



Broadcasting Notice of Consultation CRTC 2009-797

Ottawa, 22 December 2009

Call for comments on proposed amendments to the *Broadcasting Licence Fee Regulations, 1997*

In this notice, the Commission invites parties to comment on proposed amendments to the Broadcasting Licence Fee Regulations, 1997 (the Regulations) on or before 10 February 2010. The purpose of the amendments is to initiate changes to the Regulations as a result of an out-of-court settlement reached between the Government of Canada and members of the broadcasting industry with respect to the Part II broadcasting licence fees. As part of the settlement, the Government recommended that the Commission develop a new fee regime that would cap the total annual Part II licence fees to be paid by broadcasters to the lesser of the current Part II licence fees, calculated according to section 11 of the Regulations, and \$100 million, adjusted annually after 2010 by changes in the Consumer Price Index.

Introduction

1. In 2003 and 2004, the Canadian Association of Broadcasters and certain broadcasters filed actions in the Federal Court of Canada alleging that the Part II broadcasting licence fees set out in section 11 of the *Broadcasting Licence Fee Regulations, 1997* (the Regulations) were invalid because they impose a tax rather than a licence fee, as authorized by the *Broadcasting Act* (the Act). On 28 April 2008, the Federal Court of Appeal concluded that the Part II licence fees were, in pith and substance, a regulatory charge and not a tax. On 18 December 2008, the Supreme Court of Canada granted leave to appeal from this decision.
2. On 7 October 2009, the parties to the litigation announced that they had reached an out-of-court settlement by which the plaintiffs discontinued their recourses. Consequently, the decision of the Federal Court of Appeal became the final judgment on this issue. The Part II licence fees are regulatory charges, imposed in relation to a broadcaster's privilege to hold a licence. These fees recover part of the Government of Canada's substantial annual investment in the Canadian broadcasting system.
3. In return, the Government of Canada remitted the amounts due from plaintiffs for the return years 2006 to 2008, that is, the amounts due and payable on 30 November 2007, 2008 and 2009. The *Part II Broadcasting Licence Fees Payers Remission Order* was published on 28 October 2009 in the *Canada Gazette*.
4. Under the settlement agreement, the Government of Canada recommended that the Commission develop a new, forward-looking fee regime that would be capped at \$100 million per year. The new fee regime is intended to provide stability and predictability for the industry and protect the interests of Canadians. In light of the above, the Commission proposes to amend the Regulations in accordance with section 11 of the Act in order to set in place fee calculation according to criteria that it considers appropriate. A copy of the proposed amendments to the Regulations is

appended to this notice and an explanation of the criteria that the Commission considers appropriate follows.

5. Sections 3 and 11 of the Regulations require that all licensees of broadcasting undertakings pay Part II licence fees on or by 30 November of each year. According to the current system, Part II licence fees are calculated by the licensees themselves and equal 1.365% multiplied by the amount by which the fee revenue of a licensee exceeds the applicable exemption level for the return year that ended in the current calendar year.
6. For administrative reasons, the Commission proposes to amend the Regulations in order that Part II licence fees become payable on 1 December of each year. The Commission also proposes that the Part II licence fees be invoiced to licensees on or by 1 November of each year and be determined by the following formula: $(X/Y \times Z)$, where
 - X is the licensee's fee revenues for the return year terminating during the previous calendar year, less that licensee's exemption level for that return year;
 - Y is the aggregate fee revenues for the return year terminating during the previous calendar year of all licensees whose fee revenues exceed the applicable exemption levels, less the aggregate exemption level for all those licensees for that return year; and
 - Z is the lesser of
 - a) \$100 million adjusted annually on a compound basis after 2010 in accordance with the percentage increase or decrease, as the case may be, to the Consumer Price Index (CPI) and
 - b) 1.365% multiplied by the amount determined for Y.
7. The Commission notes that the proposed formula used to calculate Part II licence fees requires a determination of the lesser amount of two sums and, for each licensee, the proportion of the total to be paid. Henceforth, the Commission will have to make these determinations and publish the lower figure for the Z factor in the *Canada Gazette*. Given that licensees' financial information for a return year is not available on 1 November following the end of that return year, the Commission proposes to use the financial information of the previous return year in the calculation of the X and Y variables. For example, for the Part II licence fees for the broadcasting year 2009-2010, payable on 1 December 2010, the Commission would use the financial information submitted by licensees for the broadcasting year 2008-2009.
8. Thus, each year, licensees will be able to estimate the amount that they will have to pay on 1 December for the Part II licence fee based on the Part I licence fee invoice sent to them by the Commission at the end of February of the same year. The proportion of the total amount that an individual licensee will have to pay for Part II fees could however vary from the proportion to be paid for the Part I licence fees if, between March and the date of the invoice, certain licensees are

no longer licensees because, for example, of an exemption order or because they have ceased to carry on business.

9. The Commission is of the view that the fee calculation mechanism provides a practical and efficient means of recovery of the Part II licence fees. The Commission considers this fee calculation method to be straightforward and inexpensive to implement.
10. Commencing in 2011, the amount set out in paragraph a) of the variable Z shall be adjusted annually on a compound basis in accordance with the percentage increase or decrease to the CPI for the calendar year prior to the year of the adjustment. The CPI is the annual average all-items CPI for Canada (not seasonally adjusted) that is published by Statistics Canada, as set out in Catalogue No. 62-001-XWE, Table 5, CANSIM vector number v41690973. This information is publicly available on the Statistics Canada website.

Call for comments

11. The Commission wishes to receive comments concerning the wording of the proposed *Regulations Amending the Broadcasting Licence Fee Regulations, 1997*, a copy of which is appended to the present notice. The Commission will accept comments that it receives on or before **10 February 2010**. The Commission cannot be held responsible for postal delays and will not notify a party whose comment is received after the deadline date. The comment will not be considered by the Commission and will not be part of the public file.
12. The Commission will not formally acknowledge comments. It will, however, fully consider all comments and they will form part of the public record of the proceeding, provided that the procedures for filing set out below have been followed.

Procedure for filing comments

13. Interested parties can file their comments to the Secretary General of the Commission in **only one** of the following formats:

by using the

[\[Broadcasting interventions/comments form\]](#)

or

by mail to

CRTC, Ottawa, Ontario K1A 0N2

or

by fax at

819-994-0218

14. The Commission advises those who file and serve by electronic means to exercise caution when using e-mail for service of documents or notification, as it may be difficult to establish that service has occurred.
15. Submissions longer than five pages should include a summary.

16. Each paragraph of the submission should be numbered. In addition, where the comment is filed by electronic means, the line *****End of document***** should be entered following the last paragraph of the document, as an indication that the document has not been damaged during electronic transmission.

Important notice

17. All information that parties provide as part of this public process, except information granted confidentiality, whether sent by postal mail, facsimile, e-mail 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, e-mail addresses, postal/street addresses, telephone and facsimile numbers, and any other personal information parties provide.
18. 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.
19. 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.
20. 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.
21. The Commission encourages interested parties to monitor the public examination file and the Commission's website for additional information that they may find useful when preparing their comments.

Examination of documents

22. A list of all comments will also be available on the Commission's website. An electronic version of all comments submitted will be accessible from this list. To access the list, select "Lists of interventions/comments" under "Public Proceedings" from the Commission's website.
23. The public may examine public comments and related documents at the following Commission offices during normal business hours.

Location of Commission offices

Toll-free telephone: 1-877-249-2782

Toll-free TDD: 1-877-909-2782

Les Terrasses de la Chaudière
Central Building
1 Promenade du Portage, Room 206
Gatineau, Quebec
J8X 4B1
Tel.: 819-997-2429
Fax: 819-994-0218

Regional offices

Metropolitan Place
99 Wyse Road
Suite 1410
Dartmouth, Nova Scotia
B3A 4S5
Tel.: 902-426-7997
Fax: 902-426-2721

205 Viger Avenue West
Suite 504
Montréal, Quebec
H2Z 1G2
Tel.: 514-283-6607

55 St. Clair Avenue East
Suite 624
Toronto, Ontario
M4T 1M2
Tel.: 416-952-9096

Kensington Building
275 Portage Avenue
Suite 1810
Winnipeg, Manitoba
R3B 2B3
Tel.: 204-983-6306
TDD: 204-983-8274
Fax: 204-983-6317

2220 – 12th Avenue
Suite 620
Regina, Saskatchewan
S4P 0M8
Tel.: 306-780-3422

10405 Jasper Avenue
Suite 520
Edmonton, Alberta
T5J 3N4
Tel.: 780-495-3224

580 Hornby Street
Suite 530
Vancouver, British Columbia
V6C 3B6
Tel.: 604-666-2111
TDD: 604-666-0778
Fax: 604-666-8322

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>.

Appendix to Broadcasting Notice of Consultation CRTC 2009-797
REGULATIONS AMENDING THE BROADCASTING LICENCE FEE REGULATIONS,
1997

AMENDMENTS

1. Paragraph 3(b) of the *Broadcasting Licence Fee Regulations, 1997*¹ is replaced by the following:

(b) a Part II licence fee, payable on or before December 1 in each year.

2. Section 11 of the Regulations is replaced by the following:

11. (1) A Part II licence fee is equal to the amount determined by the formula

$$X/Y \times Z$$

Where

X is the licensee's fee revenues for the return year terminating during the previous calendar year, less that licensee's exemption level for that return year; is the aggregate fee revenues for the return year terminating during the previous calendar year;

Y of all licensees whose fee revenues exceed the applicable exemption levels, less the aggregate exemption level for all those licensees for that return year; and

Z is the lesser of

(a) \$100,000,000, and

(b) 1.365% multiplied by the amount determined for Y.

(2) Commencing in 2011, the amount set out in paragraph (a) of the description of Z in subsection (1) shall be adjusted annually on a compound basis in accordance with the percentage increase or decrease, as the case may be, to the Consumer Price Index for the calendar year prior to the year of the adjustment. The Consumer Price Index is the annual average all-items Consumer Price Index for Canada (not seasonally adjusted) that is published by Statistics Canada.

(3) The Commission shall publish the amount determined for Z each year in a public notice in the *Canada Gazette*, Part I.

(4) The Commission shall invoice a licensee for the Part II licence fee no later than November 1 of the year in which the fee is due.

¹ SOR/97-144

- (5) For the purposes of this section, the reference to “most recently completed return year” in paragraph (b) of the definition “fee revenue” in section 1 shall be read as a reference to the “return year terminating during the previous calendar year”.

COMING INTO FORCE

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

EXPLANATORY NOTE

(This note is not part of the Regulations.)

The purpose of the amendments is to limit the Part II broadcasting licence fees to the lesser of the current Part II licence fees, calculated according to section 11 of the *Broadcasting Licence Fee Regulations, 1997* before the amendments, and \$100 million, adjusted in the years after 2010 by the changes to the Consumer Price Index.