



Broadcasting Public Notice CRTC 2008-67

Ottawa, 23 July 2008

Regulatory Policy

Amendments to the *Radio Regulations, 1986* – Implementation of the *Commercial Radio Policy 2006* and the *Digital Radio Policy*

1. The Commission hereby announces that it has made amendments to the *Radio Regulations, 1986* (the Regulations) in order to implement the commercial radio and digital radio policy frameworks established in Broadcasting Public Notice 2006-158 (the Commercial Radio Policy 2006) and Broadcasting Public Notice 2006-160 (the Digital Radio Policy).
2. Specifically, the Commission has amended the Regulations in order to:
 - implement changes relating to the Canadian content of musical selections from subcategory 31 (concert music) and subcategory 34 (jazz and blues) in accordance with paragraph 94 of the Commercial Radio Policy 2006;
 - implement the new Canadian content development (CCD) contribution regime as set out in the Commercial Radio Policy 2006;
 - implement changes to broaden the definition of Local Management Agreement (LMA) as defined in paragraph 178 of the Commercial Radio Policy 2006; and
 - extend the regulatory framework for FM analog services to licensees operating in the L-band as determined in the Digital Radio Policy.
3. The amendments were registered on 28 May 2008 (SOR/2008-177) and come into force on 1 September 2008. The amendments were published in the *Canada Gazette, Part II* on 11 June 2008, and a copy is appended to this notice.

Comments

4. The Commission issued a call for comments on the proposed amendments in Broadcasting Public Notice 2007-79.
5. The Commission received one comment objecting to the required direction of CCD contributions to FACTOR/MUSICACTION. The Commission notes that in Broadcasting Public Notice 2007-79 interested parties were asked to comment only on the wording of the proposed amendments, not the policy itself. The Commission considers that adequate opportunity was given for parties to provide input on the policy. Accordingly, the Commission considers that no changes to Regulations regarding the direction of CCD contributions to FACTOR/MUSICACTION are necessary.

Definition of “spoken word station”

6. Although it was not raised by parties, the Commission notes that the definition of “spoken word station” as set out Broadcasting Public Notice 2007-79 and published in Part I of the *Canada Gazette* contained an error. Not all “spoken word stations” have conditions of licence requiring them to devote more than 50% of a broadcast week to programming from content category 1. The Commission has, therefore, modified the definition of “spoken word station” to remove reference to the condition of licence and made the Regulations accordingly.

Effective date

7. The Commission initially intended the amended Regulations to come into force on 1 September 2007 to coincide with the start of the 2007-2008 broadcast year. However, due to delays beyond the Commission’s control, the Regulations could not be made in that time frame. The presumption against retroactivity now prevents the Regulations from coming into force on the originally identified date. Therefore, in the interest of administrative simplicity, the Commission has made the Regulations come into force on 1 September 2008 to coincide with the start of the 2008-2009 broadcast year.

Transitional measure for the implementation of Canadian content development

8. As set out in Broadcasting Public Notice 2007-79, the Regulations contain provisions for the transition from the previous Canadian talent development (CTD) regime to the new Canadian content development (CCD) regime.
9. Under the new CCD regime, each radio station holding a commercial radio licence is required to make a basic annual CCD contribution based on its total broadcast revenues in the previous broadcast year. Of this basic annual contribution, 60% must be allocated to FACTOR or MUSICACTION and the remainder to eligible initiatives as defined in paragraph 108 of the Commercial Radio Policy 2006. Under the previous CTD regime, all obligations with respect to CTD were imposed only by condition of licence.
10. The Regulations, as a transitional measure, allow licensees to reduce the basic annual amount contributable under the Regulations by the amount to be contributed to the development of Canadian content or Canadian talent under conditions of licence imposed prior to 1 June 2007, the date after which all decisions were made in accordance with the new policy.
11. Licensees entitled to deduct their CTD commitments from the required basic annual contribution will contribute under their condition of licence first and, if the amount contributable under their condition of licence is *less* than the required basic annual contribution, they are required to make an additional contribution under the new basic regime above the amount prescribed in their condition of licence.

12. An example would be a licensee that has a condition of licence requiring an annual contribution of \$500 to Canadian talent and, based on its previous broadcast year's total broadcast revenues (between \$625,000 and \$1,250,000), is required under the Regulations to make basic annual contribution of \$1,000. Under the transitional provision this licensee would be able to reduce its basic annual contribution by the \$500 contributed under its condition of licence. The licensee would, therefore, only be required to contribute the difference (\$500) in order to meet its obligations under the Regulations. The net result in this instance is that the licensee would be required to contribute \$1,000: \$500 as provided in its condition of licence and an additional \$500 under the Regulations, 60% (\$300) of which must be directed to FACTOR or MUSICACTION.
13. There are, however, situations in which the amount required under a condition of licence is *equal to or higher than* the amount that would be required under the basic annual contribution required by the Regulations. An example would be a licensee that has a condition of licence requiring a contribution of \$1,000 annually to Canadian talent and, based on its previous broadcast year's total broadcast revenues (less than \$625,000), is required under the Regulations to make a basic annual contribution of \$500. Under the transitional measure, the licensee will be able to reduce its basic annual contribution to zero, since the \$1,000 required under the condition of licence is greater than the \$500 annual contribution required by the Regulations. Therefore, the net result in this instance is that the licensee would only be required to contribute \$1,000 under its condition of licence. The licensee would be considered to have met its obligations in respect of the required basic annual contribution without having to make any additional contributions under the Regulations.
14. Where the condition of licence specifies the initiative to which the contribution is to be made, the licensee must continue to contribute to that initiative. Where the condition of licence does not specify the initiative to which the contribution is to be made, the licensee should contribute to eligible initiatives as described in paragraph 108 of the Commercial Radio Policy 2006.

Secretary General

Related documents

- *Call for comments on proposed amendments to the Radio Regulations, 1986 – Implementation of the Commercial Radio Policy 2006 and the Digital Radio Policy*, Broadcasting Public Notice CRTC 2007-79, 12 July 2007
- *Digital Radio Policy*, Broadcasting Public Notice CRTC 2006-160, 15 December 2006

- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006

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REGULATIONS AMENDING THE RADIO REGULATIONS, 1986

AMENDMENTS

1. (1) The definition “official contour” in section 2 of the Radio Regulations, 1986¹ is repealed.

(2) The definitions “campus station”, “commercial station”, “community station”, “ethnic station”, “licensee” and “native station” in section 2 of the Regulations are replaced by the following:

“campus station” means an A.M. station, F.M. station or digital radio station that is licensed as a campus station; (*station de campus*)

“commercial station” means an A.M. station, F.M. station or digital radio station, other than one that

(a) is owned and operated by the Corporation or a not-for profit corporation; or

(b) is a campus station, community station, native station or ethnic station; (*station commerciale*)

“community station” means an A.M. station, F.M. station or digital radio station that is licensed as a community station; (*station communautaire*)

“ethnic station” means an A.M. station, F.M. station or digital radio station that is licensed as an ethnic station; (*station à caractère ethnique*)

“licensee” means a person licensed to operate an A.M. station, F.M. station, digital radio station or radio network; (*titulaire*)

“native station” means an A.M. station, F.M. station or digital radio station that is licensed as a native station; (*station autochtone*)

(3) The definition “market” in section 2 of the Regulations is amended by striking out the word “or” at the end of paragraph (a), by adding the word “or” at the end of paragraph (b) and by adding the following after paragraph (b):

(c) in the case of a digital radio station, the digital service area; (*marché*)

¹ SOR/86-982

(4) Section 2 of the Regulations is amended by adding the following in alphabetical order:

“contour” means a service contour marked for a licensed A.M. station or a licensed F.M. station on the map that pertains to that station and that is most recently published by the Department of Industry; (*périmètre de rayonnement*)

“digital radio licensee” means a person licensed to operate a digital radio station; (*titulaire radio numérique*)

“digital radio station” means a station that broadcasts in the frequency band of 1452 to 1492 MHz (L-band) using a digital transmission system, but does not include a transmitter that only rebroadcasts the radiocommunications of a licensee; (*station de radio numérique*)

“digital service area” means a service area marked for a licensed digital radio station on the map that pertains to that station and that is most recently published by the Department of Industry; (*zone de desserte numérique*)

2. (1) Subsections 2.2(3) to (10) of the Regulations are replaced by the following:

(3) Except as otherwise provided under a condition of its licence, an A.M. licensee, F.M. licensee or digital radio licensee that is licensed to operate a station other than a community station or campus station shall, in a broadcast week, devote at least 10% of its musical selections from content category 3 to Canadian selections and schedule them in a reasonable manner throughout each broadcast day.

(3.1) Except as otherwise provided under a condition of its licence, an A.M. licensee, F.M. licensee or digital radio licensee that is licensed to operate a commercial station shall, in a broadcast week, devote

(a) at least 25% of its musical selections from content subcategory 31 to Canadian selections and schedule them in a reasonable manner throughout each broadcast day; and

(b) at least 20% of its musical selections from content subcategory 34 to Canadian selections and schedule them in a reasonable manner throughout each broadcast day.

(4) If 7% or more of the musical selections broadcast by the licensee during an ethnic programming period are Canadian selections and are scheduled in a reasonable manner throughout the period, the requirements of subsections (3), (3.1) and (7) to (9) apply only in respect of the musical selections that are broadcast during the part of the broadcast week that is not devoted to ethnic programs.

(5) Except as otherwise provided under a condition of its licence, an A.M. licensee, F.M. licensee or digital radio licensee that is licensed to operate a campus station, commercial station or community station in the French language shall, in a broadcast week, devote at least 65% of its vocal musical selections from content category 2 to musical selections in the French language broadcast in their entirety.

(6) An A.M. licensee, F.M. licensee or digital radio licensee may, in a broadcast week, reduce the percentage of its Canadian musical selections from content category 2 referred to in subsections (7) to (9) to

(a) not less than 20% if, in that broadcast week, the licensee devotes at least 35%, but less than 50%, of all of its musical selections to instrumental selections; and

(b) not less than 15% if, in that broadcast week, the licensee devotes at least 50% of all of its musical selections to instrumental selections.

(7) Except as otherwise provided under a condition of its licence and subject to subsection (6), an A.M. licensee, F.M. licensee or digital radio licensee that is licensed to operate a station other than a commercial station, community station or campus station shall, in a broadcast week, devote at least 30% of its musical selections from content category 2 to Canadian selections and schedule them in a reasonable manner throughout each broadcast day.

(8) Except as otherwise provided under a condition of its licence that refers expressly to this subsection and subject to subsection (6), an A.M. licensee, F.M. licensee or digital radio licensee that is licensed to operate a commercial station, community station or campus station shall, in a broadcast week, devote at least 35% of its musical selections from content category 2 to Canadian selections broadcast in their entirety.

(9) Except as otherwise provided under a condition of its licence and subject to subsection (6), an A.M. licensee, F.M. licensee or digital radio licensee that is licensed to operate a commercial station shall, between 6:00 a.m. and 6:00 p.m., in any period beginning on a Monday and ending on the Friday of that week, devote at least 35% of its musical selections from content category 2 to Canadian selections broadcast in their entirety.

(10) Except as otherwise provided under a condition of its licence, an A.M. licensee, F.M. licensee or digital radio licensee that is licensed to operate a commercial station in the French language shall, between 6:00 a.m. and 6:00 p.m., in any period beginning on a Monday and ending on the Friday of that week, devote at least 55% of its vocal musical selections from content category 2 to musical selections in the French language broadcast in their entirety.

(2) Subsections 2.2(13) and (14) of the Regulations are replaced by the following:

(13) Except as otherwise provided under a condition of its licence, an A.M. licensee, F.M. licensee or digital radio licensee that is licensed to operate a station in the French language – other than a commercial station, community station or campus station – shall, in a broadcast week, devote at least 65% of its vocal musical selections from content category 2 to musical selections in the French language and schedule them in a reasonable manner throughout each broadcast day.

(14) Except as otherwise provided under a condition of its licence, an A.M. licensee, F.M. licensee or digital radio licensee that is licensed to operate a community station or campus station in the French language shall, in a broadcast week, devote at least 65% of its vocal musical selections from content category 2 to musical selections in the French language.

3. Subsections 7(2) to (4) of the Regulations are replaced by the following:

(2) Except as otherwise provided under a condition of its licence, an A.M. licensee, F.M. licensee or digital radio licensee that is licensed to operate an ethnic station shall devote at least 50% of a broadcast week to third language programs.

(3) Except as otherwise provided under a condition of its licence to devote up to 40% of a broadcast week to third language programs, an A.M. licensee, F.M. licensee or digital radio licensee that is licensed to operate a station other than an ethnic station shall devote not more than 15% of a broadcast week to third language programs.

(4) Despite subsection (3), an A.M. licensee, F.M. licensee or digital radio licensee that is licensed to operate a Type A community station, or a campus station broadcasting in a market where there is no ethnic station, may devote up to 40% of a broadcast week to third language programs.

4. Subsection 8(7) of the Regulations is replaced by the following:

(7) Subsections (1) to (4) do not apply to a person licensed to operate a radio network.

5. Section 10 of the Regulations is replaced by the following:

10. (1) For the purposes of this section, “affiliation agreement” means an agreement between one or more A.M. licensees, F.M. licensees or digital radio licensees and another party, according to which programs provided by the other party are to be broadcast by the licensee’s station at a predetermined time.

(2) An A.M. licensee, F.M. licensee or digital radio licensee shall not enter into an affiliation agreement with a person who is deemed to be a non-Canadian under section 3 of the Direction to the CRTC (*Ineligibility of Non-Canadians*).

6. The portion of paragraph 11(4)(d) before subparagraph (i) of the Regulations is replaced by the following:

(d) another A.M. licensee, F.M. licensee or digital radio licensee that broadcasts in the same market and in the same language as the licensee, an associate of that other licensee or that other licensee together with its associate, who owns less than

7. The definition “local management agreement” in subsection 11.1(1) of the Regulations is replaced by the following:

“local management agreement” means an arrangement, contract, understanding or agreement between two or more licensees or their associates that relates, directly or indirectly, to any aspect of the management, administration or operation of two or more stations, at least two of which

(a) broadcast in the same market; or

(b) broadcast in adjacent markets, with each station’s A.M. 5 mV/m contour, F.M. 0.5 mV/m contour or digital service area, as the case may be, overlapping the A.M. 15 mV/m contour, F.M. 3 mV/m contour or digital service area of the other station. (*convention de gestion locale*)

8. Section 12 of the Regulations is replaced by the following

12. This Part applies only to F. M. licensees and digital radio licensees.

9. Subsection 14(1) of the Regulations is replaced by the following:

14. (1) An F.M. licensee or digital radio licensee that is also an A.M. licensee shall not, during the broadcast day, broadcast simultaneously on its F.M. station or digital radio station the same matter that is being broadcast on its A.M. station if any part of the F.M. station’s 3 mV/m contour or the digital radio station’s digital service area overlaps with any part of the A.M. station’s daytime 15 mV/m contour.

10. The Regulations are amended by adding the following after section 14:

PART III
CANADIAN CONTENT DEVELOPMENT

15. (1) The following definitions apply in this Part.

“broadcast year” means the period beginning on September 1 and ending on August 31 of the following year. (*année de radiodiffusion*)

“eligible initiative” means an initiative that is considered to be eligible for Canadian content development funding as indicated in Broadcasting Public Notice CRTC 2006-158, dated December 15, 2006 and entitled Commercial Radio Policy 2006. (*projet admissible*)

“FACTOR” means the not-for-profit organization known as The Foundation Assisting Canadian Talent on Recordings. (*FACTOR*)

“MUSICACTION” means the not-for-profit organization known as MUSICACTION. (*MUSICACTION*)

“spoken word station” means an A.M. station, F.M. station or digital radio station that devotes more than 50% of a broadcast week to programming from content category 1. (*station de créations orales*)

“total revenues” means the total broadcast revenues reported by an A.M. licensee, F.M. licensee or digital radio licensee in its annual returns for the previous broadcast year. (*revenus totaux*)

(2) Except as otherwise provided under a condition of its licence that refers expressly to this subsection and subject to subsection (3), an A.M. licensee, F.M. licensee or digital radio licensee that is licensed to operate a commercial station or ethnic station shall contribute the following amount annually to eligible initiatives:

(a) if the licensee’s total revenues are less than \$625,000, \$500;

(b) if the licensee’s total revenues are at least \$625,000 but not more than \$1,250,000, \$1,000; and

(c) if the licensee’s total revenues are more than \$1,250,000, \$1,000 plus one half of one percent of those revenues that are in excess of \$1,250,000.

(3) If a condition of licence imposed prior to June 1, 2007 requires the licensee to make a contribution to the development of Canadian content or Canadian talent that is other than that referred to in subsection (2), the amount that the licensee is required to contribute under that subsection is reduced by the amount that the licensee is required to contribute under the condition of its licence.

(4) Except as otherwise provided under a condition of its licence, the licensee shall make at least 60% of the contribution referred to in subsection (2) to FACTOR or MUSICACTION. However, if the licensee's station is an ethnic station or spoken word station, the licensee may instead make that percentage of the contribution to any eligible initiative that supports the creation of ethnic programs or programming from content category 1, as the case may be.

11. (1) The portion of item 1 of Table A of the schedule to the Regulations in column II is replaced by the following:

Column II

Item Description

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1. Local programming as defined in Broadcasting Public Notice CRTC 2006-158, dated December 15, 2006 and entitled Commercial Radio Policy 2006.

(2) The portion of item 1 of Table E of the schedule to the Regulations in column II is replaced by the following:

Column II

Item Description

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1. Programming that originates outside Canada other than local programming as defined in Broadcasting Public Notice CRTC 2006-158, dated December 15, 2006 and entitled Commercial Radio Policy 2006, and other than programming that is produced by a Canadian as defined in section 1 of the Direction to the CRTC (Ineligibility of Non-canadians).

COMING INTO FORCE

12. These Regulations come into force on September 1, 2008.