



Broadcasting Notice of Consultation CRTC 2015-258

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Ottawa, 17 June 2015

Call for comments on proposed amendments to the exemption order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers

The Commission calls for comments on proposed amendments to the exemption order for terrestrial broadcasting distribution undertakings (BDUs) serving fewer than 20,000 subscribers set out in Broadcasting Order 2014-445 (the BDU exemption order).

Among other things, these amendments will put into effect the Commission's determinations in its [policy roadmap to maximize choice for TV viewers and foster a healthy, dynamic TV market](#). In particular, the BDU exemption order will be expanded to allow exempt BDUs to compete in markets served by licensed BDUs. As a result, Canadians will have greater choice of TV service providers. Further, to ensure that Canadians have access to Canadian services, exempt BDUs will be required to offer more Canadian than non-Canadian services.

The amendments will also harmonize the BDU exemption order with the distribution orders issued under section 9(1)(h) of the Broadcasting Act as a result of Broadcasting Regulatory Policy 2013-372. Among other things, exempt undertakings serving more than 2,000 subscribers will be required to distribute the programming services Nouveau TV5 (TV5/UNIS), AMI-tv Français and ARTV. The availability of these services will ensure that all Canadians, including Canadians located in official language minority communities and Canadians who are blind and visually impaired, have access to high-quality French-language programming.

Finally, the Commission is taking the opportunity to propose changes to the BDU exemption order to harmonize the regime for contributions to Canadian programming, as well as other minor revisions.

*The proposed changes to the BDU exemption order are set out in bold in the appendix to this notice. The deadline for comments is **20 July 2015**.*

Introduction

1. In this notice, the Commission calls for comments on proposed amendments to the exemption order for terrestrial broadcasting distribution undertakings (BDUs) serving fewer than 20,000 subscribers set out in Broadcasting Order 2014-445 (the BDU exemption order) to reflect its determinations in recent policy proceedings. The proposed changes to the BDU exemption order are set out in bold in the appendix.

Proposed changes resulting from the Let's Talk TV proceeding

Competition with licensed BDUs

2. In Broadcasting Regulatory Policy 2015-96, the Commission stated that amending the BDU exemption order to facilitate the entry of exempt terrestrial BDUs into markets already served by a licensed BDU might encourage more competition, resulting in additional options for consumers. It also noted that this proposal would be consistent with section 5(2)(g) of the *Broadcasting Act* (the Act) in that it would eliminate the administrative burden placed on new entrant BDUs by shortening the period to obtain the Commission's authorization to launch such services by approximately 8 to 10 months.
3. Accordingly, the Commission stated that it would initiate a follow-up process to broaden the BDU exemption order to allow exempt terrestrial BDUs to enter and compete in markets with licensed BDUs and to seek input from parties as to which regulatory requirements should apply to exempt BDUs and in what manner.
4. The Commission is proposing to require any new terrestrial BDU that qualifies for exemption to register and submit the following general information to the Commission no later than three months prior to commencing operations in a new service area:
 - contact information;
 - type of undertaking;
 - main undertaking location and secondary locations;
 - basic technical information to ascertain how the service is delivered;
 - the geographical coordinates of the head end;
 - whether a community channel will be offered;
 - a website address where the distribution grid (channel lineup) for the service area is listed (see Broadcasting Information Bulletin 2009-384);
 - a launch date; and
 - confirmation that the undertaking will operate under the terms and conditions of the BDU exemption order.
5. Upon launch of the service, the name of the BDU and the service area would be added to the list of registered exempt BDUs posted on the Commission's website.
6. Consistent with the above, the Commission proposes to remove the following requirement set out in paragraph 4 of the BDU exemption order:

...and the undertaking either (a) does not serve all or part of the licensed area of a licensed terrestrial broadcasting distribution undertaking (BDU) that serves 20,000 or more subscribers within that licensed area, or (b) serves all or part of the licensed area of a licensed terrestrial BDU that serves 20,000 or more subscribers only by virtue of the fact that the licensed BDU expanded to operate within the service area of the undertaking at some time following the time at which the undertaking came into being.

7. In light of the policy determinations in Broadcasting Regulatory Policy 2015-96 and the proposed amendments in this notice of consultation, as of today's date the Commission will only accept applications for broadcasting licences to operate distribution undertakings once a given undertaking reaches 20,000 subscribers. An undertaking that qualifies for exemption under the current terms of the BDU exemption order may begin operating as a competitor in markets with licensed BDUs. Undertakings that wish to do so must file the information set out in paragraph 4 of this notice with the Commission. The Commission expects programming services to negotiate affiliation agreements in good faith during this transitional period.

Preponderance of Canadian services

8. Beginning March 2016, licensed terrestrial and direct-to-home television providers will be required to offer more Canadian than non-Canadian services. However, subscribers will ultimately choose how many and what Canadian or non-Canadian discretionary channels they wish to receive beyond the entry-level service offering.
9. The Commission proposes to apply this requirement to exempt terrestrial BDUs as of the same date.

Distribution of U.S. 4+1 services

10. As of March 2016, licensed BDUs will be required to distribute a small entry-level service offering. As part of this offering, BDUs will be permitted to include only one set of the signals of the CBS, NBC, ABC and FOX commercial networks and the non-commercial PBS network (known as the U.S. 4+1 signals).
11. Currently, exempt BDUs may distribute two sets of U.S. 4+1 signals. The BDU exemption order does not specify whether these two sets may be distributed as part of the basic service or on a discretionary basis. Given that exempt BDUs will be permitted to compete in markets with licensed BDUs, it is the Commission's preliminary view that exempt BDUs should also be allowed to distribute no more than one set of U.S. 4+1 signals as part of their basic service. Consequently, the Commission proposes to amend the BDU exemption order to this effect.

Simultaneous substitution

12. The Commission will be updating the simultaneous substitution regime for licensed BDUs as outlined in Broadcasting Regulatory Policy 2015-25. Once the measures addressing the issues related to simultaneous substitution are implemented, the

Commission will consider further amending the exemption order to take these changes into account.

Addition of programming services that must be distributed pursuant to an order under section 9(1)(h) of the *Broadcasting Act*

13. In Broadcasting Regulatory Policy 2013-372, the Commission stated its intent to harmonize the BDU exemption order with the distribution orders issued under section 9(1)(h) of the Act as a result of its determinations. In particular, exempt BDUs serving more than 2,000 subscribers will be required to distribute all services that must be distributed pursuant to mandatory distribution orders under section 9(1)(h) of the Act. This includes additional services, namely Nouveau TV5 (TV5/UNIS), AMI-tv Français and ARTV, granted mandatory distribution in Broadcasting Regulatory Policy 2013-372.

Contributions to Canadian programming

14. The Commission also proposes to amend the BDU exemption order as it relates to the calculation and payment of contributions to Canadian programming (i.e. 5% of the undertaking's gross revenues derived from broadcasting activities in each broadcast year less any contribution to local expression). Specifically, the Commission notes that licensed BDUs are permitted under sections 36 and 37 of the *Broadcasting Distribution Regulations* to estimate their required contributions for each broadcast year based on the previous year's broadcasting revenues and then "true up" that amount at the end of the year if they underpaid or receive a credit toward the next year if they overpaid.
15. The Commission considers that exempt BDUs should have the same flexibility and proposes to amend the BDU exemption order to this effect.

Minor revisions

16. In addition to the above, the Commission is proposing the following minor revisions to the BDU exemption order:

- in the French version only, correcting paragraph 8 to reflect the English version, as follows (change in bold):

Si l'entreprise offre un service de programmation **sur une base numérique**, elle distribue :

- a. au moins un service spécialisé ou payant canadien de langue française, excluant les services que l'entreprise est tenue de distribuer en vertu **du paragraphe 15** ci-dessous, pour chaque tranche de dix services de programmation de langue anglaise distribués par l'entreprise, si l'entreprise est exploitée dans un marché anglophone;

- b. au moins un service spécialisé ou payant canadien de langue anglaise, excluant les services que l'entreprise est tenue de distribuer en vertu **du paragraphe 15** ci-dessous, pour chaque tranche de dix services de programmation de langue française distribués par l'entreprise, si l'entreprise est exploitée dans un marché francophone.
- removing the reference to the implementation deadline for the public alerting system at paragraph 12.2;
- removing the references to multipoint distribution systems (MDS) since the Commission no longer issues MDS licences (see Broadcasting Information Bulletin 2011-479); and
- replacing the reference to Broadcasting and Telecom Information Bulletin 2009-38 with a reference to the revised procedures in Broadcasting and Telecom Information Bulletin 2013-637.

Call for comments

17. The Commission calls for comments on the proposed BDU exemption order set out in the appendix to this document. Parties should provide alternate wording, with supporting rationale, where they consider that changes are necessary.
18. The Commission will accept comments that it receives on or before **20 July 2015**. The Commission will not formally acknowledge written comments. It will, however, fully consider all comments, and they will form part of the public record of the proceeding, provided that the procedures for filing set out below have been followed.

Procedure for filing comments

19. The *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure) apply to the present proceeding. The Rules of Procedure set out, among other things, the rules for content, format, filing and service of interventions, replies, answers of respondents and requests for information; the procedure for filing confidential information and requesting its disclosure; and the conduct of public hearings. Accordingly, the procedure set out below must be read in conjunction with the Rules of Procedure and its accompanying documents, which can be found on the Commission's website under "Statutes and Regulations." Broadcasting and Telecom Information Bulletin 2010-959 provides information to help interested persons and parties understand the Rules of Procedure so that they can more effectively participate in Commission proceedings.
20. The proposed amendments are appended to this notice. The Commission invites comments on the wording of the proposed amendments. The Commission will accept interventions that it receives on or before **20 July 2015**.

21. The Commission encourages interested persons and parties to monitor the record of the proceeding, available on the Commission's website, for additional information that they may find useful when preparing their submissions.
22. Submissions longer than five pages should include a summary. Each paragraph of all submissions should be numbered, and the line ***End of document*** should follow the last paragraph. This will help the Commission verify that the document has not been damaged during electronic transmission.
23. Pursuant to Broadcasting and Telecom Information Bulletin 2015-242, the Commission expects incorporated entities and associations, and encourages all Canadians, to file submissions for Commission proceedings in accessible formats (for example, text-based file formats that allow text to be enlarged or modified, or read by screen readers). To provide assistance in this regard, the Commission has posted on its website [guidelines](#) for preparing documents in accessible formats.
24. Submissions must be filed by sending them to the Secretary General of the Commission using **only one** of the following means:

by completing the
[\[Intervention/comment/answer form\]](#)

or

by mail to
CRTC, Ottawa, Ontario K1A 0N2

or

by fax at
819-994-0218

25. Parties who send documents electronically must ensure that they will be able to prove, upon Commission request, that service/filing of a particular document was completed. Accordingly, parties must keep proof of the sending and receipt of each document for 180 days after the date on which the document is filed. The Commission advises parties who file and serve documents by electronic means to exercise caution when using email for the service of documents, as it may be difficult to establish that service has occurred.
26. In accordance with the Rules of Procedure, a document must be received by the Commission and all relevant parties by 5 p.m. Vancouver time (8 p.m. Ottawa time) on the date it is due. Parties are responsible for ensuring the timely delivery of their submissions and will not be notified if their submissions are received after the deadline. Late submissions, including those due to postal delays, will not be considered by the Commission and will not be made part of the public record.

27. The Commission will not formally acknowledge submissions. It will, however, fully consider all submissions, which will form part of the public record of the proceeding, provided that the procedure for filing set out above has been followed.

Important notice

28. All information that parties provide as part of this public process, except information designated confidential, whether sent by postal mail, facsimile, email or through the Commission's website at www.crtc.gc.ca, becomes part of a publicly accessible file and will be posted on the Commission's website. This information includes personal information, such as full names, email addresses, postal/street addresses, telephone and facsimile numbers, etc.
29. The personal information that parties provide will be used and may be disclosed for the purpose for which the information was obtained or compiled by the Commission, or for a use consistent with that purpose.
30. Documents received electronically or otherwise will be put on the Commission's website in their entirety exactly as received, including any personal information contained therein, in the official language and format in which they are received. Documents not received electronically will be available in PDF format.
31. The information that parties provide to the Commission as part of this public process is entered into an unsearchable database dedicated to this specific public process. This database is accessible only from the web page of this particular public process. As a result, a general search of the Commission's website with the help of either its own search engine or a third-party search engine will not provide access to the information that was provided as part of this public process.

Availability of documents

32. Electronic versions of the interventions and of other documents referred to in this notice, are available on the Commission's website at www.crtc.gc.ca by visiting the "Participate" section, selecting "Submit Ideas and Comments," and then selecting "our open processes." Documents can then be accessed by clicking on the links in the "Subject" and "Related Documents" columns associated with this particular notice.
33. Documents are also available from Commission offices, upon request, during normal business hours.

Location of Commission offices

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

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Secretary General

Related documents

- *Filing submissions for Commission proceedings in accessible formats*, Broadcasting and Telecom Information Bulletin CRTC 2015-242, 8 June 2015
- *A World of Choice – A roadmap to maximize choice for TV viewers and to foster a healthy, dynamic TV market*, Broadcasting Regulatory Policy CRTC 2015-96, 19 March 2015
- *Measures to address issues related to simultaneous substitution*, Broadcasting Regulatory Policy CRTC 2015-25, 29 January 2015
- *Amendments to various regulations, the standard conditions of licence for video-on-demand undertakings and certain exemption orders – Provisions requiring the mandatory distribution of emergency alert messages*, Broadcasting Regulatory Policy CRTC 2014-444 and Broadcasting Orders CRTC 2014-445, 2014-446, 2014-447 and 2014-448, 29 August 2014
- *Practices and procedures for staff-assisted mediation, final offer arbitration and expedited hearings*, Broadcasting and Telecom Information Bulletin CRTC 2013-637, 28 November 2013
- *Applications for mandatory distribution on cable and satellite under section 9(1)(h) of the Broadcasting Act*, Broadcasting Regulatory Policy CRTC 2013-372, 8 August 2013
- *Multipoint Distribution Systems (MDS) – New licensing regime*, Broadcasting Information Bulletin CRTC 2011-479, 9 August 2011

- *Guidelines on the CRTC Rules of Practice and Procedure*, Broadcasting and Telecom Information Bulletin CRTC 2010-959, 23 December 2010
- *Streamlining of certain filing requirements for broadcasting distribution undertakings*, Broadcasting Information Bulletin CRTC 2009-384, 26 June 2009
- *Practices and procedures for staff-assisted mediation, final offer arbitration, and expedited hearings*, Broadcasting and Telecom Information Bulletin CRTC 2009-38, 29 January 2009

Appendix to Notice of Consultation CRTC 2015-258

Terms and conditions of the exemption order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers

Pursuant to section 9(4) of the *Broadcasting Act* (the Act), the Commission, by this order, exempts from the requirements of Part II of the Act and any regulations made thereunder, those persons carrying on broadcasting distribution undertakings of the class defined by the criteria and operating under the terms and conditions outlined below.

Description

The purpose of these broadcasting distribution undertakings is to provide programming services to fewer than 20,000 subscribers, using co-axial cable, fibre **or** digital subscriber line ~~or multi-point distribution system technology~~.

A. Definition of terms

1. For the purpose of this order, the terms “affiliate,” “anglophone market,” **“basic service,”** “broadcast year,” “Canadian production fund,” “Canadian programming service,” “community access television,” “community channel,” “comparable,” “contribution to local expression,” “Corporation,” “educational television programming service,” “francophone market,” “independent production fund,” “issuing authority,” “licensed,” “licensed area,” “local television station,” “National Alert Aggregation and Dissemination System,” “new programming service,” “pay television service,” “programming service,” “regional television station,” “radiocommunication distribution undertaking,” “relay distribution undertaking,” “specialty service,” “station” and “subscriber” have the same meanings as set out in the *Broadcasting Distribution Regulations*;

~~“basic service” means the package of programming services provided to all subscribers for a single fee;~~ “gross revenues derived from broadcasting activities” has the same meaning as that set out in *Guidelines respecting financial contributions by the licensees of broadcasting distribution undertakings to the creation and presentation of Canadian programming*, Circular No. 426, 22 December 1997;

“local head end” means (a) in respect of an undertaking other than a radiocommunication distribution undertaking, the specific location at which the undertaking 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 exempt undertaking in the service area, and (b) in respect of a radiocommunication distribution undertaking, the undertaking’s transmitter site;

“service area” means the area in which an exempt undertaking carries on a broadcasting distribution undertaking; and an undertaking that “serves more than 2,000 subscribers” means an undertaking whose subscriber base at the time it becomes exempt exceeds 2,000, or an undertaking whose subscriber base at the time

it becomes exempt did not exceed 2,000 but has subsequently exceeded 2,200 for at least two consecutive broadcasting years as reported pursuant to paragraph 25 below.

B. Conditions applicable to exempt distribution undertakings

General conditions

2. The Commission would not be prohibited from licensing the undertaking by virtue of any Act of Parliament or any direction to the Commission by the Governor in Council.
3. The undertaking meets all the technical requirements of the Department of Industry (the Department) and has acquired all authorizations or certificates prescribed by the Department.
4. In total, the number of subscribers served by the individual undertaking is fewer than 20,000, ~~and the undertaking either (a) does not serve all or part of the licensed area of a licensed terrestrial broadcasting distribution undertaking (BDU) that serves 20,000 or more subscribers within that licensed area, or (b) serves all or part of the licensed area of a licensed terrestrial BDU that serves 20,000 or more subscribers only by virtue of the fact that the licensed BDU expanded to operate within the service area of the undertaking at some time following the time at which the undertaking came into being.~~ Once exempt, the undertaking does not have more than 21,000 subscribers in any two consecutive broadcasting years as reported pursuant to paragraph 25 below.

Distribution of the basic service

5. The undertaking does not provide a subscriber with any programming services, other than licensed pay-per-view services, licensed video-on-demand services or the programming services of exempt programming undertakings, without also providing the basic service.

Distribution of conventional television stations

6. In regard to the provision of a basic service:
 - a. The undertaking distributes as part of its basic service all services of local television stations, with no degradation of the signal received.
 - b. If the undertaking serves more than 2,000 subscribers, it distributes as part of its basic service all services of regional television stations, other than affiliates or members of the same network of which a local television station distributed pursuant to paragraph 6(a) above, is also an affiliate or member. These stations are distributed with no degradation of the signal received. If the programming services of two or more regional television stations that are affiliates or members of the same network are received at the local head end or equivalent, the undertaking is required to distribute only one of them.

- c. If not otherwise distributed as a local or regional television station, the undertaking distributes at least one television station owned and operated by the Corporation, in each of the official languages, where the Corporation makes its signals available and pays the costs associated with the transport and reception of its signals to the undertaking's local head end or equivalent.
- d. If the undertaking receives television stations that are identical, the undertaking is required to distribute only one of them under this section.
- e. If the undertaking serves more than 2,000 subscribers, it distributes as part of its basic service, and with no degradation of the signal received, educational television programming services the operation of which is the responsibility of an educational authority designated by the province in which the service area of the undertaking is located.

Majority of Canadian programming services

- 7. A majority of each of the **programming services** and audio channels received by each subscriber, other than the programming distributed on program repeat channels, are devoted to the distribution of Canadian programming services **until 29 February 2016. As of 1 March 2016, a majority of each of the programming services and audio channels offered to each subscriber, other than the programming distributed on program repeat channels, are devoted to the distribution of Canadian programming services.** For the purposes of this paragraph, each pay television service, television pay-per-view service and video-on-demand service is counted as a single **service**.

Programming services in the language of the minority

- 8. If the undertaking delivers any programming service on a digital basis, it distributes:
 - a. at least one French-language Canadian pay or specialty service, excluding the services that the undertaking may be required to distribute under paragraph **15** below, for every ten English-language programming services distributed by the undertaking, if the undertaking is operating in an anglophone market; and
 - b. at least one English-language Canadian pay or specialty service, excluding the services that the undertaking may be required to distribute under paragraph **15** below, for every ten French-language programming services distributed by the undertaking, if the undertaking is operating in a francophone market.

Distribution of adult programming services

- 9. The undertaking does not package an adult programming service in such a way that subscribers are obliged to purchase the service in order to purchase any other programming service. The undertaking takes measures to fully block the reception of both the audio and video portions of any adult programming service to subscribers

who request that it not be receivable in their home (in either unscrambled or scrambled mode).

Distribution of single point-of-view religious services

10. The undertaking distributes a single or limited point-of-view religious pay or specialty service only on a “stand-alone basis” or in a package with other single or limited point-of-view religious services, and all such services are distributed only on a discretionary basis.

Alteration or deletion of a programming service

11. Subject to **12.1 and 12.2**, the undertaking does not alter the content or format of a programming service or delete a programming service in the course of its distribution except:
 - a. for the purpose of complying with section 328(1) of the *Canada Elections Act*;
 - b. for the purpose of deleting a programming service to comply with an order of a court prohibiting the distribution of the service to any part of the service area;
 - c. for the purpose of altering a programming service to insert a warning to the public announcing:
 - i. any danger to life or property if the insertion is provided for in an agreement entered into by the undertaking with the operator of the service or the network responsible for the service; or
 - ii. an imminent or unfolding danger to life if there is no agreement with the operator of the service or the network responsible for the service;
 - d. for the purpose of preventing the breach of programming or underlying rights of a third party, in accordance with an agreement entered into with the operator of the service or the network responsible for the service;
 - e. for the purpose of deleting a subsidiary signal, unless the signal is, itself, a programming service or is related to the service being distributed;
 - f. for the purpose of deleting the described video programming of a service distributed on an analog basis; or
 - g. for the purpose of inserting a commercial message in a Canadian programming service, excluding a video-on-demand service, if the insertion is in accordance with an agreement between the undertaking and the operator of the service or the network responsible for the service and that pertains to commercial messages that are directed to a target market of consumers.

12.1 An undertaking

- a. that serves more than 2,000 subscribers and that alters the audio content or audio format of a programming service under paragraph 11(g) shall ensure that every commercial message complies with the technical requirements set out in *ATSC Recommended Practice A/85: Techniques for Establishing and Maintaining Audio Loudness for Digital Television*, published by the Advanced Television Systems Committee Inc., as amended from time to time.
- b. that serves more than 2,000 subscribers and that distributes an authorized non-Canadian programming service shall ensure that every commercial message complies with the technical requirements set out in *ATSC Recommended Practice A/85: Techniques for Establishing and Maintaining Audio Loudness for Digital Television*, published by the Advanced Television Systems Committee Inc., as amended from time to time.

12.2 An undertaking that serves more than 2,000 subscribers and that delivers any programming service on a digital basis

- a. shall implement, ~~by no later than March 31, 2015,~~ a public alerting system that alters without delay a programming service being distributed by the undertaking in its service area to insert any alert that it receives – in a form including both text and audio content – from the National Alert Aggregation and Dissemination System, that
 - i. announces an imminent or unfolding danger to life; and
 - ii. is designated by the applicable issuing authority for immediate broadcast or distribution in the undertaking's service area.
- b. shall insert the alert in all programming services that it is distributing to subscribers whose residence or other premises are located in an area that is targeted by the alert.
- c. shall take all reasonable measures to ensure that the alerts are in conformity with the specifications and recommended practices set out in the document entitled *National Public Alerting System: Common Look and Feel Guidance*, produced at the request of the Federal/Provincial/Territorial Public Alerting Working Group of Senior Officials Responsible for Emergency Management with the support of Defence Research and Development Canada, Centre for Security Science, Canadian Safety and Security Program, and in consultation with the public-private Common Look and Feel Working Group, as that document is amended from time to time.

Prohibited programming content

13. The undertaking does not distribute a programming service that the undertaking originates and that contains:

- a. anything that contravenes any law;
- b. any abusive comment or abusive pictorial representation that, when taken in context, tends to or is likely to expose an individual or group or class of individuals to hatred or contempt on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, age or mental or physical disability;
- c. any obscene or profane language or pictorial representation; or
- d. any false or misleading news.

For the purpose of (b), sexual orientation does not include the orientation towards a sexual act or activity that would constitute an offence under the *Criminal Code*.

For the purpose of (c), material is obscene if it has as a dominant characteristic the undue exploitation of sex or the combination of sexual content with one or more of the following subjects, namely, crime, horror, cruelty and violence.

Other services distributed

14. In regard to other services distributed:

- a. No service received over-the-air or by any other means is distributed over the undertaking, other than a service that the Commission, by regulation or otherwise, has authorized. If the Commission has authorized a service for distribution subject to terms and conditions intended to address the concerns addressed in paragraph 13 above, the undertaking distributes the service subject to those terms and conditions.
- b. The undertaking distributes no more than two sets of U.S. 4+1 signals, with the exception of signals receivable by the undertaking over the air, to its subscribers. **Of these two sets, only one may be distributed as part of the basic service.**
- c. The undertaking is authorized to undertake any activity authorized in the regulatory policy entitled *General authorizations for broadcasting distribution undertakings*, as amended from time to time, under the terms and conditions set out in that regulatory policy.

Distribution of services subject to orders under section 9(1)(h) of the *Broadcasting Act*

15. If the undertaking serves more than 2,000 subscribers, **it distributes all services that must be distributed pursuant to mandatory distribution orders under section 9(1)(h) of the *Broadcasting Act*.**

Dispute resolution

16. In regard to the resolution of disputes:

- a. If a dispute concerning the terms and conditions under which programming services are distributed arises between the exempt undertaking and a programming undertaking, whether operating by licence or by exemption order, the undertaking submits to such mediation and/or dispute resolution process or processes as may be required by the Commission and to any decision that may ultimately result therefrom.
- b. If a dispute, within the meaning of paragraph 16(a), arises with respect to a programming undertaking's programming services being distributed in the absence of a commercial agreement and the matter proceeds before the Commission for dispute resolution, the undertaking submits to having the dispute resolved as provided for in Broadcasting and Telecom Information Bulletin CRTC **2013-637**, as amended from time to time, and further submits to the rates, terms and conditions established by the Commission as of the date on which the programming was first made available to the relevant undertaking in the absence of a commercial agreement.
- c. If a dispute, within the meaning of paragraph 16(a), arises with respect to a programming undertaking's new programming service that is being distributed in the absence of a commercial agreement and the matter proceeds before the Commission for dispute resolution, the undertaking further submits to the rates, terms and conditions established by the Commission for the duration of the contractual term established by the Commission.
- d. If a dispute concerning the terms and conditions under which programming services are provided to the undertaking arises between the undertaking and a relay distribution undertaking, whether operating by licence or by exemption order, the undertaking submits to such mediation and/or dispute resolution process or processes as may be required by the Commission and to any decision that may ultimately result therefrom.
- e. For greater certainty, nothing in paragraphs 16(a) through (d) prevents parties from reaching an agreement with respect to rates, terms or conditions that differ from those established by the Commission.

- f. If the Commission accepts a referral of a matter for dispute resolution, the undertaking submits to produce and file such additional information as may be requested by the Commission or any individual named by the Commission to act as mediator in a given dispute.

Obligation during dispute

17. In regard to obligation during dispute:

- a. During any dispute between the undertaking and a person licensed to carry on a programming undertaking or the operator of an exempt programming undertaking concerning the carriage or terms of carriage of programming services or concerning any right or obligation under the Act, the undertaking shall continue to distribute those programming services subject to the dispute, at the same rates and on the same terms and conditions as it did before the dispute.
- b. For the purposes of paragraph **17(a)**, a dispute exists from the moment that written notice of the dispute is provided to the Commission and served on the other undertaking that is party to the dispute and ends when an agreement settling the dispute is reached by the concerned undertakings or when the Commission renders a decision concerning any unresolved matter, whichever is first.
- c. An undertaking that distributes a new programming service with respect to which it has no commercial agreement shall abide by the rates, terms and conditions established by the operator of the concerned programming undertaking until such time as a commercial agreement is reached between the parties or the Commission renders a decision concerning any unresolved matter.

Programming service substitution

18. If the undertaking serves more than 2,000 subscribers, the undertaking deletes the programming service of a television station and substitutes the programming service of a local television station or, with the agreement of the broadcaster operating the local television station, has that broadcaster carry out the deletion and substitution, if

- a. the main studio of the local television station (i) is located within the service area of the undertaking, and (ii) is used to produce locally originated programming;
- b. the programming service to be deleted and the programming service to be substituted are comparable and simultaneously broadcast;
- c. in a case where the broadcaster operating the local television station is not to carry out the deletion and substitution under an agreement with the undertaking, the undertaking has, at least four days before the date on which

the programming service is broadcast, received from the broadcaster operating the local television station a written request for the deletion and substitution; and

- d. if a substitution is requested by more than one broadcaster, the undertaking gives priority, in the following order, to (i) if the studios of the stations are located in the same province as the service area of the undertaking or in the National Capital Region, as described in the schedule to the *National Capital Act*, the programming service of the station whose main studio is closest to the local head end, or equivalent, of the service area; (ii) in any other case, the programming service of the station that has a studio located in the same province as the service area.
19. An undertaking may discontinue a deletion and substitution if the programming services in respect of which the deletion and substitution are made are not, or are no longer, comparable and broadcast simultaneously.

Community channel

20. If the undertaking serves more than 2,000 subscribers, it shall make a contribution to Canadian programming in each broadcast year of an amount not less than 5% of that undertaking's gross revenues derived from broadcasting activities in the year, less any contribution to local expression made by the undertaking in that year. Contributions to Canadian programming shall consist of:
- a. a contribution to the Canadian production fund of at least 80% of the undertaking's total required contribution; and
 - b. to one or more independent production funds, the remainder of its total required contribution.

20.1 If an undertaking is required to make a contribution to Canadian programming in a broadcast year under paragraph 20, it may calculate the required contribution on the basis of its gross revenues derived from broadcasting activities in the previous broadcast year.

20.2 If as a result of the calculation in paragraph 20.1 the contribution to Canadian programming is greater than the amount required under paragraph 20, the licensee may deduct the excess from the amount of that contribution that is required for the subsequent broadcast year; however, if it is less than the amount required, the licensee shall make the balance of the contribution by 31 December of the subsequent broadcast year.

21. The undertaking is authorized to offer a zone-based community channel (where two or more exempt BDU service areas are combined to share local and community access television programming) under the following condition:

Exempt systems that make up a zone must be part of a community of interest. A community of interest would be determined by the following criteria:

A community of interest is one where its members share one or more of the following attributes:

- common social and economic interests;
- common heritage, culture or history;
- the same geographic or politically recognized boundary;
- access to the same local/regional media.

22. If the undertaking serves more than 2,000 subscribers and elects to offer a community channel or a zone-based community channel, the community channel offers programming that meets the following requirements:

- a. the programming offered consists of at least:
 - i. 60% local community television programs that are reflective of the community and produced in the undertaking's service area by the undertaking or by other members of the community served by the undertaking;
 - ii. 30% access programming consisting of programs produced by members of the community served by the undertaking;
- b. alternatively,
 - i. where an undertaking is an affiliate of a licensed cable undertaking, and the Commission has prescribed specific conditions of licence governing the offering of a community channel by that licensed undertaking, the undertaking may offer its community channel on the same basis as that approved for the licensed undertaking;
 - ii. where an undertaking is not an affiliate of a licensed cable undertaking, it may offer a community channel on the same basis as approved by condition of licence for any licensed undertaking that has a licensed area that includes any part of the same province or territory in which the undertaking operates;
- c. the programming includes no more than two minutes per hour of promotional messages and at least 75% of this promotional time is made available for the promotion of the community channel, non-related Canadian programming undertakings and for unpaid Canadian public service announcements;

- d. reasonable efforts are made to ensure that all the communities included within a zone-based community channel are proportionately represented; and
- e. the programming offered adheres to:
 - i. the *Cable television community channel standards*, as amended from time to time; and
 - ii. the Canadian Association of Broadcasters' *CAB Violence Code*, as amended from time to time and approved by the Commission.
- f. commercial messages or promotional messages *on the community channel* comply with the technical requirements set out in *ATSC Recommended Practice A/85: Techniques for Establishing and Maintaining Audio Loudness for Digital Television*, published by the Advanced Television Systems Committee Inc., as amended from time to time.

Information requirements

23. The undertaking or its representative registers and submits the following information to the Commission no later than three months prior to commencing operations in a new service area:

- **contact information;**
- **type of undertaking;**
- **main undertaking location and secondary locations;**
- **basic technical information to ascertain how the service is delivered;**
- **the geographical coordinates of the head end;**
- **whether a community channel will be offered;**
- **a website address where the distribution grid (channel lineup) for the service area is listed (see Broadcasting Information Bulletin 2009-384);**
- **a launch date; and**
- **confirmation that the undertaking will operate under the terms and conditions of this order.**

24. The undertaking or its representative submits the following information to the Commission by 30 November of each year:

- a. the name and contact information of the operator of the undertaking;

- b. the location of the undertaking and the communities served by the undertaking;
 - c. the total number of basic subscribers served by the undertaking as of 31 August of that year;
 - d. if the undertaking offers community programming exclusively through a video-on-demand service or provides community programming under a “zone based” approach, and does not operate separate head-end facilities or distribute a distinct local or regional television station, a statement as to its gross revenues derived from broadcasting activities in the past broadcast year and the amount and percentage of those revenues that have been contributed to community programming as described in paragraph 20(a); and
 - e. whether any programming services are provided on a digital basis.
25. If the exempt undertaking serves more than 2,000 subscribers, the undertaking submits the simplified annual return for exempt broadcasting distribution undertakings by 30 November of each year.
26. The undertaking submits any information requested by the Commission in order to ascertain the undertaking’s compliance with the terms of this order.