



Broadcasting Decision CRTC 2018-36

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Reference: Part 1 application posted on 10 August 2017

Ottawa, 29 January 2018

Access Communications Co-operative Limited

Regina (including White City), Saskatchewan

Public record for this application: 2017-0676-4

Broadcasting distribution undertaking serving Regina (including White City) – Licence amendment

*The Commission **denies** an application by Access Communications Co-operative Limited to be relieved from the requirement to contribute to the Independent Local News Fund (ILNF) for its broadcasting distribution undertaking (BDU) serving Regina (including White City), Saskatchewan.*

Instead, the Commission amends that BDU's condition of licence relating to contributions to Canadian programming in order to reduce its required contribution to 4.7% of gross revenues derived from broadcasting activities in the previous year. As such, the licensee's total contribution to Canadian programming and to the ILNF will be 5% of gross revenues derived from broadcasting activities in the previous year.

Background

1. Prior to 1 September 2017, section 34 of the *Broadcasting Distribution Regulations* (the Regulations) required each licensed terrestrial broadcasting distribution undertaking (BDU) to contribute 5% of its gross revenues from broadcasting activities in each broadcast year to Canadian programming, less any allowable contribution to local expression it made in that broadcast year up to a maximum of 2% of the licensee's gross revenues.
2. In Broadcasting Regulatory Policy 2016-224, the Commission announced a number of changes to its contribution model for BDUs, including the creation of the Independent Local News Fund (ILNF) to support the production of locally reflective news and information by private independent television stations. In order to finance the new fund, the Commission determined that all licensed terrestrial and direct-to-home BDUs would be required to contribute 0.3% of their previous year's broadcast revenues to the ILNF.
3. As announced in Broadcasting Regulatory Policy 2017-278, the Commission amended the Regulations in order to implement the new policy framework for local and community television, including the establishment of the ILNF. The new contribution model was operationalized in the Regulations by dividing the 5% contribution into two distinct requirements:

- section 34 requires each licensed terrestrial BDU to contribute 4.7% of its gross revenues from broadcasting activities in each broadcast year to Canadian programming, less any allowable contribution to local expression it made in that broadcast year (with the new maximum allowable contribution to local expression set at 1.5% of gross revenues); and
 - section 35 requires each licensed terrestrial BDU to contribute 0.3% of its gross revenues from broadcasting activities in each broadcast year to the ILNF.
4. However, over the years, some BDUs were granted conditions of licence authorizing them to allocate their entire 5% Canadian programming contribution to local expression. Since those conditions of licence would not relieve these BDUs from the new 0.3% contribution to the ILNF, they would in effect be required to make a total contribution of 5.3% of their gross annual revenues to Canadian programming (including the ILNF), compared to 5% for BDUs not subject to any such condition of licence. To address these cases, the Commission indicated in Broadcasting Regulatory Policy 2017-278 that a BDU in such a situation can apply to amend its condition of licence to include the ILNF contribution as part of its 5% contribution to Canadian programming.

Application

5. On 8 August 2017, Access Communications Co-operative Limited (Access) filed an application to amend the broadcasting licence for its BDU serving Regina (including White City), Saskatchewan, in order to add the following condition of licence:
- Provided that the licensee makes a contribution to Canadian programming each broadcast year ending 31 August of an amount not less than 5% of its gross revenues derived from broadcasting activities, the licensee is exempt from the requirement in section 35 of the *Broadcasting Distribution Regulations* to contribute to the Independent Local News Fund.
6. In Broadcasting Decision 2008-237, the Commission approved an application by Access for a condition of licence that would allow its Regina BDU to devote all of its required 5% contribution to Canadian programming to local expression broadcast on its community channel. However, rather than request an amendment to that condition of licence that would reduce the amount to 4.7%, as suggested by the Commission in Broadcasting Regulatory Policy 2017-278, the licensee requested the exemption to section 35 of the Regulations. Approval of that request would therefore allow Access's Regina BDU to continue allocating the entire 5% contribution set out in sections 34 and 35 of the Regulations to its community channel.
7. Access submitted that the ability to deduct the maximum amount of revenues possible from its required contribution and devote it to the operation of its community channel in Regina is vitally important for the following reasons:
- as a not-for-profit community-owned co-operative, it relies on the revenues it earns from its BDU to fund all of its operations, and all profits earned are re-invested into its distribution system and into its community channel;

- it does not have the ability to issue shares to investors or enter capital markets to help fund new initiatives; and
 - it is facing declining broadcasting revenues year over year, placing significant pressure on it while it strives to sustain its high-quality community channel.
8. The licensee also noted that the Commission acknowledged in Broadcasting Regulatory Policy 2016-224 that community channels in small and medium-sized markets (such as Regina) remain a key source of local reflection. It added that its community channel (Access7) is not only central to its not-for-profit community-owned co-operative mandate, but is a key competitive differentiator in a market served by larger and well-financed BDUs such as Saskatchewan Telecommunications, Shaw Direct and Bell TV.
 9. Access argued that should the Commission deny its application and instead require it to contribute a portion of its revenues to the ILNF, not only would the benefits to that fund be negligible, but the harm to its community channel would be significant, outweighing any benefit to stations that are eligible for ILNF funding.
 10. Access further argued that maximizing support for its community channel in Regina would achieve the same policy objectives for which the Commission established the ILNF, i.e., to fund new local news programming, meaning locally reflective news, analysis and interpretation. It provided numerous examples of programs that air on Access7 and contain locally reflective news and information, all of which provide Regina residents with a unique perspective on the events taking place in the community. The licensee added that there are currently no independent, private conventional television stations (i.e., recipient stations of ILNF funding) operating in Regina. In Access's view, drawing funding away from areas without independent local news voices would be inconsistent with the policy rationale for the creation of the ILNF.
 11. Access stated, however, that should the Commission deny its application, it would accept an amendment to its current condition of licence that would reduce its required contribution to Canadian programming from 5% to 4.7% of gross revenues derived from broadcasting activities in the previous year.
 12. The Commission did not receive any interventions regarding this application.

Commission's analysis and decisions

13. When it approved Access's request in Broadcasting Decision 2008-237 to devote all of its required annual 5% contribution to Canadian programming to local expression broadcast on its community channel, the Commission acknowledged arguments made by the licensee and by the Canadian Media Producers Association, many of which are similar to those provided by Access for the present application.
14. Access is unique as the only licensed not-for-profit cooperative BDU in the Canadian broadcasting system. However, in Broadcasting Regulatory Policy 2016-224, the Commission did not distinguish BDUs on the basis of corporate structure and made contributions to the ILNF mandatory for all licensed BDUs. This newly implemented

measure to support the creation of locally reflective news and information by independent stations across Canada is a major component of the new policy framework for local and community television.

15. In regard to Access's argument that it operates in a market where there are no independent stations that will benefit from ILNF funding, there are currently a number of markets across Canada where licensed BDUs operate in the same situation.¹ Approving Access's application on those grounds could result in similar applications being filed, which could have a greater impact on overall contributions to the ILNF.
16. Finally, since the implementation of changes to the Commission's contribution model for BDUs, all licensed BDUs have seen their allowable contribution to local expression decrease from a maximum of 2% to a maximum of 1.5% of revenues. As such, even if the present application is denied, the licensee would still be in a position where it would be able to devote a significantly larger percentage of funding to its community channel than its competitors.
17. In light of the above, the Commission **denies** the application by Access Communications Co-operative Limited to amend the broadcasting licence for its BDU serving Regina (including White City), Saskatchewan, to be relieved from the requirement to contribute to the ILNF.
18. Instead, the Commission amends the licensee's current condition of licence to reduce that BDU's required contribution to Canadian programming to 4.7% of gross revenues derived from broadcasting activities in the previous year, as originally proposed in Broadcasting Regulatory Policy 2017-278. As such, the licensee's total contribution to Canadian programming and to the ILNF will be 5%, rather than 5.3%, of gross revenues derived from broadcasting activities in the previous year.
19. Accordingly, as of the date of this decision, Access's BDU serving Regina (including White City) is subject to the following **condition of licence**:

The licensee shall, as an exception to section 34(2) of the *Broadcasting Distribution Regulations*, make a contribution to Canadian programming in an amount equal to 4.7% of its gross revenues derived from broadcasting activities in the previous broadcast year, less any allowable contribution to its local expression made by the licensee in that broadcast year.

Secretary General

¹ Private independent stations (recipients of ILNF funding) operate in Lloydminster and Medicine Hat, Alberta; Kamloops, Prince George and Victoria, British Columbia; St. John's, Newfoundland and Labrador; Hamilton and Thunder Bay, Ontario; and Carleton, Gatineau, Montréal, Québec, Rivière-du-Loup, Rouyn-Noranda, Saguenay, Sherbrooke, Trois-Rivières and Val d'Or, Quebec. All other markets across Canada in which licensed BDUs operate are in the same situation as Access's Regina BDU.

Related documents

- *Amendments to the Broadcasting Distribution Regulations and the Television Broadcasting Regulations, 1987 regarding local and community television, and financial support, logging requirements and Canadian exhibition requirements for over-the-air television stations*, Broadcasting Regulatory Policy CRTC 2017-278, 4 August 2017
- *Policy framework for local and community television*, Broadcasting Regulatory Policy CRTC 2016-224, 15 June 2016
- *Class 1 cable broadcasting distribution undertaking serving Regina, Saskatchewan – Licence renewal and licence amendments*, Broadcasting Decision CRTC 2008-237, 28 August 2008

This decision is to be appended to the licence.