



Broadcasting Regulatory Policy CRTC 2012-154

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Revised approach regarding contributions by broadcasting distribution undertakings to local expression

The Commission sets out its findings regarding a mechanism to ensure that the dollar value of contributions by broadcasting distribution undertakings to local expression remains at current levels. The mechanism that the Commission has adopted is summarized in the conclusion section of this document.

Background

1. Under the *Broadcasting Distribution Regulations* (the Regulations), licensed broadcasting distribution undertakings (BDUs) must, for each broadcast year, contribute 5% of their gross revenues derived from broadcasting activities in that year to support Canadian programming. Licensees are authorized to allocate up to 2% of those revenues to local expression.
2. In Broadcasting Regulatory Policy 2010-622 (Community television policy), the Commission determined that the community television sector had benefited significantly from the growth in total contributions to local expression resulting from increases in BDU revenues and recognized the improvements in community programming made over the last decade. The Commission also determined that the current dollar value of contributions to local expression was sufficient to allow the community sector to attain its objectives. As a result, the Commission considered that the amount of contributions directed to local expression by BDUs should remain stable for the foreseeable future.
3. The Commission also issued Broadcasting Notice of Consultation 2010-623 (the Notice of Consultation), which proposed the following mechanism to maintain the current contribution levels to local expression:
 - The maximum dollar contribution to local expression by each terrestrial BDU licensee will be based on the amount contributed by the licensee during the broadcast year ending 31 August 2010 (the 2010 contribution level). This amount will be adjusted yearly for inflation based on the annual Canadian consumer price index (CPI), as reported for the period ending 31 December of the preceding calendar year.

- Given the likelihood that the revenues of terrestrial BDUs will continue to grow, once the 2010 contribution level (adjusted annually for inflation) represents 1.5% of the licensee's gross revenues derived from broadcasting activities, the allowable allocation to local expression will revert to a percentage formula (i.e., 1.5% of a BDU's gross revenues derived from broadcasting activities).
 - The difference will be directed to Canadian programming initiatives.
4. The Commission sought comments on the determination noted above and requested that parties respond to the following questions:
- What is the most effective and administratively simple mechanism by which to maintain total contributions to community programming by licensed BDUs at current levels?
 - Should the percentage of revenues formula be applied on an undertaking or group basis? In the case of the latter, once an ownership group's aggregate contributions represent 1.5% of revenues, all undertakings within that group would move to the 1.5% allowable contribution.
 - What is the most appropriate use for the resulting difference?
5. The Commission also recognized the impact that new BDU entrants and changes in structure or size of existing BDUs could have on establishing and adjusting the yearly allowable contribution level to local expression, and the potential challenges that the Commission could face in establishing fair and transparent contribution levels for systems that have undergone such changes. Accordingly, the Commission also sought responses to the following questions:
- What is an appropriate methodology for determining the contribution amounts of new entrants and systems that have undergone changes in structure and size? Are there additional factors that need to be taken into account in implementing a set contribution amount?
6. The Commission received comments from BDU representatives as well as other parties in response to the Notice of Consultation. The complete record of this proceeding is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."
7. The Commission addresses each of the questions set out above in the following sections of this regulatory policy.

The most effective and administratively simple mechanism to maintain total contributions to community programming by licensed BDUs at current levels

Positions of parties

8. Most parties commenting on this question offered little in the way of alternative mechanisms that the Commission could use to achieve its stated objective of maintaining support for local expression at the 2010 contribution level.
9. Bragg Communications Inc., operating as Eastlink (Eastlink), indicated that it had no concerns with the transitional formula proposed by the Commission as it would allow for a gradual transition to the 1.5% cap. However, Eastlink submitted that the Commission should allow smaller systems to apply for an exemption to contributions to local expression on a case-by-case basis.
10. Shaw Communications Inc. (Shaw) was of the view that the Commission's proposed approach amounts to a patchwork of expenditure levels across various systems, making it inherently difficult to administer.

Commission's analysis and decisions

11. The Commission notes that most parties offered little in the way of alternative mechanisms that could be adopted to achieve the objective of maintaining contributions to local expression by licensed BDUs at the 2010 contribution levels. After reviewing the comments, the Commission is of the view that the approach it proposed in the Notice of Consultation is appropriate.
12. Accordingly, the maximum contribution to local expression by each terrestrial BDU licensee will be based on the 2010 contribution level. This amount will be adjusted yearly for inflation based on the annual CPI, as reported for the period ending 31 December of the preceding calendar year.
13. Once the 2010 contribution level, adjusted yearly for inflation, represents 1.5% of the licensee's gross revenues derived from broadcasting activities, which will eventually occur if increases in a BDU licensee's revenues are sustained, the allowable contribution to local expression will move to a percentage formula of 1.5% of a BDU's gross revenues derived from broadcasting activities.
14. Conversely, if a BDU licensee's revenues were to remain at or below 2010 levels, the 1.5% threshold would not be attained and the maximum allowable contribution of the licensee to local expression would represent the lesser of 2% of the licensee's current year's gross revenues derived from broadcasting activities or the 2010 contribution level to local expression, adjusted annually for inflation.

Application of a percentage of revenues formula at the undertaking or the group level

Positions of parties

15. Only BDUs responded to the question of whether each BDU should contribute to local expression or whether contributions should be required at the level of the ownership group. The majority favoured continuing to apply contributions to local expression at the level of the individual BDU.

16. Quebecor Media Inc., Rogers Communications Inc. (Rogers), Cogeco Cable Inc. (Cogeco) and MTS Inc., which supported requiring contributions by individual BDUs, argued that a cap applied at the group level could cause a decrease in the funding of local expression by BDUs with revenues growing at a comparatively slower pace, particularly those in smaller markets. This is because markets with higher growth would reach the 1.5% threshold more quickly than markets with smaller growth.
17. Eastlink, on the other hand, considered that a group-based approach would be easier to administer. Bell Canada also supported a group-based approach, considering that it would provide flexibility to new entrants whose growth may differ from one licensed area to the next. According to Bell Canada, under a group-based approach, a balanced standard could be achieved across different regions.

Commission's analysis and decisions

18. While acknowledging that a percentage of revenues formula applied at the group level might be easier to administer since all undertakings within a group would move to a 1.5% contribution level at the same time, the Commission is of the view that such an approach to funding local expression could penalize smaller undertakings and their service areas where the least amount of locally reflective programming is typically available.
19. For example, in slow growth markets, if each undertaking funds local expression, contribution levels could remain close to 2% of revenues whereas, under a group approach, contribution levels may decrease to 1.5% of revenues because of the size and growth of other undertakings within the same ownership group.
20. Accordingly, the Commission will continue to apply the allowable contributions by BDUs to local expression at the undertaking level.

Most appropriate use of the difference

Positions of parties

21. Several parties proposed options for the allocation of the 0.5% difference between the current contribution of 2.0% of annual gross revenues to local expression and the new contribution level of 1.5%.
22. Many parties not associated with BDUs endorsed the creation of a Community Access Media Fund (CAMF) to finance the independent, not-for-profit community television sector. The CAMF would provide additional funding for community access programming and increase funding for local programming in smaller communities.
23. For its part, the Communications, Energy and Paperworkers Union of Canada proposed that the difference be directed to support local programming by conventional broadcasters.

24. Some BDUs suggested that they should be permitted to direct the difference to the independent production fund or funds of their choice. This option was also supported by the Canadian Media Production Association.
25. Other BDUs suggested that they be permitted to contribute to new initiatives resulting from the Community television policy, such as funding closed captioning of community programming or meeting expenditure requirements for access programming. They submitted that this would contribute to improving the quality and accessibility of the content on community channels as well as provide funding to help BDUs meet their new requirements.
26. Eastlink suggested that BDUs be permitted to direct the difference to community channels operated by exempt systems, while Shaw submitted that funds could be directed to support the conversion of community channels to high definition (HD).

Commission's analysis and decisions

27. In the Community television policy, the Commission indicated that the 0.5% difference between the current 2.0% and the new 1.5% contribution to local expression would be directed to Canadian programming initiatives.
28. The Commission sees merit in several of the initiatives to support Canadian programming proposed by parties. It is of the view that many such initiatives would serve to fulfill the Commission's objective of maintaining BDU contributions to local expression at current levels while encouraging contributions to other Canadian programming initiatives.
29. The Commission notes, however, that the speed at which the full 0.5% difference will be attained by each system is dependent on the rate of growth in the revenues of each system. As a result, it is difficult to assess the actual amount of funds that will be available to be directed to other Canadian programming initiatives. Given this uncertainty, the Commission considers that using established funds rather than a new fund fully dependent on the 0.5% difference represents an efficient means of distributing the revenues.
30. In regard to the proposal by several parties to allocate the difference to the creation of a CAMF, the Commission notes that, in the Community television policy, it determined that the current level of contributions to local expression is sufficient to allow the community sector to attain its objectives. As well, in Broadcasting Regulatory Policy 2010-622-1, as a means to further support access programming, the Commission required BDUs to expend on access programming, at a minimum, an amount equal to 35% of community programming-related expenditures in the 2011 broadcast year, 40% in the 2012 broadcast year, 45% in the 2013 broadcast year, and 50% in the 2014 broadcast year. The Commission therefore considers that earmarking additional funding to access programming through the creation of a CAMF is not warranted as BDUs must already make a significant contribution to access programming.

31. In the Community television policy, the Commission indicated its intent to impose conditions of licence requiring licensed BDUs that operate community channels to caption 100% of original licensee-produced programming by the end of their next licence term. The Commission also indicated that it expects licensed BDUs to ensure that 100% of original access programming is captioned by the end of the next licence term. However, the Commission considers that allowing BDUs to direct the difference to the closed captioning of community programming for the remainder of the current licence term will encourage them to increase the level of closed captioned community programming prior to the beginning of the next licence term.
32. Accordingly, the Commission concludes that that BDUs should have the flexibility to direct the difference to the following initiatives:
- certified independent production funds of their choice and/or the Canada Media Fund, as currently provided for under section 34 of the Regulations

or

 - closed captioning of local expression during the current licence term.

Determining the contribution level of new entrants and BDUs that have undergone changes in structure and size

Positions of parties

33. Most parties not associated with BDUs did not comment on the methodology that should be used in determining the allowable contribution to local expression by new entrants and by BDUs that have undergone changes in structure and size.
34. The general position expressed by existing BDUs was that new entrants should not be afforded preferential treatment over incumbent BDUs competing in the same licence areas. Accordingly, Eastlink submitted that new entrant BDUs should be permitted to contribute the same percentage to local expression as the area's incumbent BDU. Cogeco also suggested that the same rules apply to all, including new entrants.
35. Bell Canada, on the other hand, submitted that there should be no cap for new entrant BDUs at this time as this would allow the revenues and local expression contributions of its terrestrial systems to grow in order to achieve a certain degree of market equilibrium. For its part, Rogers suggested that new entrants be permitted to contribute up to 2% of gross annual revenues for the first licence term and then be required to conform to the same requirements as other BDUs in subsequent licence terms, unless they can present a compelling argument for an exception.
36. Few parties commented on the treatment of existing systems that have undergone changes in structure and/or size. However, Rogers indicated that the existing contribution levels of the BDUs should be maintained following changes.

Commission's analysis and decisions

37. In the Community television policy, the Commission deemed it appropriate to adopt a progressive approach to reducing the allowable contribution by BDUs to their community channels, indicating that local expression contribution levels should remain stable for the foreseeable future. Given that new entrants have no existing contributions to local expression, this approach does not apply to new BDUs.
38. Given the target for allowable contributions by BDUs to local expression of 1.5% of revenues established in the Community television policy, the Commission considers it appropriate and administratively efficient to establish the contribution level to local expression of new entrants at 1.5% of gross annual revenues derived from broadcasting activities.
39. With respect to determining the allowable contribution level of existing BDUs that have undergone changes in structure and size, the Commission notes that such occurrences resulting from restructuring or acquisition are relatively rare. Notwithstanding this, the Commission considers that factors such as the current allowable contribution levels and subscriber levels of the undertakings involved will be considered in helping determine the allowable contribution level of newly formed undertakings.

Implementation date

40. In the Community television policy, the Commission indicated that BDUs would continue to fund community channels according to current regulatory requirements until the Commission reached its determination in the current proceeding. However, the Commission recognizes the need to allow BDUs adequate time to adapt planning and budgeting to conform to the determinations set out in this regulatory policy. Accordingly, the revised approach to contributions by BDUs to local expression set out in this document will come into effect on **1 September 2012**.
41. The Commission will shortly publish a notice of consultation seeking comments on changes to the Regulations needed to reflect the revised approach.

Conclusion

42. In light of all of the above, the Commission adopts the following mechanism for the funding of local expression by BDUs:

The maximum dollar contribution to local expression by each terrestrial broadcasting distribution undertaking (BDU) licensee will be based on the amount contributed by the licensee during the broadcast year ending 31 August 2010 (the 2010 contribution level). This amount will be adjusted yearly for inflation based on the annual Canadian consumer price index (CPI), as reported for the period ending 31 December of the preceding calendar year.

Once the 2010 contribution level (adjusted yearly for inflation) represents 1.5% of the licensee's gross revenues derived from broadcasting activities, which will eventually occur if increases to a BDU licensee's revenues are sustained, the

allowable contribution to local expression will move to a percentage formula of 1.5% of a BDU's gross revenues derived from broadcasting activities.

Conversely, if a BDU licensee's revenues were to remain at or below 2010 levels, the 1.5% threshold would not be attained and the maximum allowable contribution of the licensee to local expression would represent the lesser of 2% of the licensee's current year's gross revenues derived from broadcasting activities or the 2010 contribution level to local expression, adjusted annually for inflation.

BDUs may direct the difference to the following initiatives:

- certified independent production funds of their choice and/or the Canada Media Fund, as currently provided for under section 34 of the Regulations
- or
- closed captioning of local expression during the current licence term.

The Commission will continue to apply the allowable contribution by BDUs to local expression at the undertaking level.

The Commission will establish the contribution level of new entrants at 1.5% of gross annual revenues from broadcasting activities.

In the case of existing BDUs that have undergone changes in structure and size, the Commission will consider factors such as the current allowable contribution levels and subscriber levels of the undertakings involved in helping to determine the allowable contribution level.

Compliance with the above will be required for each licensed BDU.

This approach will be effective 1 September 2012.

The Commission will use annual return information submitted by BDUs, beginning with the 2012-2013 broadcast year and compare these amounts with those set out in annual returns for the 2009-2010 broadcast year to verify compliance with this approach.

The Commission reminds licensees that their estimate of monthly contributions payable under sections 36 and 37 of the *Broadcasting Distribution Regulations* should be made in accordance with the provisions of this policy.

The Commission will shortly publish a notice of consultation seeking comments on changes to the Regulations needed to reflect the approach set out above.

Secretary General

Related documents

- *Community television policy – Correction*, Broadcasting Regulatory Policy CRTC 2010-622-1, 13 September 2010
- *Call for comments on contributions by broadcasting distribution undertakings to local expression*, Broadcasting Notice of Consultation CRTC 2010-623, 26 August 2010
- *Community television policy*, Broadcasting Regulatory Policy CRTC 2010-622, 26 August 2010