



## Broadcasting Regulatory Policy CRTC 2012-468

PDF version

Route reference: 2012-386

Additional references: 2011-788, 2011-788-1, 2011-788-2, 2011-788-3 and 2012-385

Ottawa, 30 August 2012

### **Amendments to the *Broadcasting Distribution Regulations* – Provisions relating to the Local Programming Improvement Fund**

*The Commission announces that it has made amendments to the Broadcasting Distribution Regulations. These amendments implement determinations made by the Commission in Review of the Local Programming Improvement Fund, Broadcasting Regulatory Policy CRTC 2012-385, 18 July 2012.*

*The amendments, effective 1 September 2012, will be published in the Canada Gazette, Part II. A copy of the amendments is provided in the appendix to this regulatory policy.*

#### **Introduction**

1. In Broadcasting Public Notice 2008-100, the Commission established the Local Programming Improvement Fund (LPIF) to support the production of local programming provided by private and public conventional television stations operating in non-metropolitan markets.<sup>1</sup>
2. In Broadcasting Regulatory Policy 2012-385, the Commission found that although the LPIF has assisted local television stations over the preceding two years in maintaining and enhancing local programming in non-metropolitan markets, it would be inappropriate to maintain the LPIF in the long term, for the reasons set out in that regulatory policy.
3. In that regulatory policy, the Commission also stated that it would phase out the LPIF over the 2012-2013 and 2013-2014 broadcast years, in order to mitigate the effects of eliminating that source of funding for local stations. More specifically, the Commission indicated that it would:
  - for the 2012-2013 broadcast year, reduce the contribution rate from 1.5% to 1%;

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<sup>1</sup> In Broadcasting Public Notice 2008-100, as reiterated in Broadcasting Regulatory Policy 2009-406, “non-metropolitan markets” are defined as those markets of which the population with a knowledge of English or French is less than one million.

- for the 2013-2014 broadcast year, reduce the contribution rate to 0.5%; and
  - as of 1 September 2014, discontinue the LPIF.
4. The Commission subsequently issued Broadcasting Notice of Consultation 2012-386, in which it called for comments on the wording of amendments to the *Broadcasting Distribution Regulations* (the Regulations) that would give effect to the above-noted determinations. In that notice of consultation, the Commission also called for comments on the wording of amendments to the Regulations that would give effect to the following:
- If the contribution made by a licensee to the LPIF for the broadcast year beginning 1 September 2013 is greater than the amount required, the licensee will be entitled to a refund of the excess of that contribution. The existing obligation to make up any shortfalls by 31 December of the following broadcast year remains unchanged.

## Comments

5. The Commission received comments in support of the proposed amendments from MTS Inc. and Allstream Inc. (collectively, MTS Allstream). MTS Allstream stated that it had reviewed the proposed amendments to the Regulations and agreed that the amendments are appropriate for the purpose of implementing the Commission's above-noted determinations relating to phasing out the LPIF. It concluded that the Commission should adopt these amendments to the Regulations for an effective date of 1 September 2012.
6. The Commission also received comments from Rogers Communications Partnership (Rogers). Rogers considered the proposed amendments to the Regulations to be an accurate reflection of the determinations made by the Commission in Broadcasting Regulatory Policy 2012-385. It nevertheless recommended that sections 37 and 54 of the Regulations be further revised to extend the 31 December deadline by which licensees are required to make up the balance of any contribution owing from the previous broadcast year. Noting that licensees file their annual returns with the Commission by 30 November each year, Rogers stated that, from its experience, the fund administrator does not report on actual revenues until the following April. It argued that licensees are therefore unaware of any balance owing before that time. For this reason, Rogers recommended that the deadline specified in sections 37 and 54 of the Regulations be changed from 31 December to 30 April of the following year.
7. The Commission notes that the majority of comments received expressed concerns with the Commission's determinations set out in Broadcasting Regulatory Policy 2012-385. Media RendezVous Inc. and an individual noted the importance of local and regional reflection and suggested that the LPIF should be maintained.

8. Additional comments submitted by l'Alliance des producteurs francophones du Canada, l'Assemblée communautaire fransaskoise, la Fédération culturelle canadienne-française, la Fédération des communautés francophones et acadienne, le Front des réalisateurs indépendants du Canada, le Réseau national des Galas de la chanson, and Réseau Ontario related to the impact of the LPIF's dissolution on official language minority communities and the Commission's obligations under the *Official Languages Act*.
9. Comments received in reply to Broadcasting Notice of Consultation 2012-386 can be found on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Public Proceedings."

### **Commission's analysis and decision**

10. The Commission notes that the official languages considerations presented by the various parties noted above were previously raised in the context of the public process that led to the issuance of Broadcasting Regulatory Policy 2012-385. It is the Commission's view that these comments, in addition to the above-noted comments from Media RendezVous Inc. and the individual, do not pertain to the proposed wording of the amendments to the Regulations and that they therefore fall outside the scope of the present proceeding.
11. In regard to the comment from Rogers, the Commission notes that the deadlines specified in sections 37 and 54 of the Regulations apply not only in the context of contributions to the LPIF, but also in regard to contributions to the Canada Media Fund, the Small Market Local Production Fund (for direct-to-home satellite distribution undertakings), and other initiatives. The Commission also notes that licensees must report their gross revenues derived from broadcasting activities in the broadcast year by 30 November of the subsequent broadcast year. It therefore considers that licensees are capable of calculating, by 31 December, the amount of any LPIF contributions owing or owed for the previous broadcast year. Given that the relevant timelines have been in place since 1 September 2009, the Commission does not consider it necessary to revise these dates at this time.

### **Conclusion**

12. In light of the above, the Commission has adopted the proposed amendments to the *Broadcasting Distribution Regulations* as published in Broadcasting Notice of Consultation 2012-386. The amended Regulations were registered and will come into force on 1 September 2012. A copy of the amendments to the Regulations is provided in the appendix to this regulatory policy, and will be published in the *Canada Gazette*, Part II.

Secretary General

### **Related documents**

- *Call for comments on proposed amendments to the Broadcasting Distribution Regulations – Provisions relating to the Local Programming Improvement Fund*, Broadcasting Notice of Consultation CRTC 2012-386, 18 July 2012

- *Review of the Local Programming Improvement Fund*, Broadcasting Regulatory Policy CRTC 2012-385, 18 July 2012
- *Policy determinations resulting from the 27 April 2009 public hearing*, Broadcasting Regulatory Policy CRTC 2009-406, 6 July 2009
- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services* – Regulatory policy, Broadcasting Public Notice CRTC 2008-100, 30 October 2008

# **Appendix to Broadcasting Regulatory Policy CRTC 2012-468**

## **Regulations Amending the Broadcasting Distribution Regulations**

### **AMENDMENTS**

**1. Section 35 of the *Broadcasting Distribution Regulations*<sup>1</sup> is replaced by the following:**

**35.** (1) Except as otherwise provided under a condition of its licence, a licensee shall make a contribution to Canadian programming — specifically, to the Local Programming Improvement Fund — based on a percentage of its gross revenues derived from broadcasting activities in the broadcast year, as follows:

(a) 1.0% for the broadcast year beginning on September 1, 2012; and

(b) 0.5% for the broadcast year beginning on September 1, 2013.

(2) No contributions are required under subsection (1) for any broadcast year after August 31, 2014.

**2. Section 37 of the Regulations is renumbered as subsection 37(1) and is amended by adding the following:**

(2) Despite subsection (1), if, as a result of the calculations performed under subsection 36(1), the contribution made by a licensee under paragraph 35(1)(b) is greater than the amount required to be contributed under that provision, the licensee is entitled to a refund of the excess.

**3. (1) Paragraph 52(c) of the Regulations is replaced by the following:**

(c) to the Local Programming Improvement Fund,

(i) a contribution of 1.0% of gross revenues for the broadcast year beginning on September 1, 2012, and

(ii) a contribution of 0.5% of gross revenues for the broadcast year beginning on September 1, 2013.

**(2) Section 52 of the Regulations is renumbered as subsection 52(1) and is amended by adding the following:**

(2) No contributions are required under paragraph (1)(c) for any broadcast year after August 31, 2014.

**4. Section 54 of the Regulations is renumbered as subsection 54(1) and is amended by adding the following:**

(2) Despite subsection (1), if, as a result of the calculations performed under subsection 53(1), the contribution made by a licensee under subparagraph 52(c)(ii) is greater than the amount required to be contributed under that provision, the licensee is entitled to a refund of the excess.

### **COMING INTO FORCE**

**5. These Regulations come into force on September 1, 2012.**

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