadcasters to assign revenues or expenses artificially to one undertaking rather than another one will be reduced;
- (c) that no one group is disproportionately responsible to pay the fees, thus necessitating an “upper limit”: if a calculated fee total of an ownership group exceeds 35% of the actual total regulatory costs, the fee will be limited to 35% of the total fees, and the excess fees for that group will be redistributed on a prorated basis to other fee-payers; and
- (d) that the fees continue to bear a relation to the costs associated with the level of regulatory activity that the Commission performs with respect to each fee-paying undertaking or group of undertakings.

Application of the proposed new Fees Regulations

12. Since some broadcasting undertakings will not hold licences under the amended Act (for example, online undertakings), the proposed new Fees Regulations refer to broadcasting undertakings, rather than to licensees. As a general rule, the new Fees Regulations will apply to all broadcasting undertakings to which the amended Act applies, including both currently licensed undertakings and online undertakings, but with some exceptions.⁷ The proposed new Fees Regulations are structured to be as consistent as possible with other regulatory initiatives that involve online undertakings.
13. The term “online undertaking” in the amended Act is broadly defined and can cover a wide range of broadcasting undertakings.⁸ Thus, it is necessary to identify which broadcasting undertakings, and, in particular, which online undertakings, will be required to pay broadcasting fees.
14. To identify which online undertakings will be required to pay broadcasting fees, the Commission intends to adopt an exemption level consistent with the exemption level regarding registration obligations for these undertakings. In order to identify which online undertakings should be subject to registration obligations, on 12 May 2023, the Commission issued Broadcasting Notice of Consultation 2023-139, in which it sought comments on its proposed *Online Undertakings Registration Regulations* and on the undertakings that should

⁷ The exceptions are: a radio undertaking or television undertaking licensed as a student broadcasting undertaking; a “native” (henceforth to be “Indigenous”) broadcasting undertaking; a community broadcasting undertaking; a campus broadcasting undertaking; a broadcasting undertaking carried on by the Canadian Broadcasting Corporation; an independent corporation (e.g., provincial or municipal governments) that derives none of its revenues from the sale of air time; and broadcasting undertakings exempted from licensing requirements under subsection 9(4) exemption orders.

⁸ Except for any such undertakings not captured by the amended Act. An example of an exclusion from the amended Act is set out at new subsection 2(2.1), which reads as follows: “A person who uses a social media service to upload programs for transmission over the Internet and reception by other users of the service — and who is not the provider of the service or the provider’s affiliate, or the agent or mandatary of either of them — does not, by the fact of that use, carry on a broadcasting undertaking for the purposes of this Act.”

be exempt from those regulations. The proposed *Online Undertakings Registration Regulations* set out in Appendix 1 to that notice of consultation contemplate that all online undertakings will be required to register with the Commission. However, the Commission is also proposing to exempt certain online undertakings from the requirement to register.⁹ The proposed new Fees Regulations refer¹⁰ to both the regulations and exemption order to be made under subsection 9(4) of the amended Act that are contemplated in the proceeding initiated by Broadcasting Notice of Consultation 2023-139, with a view to incorporating the result of it by reference into the final *Broadcasting Fees Regulations*.

15. The result of the proceeding initiated by Broadcasting Notice of Consultation 2023-139 will determine which online undertakings will be required to register. By virtue of the incorporation by reference of both the regulations and exemption order regarding registration, online undertakings not exempted from the requirement to register are expected to become liable for fees under the proposed new Fees Regulations, once these come into force.
16. In addition, current broadcasting undertakings that are exempted from licensing requirements¹¹ under existing subsection 9(4) exemption orders will continue to be exempted from the requirement to pay fees because such exemption orders also currently exempt them from any regulations (such as the proposed new Fees Regulations) made under the amended Act.

Definitions of “return year,” “fee return” and “fiscal year”

17. The current Fee Regulations contain definitions of “return year,” “fee return” and “fiscal year,” which have been retained in the proposed new Fees Regulations. Under the proposed new Fees Regulations, the “return year” for all broadcasting undertakings would remain the 12-month period commencing 1 September in each year, while the “fiscal year”—the Government of Canada’s year that starts on 1 April of each year—would be carried forward.
18. The concept of a “fee return” would continue to require broadcasting undertakings of which fee revenue for the most recently completed return year exceeds the threshold exemption level to file with the Commission a fee return, on or before 30 November of each year, on the form provided by the Commission. This exemption level is described in detail below.
19. The “fee return” provision requires broadcasting undertakings that earn revenues above a certain threshold to file with the Commission a fee return, on or before 30 November of each

⁹ The proposed criteria for exemption are as follows: i) online undertakings whose single activity and purpose consists of providing video games services; ii) online undertakings whose single activity and purpose consists of providing unique transactions; iii) online undertakings affiliated with a broadcasting ownership group that has, after deducting any excluded revenue, annual Canadian gross revenues from broadcasting activities of less than \$10 million; or iv) online undertakings that have no affiliation whatsoever with a broadcasting ownership group, if they have, after deducting any excluded revenue, annual Canadian gross revenues from broadcasting activities of less than \$10 million. The notion of broadcasting ownership group is described in the fifth subsection of this notice, below.

¹⁰ In paragraph 2(d).

¹¹ With the exception of the broadcasting undertakings dealt with in the proceeding initiated by Broadcasting Notice of Consultation 2023-140, described in the following subsection of the present notice of consultation.

year. Until the proposed new Fees Regulations come into force,¹² this requirement in the current Fee Regulations will continue to oblige feepaying licensees to file fee returns by 30 November 2023. Invoices for the upcoming 2024-2025 fiscal year will be based on that financial information. For fiscal year 2024-2025, the fee return information provided by licensees under the current Fee Regulations will be consolidated into fee revenue information for broadcasting ownership group revenues, under the relevant provisions of the proposed new Fees Regulations.

20. The proposed new Fees Regulations will be broader than what applies only to licensees under the current Fee Regulations and will require annual fee returns by all feepaying broadcasting undertakings, including online undertakings, by 30 November each year. As the Commission's authority extends only to broadcasting activities in Canada, all fee revenue figures for Canadian and non-Canadian feepayers relate only to Canadian revenues.
21. A mechanism to require online undertakings to file fee returns that can be used in a timely manner to calculate fees is also necessary. With the proposed new Fees Regulations targeted to come into force on 1 April 2024, a transitional measure is required to ensure that online undertakings file fee returns by 30 November 2023, so that their data can be used in the calculation of fee invoices in March 2024 for the upcoming 2024-2025 fiscal year.
22. In this regard, the Commission issued Broadcasting Notice of Consultation 2023-140, in order to examine whether there is a need to amend, replace or repeal the current exemption orders for online audio and video undertakings.¹³ As part of that proceeding, the Commission is also examining whether there is a need to transition to new regulatory requirements (conditions of service) that would replace certain of the conditions of exemption that were previously set out in those exemption orders and to whom those conditions of service should apply.
23. That proceeding also contemplates the imposition of a transitional condition of service that will require online undertakings to file financial information for fee purposes by the same 30 November filing date that applies to current feepayers. The proposed new Fees Regulations refer¹⁴ to the condition of service requiring fee return information proposed via an order to be made under subsection 9.1(1) of the amended Act, with a view to incorporating the result of it by reference into the final *Broadcasting Fees Regulations*.
24. The Commission intends soon to decide whether to make the transitional fee return condition of service order in substantially the same form as that proposed in the proceeding initiated by Broadcasting Notice of Consultation 2023-140. Subsequently, when the proposed new Fees Regulations are in force, financial information from online undertakings from the previous

¹² The target date for the proposed new Fees Regulations to come into force is 1 April 2024 – the beginning of the Commission's next fiscal year.

¹³ Specifically, the Exemption order for digital media broadcasting undertakings (DMEO), set out in the appendix to Broadcasting Order 2012-409, and the exemption order for video-on-demand undertakings, set out in Appendix 1 to Broadcasting Regulatory Policy 2015-355.

¹⁴ Found in subsection 14(2) of the proposed new Fees Regulations.

30 November fee return filings will be available for the Commission to issue fee invoices to online undertakings, in time for the upcoming fiscal year.

25. As noted above, once the proposed new Fees Regulations come into force, the substance of obligations incorporated by reference into the regulations are expected to become operational elements of the *Broadcasting Fees Regulations*. Nevertheless, the condition of service proposed in the proceeding initiated by Broadcasting Notice of Consultation 2023-140 is a transitional measure, since the proposed new Fees Regulations would make it an obligation for all broadcasting undertakings to file financial information via fee returns annually on 30 November. This condition of service will expire once replaced by the final version of the proposed new Fees Regulations.

Fee revenue and an anti-avoidance provision

26. The definition of “fee revenue” in the current Fee Regulations refers generally to gross broadcasting revenues earned in Canada. The intent of the current proceeding is to retain in the proposed new Fees Regulations the breadth of the existing provision. Nevertheless, content that is primarily alphanumeric falls outside the definition of broadcasting in the amended Act, and thus would not be counted as part of fee revenues. Similarly, revenue from activities excluded from the definition of carrying on a broadcasting undertaking set out in the amended Act¹⁵ would also not be counted as part of fee revenues.
27. This would not substantially affect existing fee-paying broadcasting undertakings, since the proposed new Fees Regulations would substantially replicate what is in the current Fee Regulations. The only difference is that the new “fee return” with “fee revenue” would be filed by the entire broadcasting ownership group, rather than by individual undertakings. The concept of “broadcasting ownership group” is described in detail below.
28. The current Fee Regulations have an anti-avoidance provision to deal with a situation where a licensee has not filed a licence fee return covering 12 months of the most recently completed return year. It covers situations such as ensuring that fees can be imposed on newly licensed broadcasting undertakings that do not have financial information covering 12 months of broadcasting revenues. It also captures situations where a licensee neglects its regulatory obligation to file a fee return.
29. The proposed new Fees Regulations continue to include an anti-avoidance provision, and apply it to all broadcasting undertakings, including online undertakings. If an online undertaking has not filed a fee return, the Commission would use available information,

¹⁵ For example, as noted above at footnote 8 and as set out in subsection 2(2.1) of the amended Act, revenues from a “person who uses a social media service to upload programs for transmission over the Internet and reception by other users of the service — and who is not the provider of the service or the provider’s affiliate, or the agent or mandatary of either of them [...]” will not be included within “fee revenues”. Similarly, “excluded revenue,” referring to certain annual Canadian gross revenues from broadcasting activities addressed in the proposed exemption order contemplated in the proceeding initiated by Broadcasting Notice of Consultation 2023-139, noted in footnote 9 above, would also not be counted as part of fee revenues.

including the trends of the market, the undertaking's business plan and previous financial performance, in order to determine its gross annual revenues.

Application of the proposed new Fees Regulations to “broadcasting ownership group”

30. The design of the proposed new Fees Regulations recognizes the predominant role of ownership groups in paying the greatest portion of broadcasting fees. Currently, the top seven licensee ownership groups pay the greatest amount of Part I licence fees. Making broadcasting ownership groups, as opposed to individual undertakings, responsible for fees would achieve the goal of vastly reducing the number of invoices and fee-paying entities, thereby reducing regulatory and administrative burden.
31. Other factors taken into account in the design of the proposed new Fees Regulations include the large variation in size of revenues of online undertakings and the relative size of online undertaking revenues compared to those of fee-paying ownership groups.
32. While fee revenue figures for online undertakings cannot be predicted at the current time, it is expected that a significant amount will be added to the denominator (“B”) of the fee calculation of $A/B \times C$, such that the proportionate share of total fees paid by existing fee-payers is anticipated to decline.
33. To treat undertaking groups in a comparable manner, the intention behind the proposed new Fees Regulations is to impose an obligation to pay fees on a “broadcasting ownership group,” defined in those regulations as “a group of all operators that are affiliates of one another or, in the case of an operator that is not an affiliate of any other operator, that operator.” In turn, an “operator” is to be defined as “a person that carries on a broadcasting undertaking to which the Act applies.” A single undertaking is included within this definition. Because this approach combines the revenues of all the undertakings in the group, it avoids the issue of selective or creative accounting – allocating revenues to a chosen undertaking in order to minimize fees.
34. The proposed new Fees Regulations also include a provision requiring the person who controls a broadcasting ownership group to designate one broadcasting undertaking with the greatest amount of fee revenue within the group as the undertaking that will be responsible for all of the obligations of the proposed new Fees Regulations.

Exemption level and the upper limit to the broadcasting fees

35. The amount of fees paid should bear a relation to the level of regulatory activity that the Commission is performing with respect to each fee-paying undertaking or group of undertakings.
36. The current criterion for fixing the amount of fees in relation to the size of broadcasting undertakings' revenues is continued in the proposed new Fees Regulations.
37. The proposed new Fees Regulations set out a single threshold level of \$10 million for all broadcasting ownership groups, and an upper fee limit of 35% of the Commission's total regulatory costs for the year that any one ownership group would be required to pay. The

Commission considers that the exemption level and upper limit are in keeping with the broadcasting policy objectives set out in paragraph 3(1)(a.1) of the *Broadcasting Act* and with the aspects of the regulatory policy set out in paragraphs 5(2)(g) and (h). It could also have the benefit of achieving consistency across various regulatory obligations. The proposed threshold level would achieve the objective of eliminating the obligation on the smallest current feepayers. The \$10 million threshold level also corresponds to the proposed level of exemption for registration purposes¹⁶ and for proposed new conditions of service to be imposed on online undertakings.¹⁷ Finally, the \$10 million threshold lines up with existing regulatory levels established by the Commission in other spheres.¹⁸ An upper limit of 35% of all fees would achieve the objective of ensuring that no one broadcasting group dominates the fee regime, and would serve to ensure some proportionality between fees paid and the cost of regulatory activities caused.

38. An upper limit mechanism is intended to balance the loss of individual threshold levels for a broadcasting group. The percentage of total fees is reduced because the total amount of fees is shared among a number of large feepayers, with some new large ones added. When the upper limit is reached, other feepayers' fees would increase, as the differential excess amount would be spread proportionately among other feepaying undertakings.

Rule against duplicate imposition of the same revenue

39. The current Fee Regulations contain a provision prohibiting the double-imposition of the same revenue within the definition of “fee revenue.” As specified in those regulations, the broad definition of “fee revenue” “does not include any amount received by the licensee from another licensee, other than the amounts received from the [Canadian Broadcasting Corporation] for the sale of air time”. The reason is that revenue should be assessed as part of the gross revenues of the first broadcasting undertaking recipient of the revenue. It would be assessed a second time if it formed part of the revenues of another broadcasting undertaking. The proposed new Fees Regulations continue this provision (broadening the reference from “another licensee” to “another broadcasting undertaking”).

Coming into force – transition, and the “true-up” provision

40. The proposed new Fees Regulations have a 1 April 2024 target date for coming into force for the 2024-2025 fiscal year. Once the proposed new Fees Regulations are in force, the current Fee Regulations would be repealed. Pursuant to paragraph 11(1)(a) of the amended Act, Treasury Board approval is necessary for the proposed new Fees Regulations.
41. The current Fee Regulations contain a “true-up” provision (i.e., the “annual adjustment amount”), to ensure that the Commission collects no more and no less than the amount that it

¹⁶ The proposed registration obligations and the proposed exemption order are set out in detail in Broadcasting Notice of Consultation 2023-139.

¹⁷ The proposed conditions of service are set out in detail in Broadcasting Notice of Consultation 2023-140.

¹⁸ For example, the *Telecommunications Fees Regulations, 2010* establish a \$10 million threshold. Further in paragraph 99 of Broadcasting Regulatory Policy 2022-332 (the Revised Commercial Radio Policy), the Commission expressed a preliminary view that commercial radio ownership groups with revenues below \$10 million would not be required to pay Canadian content development contributions.

spends in each fiscal year. This “true-up” provision relates to the fiscal period for two years back, as the current fiscal year has not closed in March of a year, when bills are sent for the upcoming fiscal period. The proposed new Fees Regulations continue this “true-up” provision. With the 1 April 2024 target date, a transition provision is needed, keeping in place the previous fee structure for two years (the 2022-2023 and 2023-2024 fiscal years) for the purpose of the “true-up.” The “true-up” is (and will continue to be) charged or credited to the broadcasting ownership group in the following year’s invoice and must not, in any case, result in a disbursement of monies on the part of the Commission.

Call for comments

42. The Commission calls for comments on its proposed new *Broadcasting Fees Regulations*, which are set out in the appendix to this notice of consultation. The Commission also invites comments on any other issues that may be essential to the proposed new regulations. The Commission will accept interventions that it receives on or before **22 September 2023**.

Procedure

43. The *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure) apply to the present proceeding. The Rules of Procedure set out, among other things, the rules for content, format, filing and service of interventions, answers, replies and requests for information; the procedure for filing confidential information and requesting its disclosure; and the conduct of public hearings. Accordingly, the procedure set out below must be read in conjunction with the Rules of Procedure and related documents, which can be found on the Commission’s website under “[Statutes and Regulations](#).” The guidelines set out in Broadcasting and Telecom Information Bulletin 2010-959 provide information to help interested persons and parties understand the Rules of Procedure so that they can more effectively participate in Commission proceedings.
44. Interested persons are permitted to coordinate, organize, and file, in a single submission, interventions by other interested persons who share their position. Information on how to file this type of submission, known as a joint supporting intervention, as well as a template for the covering letter to be filed by the parties, can be found in Broadcasting Information Bulletin 2010-28-1. For clarity, this proceeding is independent from those initiated by Broadcasting Notices of Consultation 2023-139 and 2023-140, and thus interested persons must file independent submissions in this proceeding, and not simply refer to previous submissions made in other proceedings.
45. The Commission encourages interested persons and parties to monitor the record of the proceeding, available on the Commission’s website, for additional information that they may find useful when preparing their submissions.
46. Submissions longer than five pages should include a summary. Each paragraph of all submissions should be numbered, and the line *****End of document***** should follow the last paragraph. This will help the Commission verify that the document has not been damaged during electronic transmission.

47. Pursuant to Broadcasting and Telecom Information Bulletin 2015-242, the Commission expects incorporated entities and associations, and encourages all Canadians, to file submissions for Commission proceedings in accessible formats (for example, text-based file formats that allow text to be enlarged or modified, or read by screen readers). To provide assistance in this regard, the Commission has posted on its website guidelines for preparing documents in accessible formats.
48. Submissions must be filed by sending them to the Secretary General of the Commission using **only one** of the following means:

by completing the
[\[Intervention/comment/answer form\]](#)

or

by mail to
CRTC, Ottawa, Ontario K1A 0N2

or

by fax at
819-994-0218

49. Parties who send documents electronically must ensure that they will be able to prove, upon Commission request, that filing, or where required, service of a particular document was completed. Accordingly, parties must keep proof of the sending and receipt of each document for 180 days after the date on which the document is filed or served. The Commission advises parties who file or serve documents by electronic means to exercise caution when using email for the service of documents, as it may be difficult to establish that service has occurred.
50. In accordance with the Rules of Procedure, a document must be received by the Commission and all relevant parties by 5 p.m. Vancouver time (8 p.m. Ottawa time) on the date it is due. Parties are responsible for ensuring the timely delivery of their submissions and will not be notified if their submissions are received after the deadline. Late submissions, including those due to postal delays, will not be considered by the Commission and will not be made part of the public record.
51. The Commission will not formally acknowledge submissions. It will, however, fully consider all submissions, which will form part of the public record of the proceeding, provided that the procedure for filing set out above has been followed.

Important notice

52. All information that parties provide as part of this public process, except information designated confidential, whether sent by postal mail, fax, email or through the Commission's website at www.crtc.gc.ca, becomes part of a publicly accessible file and will be posted on

the Commission's website. This information includes personal information, such as full names, email addresses, postal/street addresses, and telephone and fax numbers.

53. The personal information that parties provide will be used and may be disclosed for the purpose for which the information was obtained or compiled by the Commission, or for a use consistent with that purpose.
54. Documents received electronically or otherwise will be put on the Commission's website in their entirety exactly as received, including any personal information contained therein, in the official language and format in which they are received. Documents not received electronically will be available in PDF format.
55. The information that parties provide to the Commission as part of this public process is entered into an unsearchable database dedicated to this specific public process. This database is accessible only from the web page of this particular public process. As a result, a general search of the Commission's website with the help of either its own search engine or a third-party search engine will not provide access to the information that was provided as part of this public process.

Availability of documents

56. Links to interventions, replies and final replies filed for this proceeding, as well as other documents referred to in this notice, are available on the Commission's "[Consultations and hearings: have your say](#)" page.
57. Documents are available upon request during normal business hours by contacting:

Documentation Centre
Examinationroom@crtc.gc.ca
Tel.: 819-997-4389
Fax: 819-994-0218

Client Services
Toll-free telephone: 1-877-249-2782
Toll-free TTY: 1-877-909-2782

Secretary General

Related documents

- *Call for comments – Review of exemption orders and transition from conditions of exemption to conditions of service for broadcasting online undertakings*, Broadcasting Notice of Consultation CRTC 2023-140, 12 May 2023
- *Call for comments – Proposed Regulations for the Registration of Online Streaming Services and Proposed Exemption Order regarding those Regulations*, Broadcasting Notice of Consultation CRTC 2023-139, 12 May 2023

- *Revised Commercial Radio Policy*, Broadcasting Regulatory Policy CRTC 2022-332, 7 December 2022
- *Revised exemption order for certain classes of video-on-demand (VOD) undertakings and updated standard conditions of licence for licensed VOD undertakings*, Broadcasting Regulatory Policy CRTC 2015-355 and Broadcasting Order CRTC 2015-356, 6 August 2015
- *Filing submissions for Commission proceedings in accessible formats*, Broadcasting and Telecom Information Bulletin CRTC 2015-242, 8 June 2015
- *Amendments to the Exemption order for new media broadcasting undertakings (now known as the Exemption order for digital media broadcasting undertakings)*, Broadcasting Order CRTC 2012-409, 26 July 2012
- *Guidelines on the CRTC Rules of Practice and Procedure*, Broadcasting and Telecom Information Bulletin CRTC 2010-959, 23 December 2010
- *Changes to certain practices for filing interventions – Expansion of filing practices to include the filing of joint supporting comments for broadcasting policy proceedings*, Broadcasting Information Bulletin CRTC 2010-28-1, 10 December 2010

Appendix to Broadcasting Notice of Consultation CRTC 2023-280

Proposed New *Broadcasting Fees Regulations*

Broadcasting Fees Regulations

Interpretation

Definitions

1 The following definitions apply in these Regulations.

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

broadcasting ownership group means a group of all operators that are affiliates of one another or, in the case of an operator that is not an affiliate of any other operator, that operator. (*groupe de propriété de radiodiffusion*)

excluded revenue means revenue that originates from broadcasting activities specified in a broadcasting order to be made under subsection 9(4) of the Act. (*recettes exclues*)

exemption level means \$10 million, for a broadcasting ownership group. (*franchise*)

fee revenue means the gross revenue minus excluded revenue derived during a return year from the broadcasting activity of the broadcasting undertakings that form part of a broadcasting ownership group, including

(a) any revenue received in respect of all transmitters forming part of the undertaking, if the broadcasting undertaking consists of more than one transmitter;

(b) the estimated annual revenue, based on the trends of the market in which the undertaking operates, the previous financial performance of the undertaking, and, when applicable, the business plan of the broadcasting undertaking for its first 12 months of operation, if that undertaking has not filed a fee return covering the most recent return year;

(c) revenue that is derived from the sale of air time of the broadcasting undertaking by the Corporation and paid by the Corporation to the broadcasting undertaking;

(d) if the online undertaking has not filed a fee return covering the most recent return year,

(i) the gross annual revenue, as reported by the online undertaking and validated by the Commission, or

(ii) if the information referred to in subparagraph (i) is not available, the estimated gross annual revenue of the online undertaking, based on the trends of the market in which it operates, its business plan and any previous financial performance that the Commission considers to be related to its broadcasting activity.

This definition does not include any amount received by a broadcasting undertaking from another broadcasting undertaking to which these Regulations apply, other than the amounts received from the Corporation for the sale of air time. (*recettes désignées*)

fiscal year means the one-year period beginning April 1 in any year. (*exercice*)

operator means a person that carries on a broadcasting undertaking to which the Act applies. (*exploitant*)

return year means the one-year period beginning September 1 in any year. (*année de rapport*)

Application

Exclusions

2 These Regulations apply to all broadcasting undertakings other than

- (a) campus, community, Indigenous or student broadcasting undertakings;
- (b) broadcasting undertakings carried on by the Corporation;
- (c) broadcasting undertakings carried on by an *independent corporation*, as defined in section 2 of the *Direction to the CRTC (Ineligibility to Hold Broadcasting Licences)*, that derive none of their revenues from the sale of air time; and
- (d) online undertakings that are not required to register with the Commission under the *Online Undertakings Registration Regulations*, as amended from time to time, or that are exempt from the requirement to register with the Commission under a broadcasting order to be made under subsection 9(4) of the Act.

Designated Broadcasting Undertaking

Highest fee revenue

3 (1) The operator or affiliate that controls a broadcasting ownership group must designate the broadcasting undertaking that has the highest fee revenues among the undertakings in the group.

Obligations

(2) The designated broadcasting undertaking must ensure that the broadcasting ownership group meets its obligations under sections 4 to 7.

Fee Returns

Returns

4 On or before November 30 in each year, every broadcasting ownership group whose fee revenue for the most recent return year exceeds the exemption level must file with the Commission a fee return on the form provided by the Commission.

Period covered

5 The fee return must be completed with respect to the return year preceding the calendar year in which the return is to be filed.

Fees

Broadcasting fees

6 Every broadcasting ownership group must pay broadcasting fees to the Commission annually, no later than 30 days after the date recorded on the invoice issued by the Commission.

Unpaid fees

7 If the broadcasting fees have become overdue, the broadcasting ownership group must pay interest and administrative charges in accordance with the *Interest and Administrative Charges Regulations*.

Calculation of Fees

Calculation by Commission

8 The annual broadcasting fees payable are to be calculated by the Commission.

Amount of Fees

9 (1) Subject to subsection (2), the annual broadcasting fees payable are the lesser of

(a) the sum of the initial amount calculated in accordance with subsection 10(1) and the annual adjustment amount calculated in accordance with subsection 10(2), and

(b) 35% of the Commission's actual total regulatory costs calculated in accordance with section 11.

Proportional increase

(2) If a broadcasting ownership group's annual broadcasting fees are the amount referred to in paragraph (1)(b), the fees for all other broadcasting ownership groups are to be increased proportionally to offset the difference between that amount and the amount that the broadcasting ownership group would have paid had its broadcasting fees been the amount referred to in paragraph (1)(a).

Change charged or credited

(3) Any change in the amount of the annual broadcasting fees payable that results from the calculation of the annual adjustment amount referred to in subsection 10(2) is to be charged or credited to the broadcasting ownership group in the following year's invoice and must not, in any case, result in a reimbursement on the part of the Commission.

Initial amount

10 (1) The initial amount of the annual broadcasting fees payable is calculated using the formula

$$(A \div B) \times C$$

where

A is the broadcasting ownership group's fee revenue for the most recent return year, less that broadcasting ownership group's exemption level for that return year;

B is the amount by which the aggregate fee revenues of all broadcasting ownership groups for the most recent return year exceeds the applicable exemption level, less the aggregate exemption level amount for all those broadcasting ownership groups for that return year; and

C is the estimated total regulatory costs of the Commission for the current fiscal year as calculated in accordance with subsection 11(1).

Adjustment amount

(2) The annual adjustment amount of the annual broadcasting fees payable is to be calculated using the following formula

$$(A \div B) \times D$$

where

A is the broadcasting ownership group's fee revenues for the most recent return year, less that broadcasting ownership group's exemption level for that return year;

B is the amount by which the aggregate fee revenues of all broadcasting ownership groups for the most recent return year exceeds the applicable exemption level, less the aggregate exemption level amount for all those broadcasting ownership groups for that return year; and

D is the difference between the estimated total regulatory costs of the Commission and the actual total regulatory costs of the Commission for the fiscal year as calculated in accordance with section 11.

Estimated total regulatory costs

11 (1) The estimated total regulatory costs of the Commission for a fiscal year is the sum of the following amounts, as set out in the Commission's expenditure plan published in Part III of the *Estimates of the Government of Canada*:

- (a) the costs of the Commission's broadcasting activity, and
- (b) the share, attributable to the Commission's broadcasting activity,
 - (i) of the costs of the Commission's administrative activities, and

(ii) of any other costs used to calculate the net cost of the operation of the Commission's program, excluding the costs of regulating the broadcasting spectrum.

Actual total costs

(2) The actual total regulatory costs of the Commission are to be calculated in accordance with subsection (1) using actual amounts.

Notice

Notice

12 The Commission must publish, each year, the estimated total regulatory costs referred to in subsection 11(1) in a notice in the *Canada Gazette*, Part I.

Transitional Provisions

Definition of former Regulations

13 In sections 14 and 15, *former Regulations* means the *Broadcasting Licence Fee Regulations, 1997* as they read immediately before the day on which these Regulations come into force.

Fiscal year 2024-2025

14 (1) For the fiscal year 2024-2025, the fee return information provided by broadcasting undertakings under section 5 of the former Regulations is to be consolidated into fee revenue information for their broadcasting ownership group, in accordance with sections 1 and 4 of these Regulations.

Fee revenues for online undertakings

(2) For the fiscal year 2024-2025, the fee revenues for online undertakings are to be calculated by the Commission, based on the fee return filed by the online undertaking and verified by the Commission, in accordance with a broadcasting order to be made under subsection 9.1(1) of the Act.

Fiscal years 2024-2025 and 2025-2026

15 For the fiscal years 2024-2025 and 2025-2026, the annual adjustment amount and the regulatory costs of the Commission — referred to in these Regulations in sections 10 and 11, respectively — that are associated with that annual adjustment amount are to be calculated in accordance with subsection 8(2) and section 9 of the former Regulations.

Repeal

16 The *Broadcasting Licence Fee Regulations, 1997*¹ are repealed.

Coming into Force

April 1, 2024

17 These Regulations come into force on April 1, 2024.

¹ SOR 97-144