Canadian Radio-television and Telecommunications Commission | Conseil de la radiodiffusion et des télécommunications canadiennes

Broadcasting Regulatory Policy CRTC 2009-406

Route reference: 2009-113

Additional references: 2009-70, 2009-70-1, 2009-70-2, 2009-113-1, 2009-113-2, 2009-279

Ottawa, 6 July 2009

Policy determinations resulting from the 27 April 2009 public hearing

In the present policy, the Commission sets out its determinations relating to the Local Programming Improvement Fund (LPIF), appropriate contributions to Canadian programming, the implementation of the new distant signal policy, digital transition and terms of trade.

With respect to the LPIF, the Commission determines that for the upcoming broadcast year the appropriate contribution level by broadcasting distribution undertakings (BDUs) to the fund should be 1.5% of their gross revenues. The Commission also sets out an allocation formula and eligibility criteria for accessing the resulting LPIF funding, and establishes the eligible expenses and the administration of the fund.

As regards appropriate contributions to Canadian programming, the Commission addresses issues related to local, priority and independently-produced programming. Specifically, the Commission defines what is meant by local programming, introduces and defines the concept of local presence, provides a rationale for the imposition of local programming levels as conditions of licence and harmonizes these levels for the largest multi-station ownership groups. Further, the Commission generally maintains the existing requirements and definition with respect to priority programming, as well as the current approaches to supporting independently-produced programming.

With respect to the implementation of the distant signal policy, the Commission determines that given that the negotiations related to the distribution of distant signals and those related to the value of local signals concern compensation for the distribution of conventional television stations by BDUs, and given that both sets of negotiations will logically have an impact on one another, it would be appropriate to combine these negotiations.

With respect to digital transition, the Commission identifies in the appendix to this policy the major markets where it expects conventional broadcasters to convert their full-power, over-the-air analog transmitters to digital.

Finally, as regards terms of trade, it is the Commission's view that, at this time, the establishment of appropriate terms of trade agreements is best directly negotiated by the parties involved without Commission intervention by way of mediation or otherwise.

The Commission notes that it intends to revisit the majority of these issues in the context of the 29 September 2009 policy hearing relating to a group-based licensing framework.

Introduction

1. On 30 January 2009,[1] the Commission announced that it would review the scope of the licence renewal hearing for private conventional television stations, scheduled for April 2009, in order to determine how the focus of the hearing could be significantly narrowed or reduced.

2. Pursuant to that announcement, the Commission issued Broadcasting Notice of Consultation 2009-70. In that notice, in light of concerns raised by conventional television broadcasters relating to the challenges of the broadcasting environment and the current economic climate, the Commission stated that it would be predisposed to issue short-term licences and would focus the scope of the above-noted hearing, scheduled to begin on 27 April 2009 (the Hearing), on the following key issues:

    - the appropriate contributions to Canadian programming (local, priority and independently-produced programming), given the current economic conditions;
    - the terms of administration and delivery of the Local Programming Improvement Fund (LPIF), including the method of establishing the base-level expenditures for the purpose of determining incrementality;
    - whether to impose a 1:1 ratio requirement between Canadian and non-Canadian programming expenditures, both on a trial basis during a short-term licence, and on a longer-term basis; and
    - consideration of the terms for the digital transition by August 2011, in light of an industry working group report.

3. In Broadcasting Notice of Consultation 2009-70, the Commission also set out various questions relating to its review of the scope of the Hearing.

4. Following the issuance of that notice, the Commission issued, among others, the following notices:

    - Broadcasting Notice of Consultation 2009-113, which listed the private conventional television broadcasters that submitted licence renewal applications, noted below, and which provided access to those applications:
        - CTVglobemedia Inc. (CTVgm), on behalf of CTV Television Inc. and CTV Limited

[1] http://www.crtc.gc.ca/eng/news/releases/2009/r090130.htm

    - Canwest Television GP Inc. (the general partner) and Canwest Media Inc. (the limited partner), carrying on business as Canwest Television Limited Partnership
    - TVA Group Inc. (TVA)
    - RNC MEDIA Inc. (RNC)
    - Télé Inter-Rives ltée (Télé Inter-Rives), on behalf of itself, Télévision MBS inc., CHAU-TV Communications ltée and CKRT-TV ltée
    - Sun TV Company (Sun TV)
    - Rogers Broadcasting Limited

- Broadcasting Notice of Consultation 2009-113-1, which (a) set out a proposal by the Canadian Association of Broadcasters (CAB) relating to the administration of the LPIF and (b) presented, for consideration by interested parties, a formula for the allocation of LPIF funding; and

- Broadcasting Notice of Consultation 2009-70-1, which clarified the scope of the Hearing and added questions related to advancing the date of the implementation of the new distant signal regime and to the appropriate contributions to the LPIF.

5. The Commission received written interventions and numerous parties made oral presentations. The Commission has carefully reviewed and considered the submissions of the interveners. The public record of this proceeding is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

6. In Broadcasting Decision 2009-279, the Commission set out three key initial decisions stemming from the Hearing, relating to the following:

   - the appropriate length of licence renewal terms;
   - the scope of a policy process scheduled to begin in the fall of 2009; and
   - the possible imposition of a 1:1 ratio requirement between Canadian and non-Canadian programming expenditures during the short-term licence renewal period.

7. In regard to the second point, in Broadcasting Notice of Consultation 2009-411, also issued today, the Commission sets out additional details of a policy process to commence on 29 September 2009 in which it will consider a group-based approach to the licensing of conventional and discretionary services and certain policy issues relating to conventional television stations.

8. In the present notice, the Commission sets out its determinations relating to the following:

   - the LPIF;
   - contributions to Canadian programming;

- distant signals;
- digital transition; and
- terms of trade.

Local Programming Improvement Fund

9. In Broadcasting Public Notice 2008-100, the Commission set out details relating to the LPIF, a new fund designed to improve the quality of local programming in non-metropolitan television markets across Canada. In that public notice, the Commission presented the following overall objectives of the LPIF:

   - to ensure that viewers in smaller Canadian markets continue to receive a diversity of local programming – particularly local news programming;

   - to improve the quality and diversity of local programming broadcast in these markets; and

   - to ensure that viewers in French-language markets are not disadvantaged by the smaller size of those markets.

10. The Commission also stated in that public notice that the use of LPIF funding must be incremental to the station's current expenditures on local programming.

11. As noted above, in Broadcasting Notice of Consultation 2009-70, the Commission stated that one of the issues under consideration for the conventional television licence renewal hearing would be the terms of administration and delivery of the LPIF, including the method of establishing the base-level expenditures for the purpose of determining incrementality. In this regard, the Commission, in Broadcasting Notice of Consultation 2009-113-1, provided access to the CAB's proposal for the administration of the LPIF as well as to a follow-up letter of clarification.

12. Noting that the CAB did not provide specific details regarding a simple, objective allocation formula to be adopted for the LPIF, the Commission, in that notice, presented a formula for consideration by interested parties. Further, the Commission stated that, in view of the current global fiscal crisis, it may be appropriate to modify the requirement for incremental spending and allocate funding on the basis of a "floating average" of local programming expenditures for the previous three years.

13. In Broadcasting Notice of Consultation 2009-70-1, the Commission, noting that the economic situation of conventional broadcasters continued to deteriorate, invited parties to provide comments as to:

    a) whether the 1% of gross revenues of broadcasting distribution undertakings (BDUs) to be contributed to the LPIF would provide sufficient support for local programming in non-metropolitan markets, either on a short-term or longer-term basis;

b) what the terms of eligibility for access to the funds should be; and

c) the appropriate commitments regarding the production of local content and local news, on a station by station basis, that the Commission should insist upon.

14. In light of the above, the Commission addresses below the following key issues:

- three models for the allocation of LPIF funding;
- appropriate contribution levels by BDUs to the LPIF;
- eligibility criteria for LPIF funding;
- expenses eligible for LPIF funding; and
- the administration of the LPIF.

Three models for the allocation of Local Programming Improvement Fund funding

15. As set out in Broadcasting Public Notice 2008-100, the Commission, in its original model for the allocation of LPIF funding, proposed to allocate one third of LPIF funding to broadcasters operating in smaller French-language markets and two thirds to broadcasters operating in English-language markets. The Commission's original formula allocated available LPIF funding solely on the basis of average three-year local program spending.

16. In regard to the francophone and anglophone linguistic markets, the Commission notes that the financial data provided by parties indicates that the challenge of providing a sufficient quantity and quality of local programming is currently the greatest in anglophone markets, for which the negative profit before interest and tax (PBIT) margins of the aggregated stations serving Census Metropolitan Areas (CMAs)/Census Areas (CAs) with populations under one million are particularly acute compared to those for francophone markets.

17. During the Hearing, the Commission was presented with two alternative formulas to its original proposal for allocating the LPIF funding. The models presented by CTVgm and RNC/Télé Inter-Rives attempted to introduce a greater measure of transparency and certainty by modifying the Commission's original proposal to base allocation solely according to a moving average of historical spending on local programming.

18. The proposal by CTVgm modified the Commission's original proposal by retaining the same linguistic television market split, but allocating to each station within those envelopes a percentage of the available funding equivalent to the percentage of population represented by the stations' individual market population.

19. The RNC/Télé Inter-Rives proposal modified the Commission's original proposal by retaining the same linguistic television market split, but then allocating a specific share to English- and French-language Canadian Broadcasting Corporation (CBC) stations based on the number of stations within each envelope. These allocations would then be further

divided, with one third of each subdivided envelope reserved for an equal allocation between each station, and two thirds to be allocated according to the Commission's original historical spending formula.

20. Following consideration of the various options, the Commission decided to establish a new model through which the LPIF funding will be allocated. With the formula set out in that model, the Commission sought to incorporate the modifications proposed by both CTVgm and RNC/Télé Inter-Rives, and also considered issues relating to the potential impact of those proposals on allocation of funding, as well as the issue relating to francophone and anglophone linguistic markets noted above.

21. In regard to the potential impact of the allocation model proposed by CTVgm, the Commission considers that, while it would provide maximum transparency and certainty, it has the potential to be deficient in targeting assistance to small stations. Further, it does not provide any incentive for maintained or increased local spending. In regard to the potential impact of the allocation model proposed by RNC/Télé Inter-Rives, the Commission notes that it is commendable both for retaining an incentive towards maintained or increased local spending, while also providing a base level of funding to stations regardless of market size. The Commission further considers that RNC/Télé Inter-Rives' proposal would eliminate market size as a consideration in the allocation formula which is appropriate given the significant fixed costs that are associated with improving local programming but that are not correlated to market size. However, the Commission considers that differentiating between English- and French-language CBC stations and private stations would be inconsistent with the general requirement, independent of ownership, for local programming support across all stations.

22. In light of the above, the Commission determines that, for the 2009-2010 broadcast year (beginning 1 September 2009 and ending 31 August 2010), the LPIF allocation formula shall be as follows:

- LPIF funding will be made available to television stations operating in non-metropolitan markets.[2] However, a French-language station operating in a metropolitan English-language market (i.e., an English-language market where the population with a knowledge of English is one million or more) will receive funding from the funding made available to non-metropolitan English-language markets; inversely, an English-language station operating in a metropolitan French-language market will receive funding from the funding made available to non-metropolitan French-language markets.

- One third of the overall funding will be allocated equally to stations across both

[2] The definitions of metropolitan and non-metropolitan markets are the same as those set out in Broadcasting Public Notice 2008-100. Accordingly, metropolitan television markets are those television markets in which the population with a knowledge of the official language of the station (i.e., English or French), as defined by Statistics Canada, is one million or more and non-metropolitan markets are those television markets in which the population with a knowledge of the official language of the station is less than one million.

francophone and anglophone markets, the precise amount to be determined based on the number of stations eligible for funding.

- The remaining two thirds of LPIF funding will be divided such that 30% is directed to francophone markets and 70% is directed to anglophone markets.

- These amounts will be allocated on the basis of three-year historical spending, with an allocation proportionate to the percentage of LPIF funding to all eligible stations in a linguistic market (the linguistic LPIF envelope divided by the sum of three-year average of historical local spending multiplied by the individual station average three-year local spending).

23. Furthermore, by adopting the above formula, the Commission waives the incrementality requirement for the 2009-2010 broadcast year.

Appropriate contribution level by broadcasting distribution undertakings to the Local Programming Improvement Fund

24. The Commission has considered whether the 1% of gross revenues of licensed BDUs to be contributed to the LPIF would provide sufficient support for local programming in non-metropolitan markets, either on a short-term or longer-term basis. In light of the evidence presented during the course of the Hearing, the Commission determines that it would be appropriate to increase the LPIF contribution by licensed BDUs from 1.0% to 1.5% of gross revenues for the 2009-2010 broadcast year.

25. The Commission is of the view that, based on evidence on the public record of the proceeding, the figure of 1.5% – estimated to be approximately $102 million – will provide sufficient support to ensure that Canadians in non-metropolitan markets will continue to receive local programming in the 2009-2010 broadcast year. This will help ensure the continued viability of non-metropolitan market stations that, during the course of 2008, were particularly affected by the seriousness of the economic downturn and the impaired advertising market. The Commission considers that the 1.5% will provide an appropriately sound financial footing for the production of local programming and news programming in markets where evidence suggests ongoing station operations are threatened.

26. In Broadcasting Notice of Consultation 2009-176, the Commission called for comments on proposed amendments to the *Broadcasting Distribution Regulations* (the Regulations) that would require BDU licensees to contribute to the LPIF. In that notice, the Commission stated that the 1% amount would be subject to review within the context of the Hearing. As such, the Commission will implement the proposed amendments in keeping with its determination above.

27. The appropriate LPIF contribution by licensed BDUs, as well as other regulatory support mechanisms for conventional television stations, will be revisited during the policy process to commence on 29 September 2009 in the context of group-based licensing, as announced in Broadcasting Notice of Consultation 2009-411. At this time, it is the

Commission's intention to revert to the original criteria set out in Broadcasting Public Notice 2008-100, as of 1 September 2010.

Eligibility criteria for Local Programming Improvement Fund funding

28. As noted above, the Commission has waived the incrementality requirement for the 2009-2010 broadcast year. Nevertheless, the Commission is of the view that those local stations accessing LPIF funding should broadcast minimum levels of local programming in the communities they serve.

29. In English-language non-metropolitan markets, the Commission determines that local television stations, in order to access LPIF funding, will be required to broadcast, in instances where local programming levels have been harmonized,[3] a minimum of seven hours of local programming per broadcast week.[4] Where local programming levels have not been harmonized, specifically, in the case of broadcasters that did not have renewal applications considered at the Hearing, local television stations will be required to maintain their existing local programming levels, as stated in their most recent licence renewal decisions, in order to be eligible for LPIF funding.

30. In French-language non-metropolitan markets, the Commission determines that local television stations, in order to access LPIF funding, will be required to broadcast, in instances where the local programming levels have been harmonized, a minimum of five hours of local programming per broadcast week.[5] Where local programming levels have not been harmonized, such as in the case of RNC and Télé Inter-Rives, for example, or in the case of broadcasters that did not have renewal applications considered at the Hearing, local television stations will be required to maintain their existing local programming levels, as stated in their most recent renewal decision, in order to be eligible for LPIF funding.

31. As discussed below, local programming levels are being imposed by condition of licence for the television stations for which the broadcasting licences are being renewed as part of the Hearing.

32. Local programming is defined and discussed further in the section of the present regulatory policy relating to contributions to Canadian programming.

Expenses eligible for Local Programming Improvement Fund funding

33. The Commission is of the view that the use of LPIF funding by television broadcasters should result in "on screen product." As such, the Commission considers that only those expenses that are directly associated with the production of programming should be considered eligible expenses. To this end, the Commission will use the following definition of "direct expenses," set out in Circular No. 426, to define what those expenses may be:

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[3] The harmonization of local programming levels are discussed below in the section on local programming.
[4] See Broadcasting Decisions 2009-407, 2009-408 and 2009-409, also issued today.
[5] See Broadcasting Decision 2009-410, also issued today.

> Direct expenses are those expenses solely attributable to the acquisition or production of programming. This includes, for example, salaries and benefits paid to staff who work exclusively in the programming department, non-staff talent fees, films, tapes, props, sets, program vehicle operating costs, and any other program-related materials and supplies.

34. At the Hearing, the Commission discussed with interested parties the possibility of allowing independently-owned, small market stations – those eligible to access the CAB-administered small market local programming fund available to independently-owned stations (the DTH Fund) – to allocate expenses associated with the provision of live closed captioning of local programming against the LPIF. The Commission considers that this would advance its objective to ensure the accessibility of programming for all Canadians – especially those residing in smaller communities served by independent small broadcasters with limited resources.

35. Accordingly, the Commission will accept, as eligible LPIF expenses, expenses associated with the provision of live closed captioning of local programming by independently-owned, small market stations.

36. To ensure transparency, the Commission directs all television stations that access LPIF funding to clearly identify, in their annual returns, the annual funds received through the LPIF and the annual expenditures associated with LPIF funding. This requirement is in addition to the requirement for the Fund Administrator and licensee recipients to file annual reports, as set out in Broadcasting Public Notice 2008-100.

Administration of Local Programming Improvement Fund

37. The CAB issued a request for proposals for the administration of the LPIF. As a result of that process, the CAB recommended the adoption of McCay, Duff LLP as the Fund Administrator. The Commission accepts the CAB’s recommendation of McCay, Duff LLP as the third-party administrator of the LPIF and requests the CAB to establish a governance structure, which should involve representatives from contributors to and beneficiaries of the LPIF. The governance structure should comply with all relevant guidelines for independently-administered funds, as set out in Public Notice 1999-29.

38. In regard to the contributions by licensed BDUs to the LPIF, BDUs shall make these contributions on the same monthly schedule as their requirement to contribute 5% of their gross broadcasting revenues to Canadian programming.

39. Similarly, LPIF funding will be paid out on a monthly basis, mirroring the contribution schedule.

Contributions to Canadian programming

40. As part of the Hearing, the Commission examined the appropriate contributions to Canadian programming — local programming, priority programming and independently-produced programming — by conventional broadcasters, given the current economic

conditions. The Commission's determinations in this regard are detailed below.

Local programming

41. Based on the discussions during the Hearing and the public record, the Commission considers that the following issues should be addressed in its determinations:

- the definition of local programming;
- the definition of local presence;
- the imposition of local programming levels as conditions of licence; and
- harmonized local programming levels.

Definition of local programming

42. During the Hearing, there was general consensus among all parties that the definition of local programming should be clarified.

43. The Commission has considered all of the comments submitted as part of the Hearing and has adopted the following definition of local programming:

> Local programming is defined as programming produced by local stations with local personnel or programming produced by locally-based independent producers that reflects the particular needs and interests of the market's residents.

44. The Commission recognizes the regional nature of some conventional stations operating in Canada. Accordingly, where a local station has historically been and is currently permitted to count regional programming towards meeting its local programming commitments or obligations, it should be allowed to continue to do so for purposes of meeting the requirements related to accessing the LPIF.

Definition of local presence

45. The concept of local presence was introduced by CTVgm during its oral presentation at the Hearing. CTVgm identified three key criteria:

- providing seven-day-a-week original local news coverage distinct to the market;
- employing full-time journalists on the ground in the market; and
- operating a news bureau or news gathering office in the market.

46. The Commission shares CTVgm's view of local presence and, as a principle, where appropriate and reasonable, encourages local stations to maintain a local presence. However, as noted by CTVgm, an exception will need to be made in cases where programming is produced on a regional basis, such as in Northern Ontario, Saskatchewan and Atlantic Canada.

Imposition of local programming levels as conditions of licence

47. In Public Notice 1999-97, the Commission stated the following:

> […] in the new television environment, there are sufficient market incentives to ensure that audiences will continue to receive a variety of local news without regulatory requirements. News programming is a key element in establishing a station's identity and loyalty with viewers and is generally profitable.

48. As a result, from that moment forward, most local programming levels were noted as commitments rather than required by condition of licence.

49. However, since the issuance of that public notice, the industry has undergone significant consolidations, and large media companies — detached from the local communities they serve — now operate the majority of conventional television stations. Further, over the course of the current economic downturn, it has been observed that broadcasters are more likely to cut local programming, programming that can entail significant infrastructure costs, rather than make difficult decisions in terms of cutting popular programming.

50. It is the Commission's view that diversity of voices and local reflection are equally as important as, if not more important than, other preoccupations of broadcasters and that such considerations and the public demand for local programming are currently not being appropriately recognized by many within the industry. These two elements are important objectives mandated by the *Broadcasting Act* (the Act) and the Commission needs to ensure that they are supported by the broadcasting system. Accordingly, the Commission will impose the minimum local programming levels as conditions of licence.

Harmonized local programming levels

51. The Commission notes that the current local programming commitments or conditions of licence do not necessarily reflect the population base of the markets in which local stations operate as these commitments and conditions were established as a result of competitive processes.

52. Therefore, to improve fairness within markets and predictability for industry players, the Commission has determined that it should harmonize the local programming levels of stations that are owned and operated by the largest multi-station ownership groups. As noted earlier, these levels will be imposed as conditions of licence. The levels are established based on whether the station operates in a non-metropolitan or metropolitan market.

53. In English-language markets, based on the public record, the Commission establishes the following minimum local programming levels:

- metropolitan markets: 14 hours per broadcast week
- non-metropolitan markets: 7 hours per broadcast week

54. The Commission notes that in most instances, this represents a decrease in the amount of local programming that is currently being broadcast by the English-language stations owned and operated by the conventional broadcasters with renewal applications before the Commission. However, the Commission notes that these are only minimums and that it expects the amount of local programming to be adjusted upward to reflect market conditions where appropriate. The specifics regarding each station’s local programming obligations are set out in the individual renewal decisions.[6]

55. The Act recognizes that “English and French language broadcasting, while sharing common aspects, operate under different conditions and may have different requirements.” The Commission therefore concludes that TVA, the country’s largest multi-station French-language ownership group, should operate its television stations under different requirements than those for English-language television stations.

56. TVA proposed to maintain its current local programming commitments, except in the case of CFCM-TV Québec, for which it proposed to reduce its commitment from 21 to 18 hours per broadcast week. Although Québec is considered to be a non-metropolitan French-language market, the Commission notes that it is the provincial capital as well as the province’s second largest television market. Accordingly, the Commission considers it appropriate to impose a condition of licence requiring CFCM-TV to broadcast 18 hours of local programming per broadcast week. This will be reviewed by the Commission at the time of the next licence renewal for CFCM-TV.

57. However, in regard to the proposal to maintain the current commitment of three hours and 10 minutes of local programming per broadcast week for CFER-TV Rimouski, CJPM-TV Chicoutimi, CHLT-TV Sherbrooke and CHEM-TV Trois-Rivières, the Commission is of the view that it would be appropriate to increase the local programming levels for these stations to five hours per broadcast week and impose those levels as conditions of licence. The Commission considers that these stations can afford to increase their local programming to their markets with the funding they will receive through the LPIF.[7]

58. With respect to the French-language, independently-owned small market stations that had applications before the Commission and appeared at the Hearing, namely RNC and Télé Inter-Rives, the Commission determines that they should maintain their current local programming levels and that these levels should be imposed as conditions of licence. Decisions relating to the renewal of the broadcasting licences for RNC’s and Télé Inter-Rives’ television stations will be issued at a later date.

59. In regard to the English-language, independently-owned small market stations and other English-language and French-language conventional broadcasters – both private broadcasters and the CBC – that did not have renewal applications before the Commission, they will be expected to maintain their commitments and obligations

[6] See Broadcasting Decisions 2009-407, 2009-408 and 2009-409.
[7] See Broadcasting Decision 2009-410.

related to local programming. These commitments and obligations will be reviewed at their next licence renewal.

60. As an element of the 29 September 2009 public hearing announced in Broadcasting Notice of Consultation 2009-411, the local programming obligations of conventional broadcasters will be revisited in the context of a group-based licensing framework.

Priority programming

61. In Broadcasting Notice of Consultation 2009-70, the Commission set out, for the upcoming renewal term, questions concerning the appropriateness of the current priority programming requirements and definitions applicable to the conventional television stations owned and operated by the largest multi-station ownership groups.

62. Currently, these groups are required to broadcast, at a minimum, an average of eight hours per broadcast week of Canadian priority programs over the broadcast year, such as drama and documentaries, during the peak viewing hours between 7:00 p.m. and 11:00 p.m.

63. With the exception of CTVgm, which requested a one-year administrative renewal with no changes to its conditions of licence, licensees proposed the elimination of the priority programming requirements. Some licensees suggested that the Commission widen the priority programming categories to include programs such as Canadian awards shows, the Olympics and reality television.

64. Based on the evidence presented at the Hearing and based on the scheduling of the acquisition of programming for the upcoming broadcast year, the Commission is of the view that there is insufficient evidence to warrant a change to the current priority programming requirements and definitions and that they should continue to apply to all of the largest multi-station ownership groups for these short-term licence renewal periods.

65. The Commission notes that Sun TV is no longer part of a multi-station group or affiliated with other English-language stations with which it can share programming acquisitions and productions. However, the Commission is of the view that Sun TV, as a conventional television station operating in the largest market in Canada, should be required to air some priority programming. Accordingly, it is the Commission’s determination that Sun TV’s priority programming requirement should be reduced to an average of two hours per broadcast week over the broadcast year between 7:00 p.m. and 11:00 p.m. A decision relating to the renewal of the broadcasting licence for Sun TV will be issued at a later date.

66. The issue of priority programming will be re-examined during the 29 September 2009 public hearing in the context of the discussions related to a group-based licensing framework.

Independent production

67. Large English-language television station groups are expected to ensure that at least 75% of the priority programming they broadcast is produced by independent production companies. For its part, TVA is expected to allocate minimum annual expenditures for independently-produced French-language programming.

68. In Broadcasting Notice of Consultation 2009-70, the Commission sought comments from licensees on the effectiveness of current approaches to supporting the broadcast by conventional television stations of independently-produced programming and asked whether other approaches should be considered in the short term.

69. Based on evidence presented at the Hearing and based on the scheduling of the acquisition of programming for the upcoming broadcast year, the Commission is not convinced that changes to the current approaches to supporting the broadcast of independently-produced programming are warranted at this time. The Commission will re-examine this issue in the context of the 29 September 2009 public hearing relating to a group-based licensing framework.

Distant signals

70. In Broadcasting Public Notice 2008-100, the Commission set out a new distant signal policy to be implemented by 31 August 2011. Under that new policy, all licensed BDUs will be required to obtain the consent of conventional television licensees prior to distributing their local stations in a distant market. BDUs and conventional broadcasters are expected to negotiate the appropriate level of compensation and other terms and conditions relating to the distribution of distant signals.

71. In Broadcasting Notice of Consultation 2009-70-1, the Commission noted the CAB's argument that the Commission should take immediate action to make the required amendments to the Regulations so as to implement its distant signal policy. The CAB cited, among other things, the deteriorating financial situation of conventional broadcasters.

72. The Commission considered that there might be merit in advancing the date for the implementation of the new distant signal regime in light of the financial situation of conventional broadcasters and that this issue would be better discussed as part of the licence renewal hearing for private conventional television stations.

73. Over the course of the Hearing, the Commission heard requests from conventional television licensees for the implementation date for the new distant signal policy to be advanced given the economic difficulties faced by these stations. The Commission also heard evidence from BDUs opposing this request. They argued that the distant signal policy was an integral part of the package of regulatory changes announced in Broadcasting Public Notice 2008-100 and that its implementation should not be advanced without also advancing the implementation of other regulatory changes announced in that notice.

74. In Broadcasting Notice of Consultation 2009-411, the Commission requests comments on issues related to a negotiated solution for compensation for the value of local television station signals distributed by BDUs. Given that both sets of negotiations — those related to the distribution of distant signals and those related to the value of local signals — concern compensation for the distribution of conventional television stations by BDUs, and given that both sets of negotiations will logically have an impact on one another, the Commission is of the view that it may be appropriate to combine these negotiations.

75. Accordingly, the Commission will not advance the dates for the implementation of the new distant signal policy at this time. In Broadcasting Notice of Consultation 2009-411, the Commission has requested comment on issues relating to combining negotiations regarding the value of local signals with those regarding distant signals.

Digital transition

76. Based on the evidence placed on the public record of the Hearing, including an industry working group report on the digital transition and an independent consultant firm's report on the cost estimates for the conversion to digital television,[8] the Commission expects conventional broadcasters to convert their full-power, over-the-air analog transmitters to digital in major markets.

77. For the purposes of the digital transition, the Commission determines that major markets shall include the national capital and all provincial and territorial capital cities, as well as markets either served by multiple originating stations (including CBC stations) or with populations greater than 300,000. The appendix to this regulatory policy lists all of the major markets as defined by the Commission.

78. The Commission encourages broadcasters to convert all of their full-power analog transmitters to digital in all markets and to take advantage of multiplexing opportunities — multiple broadcasters sharing one digital transmitter to deliver programming services — as a means of reducing or delaying the infrastructure investments related to the digital transition.

79. However, the Commission recognizes that the costs associated with the digital transition may not make it practical for some stations located in smaller markets to convert and that those stations may maintain service by other means, such as providing their signals through direct feeds to cable and satellite distributors.

80. Bell Canada and Shaw Communications Inc. presented proposals for alternative satellite delivery models that would ensure that consumers receive at least five local and regionally-relevant, standard definition signals representing major broadcast groups, at no monthly charge. Although the Commission recognizes the merits of these proposed models, practical, economic and technical elements of those models require further discussion.

[8] These documents were placed on the public record in Broadcasting Notice of Consultation 2009-113-2.

81. Accordingly, the Commission will be seeking additional comments on issues relating to the digital transition during the 29 September 2009 public hearing (see Broadcasting Notice of Consultation 2009-411).

Terms of trade

82. At the Hearing, the Canadian Film and Television Production Association, the Association des producteurs de films et de télévision du Québec, and the conventional television broadcasters updated the Commission on the status of their terms of trade negotiations.

83. Although it appears that the negotiations between the independent producers and television broadcasters may have stalled, it is the Commission's view that, at this time, the establishment of appropriate terms of trade agreements is best directly negotiated by the parties involved without Commission intervention by way of mediation or otherwise.

84. The Commission recognizes the importance of such agreements in this era of consolidation and of the introduction of new platforms upon which content can be accessed. Although it will not directly involve itself in the negotiations, the Commission is of the view that the inclusion of limiting terms, such as length of licensing terms, would be appropriate.

85. Given its view that terms of trade agreements would provide stability and clarity to all concerned, the Commission will only consider renewal applications for seven years with finalized terms of trade agreements in place.

Secretary General

Related documents

- *Policy proceeding on a group-based approach to the licensing of television services and on certain issues relating to conventional television* – Notice of hearing, Broadcasting Notice of Consultation CRTC 2009-411, 6 July 2009

- *Licence renewals*, Broadcasting Decision CRTC 2009-410, 6 July 2009

- *Licence renewals*, Broadcasting Decision CRTC 2009-409, 6 July 2009

- *Citytv – Licence renewals*, Broadcasting Decision CRTC 2009-408, 6 July 2009

- *Licence renewals*, Broadcasting Decision CRTC 2009-407, 6 July 2009

- *Renewal of the broadcasting licences for private conventional television stations considered at the 27 April 2009 Gatineau public hearing – Initial decisions and scope of subsequent policy proceeding*, Broadcasting Decision CRTC 2009-279, 15 May 2009

- *Call for comments on proposed amendments to the* Broadcasting Distribution Regulations, *the* Television Broadcasting Regulations, 1987*, the* Pay Television Regulations, 1990 *and the* Specialty Services Regulations, 1990, Broadcasting Notice of Consultation CRTC 2009-176, 3 April 2009

- *Licence Renewals for Private Conventional Television Stations* – Notice of hearing, Broadcasting Notice of Consultation CRTC 2009-113, 3 March 2009, as amended by Broadcasting Notice of Consultation CRTC 2009-113-1, 17 March 2009, and Broadcasting Notice of Consultation CRTC 2009-113-2, 20 April 2009

- *Scope of licence renewal hearings for private conventional television stations*, Broadcasting Notice of Consultation CRTC 2009-70, 13 February 2009, as amended by Broadcasting Notice of Consultation CRTC 2009-70-1, 27 March 2009, and Broadcasting Notice of Consultation CRTC 2009-70-2, 14 May 2009

- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services* – Regulatory policy, Broadcasting Public Notice CRTC 2008-100, 30 October 2008

- *Building on success – A policy framework for Canadian television*, Public Notice CRTC 1999-97, 11 June 1999

- *Contributions to Canadian Programming by Broadcasting Distribution Undertakings*, Public Notice CRTC 1999-29, 16 February 1999

- *Guidelines respecting financial contributions by the licensees of broadcasting distribution undertakings to the creation and presentation of Canadian programming*, Circular No. 426, 22 December 1997

Appendix to Broadcasting Regulatory Policy CRTC 2009-406

Mandatory markets for digital television conversion

British Columbia: Vancouver, Victoria

Alberta: Calgary, Edmonton, Lethbridge

Saskatchewan: Regina, Saskatoon

Manitoba: Winnipeg

Ontario: Toronto*, London, Windsor, Kitchener

Quebec: Montréal, Québec, Trois-Rivières, Sherbrooke, Rivière-du-Loup, Saguenay

New Brunswick: Saint John, Moncton, Fredericton

Nova Scotia: Halifax

Prince Edward Island: Charlottetown

Newfoundland and Labrador: St. John’s

Yukon: Whitehorse

Northwest Territories: Yellowknife

Nunavut: Iqaluit

National Capital Region (Ottawa-Gatineau)

*Barrie and Hamilton are included in the Toronto market since their stations compete in the Toronto market.