



## Broadcasting Public Notice CRTC 2003-48

Ottawa, 17 September 2003

### **A regional approach to licensing cable distribution undertakings – Adoption of related amendments to the *Broadcasting Distribution Regulations***

*The Commission adopts the amendments to the Broadcasting Distribution Regulations that were proposed in Call for comments – Proposed amendments to the Broadcasting Distribution Regulations, Broadcasting Public Notice CRTC 2002-81, 23 December 2002. The amendments, which are set out in the appendix of this public notice, came into force on 5 June 2003, the day that they were registered. These amendments permit the Commission to implement its regional licensing model for cable distribution undertakings. A dissenting opinion by Commissioner Stuart Langford is attached following the appendix.*

#### **Background**

1. This notice marks a further step in a process designed to establish a new, simplified regulatory framework for cable broadcasting distribution undertakings (BDUs). The process began on 7 December 2000 when the Commission issued three public notices. Two of the notices dealt with the Commission's approach to small cable BDUs, while the third dealt with the concept of a regional licensing model.
2. In *Proposed exemption order for small cable systems*, Public Notice CRTC 2000-162, 7 December 2000, the Commission called for comments on a proposal to exempt from licensing requirements any person that provides cable service to fewer than 2,000 subscribers and serves communities with populations of less than 10,000 people. In *Review of certain aspects of the regulation of cable undertakings*, Public Notice CRTC 2000-164, 7 December 2000 (Public Notice 2000-164), the Commission called for comments on its regime for licensing and regulating cable BDUs.
3. In *Licensing cable undertakings – a regional approach*, Public Notice CRTC 2000-163, 7 December 2000 (Public Notice 2000-163), the Commission called for comments on a proposal to license cable BDUs on a regional basis. In Public Notice 2000-163, the Commission noted that its current practice was to issue individual cable licences for narrowly defined territories. An individual licensee could therefore hold several different licences, even if its undertakings were adjacent and

technically interconnected. The Commission noted that, under a regional licensing approach, a single licence could be issued that would cover a number of territories or serving areas, thereby reducing the administrative burden on both cable licensees and the Commission.

4. On 29 May 2001, the Commission issued *Changes to the Commission's approach to cable undertakings – Proposed exemption for cable systems with fewer than 2,000 subscribers, and implementation of a regional licensing model*, Public Notice CRTC 2001-59, 29 May 2001 (Public Notice 2001-59). In that Notice, the Commission announced that it would implement two initiatives relating to its licensing and regulation of cable BDUs.
5. First, the Commission decided that it would exempt from licensing and associated regulations, those cable systems that serve small and rural communities and have fewer than 2,000 subscribers. Accordingly, in Public Notice 2001-59, the Commission called for comments on a draft exemption order setting out the specific exemption criteria for such cable BDUs. The Commission made the final exemption order in *Exemption order respecting cable systems having fewer than 2,000 subscribers*, Public Notice CRTC 2001-121, 7 December 2001 (the Small Cable Exemption Order).
6. Second, the Commission announced, in Public Notice 2001-59, that it would implement a system of regional licensing for cable distribution undertakings that would operate as follows:
  - a) The Commission would issue a maximum of three cable licences for each licensee operating in the region identified for the licensee. One licence would cover all of its Class 1 systems, the second licence would cover all of its Class 2 systems, and the third would cover any of its Class 3 systems in that region that were not exempt.
  - b) Each licence would cover a number of territories, serving areas or zones, and the portion of the system covering each territory would be subject to separate requirements with respect to matters such as the local and regional stations that must be carried. Rates for each territory could differ, with the rates charged under the current system serving as the basis for the new rates.
7. The Commission also stated that the Small Cable Exemption Order and the regional licensing approach were first steps in updating its approach to licensing and regulating cable BDUs and that it would monitor the impact of these initiatives.

8. On 23 December 2002, the Commission issued *Call for comments – Proposed amendments to the Broadcasting Distribution Regulations*, Public Notice CRTC 2002-81, 23 December 2002 (Public Notice 2002-81). In Public Notice 2002-81, the Commission set out and called for comments on proposed amendments to the *Broadcasting Distribution Regulations* (the Regulations) that were necessary to implement its regional licensing approach for cable BDUs. In Public Notice 2002-81, the Commission explained the approach that it used to develop the proposed amendments as follows:

3. In Public Notice 2001-59, the Commission noted the concerns raised by various parties about the potential impact of a regional licensing approach on copyright payments, licence fees, signal carriage and program substitution. The intent of the proposed amendments is to enable realization of administrative efficiencies while preserving, to the greatest possible extent, existing rights and obligations of all parties, including licensees, programming undertakings, other signal providers, and the public.

4. The Commission proposes to amend the definition of “licensed area,” in order to ensure that the current “licensed area” of each existing broadcasting distribution undertaking (BDU) remains unaltered under the regional licensing approach, while permitting one regional licence to include several licensed areas and undertakings. The modified definition would read as follows:

“licensed area” means an area for which a licensee has been licensed to carry on a distribution undertaking.

5. Moreover, as the term “licensed area” will continue to correspond to a particular BDU, a licensee’s obligations under the *Broadcasting Licence Fee Regulations, 1997* will not change under the regionalization proposal.

6. Under the current Regulations, some rights, obligations or prohibitions are not conferred or imposed on a licensee by reference to a specific service area. For example, under section 9 of the Regulations, a licensee must not give an undue preference to any person, or subject any person to an undue disadvantage. This provision and other provisions of general application will be unchanged under the regional licensing approach.

7. Where obligations are service-area specific, the Commission proposes to amend the Regulations in order to insert the words “in a licensed area” into the relevant sections. For example, a BDU’s local signal carriage obligations in one part of a province can differ significantly from those of another BDU, even one that is located not far away. The proposed amendment would ensure that existing rights and obligations are preserved, and that additional rights and obligations are not created as a consequence of grouping several licensed areas under one regional licence.

## Overview of comments

9. The Commission received four comments in response to Public Notice 2002-81. One was from an individual, K. Vreeken. The other three comments were from the Canadian Cable System Alliance Inc. (CCSA), the Canadian Cable Television Association (CCTA) and Quebecor Media Inc. (Quebecor).
10. K. Vreeken did not address regional licensing, but raised an issue related to the carriage of radio service by cable BDUs. The intervener suggested that cable BDUs be required to carry AM stations on their radio services before they carry FM stations, given that channel capacity is scarce. He also suggested that cable BDUs be required to list all the radio stations that they distribute. The Commission considers that the issues raised by Mr. Vreeken fall outside the ambit of the current review. It notes, however, that under the Regulations, class 1 cable BDUs must carry all local AM and FM radio stations.
11. The CCSA expressed support for the comment filed by the CCTA and did not raise any additional issues.
12. The CCTA and Quebecor raised a number of issues related to the implementation of the regional licensing approach. These issues are addressed below.

## Issues raised by the CCTA and Quebecor

### Regional licensing and the *Broadcasting Act*

#### *The CCTA's position*

13. The CCTA submitted that the regional licensing approach was inconsistent with the licensing scheme contemplated under the *Broadcasting Act* (the Act). The CCTA considered that the Act establishes a framework for licensing individual undertakings on a system-by-system basis rather than on a regional basis.
14. In support of its position, the CCTA noted that the Act defines a “licence” as a “licence to carry on *a* broadcasting undertaking issued by the Commission under this Act [emphasis added by the CCTA].” A “broadcasting undertaking” is defined to include a distribution undertaking, a programming undertaking or a network. A “distribution undertaking” is further defined as “any undertaking for the reception of broadcasting and the retransmission thereof by radio waves or other means of telecommunication to more than one permanent or temporary residence or dwelling unit or to another such undertaking.” In the CCTA’s view, these definitions associate a licence with a single undertaking rather than with several undertakings grouped together under a regional licence.

15. The CCTA further noted that, where one of the objectives of the broadcasting policy for Canada set out in section 3 of the Act is to be met by a particular component of the broadcasting system as opposed to the system as a whole, the obligation is imposed on the “broadcasting undertaking.” In the CCTA’s view, this suggests that undertakings are the regulated entities and reinforces the idea that each undertaking should be licensed individually.
16. The CCTA also referred to section 9 of the Act, which establishes the general powers of the Commission. The CCTA noted that section 9(1)(g) requires “any licensee who is authorized to carry on a distribution undertaking to give priority to the carriage of broadcasting.” Further, the CCTA noted that section 9(1)(h) requires “any licensee who is authorized to carry on a *distribution undertaking* to carry, on such terms and conditions as the Commission deems appropriate, programming services specified by the Commission [emphasis added by the CCTA].” The CCTA considered that the above references, as well as others set out in the Act, reflect the premise that the Commission would exercise its regulatory authority over individual undertakings, including distribution undertakings.
17. Finally, the CCTA cited section 32(1) of the Act, which makes it an offence to carry on a broadcasting undertaking “without a licence therefor.” The CCTA submitted that this section also suggests that each individual undertaking must hold a separate licence.

*The Commission’s analysis*

18. While acknowledging the CCTA’s views, the Commission notes that the Act provides considerable flexibility for the Commission with respect to its licensing, regulation and supervision of broadcasting undertakings. For example, section 5(2) of the Act provides that the Commission is to regulate and supervise the Canadian broadcasting system in a flexible manner that, among other things, facilitates the provision of broadcasting to Canadians and is sensitive to the administrative burden that may be imposed on persons carrying on broadcasting undertakings. The Commission considers that this provision of the Act permits it to license undertakings in the manner that it considers appropriate to the circumstances of such undertakings.
19. The Commission further notes that, under section 33(2) of the *Interpretation Act*, words in the singular include the plural, and words in the plural include the singular. The Commission considers that this provision of the *Interpretation Act* provides it with the scope to include several undertakings in a single regional licence.
20. As well, the Commission notes that, in *New Broadcasting Act – Amendments to Classes of Licence*, Public Notice CRTC 1991-63, 19 June 1991, the Commission set out the adaptations that it would make to the classes of licence that it would issue as a result of the new definitions set out in the revised Act. The Commission stated:

... the Commission will issue a single programming undertaking licence for a radio or television station and its rebroadcasters where the station and the rebroadcasters belong to the same licensee. For each rebroadcaster whose ownership is not the same as the originating station, a distribution undertaking licence will be issued but, where a number of the rebroadcasters are owned by the same person, a single distribution licence will be issued for the rebroadcasters owned by that person.

21. The Commission considers that the regional licensing approach for cable BDUs is similar to the approach outlined above that it has used to license radio and television stations and their associated rebroadcasters since 1991.
22. The Commission further notes that it has used a regional licensing approach for multi-point distribution systems in Ontario, Quebec and British Columbia. These province-wide systems operate under one licence covering a number of different undertakings, each of which has its own obligations with respect to the signals that will be carried.
23. In light of the above, the Commission considers that its regional licensing approach for cable BDUs is consistent with the provisions of the Act.

#### **Regulatory treatment under regional licensing**

##### *The CCTA's position*

24. The CCTA raised the following questions that it considered remained unanswered with respect to the regulatory treatment of cable BDUs under the regional licensing approach:
  - Once a specific distribution undertaking no longer holds an individual licence, what would be the process to effect change of ownership or control of that specific undertaking, and what would be the impact on all the other undertakings encompassed by a regional licence?
  - Assuming that competition continues to reduce the need for regulation, how will small systems be able to seek a licence exemption when the licence is held for an aggregate number of systems?
  - How will the Commission suspend or revoke the licence of an individual distribution undertaking when it no longer has a unique licence?

##### *The Commission's analysis*

25. The Commission considers that the CCTA has raised relevant questions that have not been addressed in previous public notices concerning how the regional licensing approach would function. It will therefore address each of these questions in the following paragraphs.

26. With respect to the CCTA's concerns about applications for change of ownership or effective control, the Commission notes that it currently has a number of procedural options for dealing with such applications, including consideration of the application at a public hearing, the publication of a public notice calling for comments on the application or, in some cases, the issuance of an administrative decision. Under the regional licensing approach, the purchaser will be able to apply to the Commission for a licence amendment to add the new undertaking to its existing licence. This will provide the Commission with the opportunity to deal with such applications using an administrative process in cases when a transfer of assets raises no significant issues, allowing for the application to be treated more quickly. The Commission will, of course, continue to consider, in each case, what procedural option would be appropriate in the circumstances.
27. With respect to the CCTA's concern about exemption orders, the Commission considers that, under a regional licensing approach, licensees could apply to remove from their regional licences those service areas that are served by undertakings that qualify under an existing or future exemption order or those undertakings that they have sold to others.
28. With respect to the CCTA's concerns about a licence revocation or suspension as it would relate to an individual undertaking that is included as part of a regional licence, the Commission considers that it would have several procedural options in such a situation.
29. In light of the above, the Commission considers that the questions raised by the CCTA do not pose impediments to the implementation of the regional licensing approach.

**Relationship to the *Broadcasting Licence Fee Regulations, 1997***

*The CCTA's position*

30. The CCTA stated that it remained concerned about the effect of the regional licensing approach on a licensee's obligations under the Commission's *Broadcasting Licence Fee Regulations, 1997* (the Fee Regulations). The CCTA noted that, in Public Notice 2002-81, the Commission stated that "as the term 'licensed area' will continue to correspond to a particular BDU, a licensee's obligations under the Fee Regulations will not change under the regionalization proposal." However, the CCTA also noted that, pursuant to section 3 of the Fee Regulations, the obligation to pay a licence fee is imposed on the "licensee," not on the individual undertaking.
31. In addition, the CCTA noted that, under the Fee Regulations, licence fees payable are calculated in accordance with "the gross revenue derived during a return year from the licensed activity of a licensee [emphasis added by the CCTA]." The CCTA was of the view that, because a regional licence would include many undertakings, the wording of the Fee Regulations would lead to an inadvertent increase in the fees

payable by individual distribution undertakings that currently benefit from an exemption on the first \$175,000 in fee revenues. The CCTA submitted that the Commission's proposed amendments to the Regulations must not come into force prior to any consequential amendments to the Fee Regulations.

*The Commission's analysis*

32. As noted in Public Notice 2002-81, under the regional licensing approach, the term "licensed area" will generally apply to the originally licensed area as amended from time to time of a particular BDU, not the aggregated licensed areas of all the BDUs covered by a regional licence. Further, the Fee Regulations define the term "fee revenue" as follows:

"fee revenue", in respect of a licensee of *a broadcasting undertaking*, means the gross revenue derived during a return year from the licensed activity of the licensee, whether received by the licensee or by an associated corporation...  
[emphasis added]

33. Since each undertaking will be associated with a "licensed area," as is currently the case, a licensee's obligations under the Fee Regulations will not change under the regional licensing approach, and each service area will be treated as a separate undertaking. Accordingly, under the Fee Regulations, the exemption level of \$175,000 applied to the calculation of licence fees will continue to apply to each broadcasting undertaking.
34. In light of the above, the Commission considers that that the Fee Regulations do not require amendments before the regional licensing approach is implemented.

**Alternative approaches**

*The CCTA's position*

35. The CCTA questioned whether there were any advantages for cable BDUs that would result from the regional licensing approach. The CCTA considered that, under the regional licensing approach, many of the administrative and regulatory obligations that apply to cable BDUs would remain unchanged. For example:
- annual returns would still be filed by each undertaking at the service area level;
  - capacity reports would still be compiled on a system-by-system basis;
  - broadcasting of public notices concerning an application or a change in service, such as a channel realignment, would still be required for each system.
36. Further, the CCTA considered that all information on individual service areas would have to be aggregated for the entire area covered by the regional licence, creating an additional administrative burden.

37. The CCTA further contended that, aside from reducing the number of system files maintained by the Commission staff, it was unclear what advantages would accrue to the Commission under a regional licensing approach.
38. The CCTA noted that the Commission has already achieved considerable efficiencies with respect to its regulation of cable BDUs by using licence exemptions. The CCTA considered that it would be relatively simple to consolidate the reporting and licence renewal processes for the licensed cable BDUs that are controlled by the four largest multi-system operators (MSOs) without any need to revoke licences, issue regional licences or make changes to the Regulations. The CCTA suggested that the Commission could, under the existing regulatory approach,
- consider the licence renewals of all MSO systems in a particular province or region at a single public hearing;
  - provide incentives for MSOs to consolidate systems, particularly in new amalgamated urban areas; and
  - simplify and aggregate annual reporting requirements.
39. The CCTA considered that the initiatives set out above would result in greater efficiencies and reduce administrative burden without the need of amendments to the Regulations.

*The Commission's analysis*

40. The Commission agrees with the CCTA that the Small Cable Exemption Order has contributed to greater efficiencies with respect to the regulation of cable BDUs, and that further efficiencies could be realized within the existing regulatory structure. The Commission notes that, in *Exemption of cable broadcasting distribution undertakings that serve between 2,000 and 6,000 subscribers*, Broadcasting Public Notice CRTC 2003-23, 30 April 2003, the Commission extended the exemption order approach so that it may apply to an even greater number of undertakings. Subsequently, in *Call for comments on a proposed exemption order for cable broadcasting distribution undertakings that serve between 2,000 and 6,000 subscribers; and changes to the exemption order respecting cable systems having fewer than 2,000 subscribers*, Broadcasting Public Notice CRTC 2003-41, 29 July 2003, the Commission proposed the terms of the proposed exemption order.
41. The Commission, however, disagrees with the CCTA that the regional licensing approach will bring no benefits beyond a reduction in the number of licensing files maintained by the Commission. The Commission considers that, by moving to a regional licensing approach, workloads will be reduced for both licensees and the Commission. For example, in a situation where a licensee holds separate licences for many cable BDUs, a licence renewal currently entails an examination of the conditions of licence applicable to each BDU, as well as updating each separate file. A regional licensing approach would allow the licensee and the Commission to

conduct such an examination only once, rather than many times. In addition, as previously noted, the possibility of dealing with additional applications using an administrative approach should lead to reductions in the amount of time and effort required to process applications.

42. In light of the above, the Commission considers that implementation of the regional licensing approach will contribute to a reduction of the workload both for licensees of cable BDUs and for the Commission.

#### **Perpetuation of the current structure**

##### *Quebecor's concern*

43. Quebecor noted that the regional licensing approach would involve the issuance of a regional licence while, at the same time, retaining the current service areas of individual cable BDUs. Quebecor considered that the retention of individual service areas did not adequately take into account the trend toward interconnection of cable BDUs that is occurring within the cable industry. As an example, Quebecor noted that there are now only nine head ends for all of the Vidéotron cable systems in Quebec. Quebecor was therefore concerned that retaining individual service areas for interconnected cable BDUs would perpetuate a structure that was no longer relevant.

##### *The Commission's analysis*

44. As indicated in Public Notice 2002-81, the proposed changes to the Regulations were designed to make the regulation of cable BDUs more efficient while preserving, to the greatest possible extent, the existing rights and obligations of all parties. As a result, certain obligations will pertain only to cable BDUs operating in particular service areas, while others will apply to all systems covered by the regional licence. In that sense, the regional licensing approach will preserve the existing structure for regulating cable BDUs, as Quebecor suggested.
45. The Commission considers, however, that the regional licensing approach and the associated changes to the Regulations will make it easier for cable licensees to harmonize their regulatory obligations, either at the time of licence renewal or at other times, as they consolidate their operations. The Commission, therefore, remains of the view that the regional licensing approach will allow it to respond to the greater consolidation and interconnection that is occurring in the cable industry.

#### **Need for further consultation**

##### *Quebecor's position*

46. Quebecor considered that the Commission should conduct an additional round of consultations on implementing a regional licensing approach, as well as another round of consultations on the proposed amendments to the Regulations.

### *The Commission's analysis*

47. The Commission notes that the issue of regional licensing has been discussed in a series of public notices, including Public Notices 2000-163, 2001-59 and 2002-81. The Commission has already provided several opportunities for interested parties to submit comments. It therefore considers that interested parties have been given ample opportunity to provide their comments on the regional licensing approach and the associated amendments to the Regulations, and that an adequate record has been established.
48. The Commission notes that, while the changes to the Regulations permit the Commission to issue regional licences, the changes do not, of themselves, implement the regional licensing approach. The Commission further notes that almost all of the provisions in the revised Regulations allow for exceptions by conditions of licence. Thus, licensees will have the flexibility to apply for conditions of licence that will enable the regional licensing approach to be implemented in a manner may be more appropriate to their circumstances.

### **Potential impact on copyright fees**

49. The Commission notes that, throughout the process that has led to the development of the proposed changes to the Regulations, the potential impact of regional licensing on the copyright fees paid by cable BDUs has been a continuing concern. In Public Notice 2001-59, the Commission noted that it would be up to the copyright collectives to update their royalty payment regimes to reflect the regional licensing approach. Given that no such changes have yet been made, the Commission is concerned that immediate implementation of the regional licensing approach for existing cable BDUs could increase the copyright fees that licensees currently pay.
50. In light of this concern, as a general rule, the Commission does not propose to issue regional licences applying to existing cable BDUs until the necessary changes have been made to the various royalty payment regimes and the Commission is satisfied that the financial obligations of licensees related to copyright fees do not increase as a result of the implementation of the regional licensing model. The Commission would, however, be willing to issue regional licences in response to applications for such licences from affected cable BDUs.

### **Conclusion**

51. The Commission continues to believe that the regional licensing approach will result in greater efficiencies for the licensees of cable BDUs as well as for itself. It further considers that the regional licensing approach reflects the trend toward consolidation in the cable industry and growing interconnection between systems. The Commission has therefore adopted the amendments to the Regulations set out in the appendix to this Notice. The amendments came into effect on 5 June 2003, the day that they were registered. The Commission will shortly make available on its Web site the application forms to be used to apply for regional licences.

52. As indicated above, as a general rule, the Commission does not propose to begin issuing regional licenses for existing cable BDUs until the necessary changes have been made to the relevant royalty payment regimes. After such changes have been implemented, the Commission will begin the process of renewing licences on a regional basis. The process will begin with the Atlantic region (New Brunswick, Nova Scotia, Newfoundland and Labrador, and Prince Edward Island), starting with Class 1 BDUs and any remaining licensed Class 2 and Class 3 BDUs. The Commission will continue to renew for short-term periods the licences of BDUs in other regions as necessary.

Secretary General

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

# Appendix to Broadcasting Public Notice CRTC 2003-48

SOR/2003-217 5 June, 2003

## REGULATIONS AMENDING THE BROADCASTING DISTRIBUTION REGULATIONS

### AMENDMENTS

1. (1) The definitions "available channel", "basic service", "Class 1 licensee", "Class 2 licensee", "Class 3 licensee", "community channel", "community programming", "extra-regional television station", "licensed area", "licensee", "local AM station", "local digital radio station", "local FM station", "local head end", "local television station", "regional television station" and "restricted channel" in section 1 of the *Broadcasting Distribution Regulations*<sup>1</sup> are replaced by the following:

"available channel" means any unrestricted channel of a distribution undertaking in a licensed area, other than a channel on which is distributed

- (a) the programming service of a licensed programming undertaking other than a video-on-demand programming undertaking;
- (b) community programming;
- (c) the House of Commons programming service; or
- (d) a programming service consisting of the proceedings of the legislature of the province in which the licensed area is located. (*canal disponible*)

"basic service" means the services distributed in a licensed area by a licensee as a package consisting of the programming services the distribution of which is required under sections 17, 22, 32 or 37, or a condition of its licence, and any other services that are included in the package for a single fee. (*service de base*)

"Class 1 licensee" means the holder of a Class 1 licence or a Class 1 regional licence. (*titulaire de classe 1*)

"Class 2 licensee" means

- (a) the holder of a Class 2 licence or a Class 2 regional licence issued on or after the coming into force of these Regulations; or
- (b) for the remainder of the term of a licence issued before the coming into force of these Regulations, the holder of a Class 2 licence that carried on an undertaking that had 2,000 or more subscribers immediately before the coming into force of these Regulations. (*titulaire de classe 2*)

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

"Class 3 licensee" means

- (a) the holder of a Class 3 licence or a Class 3 regional licence issued on or after the coming into force of these Regulations; or
- (b) for the remainder of the term of a licence issued before the coming into force of these Regulations,
  - (i) the holder of a Class 2 licence that carried on an undertaking that had fewer than 2,000 subscribers immediately before the coming into force of these Regulations, or
  - (ii) a licensee that, immediately before the coming into force of these Regulations, was a Part III licensee within the meaning of section 2 of the *Cable Television Regulations, 1986. (titulaire de classe 3)*

"community channel" means the channel of a distribution undertaking that is used for the distribution of community programming in a licensed area. (*canal communautaire*)

"community programming" means, in relation to a licensed area, programming that is produced

- (a) by the licensee in the licensed area or by members of the community served in the licensed area;
- (b) by the licensee in another licensed area or by the members of the community served in that other licensed area and that is relevant to the community referred to in paragraph (a);
- (c) by another licensee in a licensed area or by the members of the community served in that licensed area and that is relevant to the community referred to in paragraph (a); or
- (d) by a person licensed to operate a network for the purpose of producing community programming for distribution by the licensee on a community channel. (*programmation communautaire*)

"extra-regional television station" means, in relation to a licensed area of a distribution undertaking, a licensed television station that has

- (a) a Grade A official contour or Grade B official contour that does not include any part of the licensed area; and
- (b) a Grade B official contour that includes any point located 32 km or less from the local head end of the licensed area. (*station de télévision extra-régionale*)

"licensed area" means an area for which a licensee has been licensed to carry on a distribution undertaking. (*zone de desserte autorisée*)

"licensee" means a person who is authorized by a licence or a regional licence to carry on one or more distribution undertakings. (*titulaire*)

"local AM station" means, in relation to a licensed area of a distribution undertaking, a licensed AM station that has its principal studio located within 32 km of the local head end of the licensed area. (*station AM locale*)

"local digital radio station" means, in relation to a licensed area of a distribution undertaking, a licensed digital radio station that has a digital service area that includes any part of the licensed area. (*station de radio numérique locale*)

"local FM station" means, in relation to a licensed area of a distribution undertaking, a licensed FM station that has a 500  $\mu\text{V}/\text{m}$  official contour that includes any part of the licensed area. (*station FM locale*)

"local head end", in respect of

- (a) a licensed area of a cable distribution undertaking, means the specific location at which a licensee receives the majority of the programming services that are transmitted by local television stations or, if there are no such stations, by regional television stations, and that are distributed by the licensee in the licensed area; and
- (b) a radiocommunication distribution undertaking, means the licensee's transmitter site. (*tête de ligne locale*)

"local television station", in relation to a licensed area of a distribution undertaking, means a licensed television station that

- (a) has a Grade A official contour that includes any part of the licensed area; or
- (b) has, if there is no Grade A official contour, a transmitting antenna that is located within 15 km of the licensed area. (*station de télévision locale*)

"regional television station" means, in relation to a licensed area of a distribution undertaking, a licensed television station, other than a local television station, that has a Grade B official contour that includes any part of the licensed area. (*station de télévision régionale*)

"restricted channel" means, in relation to a licensed area of a cable distribution undertaking, a channel of that undertaking that is the same channel on which signals are transmitted by

- (a) a local television station or a local FM station; or
- (b) a television station or an FM station that has a transmitter site located outside Canada within 60 km of any part of the licensed area. (*canal à usage limité*)

**(2) Section 1 of the Regulations is amended by adding the following in alphabetical order:**

"regional licence" means a licence issued by the Commission that authorizes the licensee to carry on distribution undertakings in two or more licensed areas.  
(*licence régionale*)

**2. Subsection 6(3) of the Regulations is replaced by the following:**

(3) Except as otherwise provided under a condition of its licence, this section does not apply to a Class 3 licensee in respect of a licensed area in which the licensee only distributes programming services on the basic band.

**3. The portion of section 7 of the Regulations before paragraph (a) is replaced by the following:**

7. A licensee shall not alter or delete a programming service in a licensed area in the course of its distribution except

**4. Section 16.1 of the Regulations is replaced by the following:**

**16.1** A licensee that is operating in a licensed area that is an anglophone market within the meaning of paragraph 18(4)(b) shall distribute on an analog basis, in the licensed area, at least the same number of French-language Canadian programming services as it distributed on an analog basis in the licensed area on March 10, 2000.

**5. (1) The portion of subsection 17(1) of the Regulations before paragraph (a) is replaced by the following:**

**17. (1)** Except as otherwise provided in subsections (3) to (6) or under a condition of its licence, a licensee shall distribute in each licensed area the following as part of its basic service, in the following order of priority:

**(2) Subsection 17(2) of the Regulations is replaced by the following:**

(2) A licensee of a cable distribution undertaking shall distribute in each licensed area the programming services referred to in subsection (1) beginning with the basic band.

**(3) Subsections 17(5) and (6) of the Regulations are replaced by the following:**

(5) If the Commission has determined that a programming service is of national public interest and has licensed the service as a mandatory service, the licensee shall distribute the service in each licensed area as part of the basic service.

(6) If the programming services of two or more television stations rank equally in the order of priority established by this section, unless the operators of the stations agree otherwise in writing, a licensee shall give priority

(a) if the studios of the stations are located in the same province as the licensed area or in the National Capital Region, as described in the schedule to the *National Capital Act*, to the programming services of the stations in the order of the proximity of their main studios to the local head end of the licensed area; and

(b) in any other case, to the programming service of the station that has a studio located in the same province as the licensed area.

**6. (1) Subsection 18(3) of the Regulations is replaced by the following:**

(3) For the purposes of this section, other than subsections (11) to (11.5), a licensee makes use of digital technology for the delivery of programming to subscribers in a licensed area when at least 15% of its subscribers in the licensed area receive one or more programming services on a digital basis.

**(2) The portion of subsection 18(4) of the Regulations before paragraph (b) is replaced by the following:**

(4) For the purpose of this section, in a licensed area

(a) a licensee is considered to be operating in a francophone market if more than 50% of the total population of all cities, towns and municipalities encompassed in whole or in part within the licensed area has French as its mother tongue, according to the most recent population figures published by Statistics Canada; and

**(3) Subsections 18(6) and (7) of the Regulations are replaced by the following:**

(6) If a licensee is distributing a pay-per-view service in a licensed area on more than 10 analog channels, the Commission may declare one or more channels in the licensed area to be available channels for the purposes of subsection (5).

(7) A licensee is not required to distribute in a licensed area, under subsection (5), the service of a programming undertaking that was licensed after May 6, 1996 if the only available channel in the licensed area is one on which the licensee is distributing a non-Canadian programming service that was distributed by the licensee in the licensed area before May 6, 1996.

**(4) Subsection 18(8) of the French version of the Regulations is replaced by the following:**

(8) Si, selon une condition rattachée à la licence d'une entreprise de programmation, le Conseil autorise celle-ci à exiger que son service soit distribué soit à compter de la date à laquelle le titulaire utilise la technologie numérique pour distribuer des émissions aux abonnés, soit à compter du 1<sup>er</sup> septembre 1999, si cette date est antérieure, le titulaire n'est pas tenu de distribuer le service conformément au paragraphe (5) jusqu'à la plus rapprochée de ces deux dates.

**(5) Subsections 18(9) to (11) of the Regulations are replaced by the following:**

(9) Subject to subsection (10), if a licensee has not made use of digital technology for the delivery of programming to subscribers in a licensed area by September 1, 1999, the licensee shall distribute in the licensed area the programming service referred to in subsection (8) on an analog channel, unless the operator of the programming service agrees in writing to the distribution of its service on a digital basis.

(10) When a licensee makes use of digital technology for the delivery of programming to subscribers in a licensed area, the licensee may distribute in the licensed area the programming service referred to in subsection (8) on an analog channel or on a digital basis, or both.

(11) Except as otherwise provided under a condition of its licence, a licensee that delivers any programming service to any subscriber on a digital basis in a licensed area shall distribute in the licensed area, on a digital basis,

(a) if the licensee is operating in an anglophone market, each English-language Category 1 service that the operator of which is authorized to provide to all or part of the licensed area; and

(b) if the licensee is operating in a francophone market, each French-language Category 1 service that the operator of which is authorized to provide to all or part of the licensed area.

**(6) The portion of subsection 18(11.1) of the Regulations before paragraph (a) is replaced by the following:**

(11.1) Except as otherwise provided under a condition of its licence, a licensee that has a nominal capacity of at least 750 MHz in a licensed area and that makes use of digital technology for the delivery of any programming service in the licensed area shall distribute in the licensed area

**(7) The portion of subsection 18(11.2) of the Regulations before paragraph (a) is replaced by the following:**

(11.2) Subject to subsection (11.3) and except as otherwise provided under a condition of its licence, a licensee that has a nominal capacity in a licensed area that is less than that referred to in subsection (11.1) and that makes use of digital technology for the delivery of any programming service in the licensed area shall distribute in the licensed area

**(8) Subsections 18(11.4) and (11.5) of the Regulations are replaced by the following:**

(11.4) For the purposes of paragraph (11.2)(a), any French-language programming service, other than a service that is required to be distributed in the licensed area pursuant to paragraph 9(1)(h) of the Act or section 17 of these Regulations, constitutes a French-language Canadian specialty service.

(11.5) For the purposes of paragraph (11.2)(b), any English-language programming service, other than a service that is required to be distributed in the licensed area pursuant to paragraph 9(1)(h) of the Act or section 17 of these Regulations, constitutes an English-language Canadian specialty service.

**(9) Subsection 18(14) of the Regulations is replaced by the following:**

(14) Except as otherwise provided under a condition of its licence, a licensee shall, for each Category 2 service of a related programming undertaking that it distributes in a licensed area, distribute at least five Category 2 services of any unrelated programming undertakings in the licensed area.

**7. (1) The portion of section 19 of the Regulations before paragraph (a) is replaced by the following:**

**19.** Except as otherwise provided under a condition of its licence, if a licensee satisfies the requirements of sections 17 and 18, it may distribute in any licensed area

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

(h) any Part 2 eligible satellite service that the licensee was authorized to distribute in the licensed area as part of its basic service before June 3, 1993;

**8. Section 19.1 of the Regulations is replaced by the following:**

**19.1** Except as otherwise provided under a condition of its licence, a licensee that delivers any programming service to any subscriber on a digital basis in a licensed area, and satisfies the requirements of section 18, may distribute in that licensed area, but only on a digital basis, any Category 1 service not distributed by the licensee under that section, and any Category 2 service.

**9. Subsection 20(2) of the Regulations is replaced by the following:**

(2) If a licensee distributes in a licensed area a programming service consisting of the proceedings of the legislature of the province in which the licensed area is located, the licensee shall include that service as part of its basic service, unless the operator of the programming service agrees in writing to the distribution of its service as a discretionary service.

**10. Subsection 21(3) of the Regulations is replaced by the following:**

(3) If a licensee distributes in a licensed area on one or more analog channels the programming services of an exempt programming undertaking of which the licensee or an affiliate, or both, controls 15% or more of the total shares issued and outstanding, the licensee shall make available in the licensed area an equal number of analog channels for the distribution of programming services of third party exempt programming undertakings.

**11. The portion of subsection 22(1) of the Regulations before paragraph (a) is replaced by the following:**

**22.** (1) Except as otherwise provided under a condition of its licence, a Class 1 licensee, and any Class 2 licensee that elects to distribute an audio programming service in a licensed area, shall distribute in the licensed area

**12. (1) The portion of subsection 23(1) of the Regulations before paragraph (a) is replaced by the following:**

**23.** (1) Except as otherwise provided under a condition of its licence or in subsection (2), a licensee may distribute in any licensed area

**(2) The portion of subsection 23(2) of the Regulations before paragraph (a) is replaced by the following:**

(2) Except as otherwise provided under a condition of its licence, no licensee shall distribute in a licensed area

**13. Subsections 24(2) and (3) of the Regulations are replaced by the following:**

(2) Subject to subsection (3), if a Class 1 licensee distributes in a licensed area the programming service of a pay audio programming undertaking of which the licensee or an affiliate, or both, controls 30% or more of the total shares issued and outstanding, the licensee shall distribute in the licensed area the programming service of at least one third party pay audio programming undertaking.

(3) A licensee is not required to distribute in a licensed area the programming service of a third party pay audio programming undertaking that is delivered to the licensee's head end in a format that is technically incompatible with the licensee's method of signal distribution.

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

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

**(2) Paragraph 27(1)(d) of the French version of the Regulations is replaced by the following:**

*d) une émission d'information financée par le gouvernement fédéral, un gouvernement provincial, une administration municipale ou un de leurs organismes, ou un organisme d'intérêt public, et produite pour l'un d'eux;*

**(3) Paragraph 27(1)(e) of the Regulations is replaced by the following:**

(e) the question period of the legislature of the province in which the licensed area is located;

**(4) Subsections 27(2) to (4) of the Regulations are replaced by the following:**

(2) Whenever a licensee is not distributing community programming on the community channel in a licensed area, or is distributing on that channel community programming that has no audio component, the licensee may distribute on that channel the programming service of a local radio station, other than an educational radio programming service the operation of which is the responsibility of an educational authority.

(3) Whenever a Class 2 licensee is not distributing community programming on the community channel in a licensed area, the licensee may distribute in that licensed area the programming services referred to in Public Notice CRTC 1985-151, entitled *Complementary Programming on the Community Channel*.

(4) If a licensee provides time on the community channel in a licensed area during an election period for the distribution of programming of a partisan political character, the licensee shall allocate that time on an equitable basis among all accredited political parties and rival candidates.

**15. (1) Paragraph 28(1)(a) of the Regulations is replaced by the following:**

(a) keep a program log or a machine-readable record of programs distributed on the community channel in each licensed area and retain it for a period of one year after distribution of the programs; and

**(2) The portion of subsection 28(2) of the Regulations before paragraph (a) is replaced by the following:**

(2) A licensee shall retain a clear and intelligible audio-visual recording of each program distributed on the community channel in each licensed area for a period of

**16. (1) The portion of subsection 29(5) of the Regulations before paragraph (a) is replaced by the following:**

(5) Except as otherwise provided by a condition of its licence, with respect to each licensed area in which a Class 1 licensee had fewer than 20,000 subscribers on August 31 of the previous broadcast year, the Class 1 licensee shall make a contribution to Canadian programming

**(2) Subparagraphs 29(5)(b)(i) and (ii) of the Regulations are replaced by the following:**

(i) 5% of its gross revenues derived from broadcasting activities in the licensed area in the year, less any contribution to local expression made by the licensee in the licensed area in that year, and

(ii) 1.5% of its gross revenues derived from broadcasting activities in the licensed area in that year.

**17. (1) The portion of paragraph 30(2)(a) of the Regulations before subparagraph (i) is replaced by the following:**

(a) shall, in a licensed area, delete the programming service of a television station and substitute the programming service of a local television station or a regional television station or, with the agreement of the broadcaster operating the local television station or regional television station, have that broadcaster carry out the deletion and substitution, if

**(2) The portion of paragraph 30(2)(c) of the Regulations before subparagraph (i) is replaced by the following:**

(c) may, in a licensed area, delete the programming service of a television station and substitute the programming service of a specialty service if

**(3) The portion of paragraph 30(3)(a) of the Regulations before subparagraph (i) is replaced by the following:**

(a) shall, in a licensed area, delete the programming service of a television station and substitute the programming service of a privately owned local television station or, with the agreement of the broadcaster operating the privately owned local television station, have that broadcaster carry out the deletion and substitution, if

**18. (1) The portion of subsection 32(1) of the Regulations before paragraph (a) is replaced by the following:**

**32. (1)** Except as otherwise provided in this section or under a condition of its licence, a licensee shall distribute in each licensed area as part of its basic service

**(2) Subsection 32(2) of the Regulations is replaced by the following:**

(2) A licensee of a cable distribution undertaking shall distribute in each licensed area the programming services referred to in subsection (1) beginning with the basic band.

**19. The portion of section 33 of the Regulations before paragraph (a) is replaced by the following:**

**33.** Except as otherwise provided under a condition of its licence, a licensee may distribute in any licensed area

**20. Section 33.1 of the Regulations is replaced by the following:**

**33.1** Except as otherwise provided under a condition of its licence, a licensee that delivers any programming service to any subscriber on a digital basis in a licensed area may distribute in the licensed area, but only on a digital basis, any Category 1 or Category 2 service.

**21. Subsection 33.2(2) of the Regulations is replaced by the following:**

(2) An independent licensee that does not deliver any programming service to any subscriber on a digital basis in a licensed area may distribute in that licensed area any Category 1 service on an analog basis.

**22. (1) The portion of subsection 33.3(1) of the Regulations before paragraph (c) is replaced by the following:**

**33.3** (1) A licensee that has a nominal capacity of at least 550 MHz in a licensed area and that makes use of digital technology for the delivery of any programming service in the licensed area shall distribute in the licensed area

(a) at least one English-language Canadian specialty service for every 10 French-language programming services distributed by the licensee in the licensed area, if the licensee is operating in a francophone market within the meaning of paragraph 18(4)(a);

(b) at least one French-language Canadian specialty service for every 10 English-language programming services distributed by the licensee in the licensed area, if the licensee is operating in an anglophone market within the meaning of paragraph 18(4)(b); and

**(2) Subsections 33.3(2) to (4) of the Regulations are replaced by the following:**

(2) A licensee whose licensed area is totally interconnected with another licensed area shall distribute in the first-mentioned licensed area the same number of programming services in the language of the official language minority as are distributed in the licensed area with which it is interconnected, unless the licensee does not have the technological capacity to do so.

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

(3) For the purposes of paragraph (1)(a), any English-language programming service, other than a service that is required to be distributed in the licensed area pursuant to paragraph 9(1)(h) of the Act or section 17 of these Regulations, constitutes an English-language Canadian specialty service.

(4) For the purposes of paragraph (1)(b), any French-language programming service, other than a service that is required to be distributed in the licensed area pursuant to paragraph 9(1)(h) of the Act or section 17 of these Regulations, constitutes a French-language Canadian specialty service.

**23. The portion of section 34 of the Regulations before paragraph (a) is replaced by the following:**

34. Except as otherwise provided under a condition of its licence, a licensee may distribute in any licensed area

**24. The heading before section 39 of the Regulations is replaced by the following:**

*Programming Services That May Be Distributed*

**25. Paragraph 46(b) of the Regulations is replaced by the following:**

(b) the successor of a licensee referred to in paragraph (a), including a successor who holds a regional licence.

**26. (1) The portion of subsection 47(1) of the Regulations before paragraph (b) is replaced by the following:**

47. (1) Subject to subsection (3), this Part does not apply to a licensee referred to in paragraph 46(a) or (b), with respect to a licensed area, if

(a) the licensee sends to each of its subscribers in the licensed area a written notice that contains the information set out in Schedule 1;

**(2) The portion of paragraph 47(3)(a) of the Regulations before subparagraph (i) is replaced by the following:**

(a) suspend the application of subsection (1) or (2) in respect of the licensed area, pending further consideration of the licensee's proposal and

**(3) Paragraph 47(3)(b) of the Regulations is replaced by the following:**

(b) disallow the licensee's proposal to be removed from the obligations of this Part in respect of the licensed area either without a suspension under paragraph (a) or after such a suspension.

**27. (1) The portion of section 50 of the Regulations before paragraph (b) is replaced by the following:**

**50.** Subject to section 51, a licensee may increase the base portion of its basic monthly fee in respect of a licensed area if

(a) it sends to each of its subscribers in the licensed area a written notice that includes the relevant information set out in Schedule 2;

**(2) Subparagraph 50(b)(ii) of the Regulations is replaced by the following:**

(ii) a declaration that the notice has been or will be sent to each of its subscribers in the licensed area at least 90 days before the proposed effective date of the increase, and

**28. (1) Subsection 52(1) of the Regulations is replaced by the following:**

**52. (1)** For the purposes of subsection (2), a licensee, in respect of a licensed area, is considered to be operating in a francophone market if more than 50% of the total population of all cities, towns and municipalities encompassed in whole or in part within the licensed area has French as its mother tongue, according to the most recent population figures published by Statistics Canada.

**(2) The portion of subsection 52(2) of the Regulations before paragraph (a) is replaced by the following:**

(2) Subject to section 54, a licensee may increase its base portion in respect of a licensed area by a maximum of

**(3) Subsection 52(3) of the Regulations is replaced by the following:**

(3) If a licensee has increased its base portion under subsection (2) with respect to a specialty service and ceases to distribute that service as part of the basic service, the licensee shall decrease its base portion in respect of the licensed area by an amount equal to the amount of the increase.

**29. Section 53 of the Regulations is replaced by the following:**

**53.** (1) Subject to section 54, a licensee may increase its pass-through portion in respect of a licensed area if the increase does not exceed the amount of an increase that the Commission has, after September 1, 1986, authorized to be payable to the operator of a broadcasting undertaking.

(2) If a licensee has increased its pass-through portion under subsection (1) with respect to a programming service and ceases to distribute that service as part of the basic service, the licensee shall decrease its pass-through portion in respect of the licensed area by an amount equal to the amount of the increase.

(3) If a licensee has increased its pass-through portion under subsection (1) with respect to a programming service and the operator of the broadcasting undertaking charges the licensee less than the amount in the pass-through portion that reflects the amount payable to the operator of that undertaking for the service, the licensee shall decrease its pass-through portion in respect of the licensed area by an amount equal to the difference.

**30. Paragraph 54(1)(a) of the Regulations is replaced by the following:**

(a) it sends to each of its subscribers in the licensed area a written notice in the form set out in Schedule 3;

**31. Schedules 1 to 3 to the Regulations are replaced by the following:**

**SCHEDULE 1**  
**(Paragraph 47(1)(a))**  
**NOTICE TO SUBSCRIBERS**

*(Name of licensee)* is proposing that its basic monthly fee in *(name of licensed area)* be deregulated, in accordance with subsection 47(1) of the *Broadcasting Distribution Regulations*. If a licensee meets the criteria set out in that subsection, its basic monthly fee in *(name of licensed area)* will no longer be regulated by the Canadian Radio-television and Telecommunications Commission under Part 5 of the Regulations unless the Commission intervenes to suspend or disallow the proposed deregulation.

The details of *(name of licensee)*'s justification for the proposed deregulation are set out in documents filed with the Commission, which are available for public inspection during normal business hours at *(address of licensee)* and at the offices of the CRTC, 1 Promenade du Portage, Gatineau, Quebec, and *(address of nearest regional office)*.

**SCHEDULE 2**  
**(Paragraph 50(a))**  
**NOTICE TO SUBSCRIBERS**

(*Name of licensee*) is proposing to increase its basic monthly fee in (*name of licensed area*), in accordance with section 50 of the *Broadcasting Distribution Regulations*. That section permits a licensee to increase its basic monthly fee unless the Canadian Radio-television and Telecommunications Commission intervenes to disallow all or part of the increase.

The proposed amount and effective date of the increase are given below, in items 1 and 2. The reason for the proposed increase is given in item 3.

The details of (*name of licensee*)'s justification for the proposed increase are set out in documents filed with the Commission, which are available for public inspection during normal business hours at (*address of licensee*) and at the offices of the CRTC, 1 Promenade du Portage, Gatineau, Quebec, and (*address of nearest regional office*). You may express your comments on the proposed increase by writing to:

Secretary General  
Canadian Radio-television and Telecommunications Commission  
Ottawa, Ontario  
K1A 0N2

before (*30 days after the date of sending of this notice*). A copy of your letter must be sent to (*name of licensee's representative, title, address*).

Item 1:

Proposed amount of increase per subscriber per month: \$\_\_\_\_\_.

Your current basic monthly fee is \$\_\_\_\_\_.

If the CRTC does not disallow this increase, your new basic monthly fee will be \$\_\_\_\_\_.

Item 2:

Effective date of the proposed increase: \_\_\_\_\_.

Item 3:

Reason for the proposed increase.

(*Provide a brief statement outlining the justification for the proposed increase and any other relevant information.*)

**SCHEDULE 3**  
**(Paragraph 54(1)(a))**  
**NOTICE TO SUBSCRIBERS**

(*Name of licensee*) is proposing to increase its basic monthly fee in (*name of licensed area*), in accordance with section(s) (52, 53 or both) of the *Broadcasting Distribution Regulations*. That section permits a licensee to increase its basic monthly fee unless the Canadian Radio-television and Telecommunications Commission intervenes to disallow all or part of the increase.

The proposed amount and effective date of the increase are given below, in items 1 and 2. The reason for the proposed increase is given in item 3.

The details of (*name of licensee*)'s justification for the proposed increase are set out in documents filed with the Commission, which are available for public inspection during normal business hours at (*address of licensee*) and at the offices of the CRTC, 1 Promenade du Portage, Gatineau, Quebec, and (*address of nearest regional office*). You may express your comments on the proposed increase by writing to:

Secretary General  
Canadian Radio-television and Telecommunications  
Commission  
Ottawa, Ontario  
K1A 0N2

before (*30 days after the date of sending of this notice*). A copy of your letter must be sent to (*name of licensee's representative, title, address*).

Item 1:

Proposed amount of increase per subscriber per month: \$\_\_\_\_\_.

Your current basic monthly fee is \$\_\_\_\_\_.

If the CRTC does not disallow this increase, your new basic monthly fee will be \$\_\_\_\_\_.

Item 2:

Effective date of the proposed increase:\_\_\_\_\_.

Item 3:

Reason for the proposed increase.

*(Provide a brief statement outlining the justification for the proposed increase and any other relevant information).*

COMING INTO FORCE

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

## **Dissenting opinion of Commissioner Stuart Langford**

I disagree with the majority and would not have adopted the regulatory amendments appended to today's Public Notice. I do not question the goal of the nearly three-year-long process culminating in today's release. The benefits of a simplified regulatory framework intended to reduce the administrative burden shouldered by licensees and the Commission alike, cannot be gainsaid. Unfortunately, there is little if any likelihood that the amendments brought into force today will accomplish that end and every likelihood that precisely the opposite will be the outcome.

By majority decision, the Commission has added another complicating element to the existing *Broadcasting Distribution Regulations*. At the same time it hopes, "...to enable realization of administrative efficiencies while preserving, to the greatest extent possible, existing rights and obligations of all parties, including licensees, programming undertakings, other signal providers and the public." (Public Notice CRTC 2002-81, paragraph 3) With respect, the likelihood of this initiative and those two ambitions surviving together let alone producing a new efficient regulatory paradigm is practically zero.

### **Ad hoc, ad nauseum:**

In its intervention, the Canadian Cable Television Association (CCTA) raised concerns about how, if many former licences were rolled, so to speak, into one regional licence, the Commission would deal with matters specific only to one or another undertaking as defined under the present regime. The Association saw scope for confusion and uncertainty in future applications concerning ownership changes, licence exemption and licence revocation or suspensions.

The majority's response (see paragraphs 26 to 28 of today's PN) is not reassuring. In essence, its commitment is to cross each bridge as it comes to it, to deal with each application on a case by case basis as it arises. For ownership matters it will employ a two step process, the first to decide which of three procedural options it will utilize, and the second to proceed along the path chosen. Exemption matters would be handled one at a time upon application. With regard to licence revocation or suspension, the majority simply says that the Commission, "...would have several procedural options in such a situation." How precisely this approach marks a streamlined and efficient departure from the status quo is anyone's guess. The Commission might just as easily have republished its existing regulations bound in a cover stamped "New and Improved!"

**1 + 1 = 2:**

In light of the capacity for confusion, added paper burden and uncertainty such an ad hoc approach has, it is not difficult to understand why the very parties most impacted by the new licensing system announced today, do not want it. In exchange for a regional licence which the majority hopes may spare Commission staff some effort at licence renewal time, they will find themselves saddled with a new regime that constrains and complicates their lives. In fact, today's PN does not lighten the regulatory burden by substituting one simple system for an old complicated one. Rather, it appears to pile a new system on top of an existing one.

For matters concerning licence fees, annual returns, capacity reports, and conditions of licence, BDUs will have to revert to something eerily similar to the existing system and deal with the Commission on an "area" by area basis. At renewal time, should it ever be activated (more on that question later), the new "regional licence" system will kick in. For other matters, partial asset sales, for example, both regimes will come into play and any one of several procedural options could be exercised. Presumably, licensees will now have to maintain files, at two levels, one to track "regional" matters, the other to deal with historically defined "areas". In its search for simplicity, the majority may have created a many-headed regulatory monster. Far from promoting administrative efficiency, today's amendments seem a recipe for duplication and uncertainty.

**One size fits none:**

To muddy the regulatory waters even more the majority notes in paragraph 48 that the amendments to the regulations allowing for regional licences, are permissive only not obligatory. The Commission need not ever issue any regional licences, it has simply positioned itself to do so. As well, there will not necessarily be one new regional system. There could be many. Licensees are invited, "...to apply for conditions of licence that will enable the regional licensing approach to be implemented in a manner that may be more appropriate to their circumstances." In other words, build your own licence. How such a one-size-fits-no-one approach will reduce regulatory burden and promote administrative simplicity, is beyond the powers of this commissioner's imagination.

**Don't hold your breath:**

Finally, I come to matter of timing. Having taken almost three years to concoct the new regime announced today, the majority concludes its analysis and disposition of this matter by informing Canadians that it may never be able to put it into practice. That decision will depend upon another body. Until the regulations governing copyright payments are amended, the Commission will issue no regional licences because to do so may make licensees liable for higher royalty payments. Existing BDUs can only pray that Canada's copyright collectives drag their feet.