



Canadian Association of Broadcasters
Association canadienne des radiodiffuseurs

February 23, 2009

Via Epass

Mr. Robert A. Morin
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Dear Mr. Morin:

Re: Proposed amendments to the Broadcasting Distribution Regulations re DTH contributions to the Small Market Local Programming Fund

1. The Canadian Association of Broadcasters (CAB) represents the vast majority of Canadian programming services, including private radio and television stations, networks, specialty, pay and pay-per-view services. The CAB represents and advances the interests of Canada's private broadcasters in the social, cultural and economic policy areas.
2. The CAB is writing to the Commission on behalf of the small market independently owned television broadcasters who are eligible to receive funding from the Small Market Local Programming Fund (SMLPF).
3. As the Commission knows, the SMLPF provides critical support for the production of local programming in small markets. In a challenging environment characterized by unprecedented viewing choice due to the presence of distant signals and numerous other sources of video content, both regulated and unregulated, the SMLPF has made it possible for independently owned stations operating in small markets to maintain and in many cases enhance the level of local service they provide to their viewers.
4. Small market independently owned television broadcasters are therefore very appreciative of the Commission's ongoing support for the SMLPF, as evidenced most recently in Broadcasting Public Notice CRTC 2008-100, *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services*. In that notice, the Commission reached the conclusion, as had been recommended by the CAB, that a requirement for DTH licensees to contribute 0.4% of their gross revenues derived from broadcasting activities to the SMLPF should be enshrined in the *Broadcasting Distribution Regulations* (BD Regulations).

5. The CAB understands that the necessary amendments to the BD Regulations will be proposed for public comment in due course, with the expectation that the amendments will be in place by August 31, 2011. In the meantime, the small market independently owned stations intend to enter into discussions with both DTH licensees at an early date to ensure the continuation of their existing level of contributions to the SMLPF. These discussions will also address various other measures that the DTH licensees undertake in lieu of program deletion on behalf of local broadcasters in respect of distant signals, including measures related to the DTH carriage of small market stations. The CAB will be pleased to keep the Commission apprised of the progress of those discussions.
6. At this time, the CAB would like to identify certain points that we believe should be addressed in the proposed regulatory amendments respecting DTH contributions to the SMLPF. Our goal in providing these comments now, rather than at the time the proposed amendments are ultimately published for public consultation, is to streamline the amendment process. By identifying up front the relevant concerns of the small market independently owned broadcasters, the CAB hopes that the Commission can address these matters in the initial drafting the proposed amendments, in advance of the formal public consultation.
7. The concerns of the small market independently owned television broadcasters stem from the CAB's experiences over the past several years in administering the SMLPF. Specifically, they relate to the timeliness and accuracy of the required contributions to the SMLPF by DTH licensees.
8. The CAB notes that in Circular No. 426 issued on December 22, 1997, the Commission established a number of guidelines with respect to the financial contributions by broadcasting distribution undertakings to the creation and presentation of Canadian programming. Among other things, these guidelines address matters related to contributions to qualifying productions funds such as the SMLPF.
9. The CAB's concern is that these guidelines, particularly those respecting the timeliness of payments, are often not respected. In addition, questions have arisen as to the establishment of the correct base (i.e. "gross revenues derived from broadcasting activities") upon which contributions are calculated. Both of these matters are addressed in Circular No. 426, but not referenced directly in the BD Regulations.
10. To avoid any uncertainty going forward, and to ensure clarity with respect to the mechanics of contributions to the SMLPF after the BD Regulations are amended, the CAB urges the Commission to incorporate the following three specific matters into the proposed amendments to the BD Regulations:
 - (i) A definition of "gross revenues derived from broadcasting activities" consistent with the definition in Circular No. 426, i.e.: "total revenues, before any deductions (including those for program fees), that are earned directly or indirectly for the distribution of any broadcasting service on an undertaking by the licensee or other entity, where the licensee and other entity are not dealing at arm's length within the

meaning of section 251 of the *Income Tax Act*. This includes, for example, but without limitation, gross revenues from basic and discretionary service subscriptions, additional outlets, installation and reconnections fees, decoder sales and rentals, commercial messages, as well as revenues from the operators of exempt programming undertakings such as home shopping and real estate services. Gross revenues derived from broadcasting activities exclude revenues earned from telecommunications services such as data delivery and services whose visual images consist predominantly of alphanumeric text, such as Broadcast News, that are regulated under the *Telecommunications Act*.”

- (ii) a requirement that contributions be made monthly; and
 - (iii) a requirement that monthly payments be made no later than the fifteenth working day of the month following the month to which the fund remittance pertains. As an example, the remittance for the month of January 2009 would have to be made no later than the fifteenth working day of February 2009.
11. The CAB notes that these three requirements are fully consistent with the guidelines previously published in Circular No. 426 and therefore do not represent new operational requirements. Incorporating them into the BD Regulations, however, would ensure they are widely known and respected, and would promote efficient administration and disbursement of funds from the SMLPF to eligible stations.
12. The CAB thanks the Commission for its consideration of this matter.

Sincerely,



Pierre-Louis Smith
Vice-President, Policy and Chief Regulatory Officer

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