



## Broadcasting Public Notice CRTC 2006-14

Ottawa, 3 February 2006

### **Amendments to the *Broadcasting Distribution Regulations* – Implementation of various requirements related to the distribution of programming services**

*The Commission has adopted amendments to the Broadcasting Distribution Regulations as set out in the appendix to this notice. These amendments were registered and came into effect on 12 January 2006 and were published in Part II of the Canada Gazette on 25 January 2006.*

#### **Background**

1. In *Call for comments – Proposed amendments to the Broadcasting Distribution Regulations*, Broadcasting Public Notice CRTC 2005-86, 1 September 2005 (Public Notice 2005-86), the Commission proposed to amend the *Broadcasting Distribution Regulations* (the Regulations) in order to:
  - implement the requirement that Category 1 and Category 2 programming services be distributed in accordance with the distribution and linkage requirements for Class 1 and Class 2 licensees, as are other specialty and pay services;
  - implement the requirement that the community programming of a licensed community programming undertaking be accorded mandatory carriage as part of the basic service by Class 1 and Class 2 licensees that do not elect to distribute their own community programming, in accordance with *Policy framework for community-based media*, Broadcasting Public Notice CRTC 2002-61, 10 October 2002 (Public Notice 2002-61);
  - implement the requirement for continued distribution by Class 1 licensees of ethnic programming services that were distributed by a licensee on 16 December 2004, as determined in *Improving the diversity of third-language television services – A revised approach to assessing requests to add non-Canadian third-language television services to the lists of eligible satellite services for distribution on a digital basis*, Broadcasting Public Notice CRTC 2004-96, 16 December 2004 (Public Notice 2004-96); and
  - correct grammatical and/or translation anomalies in sections 33.3 and 53 that were identified by the Standing Joint Committee on the Scrutiny of Regulations.

## Positions of parties

2. The Commission received three comments in response to Public Notice 2005-86. South Asian Television Canada Limited (SATV), on behalf of both SATV and Asian Television Network International Limited, expressed support for the amendments relating to ethnic programming services reflecting the approach set out in Public Notice 2004-96. Two comments were received with respect to the amendments relating to community programming reflecting the approach set out in Public Notice 2002-61: one from the Community Media Education Society (CMES) supporting the amendments and one from the Fédération des télévisions communautaires autonomes du Québec (the Fédération) conditionally supporting the amendments.

### Submission by the Fédération

3. Although generally supportive of the proposed amendments relating to community programming, the Fédération submitted that, in order to avoid any ambiguity, the amendments should be modified to reflect a requirement that the obligation to carry community programming on the basic service applies on both a digital and an analog basis.
4. The Fédération pointed to the Commission's previous pronouncement on the issue in *Amendments to the Broadcasting Distribution Regulations – Implementation of the policy framework for community-based media*, Broadcasting Public Notice CRTC 2004-18, 30 March 2004 (Public Notice 2004-18), where the Fédération had raised the same issue:

The Commission is of the view that the Fédération raised a legitimate concern with respect to the carriage of the local community television programming on the community channel for subscribers receiving digital services only. Section 20(3) of the current Regulations provides that "If a licensee distributes community programming, the licensee shall distribute it as part of the basic service". The Commission notes, however, that Public Notice 2002-61 did not specify that carriage of the local community television programming was mandatory on analog and/or digital.

It was not the Commission's objective in Public Notice 2002-61 to prevent those who subscribe exclusively to a digital cable package from receiving local community television programming. The Commission considers that cable licensees, for the purpose of meeting the requirement set out at section 27.1 of the proposed amendments, are to make the local community television programming available to all subscribers as part of their basic service, whether they subscribe to analog and digital cable or digital cable exclusively.

5. The Fédération submitted that, in light of the comments and the fact that the Commission was now proposing to repeal section 20(3), the modification should now be made.

### **Commission's determination**

6. In response to the concerns of the Fédération, the Commission considers that the issue has already been addressed in Public Notice 2004-18. Further, it notes that section 20(3) is only being repealed to avoid any redundancy by the inclusion of similar language in section 27(0.1). Thus, the Commission considers that the repeal of section 20(3) in no way impacts the Commission's previous determination on the issue since the obligation stated in section 20(3) to carry this programming as part of the basic service is simply moved to section 27(0.1).
7. Having considered the comments received in response to Public Notice 2005-86, the Commission has decided to amend the regulations as proposed.

### **Implementation**

8. The Commission has made the amendments appended to this notice. These amendments were registered and came into effect on 12 January 2006 and were published in Part II of the *Canada Gazette* on 25 January 2006.

Secretary General

*This document is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>*

## REGULATIONS AMENDING THE BROADCASTING DISTRIBUTION REGULATIONS

### AMENDMENTS

**1. Sub-paragraph 18(5)(c)(i) of the *Broadcasting Distribution Regulations*<sup>1</sup> is replaced by the following:**

(i) the licensee was distributing the service on December 16, 2004, or

**2. Paragraph 19(f) of the Regulations is replaced by the following:**

(f) subject to section 27, community programming.

**3. (1) Subsection 20(1) of the Regulations is replaced by the following:**

**20.** (1) Except as otherwise provided under a condition of its licence, if a licensee distributes a Category 1 service, a Category 2 service, or a programming service referred to in subsection 18(5) or paragraph 19(c), (d) or (i), the licensee shall distribute the service in accordance with the Commission's Public Notice entitled *Distribution and Linkage Requirements for Class 1 and Class 2 Licensees*, as amended from time to time.

**(2) Subsection 20(3) of the Regulations is repealed.**

**4. (1) Section 27 of the Regulations is amended by adding the following before subsection (1):**

**27.** (0.1) Except as otherwise provided under a condition of its licence, if a licensee elects to distribute community programming under paragraph 19(f) or if a community programming undertaking is licensed in the licensed area, the licensee shall distribute the community programming as part of the basic service.

**(2) The portion of subsection 27(1) of the Regulations before paragraph (a) is replaced by the following:**

(1) If a licensee elects to distribute community programming under paragraph 19(f), except as otherwise provided in subsections (2) and (3) or under a condition of its licence, the licensee shall not distribute on the community channel in a licensed area any programming service other than

**5. Subsection 33.3(2.1) of the English version of the Regulations is replaced by the following:**

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<sup>1</sup> SOR/97-555

(2.1) A licensee whose licensed area is totally interconnected with another licensed area shall distribute in the first-mentioned licensed area the English- and French-language versions of the House of Commons programming service with the same distribution status as in the licensed area with which it is interconnected, unless the licensee does not have the technological capacity to do so.

**6. (1) Subsection 53(1) of the French version of the Regulations is replaced by the following:**

**53.** (1) Sous réserve de l'article 54, le titulaire peut augmenter les frais imputables relativement à une zone de desserte autorisée si l'augmentation ne dépasse pas le montant d'une augmentation permise par le Conseil, après le 1<sup>er</sup> septembre 1986, à titre de somme à payer à l'exploitant d'une entreprise de radiodiffusion.

**(2) Subsection 53(3) of the French version of the Regulations is replaced by the following:**

(3) Le titulaire qui a augmenté les frais imputables conformément au paragraphe (1) relativement à un service de programmation doit, si le montant que l'exploitant de l'entreprise de radiodiffusion exige de lui pour le service est inférieur au montant inclus dans les frais imputables à titre de somme à payer à l'entreprise, réduire les frais imputables relativement à la zone de desserte autorisée d'un montant égal à la différence.

COMING INTO FORCE

**7. These Regulations come into force on the day on which they are registered.**