1994-95 Canadian Broadcast and Cable Regulatory Handbook

STATUTES, REGULATIONS, DIRECTIONS, ORDERS, PROCEDURES, CODES AND POLICIES RELATING TO THE REGULATION OF BROADCASTING STATIONS AND NETWORKS, CABLE TELEVISION SYSTEMS AND SATELLITE PROGRAMMING SERVICES IN CANADA.

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by
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UPDATED TO APRIL 20, 1994

McCarthy Tétrault

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Every effort has been taken to ensure the accuracy of the reproduction of the legislation, regulations and CRTC documents set out in this volume. However, the reader is cautioned that only the official version of these documents as published in the *Canada Gazette* or by the Commission may be relied upon. In particular, all annotations and commentary, generally contained within square brackets or in different typeface, have been added by the authors and do not necessarily reflect the views of the Commission.

The documents presented in this volume have been updated, except where otherwise indicated, to *April 20, 1994*.

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Additional copies of *1994-95 Canadian Broadcast and Cable Regulatory Handbook*, in either the English or French language, may be purchased by writing to McCarthy Tétrault, Suite 1000, 275 Sparks Street, Ottawa, Ontario K1R 7X9. FAX (613) 563-9386. The French language version of the *Handbook* is entitled *Manuel de réglementation sur la radiodiffusion et la télédistribution au Canada (1994-95)*.

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Introduction to the 1994-95 Edition

This is the 1994-95 edition of the *Canadian Broadcast and Cable Regulatory Handbook*, a publication which was first issued in the spring of 1993. Since that time, numerous changes have occurred to broadcast and cable regulations, exemption orders, codes and licensing policies in Canada.

At the same time as the documents in the 1993 edition have been updated, the page format of the handbook has been changed to allow a greater volume of material in a smaller size. We hope that readers will find the new format useful and practical.

As noted in the introduction to the 1993 edition, this publication presents an annotated consolidation of the 1991 *Broadcasting Act*, along with updated consolidations of cabinet directions and regulations, procedures, exemption orders, circulars and policy announcements and public notices issued by the Canadian Radio-television and Telecommunications Commission (CRTC) under that Act or its predecessor legislation.

Among the many changes that have taken place since the last edition was published have been the following:

- the ownership transfer provisions of the regulations have been entirely replaced
- the CRTC has amended one of its exemption orders, issued ten new exemption orders, and proposed four others
- new policies have been issued relating to religious broadcasting, low-power radio broadcasting, and multipoint distribution systems
- the Commission has issued major new policy statements on the "benefits" test for ownership transfers, and on the reporting of Canadian programming expenditures by television stations
- most significantly, the Commission issued its new *Structural Public Hearing* policy statement, enacted consequential changes to numerous sections in the regulations affecting cable television systems, and issued new policies on the Cable Production Fund and on the criteria for subsection 18(8) cable rate increases
- a number of industry codes have been significantly amended, and a new CCTA Access Commitment has been published

All of these changes and many others are reflected in the 1994-95 handbook. We have also corrected a number of errors that were reported to us, and added selected notes on recent CRTC decisions.

In publishing this edition, we should reiterate the cautionary notes made in the introduction to the earlier edition, to the following effect:

1. Many aspects of broadcasting policy are contained or embodied in specific licensing decisions of the CRTC, which are far too voluminous for inclusion in this handbook. In a number of cases, such decisions expand upon or waive certain general policies in the particular circumstances of a licensee. Similarly, many of the regulations are expressed to be "except as otherwise provided pursuant to the terms of its licence". In assessing the applicability of particular regulations or policy statements, therefore, it is important to examine the relevant licensing decisions of the Commission.

2. In addition, while regulations and licensing decisions are binding upon the Commission and licensees as at the time they are issued, policy statements as to future licensing policy are not binding and may be subject to amendment or waiver by the Commission, a matter which is reinforced by section 6 of the *Broadcasting Act*, below at §104-52.

3. With the enactment of the 1991 *Broadcasting Act*, a number of terms in previous regulations or policy statements have been superseded. To give an obvious example, pay and specialty services, referred to and regulated as "networks" under the old legislation, are now characterized as "programming undertakings". Until the Commission has completed the task of considering the language of its earlier notices in light of the new legislation, the older notices must be treated with particular caution.

4. Moreover, at any particular time, the Commission has amendments to regulations or licensing policies under consideration. Notices calling for comments on such amendments which have been issued by the Commission up to April 20, 1994, have been included in this handbook. However, it must be underlined that this handbook presents a snapshot of CRTC regulations and policies at a particular time, and the documents herein are subject to constant change.

It is the intention of the authors to update this handbook on a regular basis. In the meantime, policy developments since the date of publication can be followed in the McCarthy Tétrault *Broadcasting Regulatory Reporter*, a subscription service published every two weeks from our Ottawa office.

In preparing this compendium, we wish to thank our colleagues at McCarthy Tétrault. A special thanks is owed to Linda Noxon of our Toronto office, who supervised with unfailing good humour the enormous task of assembling and formatting the documents involved. The preparation of the French language version of this handbook could not have been completed without the help of Dominique Têtu, Marie-Christine Bujold and Paul Hurtubise.

Needless to say, a task of this size could not have been undertaken without the cooperation of the CRTC, and we owe a special debt of thanks to its Secretary General, Allan J. Darling, for his constant support. We would also like to thank members of the CRTC Legal Branch, particularly Avrum Cohen, Jean Doucet, Donald Rhéaume and William Howard, as well as Sheridan Scott, then with the CRTC Legal Branch, but now with the CBC. Commission staff members who assisted us and warrant special recognition include William Allen, Alice Carrier, Wayne Charman, Peter Fleming, Richard Frith, Randy Hutson, Denis Ménard, Lesha Radzenko, Diane Rhéaume, Maurice Saint-Onge, Martine Vallee and Emmett Will. Finally, we would like to thank the Canadian Cable Television Association for financial assistance given in connection with an earlier publication of the annotated *Broadcasting Act*, which is incorporated herein.

Despite all this help, a number of errors will undoubtedly have crept in; for these we remain responsible and apologize to our readers.

The documents presented in this volume have been updated, except where otherwise indicated, to April 20, 1994.

Peter S. Grant
Anthony H.A. Keenleyside
Michel Racicot

Toronto, Ottawa and Montréal
May 1994

1994-95 CANADIAN BROADCAST AND CABLE REGULATORY HANDBOOK

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[§101-1]

Note on the Enactment of the 1991 Broadcasting Act

[§101-2]

The 1991 *Broadcasting Act*, given royal assent on February 1, 1991, and proclaimed in force on June 4, 1991, was introduced as Bill C-40 and given first reading in the Canadian House of Commons on October 12, 1989. The Bill was largely based on Bill C-136, which had been tabled for first reading in the House of Commons on June 23, 1988. Bill C-136 had gone through third reading in the House of Commons but did not go past first reading in the Senate. It died on the order paper when the 33rd Parliament was dissolved on October 1, 1988.

The new *Broadcasting Act* repealed and replaced the former *Broadcasting Act*, R.S.C.1985, c. B-9. The new Act constitutes the first significant revision to the *Broadcasting Act* since the passage of the former Act in 1968.

The new Act is based in substantial part on the recommendations of the *Report of the Task Force on Broadcasting Policy* which was published in September, 1986. The recommendations of the Task Force (also known as the Caplan-Sauvageau Task Force) were referred to the House of Commons Standing Committee on Communications and Culture, which dealt with them and related matters in a number of reports issued over the next 18 months.

In its *Fourth Report*, issued on February 12, 1987, the Standing Committee dealt with the structure and financial administration of the Canadian Broadcasting Corporation. In its *Fifth Report*, issued on April 18, 1987, the Committee set forth interim recommendations on the licensing of new satellite-delivered specialty programming services and on certain legislative amendments relating to the power of direction and the unauthorized reception of encrypted signals. In its *Sixth Report*, dated May 6, 1987, the Standing Committee focused on recommendations for a new *Broadcasting Act*, including legislative definitions, objectives for the Canadian broadcasting system, legislative provisions related to the CBC, cable television and other distribution undertakings, and CRTC regulatory powers. Finally, the Standing Committee issued its *Fifteenth Report* of June 9, 1988. Entitled "A Broadcasting Policy for Canada", this lengthy report incorporated the previous recommendations and added other recommendations on matters of broadcasting policy.

Bill C-136 was tabled for first reading in the House of Commons by Minister of Communications Flora MacDonald on June 23, 1988. At the same time, the Minister released a Policy Paper entitled "Canadian Voices: Canadian Choices -- A New

Broadcasting Policy for Canada", discussing the content and purpose of the proposed legislation. The Minister also tabled a Government Response to the *Fifteenth Report* on the Standing Committee on Communications and Culture.

As noted above, Bill C-136 did not become law prior to the dissolution of Parliament on October 1, 1988. However, a revised version of the legislation was tabled for first reading as Bill C-40 on October 12, 1989, by Minister of Communications Marcel Masse. As amended in the House of Commons, this version was passed by the Senate and received royal assent on February 1, 1991.

As tabled for first reading, Bill C-40 was substantially the same as Bill C-136, as amended at the committee stage, except for the following changes: (a) the removal of an exclusion from the definition of "broadcasting" of programs transmitted on demand; (b) new wording in the section 3 broadcasting policy supporting the Canadian independent production sector and referring to educational programming; (c) the addition of arts and culture language to the mandates of the CBC and alternative television programming services; (d) the addition of a mandate that distribution undertakings give priority to the carriage of local Canadian television stations, and originate programming only where the CRTC considers it appropriate; (e) the incorporation of amendments limiting the ability of the CRTC to order commercial substitution that had been made by the *Canada-U.S. Free Trade Agreement Implementation Act*, and (f) a stipulation that the Chairperson of the CBC perform the duties of the office on a part-time basis.

During the committee stage of the consideration of Bill C-40, a number of further amendments were made to the legislation, principally as follows: (a) the meaning of the word "network" was clarified; (b) a reference to the "community element" of the broadcasting system was added to section 3; (c) the CRTC authority to determine questions of fact or law was stated to apply in respect to any matter and not just in making mandatory orders; (d) the time for cabinet review of decisions was reduced from 120 to 90 days; (e) the provision of an international service by the CBC was mandated; and (f) the language of amendments to the *Radiocommunication Act,* prohibiting the unauthorized reception of encrypted signals, was clarified and tightened.

In the annotations which follow each section of the Act, the principal changes from the previous *Broadcasting Act* are highlighted. In addition, a discussion is included of the relevant parts of the Task Force Report, Standing Committee Reports, and Government Policy Paper and Response which deal with the issues involved. It should be emphasized, of course, that where the words of an Act are plain, the meaning of the legislation must be taken from the language of the statute itself, not from ministerial statements or parliamentary documents. However, in cases of ambiguity, the courts have increasingly referred to parliamentary documents of this kind to understand the context and purpose of statues. See, e.g. *Tschritter v. Children's Guardian for Alberta,* [1989] 4 W.W.R. 175 (Alta. C.A.). For this reason, references have been included to all government and committee documents that may be useful in aiding in the interpretation of Bill C-40.

The limitations of space have precluded a comparative survey of the earlier broadcasting statutes. Readers who are interested in the history of broadcasting legislation in Canada are referred to Peter S. Grant, *Canadian Communications Law and Policy*, Volume 1 (Toronto: Law Society of Upper Canada, 1988), at p.5. The same volume also provides a detailed survey of the case law interpreting the previous legislation up to the beginning of 1988.

[§102-1]

[CANADA]

Canadian Radio-television and Telecommunications Commission Act

[§102-2]

[R.S.C. 1985, c. C-22; as amended by 1987, c. 34, s. 283; 1991, c. 11, ss. 75-80, proclaimed in force, June 4, 1991; and 1993, c.38, ss.83-85, proclaimed in force October 25, 1993.

This statute, first enacted in 1974-75-76, c.49, established the Canadian Radio-television and Telecommunications Commission in 1976. The Commission inherited the powers in relation to broadcasting formerly exercised by the Canadian Radio-Television Commission under the *Broadcasting Act,* and the powers in relation to the federally-regulated telephone and telegraph companies formerly exercised by the Telecommunication Committee of the Canadian Transport Commission under the *Railway Act,* the *Telegraphs Act* and the *National Transportation Act*. (These statutes as amended were superseded by the *Telecommunications Act*, 1993, c.38, proclaimed in force on October 25, 1993.)

As amended by Bill C-40 in 1991, the Commission has up to thirteen full-time members (an increase from nine) and up to six part-time members (a decrease from ten)(s. 3(1)). The *CRTC Act* deals with the tenure of office, reappointment and termination of members (s. 3), and the disqualification of members from holding outside interests (s. 5). The duties of Chairman are specified (s. 6) and provisions are set forth relating to salaries, fees and expenses of members (s. 7), appointment of staff (s. 8), superannuation of members (s. 9), head office, frequency of meetings and quorum of the Commission (s. 10), and the Commission's power to enact by-laws (s. 11). The Governor in Council may direct the CRTC to establish regional offices (s. 10(1.1)).

The full-time members of the Commission collectively exercise all the powers of the Commission relating to telecommunications (s. 12(2)), and the full-time members can make by-laws delegating their powers to sub-committees (s. 12(3)).

The objects and powers of the Commission in the broadcasting field are as stipulated in the *Broadcasting Act* (s. 12(1)), set forth at §104-1 below. In particular, broadcasting licensing decisions are taken by the full-time and part-tie members assigned to a hearing panel for the particular matter: see *Broadcasting Act*, s. 20, below at §104-94.]

AN ACT TO ESTABLISH THE CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION

SHORT TITLE

[§102-3]

1. Short title.-- This Act may be cited as the *Canadian Radio-television and Telecommunications Act*. [1974-75-76, c. 49, s. 1.]

INTERPRETATION

[§102-4]

2. Definitions.-- In this Act,

[§102-5]

"broadcasting" has the same meaning as the *Broadcasting Act*; [1991, c. 11, s. 75(1); proclaimed in force, June 4, 1991]

[§102-6]

"Chairman" means the Chairman of the Commission designated by the Governor in Council pursuant to subsection 6(1);

[§102-7]

"Commission" means the Canadian Radio-television and Telecommunications Commission;

[§102-8]

"member" means a member of the Commission and includes a full-time member and a part-time member;

[§102-9]

"Minister" means the Minister of Communications;

[§102-10]

[*NOTE: Definition of "telecommunication" repealed by S.C. 1993, c.38, s.83.*]

[§102-11]

"telecommunications undertaking" means an undertaking in the field of telecommunication that is carried on in whole or in part within Canada or on a ship or aircraft registered in Canada.

[§102-12]

"Vice-Chairman" means any Vice-Chairman of the Commission designated by the Governor in Council pursuant to subsection 6(1). [1974-75-76, c. 49, s. 2; 1991, c. 11, s. 75.]

ESTABLISHMENT AND CONSTITUTION OF COMMISSION

[§102-13]

3. (1) **Commission established.--** There is hereby established a commission, to be known as the Canadian Radio-television and Telecommunications Commission, consisting of not more than thirteen-full-time members and not more than six part-time members to be appointed by the Governor in Council.

[§102-14]

(2) **Tenure of office.--** A member shall be appointed to hold office during good behaviour for a term not exceeding five years but may be removed at any time by the Governor in Council for cause.

[§102-15]

(3) **Reappointment.--** Subject to section 5, a member is eligible for reappointment. [Rep. & sub., 1991, c.11, s.76, proclaimed in force, June 4, 1991.]

[§102-16]

4. Duties of full-time members.-- A full-time member shall devote the whole of his time to the performance of his duties under this Act. [1974-75-76, c. 49, s. 4.]

[§102-17]

5. (1) **Disqualifications.--** A person is not eligible to be appointed or to continue as a member of the Commission if the person is not a Canadian citizen ordinarily resident in Canada or if, directly or indirectly, as owner, shareholder, director, officer, partner or otherwise, the person

(*a*) is engaged in a telecommunications undertaking; or

(*b*) has any pecuniary or proprietary interest in

(i) a telecommunication undertaking, or

(ii) the manufacturer or distribution of telecommunication apparatus, except where the distribution is incidental to the general merchandising of goods by wholesale or retail.

[§102-18]

(2) **Disposal of interest.--** A member in whom any interest prohibited by subsection (1) vest by will or succession for the member's own benefit shall, within three months thereafter, absolutely dispose of that interest. [1974-75-76, c. 49, s. 5.]

CHAIRMAN AND VICE-CHAIRMEN

[§102-19]

6. (1) **Chairman and Vice-Chairmen.--** The Governor in Council shall designate one of the full-time members to be Chairman and two of the full-time members to be Vice-Chairmen of the Commission.

[§102-20]

(2) **Chairman chief executive officer.--** The Chairman is the chief executive officer of the Commission, has supervision over the direction of the work and the staff of the Commission and shall preside at meetings of the Commission.

[§102-21]

(3) **Chairman's absence, incapacity or office vacant.--** In the event of the absence or incapacity of the Chairman or if the office of Chairman is vacant, the Commission may authorize one of the Vice-Chairmen to exercise the powers and to perform the duties and functions of the Chairman.

[§102-22]

(4) **Acting Chairman.--** The Commission may authorize one or more of its full-time members to act as Chairman for the time being if the Chairman and both Vice-Chairman are absent or unable to act or if the office of Chairman and each office of Vice-Chairman are vacant. [1974-75-76, c. 49, s. 6.]

REMUNERATION

[§102-23]

7. (1) **Salaries and fees.--** Each full-time member shall be paid a salary to be fixed by the Governor in Council and each part-time member shall be paid such fees for attendances at meetings of the Commission or any committee thereof or at any public hearing before the Commission that the part-time member is requested by the Chairman to attend as are fixed by by-law of the Commission.

[§102-24]

(2) **Expenses.--** Each member is entitled to be paid such travel and living expenses incurred in the performance of his duties as are fixed by by-law of the Commission. [1974-75-76, c. 49, s. 7.]

STAFF

[§102-25]

8. Appointment.-- The officers and employees necessary for the proper conduct of the business of the Commission shall be appointed int he manner authorized by law [1974-75-76, c. 49, s. 8.]

SUPERANNUATION

[§102-26]

9. (1) **Full-time member's superannuation.--** The full-time members of the Commission shall be deemed to be persons employed in the Public Service for the purposes of the *Public Service Superannuation Act.*

[§102-27]

(2) **Compensation.--** For the purposes of any regulations made pursuant to section 9 of the *Aeronautics Act,* the full-time members of the Commission shall be deemed to be persons employed in the public service of Canada. [1974-75-76, c. 49, s. 9.]

OFFICES, MEETINGS AND RESIDENCE

[§102-28]

10.(1) **Head Office.--** The head office of the Commission shall be int he National Capital Region described in the schedule to the *National Capital Act* or at such other place within Canada as may be designated by the Governor in Council.

[§102-29]

(1.1) **Regional offices.--** The Governor in Council may direct the Commission to establish an office of the Commission in any region of Canada and the Commission shall comply with any such direction. [1991, c. 11, s. 78(1); proclaimed in force, June 4, 1991.]

[§102-30]

(2) **Meetings.--** The Commission shall meet at least six times in each year.

[§102-31]

(3) **Quorum.--** A majority of the full-time members from time to time in office and a majority of the part-time members from time to time in office constitute a quorum of the Commission. [1974-75-76, c. 49, s. 10.]

[§102-32]

(4) **Telephone conferences.--** A member may, subject to the by-laws of the Commission, participate in a meeting of the Commission or a committee of the Commission by means of such telephone or other communication facilities as permit all persons participating in the meeting to hear each other, and a member who participates in such a meeting by those means is deemed for the purposes of this Act to be present at the meeting [1991, c. 11, s. 78(2), proclaimed in force, June 4, 1991.]

[§102-33]

10.1 (1) **Residence of members.**-- Subject to subsection (2), the full-time members of the Commission shall reside in the National Capital Region as described in the schedule to the *National Capital Act* or within such distance thereof as may be determined by the Governor in Council.

[§102-34]

(2) **Idem.**-- Where a regional office of the Commission is established under subsection 10(1.1), a full-time member of the Commission who is designated for the purposes of this section by the Governor in Council shall reside in the region and within such distance of the regional office as may be determined by the Governor in Council. [1991, c. 11, s. 79, proclaimed in force, June 4, 1991.]

BY-LAWS

[§102-35]

11. (1) **By-laws.**-- The Commission may make by-laws

(*a*) respecting the calling of meetings of the Commission,

(*b*) respecting the conduct of business at meetings of the Commission, the establishment of special and standing committees of the Commission, the delegation of duties to those committees and the fixing of quorums for meetings thereof; and

(*c*) fixing

(i) the fees to be paid to part-time members for attendances at meetings of the Commission or any committee thereof or at public hearings before the Commission that they are requested by the Chairman to attend, and

(ii) the travel and living expenses to be paid to members.

[§102-36]

(2) **By-law subject to Minister's approval.**-- No by-law made under paragraph (1)(*c*) has any effect unless it has been approved by the Minister. [1974-75-76, c. 49, s. 11.]

OBJECTS, POWERS, DUTIES AND FUNCTIONS

[§102-37]

12.(1) **In relation to broadcasting.**-- The objects and powers of the Commission in relation to broadcasting are as set out in the *Broadcasting Act*.

[§102-38]

(2) **In relation to telecommunication.**-- The full-time members of the Commission and the Chairman shall exercise the powers and perform the duties vested in the Commission and the Chairman, respectively, by the *Telecommunications Act* or by any special Act within the meaning of that Act.

[§102-39]

(3) **By-laws.**-- The full-time members of the Commission may

(*a*) make by-laws respecting the establishment of special and standing committees of the full-time members, the delegation of the powers, duties and functions of the full-time members, the delegation of the powers, duties and functions of the full-time members to these committees and the fixing of quorums for meetings thereof; and

(*b*) by any such by-law, provided that any act or thing done by any such committee in the exercise of the powers or the performance of the duties and functions so delegated to it shall be deemed to be an act or thing done by the full-time members. [*Rep. & sub.*, 1991, c. 11, s. 80, proclaimed in force, June 4, 1991; ss.(2) *rep. & sub.*, 1993, c.387, s.85, proclaimed in force October 25, 1993.].]

[§102-40]

13. Annual report.-- The Committee shall, within three months after the end of each fiscal year, submit to the Minister a report, in such form as the Minister may direct, on the activities of the Commission for that fiscal year, and the Minister shall cause a copy of the report to be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the Minister receives it. [*Rep. & sub.*, 1991, c. 11, s. 80, proclaimed in force, June 4, 1991.]

[§102-41]

14. *Repealed,* 1991, c. 11, s. 80, proclaimed in force, June 4, 1991.]

[§104-1]

[CANADA]

Broadcasting Act

[§104-2]

[Statutes of Canada 1991, chapter 11, proclaimed in force on June 4, 1991. Consolidated as R.S.C. 1985, c.B-9.01. Amended 1993, c.38, ss.81 and 82, proclaimed in force October 25, 1993.

This statute, which repealed and replaced the previous *Broadcasting Act*, which had been in effect since 1968, governs the powers and functions of the Canadian Radio-television and Telecommunications Commission respecting broadcasting, and the operations and purpose of the Canadian Broadcasting Corporation. For the membership and structure of the Commission, see the *Canadian Radio-television and Telecommunications Commission Act*, set out above at §102. For the powers of the Minister of Communications to certify broadcasting undertakings for technical purposes, see the *Radiocommunication Act*, below at §106. (It should be noted that since a cabinet reorganization in June 1993, the functions of the Minister of Communications under the *Broadcasting Act* have been performed by the Minister of Canadian Heritage, although the statutory references to the Minister of Communications have not been amended.)

The 1991 *Broadcasting Act* is made up of four Parts. Part I of the Act (ss.2-4), following definitions of terms (s.2), sets out the cornerstone of the Act, a declaration of the "broadcasting policy for Canada" (s.3). This statement sets forth a number of policy objectives which the Commission is to seek to implement. Part I concludes with certain inclusions and exclusions from the application of the Act (s.4). The Act directly applies to three categories of broadcasting undertakings: programming undertakings, distribution undertakings and networks (s.2), but exempts telecommunications carriers and non-program activities (ss.2,4) except insofar as they affect programming.

Part II of the Act (ss.5-34) sets forth the objects and powers of the CRTC in relation to broadcasting. The Commission is mandated to regulate and supervise all aspects of the Canadian broadcasting system with a view to implementing the broadcasting policy set out in section 3, while having regard to certain regulatory policy objectives (s.5). The Commission is specifically empowered to issue policy guidelines and statements (s.6). The Governor in Council is empowered to issue to the Commission policy directions of general application on broad policy matters (s.7), subject to certain procedural limitations (s.8).

The Commission is given the power to prescribe classes of licences, to issue, amend or renew broadcasting licences, subject to conditions deemed appropriate for the implementation of the broadcasting policy, and to suspend or revoke licences (s.9). In regard to the "core service" licences issued to the CBC, conditions proposed to be imposed by the Commission are subject to directives from the Minister of Communications after consultation between the Commission and the CBC (s.23).

The Commission can require licensees of distribution undertakings to give priority to broadcasting and to carry programming services on terms and conditions set by the

Commission (s.9). However, except in certain circumstances, commercial deletion may not be ordered (s.9(2)). The Commission is given the power to exempt persons carrying on broadcasting undertakings of any class from all or any part of Part II of the Act (s.9(4)). The Commission may enact regulations applicable to licensees dealing with a number of matters (s.10), and can establish licence fees (s.11).

The Commission can issue mandatory orders (s.12) and enforce them by filing them with the courts (s.13). Research may be undertaken (s.14) and the Commission is to hear and report on matters if so requested by the Governor in Council (s.15). Provisions relating to the powers and procedures of the Commission respecting hearings are set forth (ss.16-18), including the application of the "those who hear, decide" rule (s.20). Notice of applications and hearings is required to be given (s.19) and the CRTC may make rules of procedure (s.21). No licence may be issued, amended or renewed on contravention of a cabinet direction respecting the eligibility of applicants or unless the Minister of Communications has certified that the technical requirements of the *Radiocommunication Act* will be met (s.22). Except upon consent, no licence may be revoked or suspended except for a breach of a licence condition, regulation or mandatory order, or the failure to comply with an eligibility requirement in a cabinet direction (s.24(1)); in the case of the CBC core services, a contravention is to be the subject of a CRTC report to the Minister (s.24(4)).

The cabinet may issue directions to the Commission on the eligibility of applicants, the broadcasting of programs of urgent importance, or the implementation of Article 2006 of the Canada-U.S. Free Trade Agreement (ss.26,27). The cabinet may set aside or refer back for reconsideration the issue, amendment or renewal by the Commission of any licence (s.28), subject to procedural rules on petitions (s.29). Decisions and orders of the Commission are final and conclusive (s.16), although an appeal lies upon leave to the Federal Court of Appeal on a question of law or jurisdiction (s.31). Penalties for contravening regulations or orders, or for broadcasting without or contrary to a licence, are set forth (ss.32,33) and a two-year limitation period for prosecutions is prescribed (s.34).

Part III of the *Broadcasting Act* (ss.35-71) governs the powers and functions of the Canadian Broadcasting Corporation.

The remainder of the *Broadcasting Act*, comprising Part IV, contains related and consequential amendments to other statutes (ss.77-88), the repeal of the previous *Broadcasting Act* (s.89), and transitional provisions (ss.90-93).]

SHORT TITLE

[§104-3]

1. Short title.--This Act may be cited as the *Broadcasting Act*. [1991, c.11, s.1]

[§104-4]

PART I

GENERAL

Interpretation

[§104-5]

2. (1) **Definitions.**--In this Act,

[§104-6]

"broadcasting" means any transmission of programs, whether or not encrypted, by radio waves or other means of telecommunication for reception by the public by means of broadcasting receiving apparatus, but does not include any such transmission of programs that is made solely for performance or display in a public place;

History: This is a significant amendment from the definition of "broadcasting" found in section 2(1) of the *Broadcasting Act*, R.S.C. 1985, c.B-9, where the term was defined to mean "any radiocommunication in which the transmissions are intended for direct reception by the general public".

Commentary: The new definition above generally reflects Recommendations 8, 9 and 10 of the Sixth Report of the Standing Committee on Communications and Culture, May 6, 1987, which endorsed the recommendation of the *Report of the Task Force on Broadcasting Policy* (1986) at pp.150-1. Recommendations 8, 9 and 10 in the Sixth Report read as follows:

"Recommendation 8

The Committee endorses the Task Force recommendations:

(*a*) That the Act should cover all undertakings involved in broadcasting in the widest sense, that is, those that decide what programs to carry, as well as those that are involved in program dissemination to the public and thus in determining program accessibility to Canadians; and

(*b*) That the Act should broaden the definition of broadcasting and related concepts to cover all forms of program reception and distribution whether by Hertzian waves or through any other technology.

Recommendation 9

The term "broadcasting" should be defined so as to extend to any radiocommunication in which the transmissions are intended for reception by the public, including not only conventional radio and television stations but also satellite operations, where the signals are intended to be received only by cable television systems or other distribution undertakings that redistribute such signals to their subscribers.

Recommendation 10

The term "broadcasting" should be defined so as to extend to pay television, specialty and other program services intended for reception by the public, where the signals are scrambled and the service is intended to be received only by members of the public paying for such services."

The new definition makes it clear that encrypted signals can constitute broadcasting, reversing the *dicta* to the contrary in the decision of *CRTC et al. v. Lount Corporation et al.*, [1985] 2 F.C. 472, 19 D.L.R.(4th) 304. (For the definition of the word "encrypted", and a further discussion of the rationale for including encrypted signals, see below at §104-12.)

A second important change with the new legislation is the concept that broadcasting can involve other forms of transmission besides Hertzian waves. For the definition of the phrase "other means of telecommunication", see below at §104-20.

A third change relates to the use of the word "program" in the definition of "broadcasting". This term is elsewhere defined in section 2 to include sound or visual images, including commercials, but to exclude images consisting predominantly of alphanumeric text: see below at §104-16.

In the former Act, the definition of broadcasting applied to all matter transmitted to the general public, including "signs, signals, writing, images, sounds or intelligence of any nature". The new Act focuses only on the transmission of programs, leaving non-programming services unregulated under the *Broadcasting Act*.

At the same time, however, section 86 of the new Act contains amendments to section 335 of the *Railway Act* which modify the exemption from rate regulation for companies charging for the transmission of messages intended for reception by the general public and licensed under the *Broadcasting Act*. The modified exemption effectively allows the CRTC to regulate the tolls charged by licensees for the transmission of non-programming services, to the extent that the licensee company constitutes a "company" within the meaning of section 334 of the *Railway Act*, i.e. a person under federal jurisdiction having the power to construct or operate a telegraph or telephone system or line.

The removal of non-programming activities from the ambit of broadcasting was the subject of comment by the CRTC in a written submission to the Standing Committee on Communications and Culture, January 31, 1990, at p.5:

> "One can reach a number of conclusions from a reading of these sections of the Act. First, broadcasting is programming only. Second, the programming part of a cable system, radio or television station would be regulated by the Commission pursuant to its broadcasting mandate. Third, the non-programming part of the system or station (at least as regards rates) could be regulated either by the Commission pursuant to its telecom mandate or, perhaps, by a provincial regulatory body (it is not clear from the Act). Fourth, the Commission's broadcasting jurisdiction is over the programming part of the system or station and does not extend to any other aspect of it. The Commission will have no control over other uses that could be made of the apparatus. This conclusion is reinforced by the statement found at s.4(3) of the new Act."

The statement that the CRTC has no control over non-programming uses is not entirely accurate. To the extent that the non-programming activities of a licensee affect or relate to its programming activities, the Commission could annex appropriate conditions of licence relating thereto that advance the section 3 objectives. This is made explicit in paragraph 9(1)(*g*) of the Act, which empowers the Commission to "require any licensee who is authorized to carry on a distribution undertaking to give priority to the carriage of broadcasting".

In Bill C-136, the definition of "broadcasting" had also excluded "any such transmission of programs...made on the demand of a particular person for reception only by that person". However, this exclusion was dropped from Bill C-40, in order to ensure that all so-called "pay-per-view" systems would be included.

A fourth change from the former Act is the concept that to qualify as "broadcasting", the transmissions must be for reception by means of "broadcasting receiving apparatus", a term defined in somewhat circular terms elsewhere in the section: see below at §104-7.

A fifth change in the new Act is that the phrase "reception by the general public" in the old definition of "broadcasting" is replaced simply with "reception by the Public". The old definition had left room for an argument that a service directed to paying subscribers only would not be to the "general" public, although there was *dicta* to the contrary in *R. v. Continental Cablevision Inc. et al.*, (1974), 5 O.R. (2d) 523, 19 C.C.C. (2d) 540 (Ont.). The change in definition clearly strengthens the view expressed in *Jennings v. Stephens*, [1939] 1 Ch. 469, *per* Lord Wright, M.R. at pp.476 and 479, that the "public" includes a portion of the public.

Finally, the definition excludes any transmission of programs solely for display or performance in a public place. In the Government Response, June 23, 1988, at p.88, it is noted that this wording would exclude such matters as "championship fights shown in arenas".

Because the definition refers to the "transmission of programs", the question may be asked whether the Act applies to the transmission of a single program, e.g. on a pay-per-view basis. The

answer would appear to be in the affirmative, since subsection 33(2) of the *Interpretation Act* stipulates that "words in the plural include the singular".

[§104-7]

"broadcasting receiving apparatus" means a device, or combination of devices, intended for or capable of being used for the reception of broadcasting;

History: New.

Commentary: In the Government Response to the Fifteenth Report of the Standing Committee on Communications and Culture, June 23, 1988, at p.88, it was suggested that a telephone or teleconference apparatus would not qualify to be a broadcasting receiving apparatus.

The above definition may be contrasted with the definition for "radio apparatus" in section 2 of the *Radiocommunication Act*, [rep.& sub. 1989, c.17, s.3(2): see below at §106-18], viz. "a device or combination of devices intended for, or capable of being used for, radiocommunication". This definition supplanted an earlier definition in the *Radio Act* in the following terms: "a reasonably complete and sufficient combination of distinct appliances intended for or capable of being used for radiocommunication": *Radio Act*, s.2(1). For cases interpreting the latter definition, see *Canadian Communications Law and Policy*, Volume 1 (1988) at §355-72 (Messier), §355-171 (Struk), and §355-306 (Lount).

[§104-8]

"broadcasting undertaking" includes a distribution undertaking, a programming undertaking and a network;

History: The term "broadcasting undertaking" was defined in section 2(1) of the *Broadcasting Act*, R.S.C. 1985, c.B-9, to include "a broadcasting transmitting undertaking, a broadcasting receiving undertaking and a network operation, located in whole or in part within Canada or on a ship or aircraft registered in Canada".

Commentary: The term "broadcasting transmitting undertaking" no longer appears in the new *Broadcasting Act*, and is generally replaced with the term "programming undertaking", which is defined more widely. The term "broadcasting receiving undertaking" is also dropped, to be replaced generally with the concept of a "distribution undertaking", discussed further below in the commentary at §104-11.

The word "undertaking" is not defined in the Act, although subsection 4(3) of the Act, below at §104-46, states that the Act applies in respect of broadcasting undertakings whether or not they are carried on for profit or as part of, or in connection with, any other undertaking of activity. Even in the absence of legislative direction to this effect, the Supreme Court of Canada adopted a wide definition of the word "undertaking" as encompassing projects that are non-commercial as well as commercial in nature: see *Nipawin and District Satellite T.V. Inc. et al. v. The Queen*, [1991] 1 S.C.R. 64, adopting the judgment of Vancise J.A. in [1988] 4 W.W.R. 375, 42 C.C.C. (3d) 32. That judgment specifically applied the following definitions to the word: "something undertaken or attempted; an enterprise" (Shorter Oxford); "something undertaken; a business work or project which one engages in or attempts; enterprise -- large scale undertakings involving large expenditures of money" (Webster's Third New International).

In the *Radio Reference*, [1932] A.C. 304 at 315, Viscount Dunedin stated that an "undertaking" is not a physical thing but is an arrangement under which of course physical things are used." This statement was later referred to and applied by Laskin C.J.C. in *Capital Cities Communications Inc. et al. v. CRTC et al.*, [1978] 2 S.C.R. 141. For a case applying the term "arrangement" to a cable television system with its U.S. head end owned by one company and the distribution system owned and operated by a separate company in Canada, see *R. v. Continental Cablevision Inc. et al.* (1974), 5 O.R. 523, 19 C.C.C.(2d) 540, upheld *sub nom. R. v. Maahs and Teleprompter Cable Communications Corp.* (1975), 21 C.C.C.(2d) 497.

[§104-9]

"Commission" means the Canadian Radio-television and Telecommunications Commission established by the *Canadian Radio-television and Telecommunications Commission Act*;

History: Unchanged from section 2 of the *Broadcasting Act*, R.S.C. 1985, c.B-9. For the text of the *Canadian Radio-television and Telecommunications Commission Act*, see above at §102-1.

[§104-10]

"Corporation" means the Canadian Broadcasting Corporation continued by section 34;

History: Unchanged from section 2 of the *Broadcasting Act*, R.S.C. 1985, c.B-9.

[§104-11]

"distribution undertaking" means 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;

History: New.

Commentary: The term "distribution undertaking" generally replaces the term "broadcasting receiving undertaking" which appeared in the *Broadcasting Act*, R.S.C.1985, c.B-9. The concept that distribution undertakings should be separately treated in the Act originated with Recommendations 11 and 15 of the Sixth Report of the Standing Committee on Communications and Culture, May 6, 1987; however, a somewhat different definition was used. There is also a discussion of the status of such undertakings at pp.574-577 of the *Report of the Task Force on Broadcasting Policy* (1986).

In the Government Response, June 23, 1988, at p. 71, the definition is discussed in the following terms:

> "The intention was to create a technology neutral definition that would capture all 'distribution undertakings' including conventional cable systems, some satellite direct-to-home services, 'mini cable systems' serving a restricted geographic area such as SMATV systems in apartment buildings or condominium complexes, and 'wireless cable systems' such as MMDS and rebroadcasters operating in remote areas. To this end, the definition focuses on the activity undertaken (i.e. the reception and retransmission of programming services of others) rather than the technology used to carry on the activity."

The concept of differentiating programming undertakings from distribution undertakings is not entirely free from practical difficulty, given the fact that certain undertakings can be said to perform both functions. For example, subparagraph 3(1)(*t*)(iv) of the Act contemplates that a distribution undertaking may itself originate programming, e.g. the transmission of a community channel. In doing so, it would qualify as a programming undertaking as well as a distribution undertaking. Similarly, an off-air television transmitter which qualifies as a programming undertaking would also appear to qualify as a distribution undertaking to the extent it is retransmitting programming received from a network operator or a programming undertaking.

In *New Broadcasting Act -- Amendments to Classes of Licence,* CRTC Public Notice 1991-63, June 19, 1991, set out below at §271, the CRTC has attempted to deal with these overlaps by defining its classes of licences under the new Act so as to reflect the "primary function" of the undertaking to be licensed, be it for program origination, program distribution or as a network operation. This approach is obviously somewhat simpler than the other options open to the Commission in dealing with these overlaps, e.g. issuing two separate licences to undertakings carrying out multiple or hybrid functions, or issuing a dual or multiple licence using a form describing the undertaking in hybrid terms. Under the approach adopted by the CRTC, the Commission has indicated that it will issue a licence for what

it considers to be the primary function of the undertaking, presumably leaving any hybrid attributes to be dealt with through regulations or conditions of licence.

[§104-12]

"encrypted" means treated electronically or otherwise for the purpose of preventing intelligible reception;

History: New.

Commentary: The inclusion of encrypted transmissions within the definition of "broadcasting" reflects Recommendation 10 of the Sixth Report of the Standing Committee on Communications and Culture, May 6, 1987. The rationale for that conclusion, taken from the Sixth Report at pp.21-22, reads as follows:

> "A related issue is whether the term 'broadcasting' should encompass signals that are scrambled or encrypted, so that only contracting affiliates and/or their subscribers may obtain the services, usually for the payment of a fee. In the Committee's view, there is no reason why these services should not be included in the definition of 'broadcasting'. They are clearly intended for reception by the public. An analogy might be made to entertainment events that are open to the public, even though admission tickets are required and people not purchasing tickets are precluded from attending. As the Task Force noted in its Report, 'the important thing is to include all forms of transmission, distribution and reception of signals containing programs intended for the public, whether in scrambled form or not"...
>
> Recommendation 10
>
> > The term "broadcasting" should be defined so as to extend to pay television, specialty and other program services intended for reception by the public, where the signals are scrambled and the service is intended to be received only by members of the public paying for such services."

Under the former Act, encrypted signals were very likely outside the definition of "broadcasting", given the *dicta* of the Federal Court of Appeal in *CRTC v. Lount Corporation*, [1985] 2 F.C. 472, summarized in *Canadian Communications Law and Policy*, Volume 1 at §355-306.

[§104-13]

"licence" means a licence to carry on a broadcasting undertaking issued by the Commission under this Act;

History: Comparable to the definition of "licensee" in section 2(1) of the *Broadcasting Act*, R.S.C. 1985, c.B-9.

[§104-14]

"Minister" means the Minister of Communications;

[§104-15]

"network" includes any operation where control over all or any part of the programs or program schedules of one or more broadcasting undertakings is delegated to another undertaking or person;

History: Comparable to the definition of "network" in section 2 of the *Broadcasting Act*, R.S.C. 1985, c.B-9.

Commentary: The term "network operator", which was used in the old Act to refer to the undertaking or person to whom the delegation of control was made, no longer appears in the *Broadcasting Act*.

In Recommendation 16 of the Sixth Report of the Standing Committee on Communications and Culture, May 6, 1987, the Committee urged that the term "network operation" be defined "so as to apply not only to conventional radio and television networks (where there is a delegation of program responsibility from the affiliate to the network) but also to satellite-to-cable networks or other operations where the supplier of a program service gives a right to two or more cable television systems or other distributors to market or exhibit the program service to its subscribers or customers."

The latter part of this recommendation was not incorporated into the definition of a "network" in the new Act, but the expansion of the definition of the new term "programming undertaking" in the Act, as noted below at §104-17, now covers satellite-to-cable networks. See Government Response at p.72.

For a decision refusing leave to appeal a CRTC decision applying the term "network" to the operations of CANCOM, on the basis that the definition in the former *Broadcasting Act* was not exhaustive and that it could include arrangements not involving a delegation of control, see *Global Communications Limited v. CRTC et al.*, (Federal Court of Appeal, 1987), noted in *Canadian Communications Law and Policy*, Volume 1, at §355-338.

Under the new Act, the CRTC has indicated that certain operations formerly treated as "networks" will no longer be classified as such but will be treated as programming undertakings or distribution undertakings, depending on the "primary function" of the undertaking to be licensed. See *New Broadcasting Act -- Amendments to Classes of Licence*, CRTC Public Notice 1991-63, June 19, 1991, set out below at §271. In particular, the Commission has indicated that operations such as CANCOM and cable microwave networks will now be classified as (Relay) Distribution Undertakings, pay television networks such as The Movie Network and Super Ecran will be classified as (Pay-TV) Programming Undertakings and specialty programming services such as MuchMusic or MusiquePlus will be categorized as (Specialty) Programming Undertakings.

[§104-16]

"program" means sounds or visual images, or a combination of sounds and visual images, that are intended to inform, enlighten or entertain, but does not include visual images, whether or not combined with sounds, that consist predominantly of alphanumeric text;

History: New.

Commentary: A wider definition of the word "program" was urged in Recommendation 18 of the Sixth Report of the Standing Committee on Communications and Culture, May 6, 1987. However, the present definition excludes visual images that consist predominantly of alphanumeric text. The term "alphanumeric text" is not defined.

The term "alphanumeric service" is used in an exclusionary sense in the *Cable Television Regulations, 1986*, which specify rules and priorities for programming services and define the term "programming service" to mean "any combination of images, sounds or images and sounds including a commercial message, *other than an alphanumeric service*, that is designed to inform or entertain the public...". As amended in 1988, the term "alphanumeric service" is defined in the Regulations to mean "a service consisting of letters, numbers, graphic designs or still images, or any combination thereof, that may be accompanied by background music, the programming service of a licensed A.M. station or licensed F.M. station other than an educational radio programming service the operation of which is the responsibility of an educational authority, the service of Weather Radio Canada or spoken words that simply and briefly explain or describe what is represented by the letters, numbers, graphic designs or still images." (See SOR/88-251).

In making this exclusion, the Commission's intent was to deregulate services fitting within the alphanumeric definition. In particular, such services would not need to obtain a network licence from the Commission as a prerequisite to being carried, and cable systems were permitted to carry such services under the Regulations without having to seek specific CRTC permission.

The meaning of the Commission's definition was later clarified in *Enquiries and Complaints about the Canadian Home Shopping Network (CHSN) Service Distributed by Some Cable Licensees*, Public

Notice CRTC 1988-26, 24 February 1988, where the Commission ruled that the teleshopping service then operated by CHSN did not fall within the definition.

CHSN conformed its operations to the Commission's ruling, but later applied for a network licence from the Commission so as to be able to use full motion video. The application was later denied in *Simon Dean, obci (CHSC/Le Club)*, Decision CRTC 89-290, 25 May 1989.

Under the new Act, the distinction between programming and non-programming services is made on a somewhat different basis. The result is that a service such as an alphanumeric cable wire news service is automatically exempted from the definition of "programming undertaking" in the Act, since its visual images consist predominantly of alphanumeric text. However, an operation such as the Canadian Home Shopping Network, while qualifying as an "alphanumeric service" under the CRTC *Cable Television Regulations, 1986* and thereby avoiding the application of the rules applicable to programming services thereunder, would not qualify under the alphanumeric exclusion in the new legislation since it carries both still and moving images which do not consist predominantly of alphanumeric text. Since a service such as CHSN would now qualify as a "programming undertaking" under the Act, it would normally need to obtain a licence under the Act, unless the Commission were to issue an order under subsection 9(4) of the Act exempting the class of alphanumeric services as defined in the Regulations from the requirement to obtain such a licence. In fact, the CRTC issued such an order in 1993: see *Exemption Order Respecting Still Image Programming Service Undertakings*, Public Notice CRTC 1993-51, April 30, 1993, set out below at §163.

In a written brief filed with the Standing Committee on January 31, 1990, at p.6, the CRTC expressed concern that the exclusion of alphanumeric text from the definition of "program" in the *Broadcasting Act* might apply to the closed-captioning alphanumeric material transmitted on the vertical blanking interval of a television signal for use by the hearing impaired, and that this might lead to a loss of CRTC jurisdiction over this aspect of broadcasting. The concern appears to some extent misplaced, since the CRTC continues to have jurisdiction over the transmission of visual images with which the closed-captioning is ultimately combined on the viewer's television screen, and it could presumably require the transmission of such visual images by its licensees to be accompanied by alphanumeric information for the hearing-impaired, given that such information would not constitute a predominant part of the ultimate visual image received by the viewer.

Note that the term "program" now clearly includes advertisements and announcements, a conclusion reinforced in the wording of subsection 10(1)(*e*), below at §104-68. In the former Act, the term "program" was undefined but a number of sections spoke of "programs, advertisements or announcements", supporting the conclusion that the term "program" did not include commercials. In order to ensure that commercials were caught, the CRTC defined the term "programming service" in section 2 of the *Cable Television Regulations, 1986*, as "including a commercial message". See SOR/86-831, below at §133-48.

[§104-17]

"programming undertaking" means an undertaking for the transmission of programs, either directly by radio waves or other means of telecommunication or indirectly through a distribution undertaking, for reception by the public by means of broadcasting receiving apparatus;

History: New.

Commentary: This definition generally replaces the term "broadcasting transmitting undertaking" found in the previous Act, except that it now includes such undertakings even when their transmissions do not go directly to the public but are sent to the public indirectly through a distribution undertaking. Satellite-to-cable program services such as First Choice, Superchannel and MuchMusic, which had formerly been licensed as "network operations" under the Act, now qualify in their own right as "programming undertakings". See *New Broadcasting Act -- Amendments to Classes of Licence*, CRTC Public Notice 1991-63, June 19, 1991, set out below at §271.

The concept of including indirect as well as direct reception by the public in the concept of "broadcasting" reflects in part the definition of "Broadcasting-Satellite Service" added to the ITU

International Radio Regulations in 1985. In those Regulations, the term "direct reception" for the purpose of the broadcasting-satellite service was stated to encompass both "individual reception" and "community reception", the latter term itself defined to include reception "by a group of the general public at one location...or through a distribution system covering a limited area." See *Canadian Communications Law and Policy*, Volume 1 (1988), at pp.663-664.

[§104-18]

"radio waves" means electromagnetic waves of frequencies lower than 3000 GHz that are propagated in space without artificial guide;

History: Comparable to the definition of "radiocommunication" in section 2 of the *Broadcasting Act*, R.S.C. 1985, c.B-9. This in turn is based on the definition of "radio waves" in Article 1 of the *International Telecommunication Union Radio Regulations*: see *Canadian Communications Law and Policy*, Volume 1, (1988) at §215-6.
Commentary: In *Regina v. Lougheed Village Holding Ltd.* (1961), 59 C.P.R. (2d) 107 (B.C.County Court), a prosecution under the *Radio Act* was dismissed on the basis of an argument that a satellite signal did not constitute "radiocommunication" because the satellite "focused" the signal, thus "guiding it on its way to earth. However, this approach was later dismissed in the judgment of Muldoon J. in *Shuswap Cable Ltd. v. The Queen et al.* (1986), 31 D.L.R. (4th) 349, [1987] 1 F.C. 505 (F.C.T.D.). In that decision, Muldoon J. held that satellite signals constituted radiocommunication since there was no man-made device along with the waves are propagated. Although the electromagnetic waves can be aimed or directed, they cannot be further controlled once propagated in space. The same view was taken by the trial court in *The Queen v. Nipawin and District Satellite T.V. Inc. and Zanyk* (1986), 47 Sask R. 48, upheld on that ground by the Saskatchewan Court of Appeal in [1988] 4 W.W.R. 375, 42 C.C.C. (3d) 32; appeal dismissed, [1991] 1 S.C.R. 64.

[§104-19]

"temporary network operation" means a network operation with respect to a particular program or a series of programs that extends over a period not exceeding sixty days.

History: Unchanged from section 2 of the *Broadcasting Act*, R.S.C. 1985, c.B-9, except that the maximum time period for a temporary network operation is extended from one month to sixty days.

[§104-20]

(2) **Meaning of "other means of telecommunication".**--For the purposes of this Act, "other means of telecommunication" means any wire, cable, radio, optical or other electromagnetic system, or any similar technical system. [*Rep. & sub.*, 1993, c.38, s.81. proclaimed in force October 25, 1993.]

History: New.
Commentary: This phrase is used in the definition of "broadcasting" in subsection 2(1). The concept of using a new "technology-neutral" definition of broadcasting is commented on extensively in the Government Response to the Fifteenth Report of the Standing Committee on Communications and Culture, June 23, 1988, at pp.87-88.

[§104-21]

(3) **Interpretation.**--This Act shall be construed and applied in a manner that is consistent with the freedom of expression and journalistic, creative and programming independence enjoyed by broadcasting undertakings. [1991, c.11, s.2]

History: New.
Commentary: This subsection is the only counterpart to the statement in paragraph 3(*c*) of the *Broadcasting Act*, R.S.C.1985, c.B-9, that "the right to freedom of expression...subject only to generally applicable statutes and regulations, is unquestioned". In a clause-by-clause analysis of Bill C-136 dated August 1988 prepared by the Department of Communications, it was stated that the reference to the right of freedom of expression "has not been carried over into the proposed legislation since the Charter now makes such a provision superfluous."

Broadcasting Policy for Canada

[§104-22]

3. (1) **Declaration.**--It is hereby declared as the broadcasting policy for Canada that

[§104-23]

(*a*) the Canadian broadcasting system shall be effectively owned and controlled by Canadians;

History: Based on the opening words of paragraph 3(1)(*b*) of the *Broadcasting Act*, R.S.C. 1985, c.B-9. The word "shall" replaces the word "should".
Commentary: The reference of Canadian ownership and control in the old Act was tied to the phrase "so as to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada". The latter phrase has now been decoupled from the concept of Canadian ownership and control and expressed as a distinct policy objective for the broadcasting system in paragraph 3(1)(*d*)(i), below at §104-26.

The substitution of the word "shall" for "should" in this clause would appear to indicate that the Canadian ownership and control policy is to be viewed as mandatory, rather than directory. Section 11 of the *Interpretation Act*, as construed by section 15(2)(*a*) thereof, stipulates that the expression "shall" is to be construed as imperative if a contrary intention does not appear.

For the application of this paragraph in the context of the *Direction to the CRTC (Eligible Canadian Corporations)*, C.R.C. 1978, c.376, see *Re Cable Laurentide Ltée. and Canadian Radio-television and Telecommunications Commission et al.* (1980), 114 D.L.R. (3d) 545, [1980] 2 F.C. 441 (Fed.C.A.).

[§104-24]

(*b*) the Canadian broadcasting system, operating primarily in the English and French languages and comprising public, private and community elements, makes use of radio frequencies that are public property and provides, through its programming, a public service essential to the maintenance and enhancement of national identity and cultural sovereignty;

History: This is a substantially rewritten version of paragraph 3(*a*) of the *Broadcasting Act*, R.S.C.1985, c.B-9, which reads as follows:

> "(*a*) broadcasting undertakings in Canada make use of radio frequencies that are public property and such undertakings constitute a single system, herein referred to as the Canadian broadcasting system, comprising public and private elements;"

Commentary: The general approach taken here is suggested in the *Report of the Task Force on Broadcasting Policy* (1986), at p.152. In the former *Broadcasting Act*, as well as in the original version of Bill C-40 given first reading, only two "elements" of the system were referred to, viz. public and private. The "public element" is generally considered to refer to undertakings under public ownership, e.g. the CBC, Alberta ACCESS, Radio-Quebec and TVOntario, while the "private

element" is taken to refer to privately-owned (shareholder-controlled) undertakings. The reference to a third component, viz. the "community element", was added to Bill C-40 at the committee stage, reflecting the involvement of licensees without share capital, e.g. licensees that are co-operatives or are member-controlled. The inclusion of a "community element" in section 3 of the Act was recommended at p.502 of the *Report of the Task Force on Broadcasting Policy*. For a more recent reference, see also the definition of "community radio" in Public Notice CRTC 1992-38, May 29, 1992, below at §281-4.

The obligations of each "element" in the system are set out in paragraph 3(1)(*e*) below, the only other use of the word "element" in the Act. However, the word "private" is used again in paragraph (*s*), where obligations are set forth for private networks and programming undertakings.

The statement that the broadcasting system makes use of radio frequencies that are public property derives from section 3(*a*) of the former Act, although the formulation in the former Act was that "broadcasting undertakings in Canada make use of radio frequencies that are public property". Since the Act is now stated to be applicable to undertakings transmitting programs by "other means of telecommunication" and neither receiving nor transmitting radio waves, it was necessary to amend the statement so that it applied only to the system as a whole and not necessarily to all undertakings.

The statement that radio frequencies are public property does not mean that the *Broadcasting Act* supersedes the *Copyright Act* so that it prevails over the rights of copyrightholders in programs. As noted by Cattenach J. in *Warner Bros.-Seven Arts Inc. et al. v. CESM-TV Ltd.* (1971), 65 C.P.R. 215, with respect to the predecessor Act, "the section does not go on to say that what is sent out on those carrier radio frequencies is also public property".

The statement that the broadcasting system provides "a public service" is an entirely new concept in the Act. In the *Report of the Task Force on Broadcasting Policy* (1986), at pp.144-5, this concept is related to section 36 of the *Constitution Act, 1982*, which commits the legislatures and governments of Canada to "providing essential public services of reasonable quality to all Canadians".

The wording may also provide an argument for federal jurisdiction over broadcasting as defined more expansively in section 2 of the Act on the basis of the "rational dimension" test. Under that test, which has been applied to radiocommunication, if the subject matter of the legislation goes beyond local or provincial concerns or interests and must from its inherent nature be the concern of the Dominion as a whole, then it will fall within the competence of Parliament as a matter affecting the peace, order and good government of Canada. See *Reference re Anti-Inflation Act*, [1976] 2 S.C.R. 373, 68 D.L.R. (3d) 452; *cf. Radio Reference*, [1932] A.C. 304, [1932] 2 D.L.R. 81.

[§104-25]

(*c*) English and French language broadcasting, while sharing common aspects operate under different conditions and may have different requirements;

History: New.

Commentary: This concept has some roots in Recommendation 133 of the Fifth Report, April 18, 1987, and Recommendation 65 of the Sixth Report of the Standing Committee on Communications and Culture, May 6, 1987. As a regulatory approach, the distinction has been reflected in a number of CRTC policies, e.g. in regard to the licensing of specialty services on November 30, 1987, as noted below at §235-15. This concept is also reiterated in paragraph 5(2)(*a*) of the new Act, noted below at §104-50.

[§104-26]

(*d*) the Canadian broadcasting system should

(i) serve to safeguard, enrich and strengthen the cultural, political, social an economic fabric of Canada,

(ii) encourage the development of Canadian expression by providing a wid range of programming that reflects Canadian attitudes, opinions, ideas, values an

artistic creativity, by displaying Canadian talent in entertainment programming and by offering information and analysis concerning Canada and other countries from a Canadian point of view,

(iii) through its programming and the employment opportunities arising out of its operations, serve the needs and interests, and reflect the circumstances and aspirations, of Canadian men, women and children, including equal rights, the linguistic duality and multicultural and multiracial nature of Canadian society and the special place of aboriginal peoples within that society, and

(iv) be readily adaptable to scientific and technological change;

History: Subparagraphs (i) and (iv) are similar to the concepts expressed in paragraphs 3(*b*) and (*j*) of the *Broadcasting Act*, R.S.C.1985, c.B-9. Subparagraphs (ii) and (iii) reflect new concepts.
Commentary: Subparagraph (ii) was not in Bill C-136 as tabled for first reading but was added at the committee stage, and subsequently found its way into Bill C-40.

Subparagraph (iii) adds a concern with the employment opportunities arising out of the operation of broadcasting undertakings. The stated intention of the government was for the Commission to enforce the spirit of the *Employment Equity Act*. Thus the Commission would be responsible for seeing that broadcasters "practice equity by employing a broad cross-section of society within the broadcasting industry, thereby ensuring a diversity of views and a healthy respect for differences." In a written submission to the Standing Committee dated January 31, 1990, at pp.17-18, the CRTC expressed concern about the overlap between the role of the CRTC and the role of the Canadian Human Rights Commission in administering the *Employment Equity Act* in respect to undertakings with over 100 employees. In particular, the CRTC noted the possibility of inconsistent rulings and additional administrative burdens and costs. It urged that employment equity matters "should be the responsibility of a single expert body -- namely, the Canadian Human Rights Commission." However, the new Act gives the CRTC an overlapping jurisdiction in this area.

For the Commission's employment equity policy, see *Implementation of an Employment Equity Policy*, Public Notice CRTC 1992-59, September 1, 1992, set out below at §285.

[§104-27]

(*e*) each element of the Canadian broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming;

History: New.
Commentary: For a discussion of the three "elements" in the system, see the commentary under paragraph 3(1)(*b*), above at §104-24. More specific obligations with respect to the creation and presentation of Canadian programming are set forth in paragraph 3(1)(*f*) for each broadcasting undertaking, in paragraph 3(1)(*m*) for the CBC, in paragraph 3(1)(*s*) for private networks and programming undertakings and in subparagraph 3(1)(*t*)(i) for distribution undertakings.

[§104-28]

(*f*) each broadcasting undertaking shall make maximum use, and in no case less than predominant use, of Canadian creative and other resources in the creation and presentation of programming, unless the nature of the service provided by the undertaking, such as specialized content or format or the use of languages other than French and English, renders that use impracticable, in which case the undertaking shall make the greatest practicable use of those resources;

History: This is a significantly amended version of the last phrase of paragraph 3(1)(*d*) of the previous *Broadcasting Act*, which stated that "the programming provided by each broadcaster should be of high standard, using predominantly Canadian creative and other resources."
Commentary: Paragraphs (*e*) and (*f*) use the imperative verb "shall" rather than "should". In Bill C-136, these two paragraphs were combined and made reference only to the phrase "maximum use of Canadian creative and other resources". The concept of "predominantly Canadian" in paragraph 3(*d*) of the previous Act was restored in Bill C-40, subject to the exceptions noted in paragraph (*f*). These were suggested in Recommendations 29 and 30 of the Sixth Report of the Standing Committee on Communications and Culture, May 6, 1987, at p.47.

The last phrase of paragraph 3(1)(*d*) of the old Act, quoted above, only applied to each "broadcaster", a term defined to mean a broadcasting transmitting undertaking; thus, it did not apply to cable television systems, which were characterized as broadcasting receiving undertakings in the old Act. The new formulation makes the obligation applicable to each broadcasting undertaking, including cable television systems, but only to the extent that such undertakings create and present programming.

[§104-29]

(*g*) the programming originated by broadcasting undertakings should be of high standard;

History: Based on paragraph 3(*d*) of the *Broadcasting Act*, R.S.C.1985, c.B-9, viz. "the programming provided by each broadcaster should be of high standard..."

Because the word "broadcaster" was defined to mean a broadcasting transmitting undertaking, the obligation in the old Act did not apply to broadcasting receiving undertakings, i.e. cable television systems. By contrast, the formulation in the new Act applies to all broadcasting undertakings, but only insofar as the programming is originated by that undertaking.
Commentary: Under the former Act, the CRTC had interpreted the word "provided" to include both acquired and produced programs, in other words, all programs presented by an undertaking. The word "provided" is replaced with the word "originated" in the English version of the new Act. However, the French language version continues to use the verb "offerte" which is also used in the same sense as the word "provided" elsewhere in section 3.

While there are conflicting usages in the new legislation, the better view is that the word "originated" includes more than simply programs that are produced by an undertaking but includes all programs presented as part of the broadcast schedule whether they have been produced by the licensee or not. This reading is supported by (*a*) the use of the word "offerte" in the French version of the Act, (*b*) the fact that where the Act only intends to refer to "produced" programs, the term "produced" is typically used: see, e.g. subparagraph 3(1)(*r*), which refers to programming which should "be acquired rather than produced..."; and (*c*) the industry usage common in regard to satellite programming services, where the term "origination centre" refers to a technical facility where both acquired and produced programs are assembled and uplinked.

While this reading is not uniform (for example, the term "originate" appears to be used to refer to produced as opposed to acquired programs in the list of CBC powers set out in paragraphs 46(1)(*c*), (*d*) and (*g*) of the new Act), the term "origination" in paragraph 3(1)(*g*), as well as in subparagraph 3(1)(*t*)(iv) and paragraph 10(1)(*h*), appears to be intended to contrast programming that is initially transmitted by an undertaking (whether acquired or produced) with programming that is simply retransmitted by a distribution undertaking.

For a discussion of the "high standard" issue, see the *Report of the Task Force on Broadcasting Policy* (1986) at p.164. See also the reference to this concept in *Policy Regarding Open-Line Programming*, Public Notice CRTC 1988-213, December 23, 1988, below at §251-7. For a CRTC decision giving a one-year renewal to a radio station for the continued violation by an open-line host of the high standard requirement, which contains a discussion of the interplay between this concern and the *Canadian Charter of Rights and Freedoms*, see *Les Entreprises de Radiodiffusion de la Capitale Inc. (CHRC)*, Decision CRTC 90-772, August 20, 1990.

[§104-30]

(*h*) all persons who are licensed to carry on broadcasting undertakings have a responsibility for the programs they broadcast;

History: This paragraph corresponds to the opening words of paragraph 3(*c*) of the *Broadcasting Act*, R.S.C. 1985, c.B-9.

Commentary: The *Broadcasting Act* uses the word "broadcast" as a verb only twice, viz. in paragraph 3(1)(*h*) and again in subsection 26(2). In the *Report of the Task Force on Broadcasting Policy* (1986), at pp.158-160, the recommendation is made that "the Act should consider persons authorized to operate all categories of broadcasting undertakings responsible for the programs they distribute except when they have no decision-making power, in whole or in part, over the messages distributed". Based on the use of the word "transmission" in the expanded definition of "broadcasting" and in the definition of "programming undertaking" in the Act, compared with the use of "retransmission" in the definition of a "distribution undertaking", it may now be arguable that the responsibility referred to in paragraph 3(1)(*h*) applies only to the transmission and not to the retransmission of programs, which would largely achieve the result desired by the Task Force.

Under this reading, distribution undertakings would continue to have responsibility for the programs they originate and transmit, such as the community channel. This is consistent with CRTC policy, as expressed in *Community Channel Policy Review*, 10 C.R.T. (Part 2) 44 (CRTC Circular No.297, June 12, 1984), and reflected in the CCTA *Cable Television Community Standards*, below at §179-5. However, under this reading, the Act would not impose responsibility on cable licensees for the programs they simply receive and retransmit pursuant to CRTC regulations or licence conditions.

This approach is also supported by the French text of paragraph (*h*) which states that "les titulaires de licenses d'exploitation d'entreprises de radiodiffusion assument la responsabilité de *leurs* émissions". (italics added)

On August 10, 1988, in response to a question from Committee Chairman Jim Edwards on the meaning of paragraph 3(1)(*f*) in Bill C-136 [later paragraph 3(1)(*h*) in Bill C-40, as set out above], the following exchange took place before the Standing Committee on Communications and Culture concerning this paragraph (see *Proceedings*, at 1:63-64):

> *[Minister of Communications] Miss MacDonald:* I think there is a distinction here between broadcasting and distribution.
>
> *Mr. Edwards:* Broadcasting, the gerund, is defined in subclause 2.(1) of the bill; but broadcast, the verb, is not defined. So you may want to just ask your legal people to have a look at that.
>
> *Miss MacDonald:* I will. Mr. Gourd [the Deputy Minister of Communications] suggests to me that it is much more clearly stated in French than in the English...
>
> *Mr. Gourd:* This tries to cover programs that the cable operators originate. That is why n French it refers to "their programs". It relates to the definition of broadcasting, which refers to a transmission of programs. Distribution undertaking refers to reception and retransmission. So perhaps it has to be clarified, because the intent is directed at "their programs"
>
> *Miss MacDonald:* I will certainly take a look at that. Clarity is one thing, but I think there is a semantic point here that we had better revisit.
>
> *Mr. Edwards:* The deputy minister is quite right in saying "leurs émissions" --
>
> *Miss MacDonald:* It is much clearer...

Later, on August 23, 1988, when CRTC Chairman André Bureau appeared before the Standing Committee, he expressed the view that the responsibility of cable operators under this paragraph might also extend to the carriage of foreign programming services (*Proceedings*, at 6:147):

> "It is not a very simple answer that we can give, because it depends on whether you are talking about the foreign service or you are talking about the Canadian service. In most cases the responsibility will vary, and in most cases practically what will happen is that the party who seems to have been hurt or who claims there is damage coming out of that programming will go directly to the broadcaster if it is a Canadian broadcasting service, while if it is a foreign service then they could go to the cable and tell them that they have some responsibility because they have decided they would carry these optional services so, coming

out of the option they have exercised, they should be responsible for that. So without going too much into details, I think you can understand that there is a different level of responsibility depending on the nature of the service and the source of the programming.

"When we read in the specific paragraph you are alluding to, paragraph [3(1)(*h*)], is that for the programs they broadcast, if they are programs they originate themselves, cable-originated programs, then we believe they are responsible, like any other broadcaster. If it is a foreign program that is being distributed as an optional service, then there might be a case for some responsibility on their part because they were not obligated to carry the service."

In an earlier appearance before the Standing Committee on August 17, 1988, the Canadian Cable Television Association urged that the English test of paragraph 3(1)(*f*) in Bill C-136 -- now paragraph 3(1)(*h*) -- be amended to read "programs they originate" rather than "programs they broadcast", to "reflect the sense of the French text". See *Proceedings*, at p.4A:12. Although this amendment was not made in Bill C-40, it would appear that the English text can be read so as to achieve the same result.

[§104-31]

(*i*) the programming provided by the Canadian broadcasting system should

(i) be varied and comprehensive, providing a balance of information, enlightenment and entertainment for men, women and children of all ages, interests and tastes,

(ii) be drawn from local, regional, national and international sources,

(iii) include educational programs and community programs,

(iv) provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern, and

(v) include a significant contribution from the Canadian independent production sector;

History: Subparagraph (*i*) collects and restates a number of existing concepts found in paragraphs 3(*d*) and (*i*) of the *Broadcasting Act*, R.S.C.1985, c.B-9, adds the "regional" aspect, and adds an emphasis on independent production. The focus on the independent production sector was not in Bill C-136 but was added to Bill C-40.

Commentary: The concepts in subparagraph (*i*) reflect Recommendations 22 to 25 and 31 of the Sixth Report of the Standing Committee on Communications and Culture, May 6, 1987.

There is a significant difference between the English and French texts of subparagraph (*i*). The English text states that "the programming...should be varied and comprehensive". The French text states that "la programmation offerte...devrait...être variée et aussi large que possible" (varied and as comprehensive as possible).

The statement in subparagraph (iv) is a significantly amended version of what used to be the "balance" requirement in paragraph 3(*d*) of the Act: viz. "the programming provided by the Canadian broadcasting system...should provide reasonable, balanced opportunity for the expression of differing views on matters of public concern". The word "balanced" has now been dropped. For a discussion, see the *Report of the Task Force on Broadcasting Policy* (1986) at pp.161-163, which recommended keeping the concept of "balance" but making it clear that such balance would apply only to a broadcaster's overall programming and not to every program broadcast. This was later directly incorporated into CRTC policy: see *Balance in Programming on Community Access Media*, Public Notice CRTC 1988-161, September 29, 1988, below at §247-4.

[§104-32]

(*j*) educational programming, particularly where provided through the facilities of an independent educational authority, is an integral part of the Canadian broadcasting system;

History: A broadened version of paragraph 3(*i*) of the *Broadcasting Act*, R.S.C. 1985, c.B-9.
Commentary: This statement was not in Bill C-136 but was added to Bill C-40 at the request of the provincial educational authorities.

[§104-33]

(*k*) a range of broadcasting services in English and in French shall be extended to all Canadians as resources become available;

History: This paragraph expands paragraph 3(*e*) of the *Broadcasting Act*, R.S.C. 1985, c.B-9, which stated that "all Canadians are entitled to broadcasting service in English and French as public funds become available." The section now refers to a *range* of services as *resources* become available.
Commentary: This phrase stops short of the Recommendation of the *Task Force on Broadcasting Policy* (1986) at p.156 that the right of all Canadians to broadcasting service in French and in English should be reaffirmed. However, the provision can be seen as addressing concerns about unequal services in French and English, and the lack of sufficient choice in some regions. See also Recommendation 26 of the Sixth Report of the Standing Committee on Communications and Culture, May 6, 1987.

In a clause-by-clause analysis of Bill C-136 dated August 1988 prepared by the Department of Communications, the following comment was made:

> "This section recognizes that in contemporary terms, being able to receive only one or two signals is to be under-served. This applies equally to Canadians in rural areas who do not have cable or other multi-channel distribution services available to them and to those urban Canadians who may have no service or only one available to them in the official language of their choice. The implication that extension of service should be done with public funds has also been removed with the new wording."

[§104-34]

(*l*) the Canadian Broadcasting Corporation, as the national public broadcaster, should provide radio and television services incorporating a wide range of programming that informs, enlightens and entertains;

[§104-35]

(*m*) the programming provided by the Corporation should

(i) be predominantly and distinctively Canadian,

(ii) reflect Canada and its regions to national and regional audiences, while serving the special needs of those regions,

(iii) actively contribute to the flow and exchange of cultural expression,

(iv) be in English and in French, reflecting the different needs and circumstances of each official language community, including the particular needs and circumstances of English and French linguistic minorities,

(v) strive to be of equivalent quality in English and in French,

(vi) contribute to shared national consciousness and identity,

(vii) be made available throughout Canada by the most appropriate and efficient means and as resources become available for the purpose, and

(viii) reflect the multicultural and multiracial nature of Canada;

[§104-36]

(*n*) where any conflict arises between the objectives of the Corporation set out in paragraphs (*l*) and (*m*) and the interests of any other broadcasting undertaking of the Canadian broadcasting system, it shall be resolved in the public interest, and where the public interest would be equally served by resolving the conflict in favour of either, it shall be resolved in favour of the objectives set out in paragraphs (*l*) and (*m*);

History: Paragraphs 3(1)(*l*), (*m*) and (*n*), which set out the mandate of the Canadian Broadcasting Corporation, are based on paragraphs 3(1)(*f*), (*g*) and (*h*) of the previous *Broadcasting Act*, R.S.C.1985, c. B-9, amended and expanded in a number of particulars.

Commentary: In the former *Broadcasting Act*, paragraph 3(1)(*f*) provided that the CBC should provide "a national broadcasting service that is predominantly Canadian in content and character". In the new Act, the CBC is now described as "the national public broadcaster", distinguishing it from other public broadcasters who could be local, provincial or regional. Subparagraphs 3(1)(*m*)(v) and (viii) did not appear in the former Act. Subparagraph 3(1)(*m*)(vi) deletes the concept "contribute to the development of national unity" that had appeared in subparagraph 3(1)(*g*)(iv) of the former Act, and adds the word "consciousness", picking up a recommendation of the Task Force Report at p.285.

Minister of Communications Marcel Masse explained the reasons for the removal of the phrase in the former Act requiring the CBC to "contribute to the development of national unity" in the following terms in an appearance before the Standing Committee on January 31, 1990 (see *Proceedings*, at p. 2:11);

> "The primary function of public broadcasting is, first, to reflect our social values, which are above all cultural values.
>
> "I have removed from the CBC its obligation to promote Canadian unity because it is, first maintaining this political value artificially, and second, it was a constraint on freedom of expression. This obligation also opens the door to an intolerable interference. In removing it, we will rather place greater emphasis on the capacity of Canadians to recognize each other through their values."

The Minister elaborated on this in the following exchange with Committee member Ian Waddell (NDP Port Moody-Coquitlam), at pp.2:17-18:

> *Mr. Waddell:* The intolerable interference with the CBC was when the government of the day issued directions that it did not want separatists in the CBC. That is what you mean by intolerable. Is that why you are changing?
>
> *Mr. Masse:* Do you support the government in issuing a directive to Radio-Canada in a sense like that?...
>
> [TRANSLATION] I am on the side of freedom of expression, and the quality of life in our country is directly connected, not to the will of politicians, but to freedom of expression for the population. This is why Canada is a great country. Not because of directives given by previous governments to [Radio-Canada], but because we have the right to express our cultural identity. This is why the Canadian identity, in my opinion, rests more on freedom of expression than on directives issued by previous governments...
>
> [TEXT] Since you raise the question, I think this country will be great the day French Canadians, English Canadians, and Canadians will know each other, because they are great people. It is by the knowledge they have of each other that this country will be great. This is why we have asked Radio-Canada to make sure to have a *promotion de notre réalité culturelle*. I deeply believe this is my world. The future of Canada will go by a better knowledge of what we are.

Paragraph 3(*l*)(*n*) contrasts the objectives of the CBC with the interests of any other broadcasting undertaking, giving preference to the CBC objectives when the public interest is otherwise balanced. In the former Act, this contrast had been with the interests of the "private element" of the system.

In addition, the former Act had stated that "paramount consideration shall be given to the objectives of the national broadcasting service", a formulation no longer present in the Act.

[§104-37]

(*o*) programming that reflects the aboriginal cultures of Canada should be provided within the Canadian broadcasting system as resources become available for the purpose;

History: New.
Commentary: The concern with programming reflecting aboriginal cultures responds to Recommendations 110 and 111 of the 15th Report of the Standing Committee on Communications and Culture, June 9, 1988, at p.279. See also *Native Broadcasting Policy*, Public Notice CRTC 1990-89, September 20, 1989, set out below at §262.

[§104-38]

(*p*) programming accessible by disabled persons should be provided within the Canadian broadcasting system as resources become available for the purpose;

History: New.
Commentary: The accessibility to the disabled clause responds to Recommendation 33 of the Sixth Report of the Standing Committee on Communications and Culture, May 6, 1987, calling for increased use of closed-captioning, and Recommendations 127 to 129 of the 15th Report, June 9, 1988, at pp.308-314. Also see the Government Response, June 23, 1988, at p. 51.

[§104-39]

(*q*) without limiting any obligation of a broadcasting undertaking to provide the programming contemplated by paragraph (*i*), alternative television programming services in English and in French should be provided where necessary to ensure that the full range of programming contemplated by that paragraph is made available through the Canadian broadcasting system;

[§104-40]

(*r*) the programming provided by alternative television programming services should
(i) be innovative and be complementary to the programming provided for mass audiences,
(ii) cater to tastes and interests not adequately provided for by the programming provided for mass audiences, and include programming devoted to culture and the arts,
(iii) reflect Canada's regions and multicultural nature,
(iv) as far as possible, be acquired rather than produced by those services, and
(v) be made available throughout Canada by the most cost-efficient means;

History: Paragraphs 3(1)(*q*) and (*r*) are new.
Commentary: The alternative television programming services described in these paragraphs respond to Recommendation 100 of the 15th Report of the Standing Committee on Culture and Communications, June 9, 1988, at p.269. For a general description of the government's interest in

this area, see Canadian Voices: Canadian Choices, at pp.33-35, and the Government Response, June 23, 1988, at p.39.

In a written submission to the Standing Committee dated January 31, 1990, the CRTC noted that the goals of the alternative programming services "seem to be almost identical to those traditionally ascribed to the CBC. Aside from the fact that the CBC must be 'predominantly and distinctively Canadian' and the alternative programmer need not, there seems to be little distinction between the two."

The French version of subparagraph (v) ("être offerte partout au Canada de la manière la plus rentable, compte tenu de la qualité") goes beyond the concept of "cost-efficient" found in the English version and adds a concept of maintaining quality.

[§104-41]

(*s*) private networks and programming undertakings should, to an extent consistent with the financial and other resources available to them,

(i) contribute significantly to the creation and presentation of Canadian programming, and

(ii) be responsive to the evolving demands of the public; and

History: New.

Commentary: As is made clear in the French version of this clause, the word "private" modifies both "networks" and "programming undertakings". The obligation set forth in this paragraph overlaps to a large extent with the more general obligation expressed in paragraph 3(1)(*f*) for each broadcasting undertaking to make maximum use of Canadian creative and other resources in the creation and presentation of programming. The obligation in paragraph 3(1)(*f*) is limited by the format or nature of the service; by contrast, the obligation in paragraph 3(1)(*s*) above is limited by the financial and other resources available.

The reference to available resources reflects wording expressed in the Recommendations of the *Report of the Task Force on Broadcasting Policy* on private television (p.471) and on private radio (p.402), as well as Recommendation 30 of the Sixth Report of the Standing Committee on Communications and Culture, May 6, 1987, at p.412.

The addition of subparagraph (ii) regarding responsiveness to "the evolving demands of the public" is a new objective which has long been sought by the private sector but was not included in the Task Force or Standing Committee recommendations.

In a written brief to the Standing Committee dated August 23, 1988, at p. 28, the CRTC expressed concern that the imposition of a requirement to contribute significantly to the creation and presentation of Canadian programming would not be realistic in the case of distribution networks such as CANCOM. However, this concern has been resolved with the decision of the CRTC to classify operations such as CANCOM as "distribution undertakings" rather than "networks". See *New Broadcasting Act -- Amendments to Classes of Licence*, CRTC Public Notice 1991-63, June 19, 1991, set out below at §271. Also see the commentary under §104-15 above.

[§104-42]

(*t*) distribution undertakings

(i) should give priority to the carriage of Canadian programming services and, in particular, to the carriage of local Canadian stations,

(ii) should provide efficient delivery of programming at affordable rates, using the most effective technologies available at reasonable cost,

(iii) should, where programming services are supplied to them by broadcasting undertakings pursuant to contractual arrangements, provide reasonable terms for the carriage, packaging and retailing of those programming services, and

(iv) may, where the Commission considers it appropriate, originate programming, including local programming, on such terms as are conducive to the achievement of the objectives of the broadcasting policy set out in this subsection, and in particular provide access for underserved linguistic and cultural minority communities.

History: New.

Commentary: This paragraph reflects Recommendations in the Sixth Report of the Standing Committee on Communications and Culture, May 6, 1987, to give the CRTC the power to establish conditions regarding the carriage of programming services by distribution undertakings (Recommendation 57 at p.92), to arbitrate terms and conditions of affiliation agreements (Recommendation 52, at p.86) and to require the fees charged by distribution undertakings to be equitable (Recommendation 60, at p.95). (The power of the CRTC under the previous *Broadcasting Act* to fix the maximum fees charged by cable television systems as a condition of the right to a territorial monopoly was upheld by the Supreme Court of Canada in *Canadian Broadcasting League v. CRTC et al.*, [1985] 1 S.C.R. 174, affirming [1983] 1 F.C. 182, as noted in *Canadian Communications Law and Policy*, Volume 1 at §355-303.)

In a clause-by-clause analysis of Bill C-136 dated August 1988 prepared by the Department of Communications, the following comment is made concerning this paragraph:

> "For the first time, the role that distribution systems (particularly cable operators) are expected to play in meeting the government's goals for broadcasting is spelled out. This section permits distribution systems to take on some programming activities. It also establishes some rules about how they are to exercise their territorial exclusivity; they are not to use their position as 'gatekeepers' between programming services and consumers to restrict access or impose excessive charges. Most important, it establishes in legislation the priority to be accorded to Canadian signals."

The specific reference to giving priority to "the carriage of local Canadian stations" in subparagraph (i) did not appear in Bill C-136 but was added to Bill C-40 at the urging of the Canadian Association of Broadcasters.

In a written submission dated January 31, 1990, to the Standing Committee, at pp.32-33, the CRTC expressed concern that subparagraph (i) might be read so as to preclude the licensing of television retransmitters in remote or underserved areas which simply retransmit U.S. programming services received off a satellite via a scrambled signal.

The English version of subparagraph (ii) ["should provide efficient delivery of programming at affordable rates, using the most effective technologies available at reasonable cost"] is not fully reflected in the French text which does not include the concept "at reasonable cost".

The term "affordable" is not defined in the legislation. The older definitions for the word in the Oxford English Dictionary connote a rate that subscribers can spare or "have the means to pay" for. The OED also notes that the term "affordably [priced]" has a more recent U.S. usage of "cheaply, reasonably".

In the French text, the word "affordable" is translated as "abordable". In Harrap's Shorter Dictionary, the phrase "vos prix ne sont pas abordable" is translated as "your prices are not reasonable, are beyond my means."

The issue of the involvement of distribution undertakings in the origination of programming has been a controversial one. The *Report of the Task Force on Broadcasting Policy* (1986) argued at p. 575-6 that the "activities of creation, assembly and marketing of programming, other than that which is simply retransmitted [by cable undertakings], should be entrusted to separate organizations." In particular, it recommended, "community programming and any other programming services in which the owners of a cable transmission undertaking may be involved should be the responsibility of separately licensed entities."

The Standing Committee on Communications and Culture took this approach still further in its Sixth Report, May 6, 1987, at p.86, when it recommended that while distribution undertakings should continue to be permitted to operate and take responsibility for local community access channels, "the Act should provide that no distribution undertaking may have an ownership interest in, or be in

common ownership with, pay television, specialty or another other network programming service distributed on such undertaking on the basis of a contractual relationship...or where the consent of the network or the distribution undertaking is required for such carriage". This was reiterated in Recommendation 68 of the 15th Report of the Standing Committee, June 6, 1988, at p.184.

However, this approach was not adopted by the government. In Bill C-136, as tabled on June 23, 1988, subparagraph (iv) stipulated that distribution undertakings "should where appropriate originate programming, including local programming, on such terms as are conducive to the achievement of the objectives of the broadcasting policy set out in this subsection". In the Government Response, June 23, 1988, at p.278, it was stated that the government "believes that to restrict cable operators to being merely distributors would deny the broadcasting system an important source of funds for programming which should not be ignored."

In the final language of subparagraph (iv), as amended in Bill C-40, the expansive language in Bill C-136 has been limited in certain respects: the provision is expressed with the words "may" rather than "should"; the CRTC is required to make a finding that such origination is deemed appropriate; and the role for such programming is particularized to furnishing access to underserved linguistic and cultural minority communities.

For a discussion of the meaning of the word "originate" in the new Act, see the commentary at §104-29 above.

[§104-43]

(2) **Further declaration.**--It is further declared that the Canadian broadcasting system constitutes a single system and that the objectives of the broadcasting policy set out in subsection (1) can best be achieved by providing for the regulation and supervision of the Canadian broadcasting system by a single independent public authority. [1991, c.11, s.3]

History: This is based on paragraph 3(1)(*k*) of the *Broadcasting Act*, R.S.C.1985, c.B-9, together with an amended version of the "single system" phrase from paragraph 3(1)(*a*).

Commentary: In the previous Act, the equivalent statement in paragraph 3(1)(*a*) was that "broadcasting undertakings in Canada... constitute a single system". This has been changed to the statement that the "Canadian broadcasting system constitutes a single system".

This change was objected to by the CRTC, which stated in a written submission to the Standing Committee dated January 30, 1990, at p.33, that "[t]he point is not that the system is a system, but rather that all undertakings in sum constitute the entire system and there is no parallel system outside of those undertakings. It was this concept that was relied on by the Saskatchewan Court of Appeal in the case of *R. v. Nipawin and District Satellite T.V. Inc.* This concept is a fundamental one and ensures that all undertakings fall within the Commission's jurisdiction."

Notwithstanding the Commission's concerns, however, the concept that the Canadian broadcasting system is constituted by broadcasting undertakings would appear to be implicit from the general language of subsection 3(1), as well as by specific references such as paragraph 3(1)(*n*), above at §104-36. The inclusion of non-profit undertakings such as the operation referred to in the *Nipawin* case is specifically brought under the Act by virtue of subsection 4(3), below at §104-46.

Application

[§104-44]

4. (1) **Binding on Her Majesty.**--This Act is binding on Her Majesty in right of Canada or a province.

History: There was no comparable provision in the former *Broadcasting Act*. However, subsection 3(1) of the *Radio Act*, R.S.C. 1985, c. R-2 [now subsection 3(1) of the *Radiocommunication Act*, below at §106-28] made the same statement.

Commentary: This clause reflects Recommendation 19 of the Sixth Report of the Standing Committee on Communications and Culture, May 6, 1987, at pp.28-29, which pointed out the anomalous situation where provincial Crown broadcasters were subject to the *Radio Act* but not specifically made subject to the *Broadcasting Act*. Note, however, that provincial Crown broadcasters are exempted from CRTC licence fees by virtue of subsection 11(3) of the Act, below at §104-73.

[§104-45]

(2) **Application generally.**--This Act applies in respect of broadcasting undertakings carried on in whole or in part within Canada or on board

(*a*) any ship, vessel or aircraft that is

(i) registered or licensed under an Act of Parliament, or

(ii) owned by, or under the direction or control of, Her Majesty in right of Canada or a province;

(*b*) any spacecraft that is under the direction or control of

(i) Her Majesty in right of Canada or a province,

(ii) a citizen or resident of Canada, or

(iii) a corporation incorporated or resident in Canada; or

(*c*) any platform, rig, structure or formation that is affixed or attached to land situated in those submarine areas adjacent to the coast of Canada and extending throughout the natural prolongation of the land territory of Canada to the outer edge of the continental margin or to a distance of two hundred nautical miles from the baselines from which the breadth of the territorial sea of Canada is measured, whichever is greater.

History: The opening phrase of this subsection ("carried on in whole or in part within Canada...") is an amended version of language originally appearing in the definition of a "broadcasting undertaking" in the former *Broadcasting Act*, R.S.C. 1985, c. B-9 ("located in whole or in part within Canada..."). Subsection 4(2) of the *Radio Act*, R.S.C.1985, c.R-2, is similar to paragraphs (*a*) and (*b*); subsection 4(2) has since been replaced by subsection 3(3) of the *Radiocommunication Act*, below at §106-30, which also contains the equivalent of paragraph (*c*).

Commentary: An undertaking may be prosecuted even if it is carried on in part within Canada and in part outside Canada. For successful prosecutions of cable television systems carried on in part within the United States with a head-end owned by one company and in part within Canada with a cable distribution system owned by another company, see *Canadian communications Law and Policy*, Volume 1 (1988), at §355-114 *(Acadian)*, §355-135 *(Acadian)*, §355-143 *(Continental)*, and §355-149 *(Maahs)*. The case law also indicates that U.S. broadcasting stations whose signals reach into Canada but have no physical assets in Canada can be held to be radiocommunicating "in Canada" within the meaning of the *Copyright Act:* see *C.A.P.A.C. v. International Good Music, Inc. et al.*, [1963] S.C.R. 136; or can be held to be publishing words and thereby committing the tort of defamation "within Canada" see *Jenner v. Sun Oil Co. et al.*, [1952] O.R. 240, [1952] 2 D.L.R. 526. The use of the word "carried on" instead of "located" in the opening phrase of subsection 4(2) strengthens the argument that a broadcasting undertaking need not have physical assets in Canada to be carried on in part within Canada.

[§104-46]

(3) **For greater certainty.**--For greater certainty, this Act applies in respect of broadcasting undertakings whether or not they are carried on for profit or as part of, or in connection with, any other undertaking or activity.

History: New.

Commentary: The Sixth Report of the Standing Committee on Communications and Culture, May 6, 1987, strongly recommended that this provision be carried into the new Act: see Recommendation 12 at p.24. The amendment was intended to remove the defence accepted by the Federal Court of Appeal in *CRTC v. Lount Corporation*, [1985] 2 F.C. 472, noted in *Canadian Communications Law and Policy*, Volume 1 at §355-306, which held that the term "undertaking" did not include a hotel SMATV system. The inclusion of non-profit operations was also intended to overcome the defence that succeeded at trial in *The Queen v. Nipawin and District Satellite T.V. Inc. et al.*, noted in *Canadian Communications Law and Policy*, Volume 1 at §355-337, although this decision was subsequently overturned on appeal: see [1988] 4 W.W.R. 375, 42 C.C.C. (3d) 32; appeal dismissed, [1991] 1 S.C.R. 64.

[§104-47]

(4) **Idem.**--For greater certainty, this Act does not apply to any telecommunications common carrier, as defined in the *Telecommunications Act*, when acting solely in that capacity. [1991, c.11, s.4; subs.(4) rep.& sub., 1993, c.38, s.82, proclaimed in force October 25, 1993.]

History: New.

Commentary: The inclusion of the exemption in subsection 4(4) formed part of Recommendation 11 of the Sixth Report of the Standing Committee on Communications and Culture, May 6, 1987, at p.24. The exemption was also included in Clause 2 of Bill C-20, given first reading on December 20, 1984, although this Bill died on the order paper on August 28, 1986. See *Canadian Communications Law and Policy*, Volume 1, at §103-17.

At the time of the enactment of the 1991 *Broadcasting Act*, there was no definition for the term "telecommunications common carrier" in federal legislation, although the phrase was used as a way to designate certain named carriers in the *Teleglobe Canada Reorganization and Divestiture Act*, S.C. 1987, c.12, as amended, and in the former *Telesat Canada Act*. The term "telecommunications common carrier" is now defined in section 2 of the *Telecommunications Act*, S.C. 1993, c.38, as follows:

> "telecommunications common carrier" means a person who owns or operates a transmission facility used by that person or another person to provide telecommunications services to the public for compensation.

It should be noted that section 4 of that Act states that "This Act does not apply in respect of broadcasting by a broadcasting undertaking."

Reference should also be made to the commentary below at §104-64 for a discussion of the power of the Commission under paragraph 9(1)(*f*) of the Act to require CRTC approval for certain contracts between broadcasting licensees and telecommunications common carriers.

The phrase "when acting solely in that capacity" would appear to restrict the carrier exemption to situations where the carrier is providing the means of transmission as a publicly regulated common carrier and it has no control over the content or selection of the signal, nor do its activities change or modify that content. This interpretation is supported by the wording of section 36 of the *Telecommunications Act*, S.C. 1993, c.38, which provides as follows:

> "Except where the Commission approves otherwise, a Canadian carrier shall not control the content or influence the meaning or purpose of telecommunications carried by it for the public."

This provision was based on section 8 (since repealed) of the *Bell Canada Act*, 1987, c.19, which stipulated that where Bell Canada "provides services or facilities for the transmission...of intelligence... *it shall act solely as a telecommunications common carrier and shall not control the contents or influence the meaning or purpose of messages transmitted, entitled or received...*". (emphasis added)

It is interesting to compare the carrier exemption stipulated above with the carrier exemption in section 3(1.3) of the *Copyright Act*, R.S.C. 1985, c. C-42, added in 1988, c.65, s.62(2):

> "For the purpose of paragraph (1)(*f*), a person whose only act in respect of the communication of a work to the public consists of providing the means of telecommunication necessary for another person to so communicate the work does not communicate that work to the public."

In the United States, the counterpart to this provision is the so-called "passive carrier exemption" set out in section 111(*a*)(3) of the U.S. *Copyright Act of 1976*. See *Nimmer on Copyright* (1991), at §12.04[B].

[§104-48]

PART II

OBJECTS AND POWERS OF THE COMMISSION IN RELATION TO BROADCASTING

Objects

[§104-49]

5. (1) **Objects.**--Subject to this Act and the *Radiocommunication Act* and to any directions to the Commission issued by the Governor in Council under this Act, the Commission shall regulate and supervise all aspects of the Canadian broadcasting system with a view to implementing the broadcasting policy set out in subsection 3(1) and, in so doing, shall have regard to the regulatory policy set out in subsection (2).

History: Substantially the same as section 5 of the *Broadcasting Act*, R.S.C.1985, c.B-9, except for the reference to the "regulatory policy" set out in subsection (2).

[§104-50]

(2) **Regulatory policy.**--The Canadian broadcasting system should be regulated and supervised in a flexible manner that

(*a*) is readily adaptable to the different characteristics of English and French language broadcasting and to the different conditions under which broadcasting undertakings that provide English or French language programming operate;

(*b*) takes into account regional needs and concerns;

(*c*) is readily adaptable to scientific and technological change;

(*d*) facilitates the provision of broadcasting to Canadians;

(*e*) facilitates the provision of Canadian programs to Canadians;

(*f*) does not inhibit the development of information technologies and their application or the delivery of resultant services to Canadians; and

(*g*) is sensitive to the administrative burden that, as a consequence of such regulation and supervision, may be imposed on persons carrying on broadcasting undertakings.

History: New.

Commentary: This subsection sets forth so-called "regulatory policies" for the CRTC, which are intended to be supplemental to the broadcasting policy set out in subsection 3(1). A number of the regulatory policies, however, appear to be reiterations of statements already found in section 3. For example, paragraph 5(2)(*a*) is much the same as paragraph 3(1)(*c*); paragraph 5(2)(*b*) is caught by the language of subparagraph 3(1)(*i*)(ii); paragraph 5(2)(*c*) is the same as subparagraph 3(1)(*d*)(iv); paragraph 5(2)(*d*) replicates paragraph 3(1)(*k*) in large part; and paragraph 5(2)(*e*) deals broadly with an issue dealt with in more detail in paragraphs 3(1)(*e*) and (*f*) of the Act.

Taking the foregoing into account, the only paragraphs that appear to be unique in the regulatory policy are paragraphs 5(2)(*f*) and 5(2)(*g*).

Note that the French text of paragraph (*f*) reads "permettre", i.e. "permits the development of information technologies" rather than "does not inhibit".

In a clause-by-clause analysis of Bill C-136 prepared by the Department of Communications dated August 1988 it was stated that paragraph (*f*) was intended to indicate that "the development and delivery of non-programming services should not be restrained by the Commission." As for paragraph (*g*), "[t]his clause serves as a reminder to the CRTC that the administrative burden imposed by regulation should not be so intrusive as to seriously hamper the operation of broadcasting undertakings, or divert significant energies away from, the development of the Canadian broadcasting system."

[§104-51]

(3) **Conflict.**--The Commission shall give primary consideration to the objectives of the broadcasting policy set out in subsection 3(1) if, in any particular matter before the Commission, a conflict arises between those objectives and the objectives of the regulatory policy set out in subsection (2). [1991, c.11, s.5]

History: New.
Commentary: As noted in the commentary at §104-50, a number of the regulatory policy objectives set out in subsection 5(2) are simply reiterations of concepts already found in the broadcasting policy in subsection 3(1); thus, no conflict is likely to arise. However, paragraphs 5(2)(*f*) and (*g*) appear only in the statement of regulatory policy objectives, and will therefore have lesser significance if found to be in conflict with the broadcasting policy in subsection 3(1).

[§104-52]

6. Policy guidelines and statements.--The Commission may from time to time issue guidelines and statements with respect to any matter within its jurisdiction under this Act, but no such guidelines or statements issued by the Commission are binding on the Commission. [1991, c.11, s.6]

History: New.
Commentary: The CRTC's practice of issuing policy statements has been upheld and applauded by the Supreme Court of Canada in *Capital Cities Communications. Inc. et al. v. CRTC et al.*, [1978] 2 S.C.R. 141, 81 D.L.R. (3d) 609, even though no statement equivalent to that above appeared in the former *Broadcasting Act*. In particular, Laskin C.J.C. stated, "[i]n my opinion, having regard to the embracive objects committed to the Commission under s. 15 of the Act, objects which extend to the supervision of 'all aspects of the Canadian broadcasting system with a view to implementing the broadcasting policy enunciated in section 3 of the Act', it was eminently proper that it lay down guidelines from time to time as it did in respect to cable television... An overall policy is demanded in the interests of prospective licensees and of the public under such a regulatory regime as is set up by the *Broadcasting Act*. Although one could mature as a result of a succession of applications, there is merit in having it known in advance." Case law also indicates that such policy statements cannot be "binding" in the sense that the CRTC cannot fetter its right to change the policy or to grant

exemptions, and cannot decline to hear applications arguing that the policy should not apply to the particular circumstances of the application.

In the new Act, the right of the CRTC to issue non-binding guidelines and statements is now specifically set forth in section 6, although the CRTC stated in a written brief to the Standing Committee dated January 31, 1990, at p.34, that it did not believe that it needed any statutory mandate to issue guidelines. In view of the fact that the Governor in Council is now given the right to issue "directions of general application on broad policy matters" to the CRTC under section 7 of the Act, however, the addition of section 6 may be a useful reminder that the power of the CRTC to issue policy statements is unaffected thereby.

[§104-53]

7. (1) **Policy directions.**--Subject to subsection (2) and section 8, the Governor in Council may, by order, issue to the Commission policy directions of general application on broad policy matters with respect to

(*a*) any of the objectives of the broadcasting policy set out in subsection 3(1); or

(*b*) any of the objectives of the regulatory policy set out in subsection 5(2).

History: New.

Commentary: The Governor in Council is also permitted to issue directions to the CRTC on specific matters under sections 26 and 27. However, the concept of allowing the government to issue directions on general policy matters to the CRTC is a new addition to the Act. The idea first originated in 1977, with the introduction of Bill C-43 by Minister of Communications Jeanne Sauvé. Section 9 of that Bill would have empowered the Governor in Council to issue broad policy directions to the CRTC with respect to the national telecommunications policy set out in the proposed Act. Although reintroduced by the Liberal government as Bill C-24 and Bill C-16 in 1978, the proposed legislation never proceeded beyond first reading. For a note on this legislation, see *Canadian Communications Law and Policy*, Volume 1 (1988) at §115-1. Section 9 in Bill C-16 is set forth at §116-60.

On December 20, 1984, shortly after the Conservative government came into power, Minister of Communications Marcel Masse introduced Bill C-20 for first reading, which would have added a direction power to the CRTC Act. For the text of this provision, as amended and reported by the Standing Committee on Communications and Culture on November 22, 1985, see *ibid.* at §101-43. However, Bill C-20 died on the order paper when Parliament was prorogued on August 28, 1986.

The power of the government to issue policy directions to the CRTC was recommended at p.175 of the *Report of the Task Force on Broadcasting Policy* (1986). The Task Force recommendation also stipulated that if the government was to intervene it should either be able to set aside or refer back decisions, or issue policy directives, but it should not have both powers. The objection of the Task Force to tandem powers was picked up by the CRTC which stated the following in a written submission to the Standing Committee on Communications and Culture dated January 31, 1990:

> "We believe that the power of the Governor in Council to issue broad policy directions should be retained but that the power to review and to set aside Commission decisions should not be adopted or, at the very least, not used in any single case already resulting from a Cabinet direction."

In fact, as set out in section 28, the government has retained the power to set aside specific licensing decisions in addition to its power to issue directions, although on a more limited basis than applied under the previous Act. See below at §104-120.

The provisions on policy directions now contained in the *Broadcasting Act* are based on the earlier proposals, but contain a number of limitations and provisos that were not in the earlier versions. For a discussion of the limitations, see the commentary under §104-54 below. Also note that a direction cannot be issued until after a proposed direction has been tabled and considered under subsection 8(1) of the Act.

In Bill C-136, the provision would have simply given the Governor the Council the right to issue "policy directions" to the CRTC with respect to the named objectives. This was amended at the

committee stage, however, to take the form now in the Act, viz. to give the Governor in Council the right to issue "directions of general application on broad policy matters." Thus, the intent is now clear that the directions in question should be general rather than specific and broad rather than narrow.

[§104-54]

(2) **Exception.**--No order may be made under subsection (1) in respect of the issuance of a licence to a particular person or in respect of the amendment, renewal, suspension or revocation of a particular licence.

History: New.
Commentary: These limitations were contained in identical form in the direction power proposed in Bill C-20, given first reading on December 20, 1984. Bill C-20 died on the order paper when Parliament was prorogued on August 28, 1986.

[§104-55]

(3) **Directions binding.**--An order made under subsection (1) is binding on the Commission beginning on the day on which the order comes into force and, subject to subsection (4), shall, if it so provides, apply with respect to any matter pending before the Commission on that day.

[§104-56]

(4) **Exception.**--No order made under subsection (1) may apply with respect to a licensing matter pending before the Commission where the period for the filing of interventions in the matter has expired unless that period expired more than one year prior to the coming into force of the order.

[§104-57]

(5) **Publication and tabling.**--A copy of each order made under subsection (1) shall be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the making of the order.

[§104-58]

(6) **Consultation.**--The Minister shall consult with the Commission before the Governor in Council makes an order under subsection (1). [1991, c.11, s.7]

History: New.
Commentary: These provisions and the provisions in section 8 reflect in part the following recommendations in the *Report of the Task Force on Broadcasting Policy* (1986), at p.176:

"Cabinet, prior to issuing a directive, should be required to consult public opinion in the way the CRTC does when it plans to make or amend regulations. The CRTC should be responsible for such public hearings.

Directives should be used in moderation so as to leave the regulatory authority free of intervention in exercising its day-to-day mandate, and the following rules should be observed:

- directives take the form of regulations and are subject to the provisions of the *Statutory Instruments Act*;
- directives cannot be retroactive;
- only the government, and not ministers, may issue a directive;

- directives shall be formulated in general terms, like regulations, and the regulatory authority shall be responsible for interpreting them, and monitoring their application."

In the Fifth Report of the Standing Committee on Communications and Culture, April 18, 1987, the following recommendations were made:

"Recommendation 10

The Governor in Council should be empowered to issue binding directions to the CRTC expressly restricted to broad policy matters in furtherance of the objectives of the *Broadcasting Act*. The directions should expressly refer to the specific objectives of the Act which they seek to further.

Recommendation 11

The CRTC should be entitled to request that the Governor in Council issue a direction on a specific matter.

Recommendation 12

Before coming into effect, proposed directions should be tabled in the House of Commons and referred to an appropriate committee of the House for consideration. The committee should consult with interested parties, including the CRTC, and should be required to report on the proposed direction within forty sitting days from the date on which the reference to the Committee is made.

Recommendation 13

Directions should not have retroactive effect and should not be issued in respect of a particular licence."

As will be seen from the text of section 8 discussed further below, the government is required to table a direction in proposed form in Parliament and to allow 40 sitting days for its consideration before it can issue a direction in final form under section 7; however, the government is not obliged to wait for a report of the committee of the House before so proceeding.

The restriction imposed by subsection (4) with regard to pending licensing matters is rather limited. The following timetable may be useful in examining its effect:

Date	*Can Cabinet Issue a Policy Direction to Affect this Proceeding?*
CRTC calls for applications	Yes
CRTC receives and gazettes applications, calling for interventions	Yes
Deadline for interventions has not run out	Yes
Deadline for interventions (usually 30 days after gazette date) has expired	No
CRTC proceeds with public hearing	No
CRTC issues its decision	No (but cabinet can set it aside or refer it back under section 28)
One year has elapsed from deadline for interventions and CRTC has not yet issued its decision	Yes

In considering the time limits above, it must also be borne in mind that the Governor in Council cannot issue a final policy direction under section 7 without first having consulted the CRTC under subsection 8(4), having published the order in proposed form for comment under subsection 8(1) of the Act, having waited at least 40 sitting days of Parliament, and after having consulted again with the CRTC under subsection 7(6) if this step had not been done before.

Given the time needed for these preliminary steps, it would be entirely possible for the Commission to decide to proceed with a major licensing proceeding even where the government had indicated it wanted to issue a policy direction on the general subject-matter first, and for that proceeding to have reached the hearing stage before the government would have time to issue a final policy direction that could affect the matter. However, in practice, it can be anticipated that where

the government has issued a proposed policy direction relating to an upcoming proceeding, the CRTC would normally defer the hearing to give the government sufficient time to complete its consultative process and to issue the direction in final form. To proceed otherwise would risk having the ultimate licensing decisions set aside or referred back under section 28, if the decisions did not take the proposed policy into account.

In a clause-by-clause analysis of Bill C-136 dated August 1988 prepared by the Department of Communications, the following explanation was given for the one-year limit in subsection (4):

> "The point of including the one-year limit is to ensure that the Governor in Council is not prevented from issuing a direction on a matter simply because the Commission, at one time in the past, may have instituted an inquiry into the matter. Obvious examples of this occurring are the inquiry into Canadian content begin in 1980-81 but never formally concluded, and the 1971 deferral of a decision for a Montreal transmitter for Global television."

[§104-59]

8. (1) **Procedure for issuance of policy directions.**--Where the Governor in Council proposes to make an order under section 7, the Minister shall cause the proposed order to be

(*a*) published by notice in the *Canada Gazette*, which notice shall invite interested persons to make representations to the Minister with respect to the proposed order; and

(*b*) laid before each House of Parliament.

[§104-60]

(2) **Referral to committee.**--Where a proposed order is laid before a House of Parliament pursuant to subsection (1), it shall stand referred to such committee thereof as the House considers appropriate to deal with the subject-matter of the order.

[§104-61]

(3) **Implementation of proposal.**--The Governor in Council may, after the expiration of forty sitting days of Parliament after a proposed order is laid before both Houses of Parliament in accordance with subsection (1), implement the proposal by making an order under section 7, either in the form proposed or revised in such manner as the Governor in Council deems advisable.

[§104-62]

(4) **Consultation.**--The Minister shall consult with the Commission before a proposed order is published or is laid before a House of Parliament under subsection (1).

[§104-63]

(5) **Definition of "sitting day of Parliament".**--In this section, "sitting day of Parliament" means a day on which either House of Parliament sits. [1991, c.11, s.8]

History: New.

Commentary: For a discussion of the background to this section, see the commentary under §104-58 above. This section responds in particular to Recommendation 12 of the Fifth Report of the Standing Committee on Communications and Culture, dated April 18, 1987, reproduced further above.

The section departs from the Committee's recommendation in making consultation with the CRTC mandatory *before* publication or tabling of a proposed order. Further consultation with the CRTC is required by subsection 7(6), above at §104-58, before the binding direction is issued. In a clause-by-clause analysis of Bill C-136, dated August 1988 prepared by the Department of Communications, it was stated that "[t]hese safeguards ensure that the Commission has the opportunity to bring to the attention of the Governor in Council any concerns it may have about the proposed direction, whether in terms of the policy behind it, its practicality, the manner of its application, the timing, or any other matter."

General Powers of Commission

[§104-64]

9. (1) **Licences, etc.**--Subject to this Part, the Commission may, in furtherance of its objects,

(*a*) establish classes of licences;

(*b*) issue licences for such terms not exceeding seven years and subject to such conditions related to the circumstances of the licensee

(i) as the Commission deems appropriate for the implementation of the broadcasting policy set out in subsection 3(1), and

(ii) in the case of licences issued to the Corporation, as the Commission deems consistent with the provision, through the Corporation, of the programming contemplated by paragraph 3(*l*)(*l*) and (*m*);

(*c*) amend any condition of a licence on application of the licensee or, where five years have expired since the issuance or renewal of the licence, on the Commission's own motion;

(*d*) issue renewals of licences for such terms not exceeding seven years and subject to such conditions as comply with paragraph (*b*);

(*e*) suspend or revoke any licence;

(*f*) require any licensee to obtain the approval of the Commission before entering into any contract with a telecommunications common carrier for the distribution of programming directly to the public using the facilities of that common carrier;

(*g*) require any licensee who is authorized to carry on a distribution undertaking to give priority to the carriage of broadcasting; and

(*h*) require 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.

History: This section combines the licensing powers of the Executive Committee of the CRTC under section 6 of the *Broadcasting Act*, R.S.C. 1985, c.B-9, with certain powers of the full Commission under section 7 of the former Act. The maximum term of licence is increased from 5 to 7 years. Paragraphs 9(1)(*f*), (*g*) and (*h*) are new.

Commentary: The term "Executive Committee", which was used in the former Act to refer to the full-time members only, is now replaced with the term "Commission", since both full-time and part-time members have a vote on licensing matters under the new Act, if they have been assigned to a panel hearing the particular application under section 20.

Pursuant to paragraph (*a*), the Commission has established new classes of licence corresponding to the three major types of broadcasting undertakings, namely, programming undertakings, distribution undertakings and networks. See *New Broadcasting Act -- Amendments to Classes of Licence*, CRTC Public Notice 1991-63, June 19, 1991, set out below at §271.

Under the previous Act, the Commission could not amend the conditions of a licence during its currency except upon the application of the licensee: see *John Graham & Co. Ltd. et al. v. CRTC*, [1976] 2 F.C. 82, 68 D.L.R. (3d) 110 (Fed.C.A.). This provided some stability for the terms of licence, since such terms could be changed without the licensee's consent only upon renewal. In the new Act, the maximum licence term is extended from 5 to 7 years. Once the licence is issued, the principle that the Commission cannot unilaterally amend a licence during the term continues to apply, subject however to a rule that in the last two years of a seven year licence, the CRTC is permitted to amend a licence on its own motion without the licensee's consent.

Paragraphs (*f*), (*g*) and (*h*) are new provisions of the Act.

Paragraph (*f*) gives the CRTC the additional power to require licensees to obtain the approval of the Commission before entering into common carrier contracts. This is intended to tie together with contemporaneous amendments to section 340 of the *Railway Act* which allow the CRTC to approve discriminatory telecommunications tariffs in furtherance of broadcasting policy. See section 340(3.3) of the *Railway Act*, added by S.C. 1991, c.11, s.87(1). In a clause-by-clause analysis of Bill C-136 prepared by the Department of Communications dated August 1988 the following comments were made on paragraph (*f*):

> "At present, CRTC regulations require cable companies to own the crucial parts of their plant (the head-end and the lines from the telephone pole into the home) but permit leasing of the remainder from the telephone companies, as long as these arrangements do not compromise the reliable delivery of broadcast services to cable subscribers. If the cable facilities were entirely leased from the phone companies, which under existing law have no authority to give priority to broadcasting services, the Commission would have no assurance that authorized cable system transmissions would in fact be delivered to subscribers' homes.
>
> "New technologies such as fibre optics could lead to new types of plant arrangements based on cable sharing of telephone company fibre facilities. It could therefore be beneficial to adopt a technology neutral regulation which allows the Commission to regulate regardless of the technology chosen for delivery. The new Act will give the Commission explicit authority to regulate these new types of arrangements. To ensure that broadcasting objectives are accorded priority under any such new arrangement, a consequential amendment to the *Railway Act* is included in this Bill...
>
> "This provision would also apply to arrangements between satellite carriers, such as Telesat, and satellite-delivered programming services which are available direct-to-home, such as First Choice and Cancom."

For a discussion of the meaning of the term "telecommunications common carrier", see the commentary above at §104-47.

Paragraphs (*g*) and (*h*) respond to Recommendation 57 of the Sixth Report of the Standing Committee on Communications and Culture, May 6, 1987, at p.92, which stated that "the Commission should continue to have the power to establish conditions respecting the carriage of programming services by distribution undertakings." In fact, the Commission has already exercised these powers in its regulations and licence conditions applicable to cable television, and its authority to do so even when the programming services did not qualify as "broadcasting" under the old Act was upheld in *R. v. Shellbird Cable Ltd.* (1982), 67 C.P.R. (2d) 148 (Nfld. C.A.). Under this reading, therefore, paragraphs (*g*) and (*h*) simply make the Commission's authority explicit in these areas. At the same time, by moving these powers to separate paragraphs of subsection 9(1), the Act makes it possible to the Commission to issue orders relating thereto during the term of a licence, rather than waiting for renewal, or an application by the licensee therefor.

In a clause-by-clause analysis of Bill C-136 prepared by the Department of Communications dated August 1988 the following comments were made on paragraph (*h*):

> "This clause provides a clear statutory basis for the Commission's priority carriage regulations (already enacted in the Cable Regulations). The 1968 Act was silent on such a power. It would also allow the CRTC to require carriage of a particular service such as, for example, TV-5, a second CBC service, or the alternative programmer... This is one of the clauses in which the "cable-as-gatekeeper" problem is addressed. It ensures that the cable industry

cannot frustrate the licensing of new satellite to cable services simply by refusing to carry them."

Under section 28 of the Act, below at §104-120, the Governor in Council has the power to set aside or refer back for reconsideration a decision to issue, amend or renew a licence. However, the section does not give the Governor in Council the power to set aside or refer back any orders issued by the Commission under paragraphs (*a*), (*e*), (*f*), (*g*) or (*h*).

Recent CRTC Decisions: From time to time the CRTC issues short term "administrative renewals" of licenses, usually for one year. For a case that addressed the impact of such renewals on terms and conditions continued in the original licence as amended, see Decision CRTC 91-496, July 18, 1991. There the CRTC held that an administrative extension carried forward all such terms and conditions. For cases where the CRTC has declined to renew a licence, generally for failure to become operational, see Decision CRTC 91-610, August 20, 1991; Decision CRTC 91-775, September 27, 1991; and Decision CRTC 89-267, May 16, 1989.

[§104-65]

(2) **Restriction re conditions.**--Notwithstanding subsections (1) and 28(3), no licence of a distribution undertaking may be made subject to a condition that requires the licensee to substitute replacement material for commercial messages carried in a broadcasting signal received by that licensee.

[§104-66]

(3) **Exception.**--Subsection (2) does not apply in respect of a condition of a licence renewed after October 4, 1987 where before that date the licensee was complying with such a condition.

History: Based on subsections 7(2) and (3) of the *Broadcasting Act*, R.S.C. 1985, c.B-9, added by the *Canada-United States Free Trade Agreement Implementation Act*, S.C.1988, c.65, s.50(1), effective January 1, 1989.

Commentary: Subsections 9(2) and (3) were added to the *Broadcasting Act* in 1989 to implement Article 2006, subparagraph 3(*a*)(vi) of the *Canada-United States Free Trade Agreement*. For the text of the relevant provisions of the *Canada-U.S.Free Trade Agreement*, see *Canadian Communications Law and Policy*, Volume 1 (1988), at §290-1. Article 2006 is set out at §290-76.

Subsection 50(2) of the *Canada-United States Free Trade Agreement Implementation Act*, S.C.1988, c.65, reads as follows:

> (2) Where a licence of a broadcasting receiving undertaking issued or renewed after October 4, 1987 is subject to a condition to which it could not be made subject by virtue of subsection 7(1) of the *Broadcasting Act*, had that subsection been in force when the licence was issued or renewed, the condition ceases to have effect on the coming into force of this section, unless before October 4, 1987 the licensee was complying with that condition.

Because of the use of the word "before", the exemption would appear to grandfather not only cable television systems in Calgary which were implementing the licence condition requiring commercial deletion as of October 4, 1987, but also systems in Edmonton which were previously carrying out commercial deletion.

Note also section 27, below at §104-116, which authorizes the Governor in Council to issue directions of general application to the Commission respecting the manner in which the Commission shall apply or interpret paragraph 3 of Article 2006 of the FTA.

[§104-67]

(4) **Exemptions.**--The Commission shall, by order, on such terms and conditions as it deems appropriate, exempt persons who carry on broadcasting undertakings of any

class specified in the order from any or all of the requirements of this Part or of a regulation made under this Part where the Commission is satisfied that compliance with those requirements will not contribute in a material manner to the implementation of the broadcasting policy set out in subsection 3(1). [1991, c.11, s.9.]

History: This is an expanded version of section 7(1)(*e*) of the previous Act, which permitted the CRTC to "exempt persons carrying on broadcasting receiving undertakings of any class from the requirement that they hold broadcasting licences." The new provision applies to all classes of undertakings and allows the CRTC to exempt a person from all or any part of the requirements of Part I or of a regulation made under Part I.

Commentary: Under the previous Act, the CRTC had issued two exemption orders, namely, *Master Antenna Television Systems (MATV) Exemption Order*, Public Notice CRTC 1989-47, May 18, 1989, since superseded by the amended version set out below at §152, and *Resource Development Installations Exemption Order*, Public Notice CRTC 1981-79, October 19, 1981, set out below at §151. Since the proclamation of the Act, the Commission has issued over a dozen additional exemption orders (set out below at §153 to §165 inclusive), and has proposed a number of others (see below at §166, §167 and §168).

The expansion of the CRTC power to exempt undertakings from licensing and regulation responds to Recommendations 12 and 13 of the Sixth Report of the Standing Committee on Communications and Culture, May 6, 1987. Subsection (4) allows the Commission to choose which requirements in the Act would still be applicable to persons otherwise exempted. However, it is not clear if the Commission could exempt a person from the requirement to obtain a licence but not exempt that person from the regulations, since the framework of the Act is that regulations only apply to licensees. See subsection 10(2), below at §104-69.

[§104-68]

10. (1) **Regulations generally.**--The Commission may, in furtherance of its objects, make regulations

(*a*) respecting the proportion of time that shall be devoted to the broadcasting of Canadian programs;

(*b*) prescribing what constitutes a Canadian program for the purposes of this Act;

(*c*) respecting standards of programs and the allocation of broadcasting time for the purpose of giving effect to the broadcasting policy set out in subsection 3(1);

(*d*) respecting the character of advertising and the amount of broadcasting time that may be devoted to advertising;

(*e*) respecting the proportion of time that may be devoted to the broadcasting of programs, including advertisements or announcements, of a partisan political character and the assignment of such time on an equitable basis to political parties and candidates;

(*f*) prescribing the conditions for the operation of programming undertakings as part of a network and for the broadcasting of network programs, and respecting the broadcasting times to be reserved for network programs by any such undertakings;

(*g*) respecting the carriage of any foreign or other programming services by distribution undertakings;

(*h*) for resolving, by way of mediation or otherwise, any disputes arising between programming undertakings and distribution undertakings concerning the carriage of programming originated by the programming undertakings;

(*i*) requiring licensees to submit to the Commission such information regarding their programs and financial affairs or otherwise relating to the conduct and management of their affairs as the regulations may specify;
(*j*) respecting the audit or examination of the records and books of account of licensees by the Commission or persons acting on behalf of the Commission; and
(*k*) respecting such other matters as it deems necessary for the furtherance of its objects.

History: Based on subsection 6(1) of the *Broadcasting Act*, R.S.C. 1985, c.B-9, but expanded by adding paragraphs (*b*), (*g*), (*h*) and (*j*), which are new powers of the Commission.
Commentary: The powers given to the CRTC under paragraphs (*a*) and (*b*) had always been implicitly assumed under paragraph 6(1)(*i*) of the previous Act, which enabled the Commission to make regulations "respecting standards of programs and the allocation of broadcasting time for the purpose of giving effect to paragraph 3(*d*)." Paragraph 6(1)i) is now restated as paragraph 10(1)(*c*) above.

In the 15th Report of the Standing Committee on Communications and Culture, June 9, 1988, Recommendation 59 at p.173 stated that "[t]he CRTC must ensure that its definition of a Canadian program will result in Canadian performance programming that reflects the objectives of Canadian broadcasting policy as stated in *Broadcasting Act*."

Paragraph 10(1)(*d*) ("respecting the character of advertising and the amount of broadcasting time that may be devoted to advertising") uses the same language as in paragraph 6(1)(*b*)(ii) of the previous Act. There has always been a question as to whether this paragraph permits the Commission to enact regulations which prohibit the advertising of certain products or services. In a written submission to the Standing Committee dated January 31, 1990, at p.36, the CRTC noted that the wording might preclude it "from pre-clearing and rejecting alcoholic beverage, food and drug advertisements." Apart from the ambit of the wording of paragraph 10(1)(*d*), it should be noted that pre-clearance systems raise difficult administrative law problems when they substitute a case-by-case discretion for a regulatory regime. See *Verdun v. Sun Oil Limited*, [1952] 1 S.C.R. 222, [1952] 1 D.L.R. 529.

At the same time, under paragraph 10(1)(*c*) of the Act, the CRTC is authorized to make regulations respecting "standards of programs". The term "programs" has been defined in section 2 so as to include "advertising", so that the Commission might arguably prohibit advertising that in its view fell below acceptable standards. See the commentary at §104-16 above.

In that connection, reference should be made to the leading case on the power of the CRTC to enact regulations under the previous Act, namely, *CKOY Ltd. v. The Queen*, [1979] 1 S.C.R. 2, 90 D.L.R. (3d) 1 (S.C.C.). That case established that given the policy of the Act that programs should be of high standard, the CRTC could enact regulations to prohibit an undesirable broadcasting technique, i.e. airing a telephone interview without the consent of the interviewee.

Paragraph 10(1)(*g*) is a new power, although it had been assumed to exist under the omnibus authority of the CRTC in paragraph 6(1)((x) of the previous Act. The word "respecting" permits regulations which prohibit the carriage of foreign or other programming services as well as regulations prescribing how they are to be carried.

The addition of paragraph 10(1)(*h*) was specifically addressed in the Sixth Report of the Standing Committee on Communications and Culture, May 6, 1987, in Recommendation 52, which stated that "[t]he CRTC should be given the power to arbitrate the terms and conditions contained in affiliation agreements between distribution undertakings and network operators." Paragraph 10(1)(*h*) is in fact a somewhat wider power. In a clause-by-clause analysis of Bill C-136 dated August 1988 prepared by the Department of Communications, the following statement was made on paragraph (*h*):

> "Gaining access to cable distribution on equitable terms can be a point of contention between the cable industry and some satellite programming services. These disputes become more common as some cable systems approach full utilization of their usable channels.
>
> "Providing the Commission with an explicit mediation power will give programmers a safety valve should negotiations with cable reach a stalemate. It will also enable the CRTC to ensure equitable treatment for all licensed services in those situations where a cable

company is allowed to invest in certain programming services and allegations are made that the cable company is giving its services preferential treatment.

"This is one of the responses to the 'cable as gatekeeper' problem, and while it may not be enthusiastically received by the cable industry, it should be seen as preferable to the solution of simply excluding cable from programming activities."

Pursuant to the power given to it in paragraph 10(1)(*h*), the Commission in 1994 added provisions to the *Cable Television Regulations, 1986*, to create a mediation and arbitration mechanism. For the text of these provisions, see below at §133-140.

For a discussion of the meaning of the word "originated" in paragraph (*h*), see the commentary above at §104-29. Note that the word "originated" in paragraph (*h*) is translated by the word "transmettent" in the French version of the Act.

The audit clause in paragraph 10(1)(*j*) is a new power.

[§104-69]

(2) **Application.**--A regulation made under this section may be made applicable to all persons holding licences or to all persons holding licences of one or more classes.

History: This subsection is based on wording originally set out in the preamble of section 6(1) of the *Broadcasting Act*, R.S.C. 1985, c.B-9.

Commentary: In the old Act, it was clear from the placement of this phrase that regulations enacted by the CRTC could apply directly *only* to persons holding licences or to all persons holding licences of one or more classes. By virtue of s.21 of the *Criminal Code*, discussed further below at §104-134, persons aiding or abetting a licensee to commit a breach of the regulations would also be considered to be committing the offence; however, in order to constitute the offence, the regulation would need to have been breached by a licensee.

In the new Act, while the matter is not as clear, the fact that the statute specifically stipulates that regulations apply to persons holding licensees may give rise to a presumption that no other persons were intended to be covered by such regulations. If that is the case, the Commission may also be precluded from making its regulations applicable to person exempted from the requirement to obtain a licence under subsection 9(4) of the Act. However, it could presumably achieve much the same result by incorporating a requirement to comply with the regulations as a term of condition of the exemption order.

For cases discussing the implications of a possible overlap between regulations and licence conditions, see *Canadian Communications Law and Policy*, Volume 1 (1988), at §355-247 (CTV) and §355-332 (*Maclean-Hunter*).

[§104-70]

(3) **Publication of proposed regulation.**--A copy of each regulation that the Commission proposes to make under this section shall be published in the *Canada Gazette* and a reasonable opportunity shall be given to licensees and other interested persons to make representations to the Commission with respect thereto. [1991, c.11, s.10]

History: Substantially the same as subsection 6(2) of the *Broadcasting Act*, R.S.C. 1985, c.B-9.

[§104-71]

11. (1) **Regulations respecting licence fees.**--The Commission may make regulations (*a*) with the approval of the Treasury Board, establishing schedules of fees to be paid by licensees of any class;

(*b*) providing for the establishment of classes of licensees for the purposes of paragraph (*a*);

(*c*) providing for the payment of any fees payable by a licensee, including the time and manner of payment;

(*d*) respecting the interest payable by a licensee in respect of any overdue fee; and

(*e*) respecting such other matters as it deems necessary for the purposes of this section.

[§104-72]

(2) **Criteria.**--Regulations made under paragraph (1)(*a*) may provide for fees to be calculated by reference to any criteria that the Commission deems appropriate, including by reference to

(*a*) the revenues of the licensees;

(*b*) the performance of the licensees in relation to objectives established by the Commission, including objectives for the broadcasting of Canadian programs; and

(*c*) the market served by the licensees.

[§104-73]

(3) **Exceptions.**--No regulations made under subsection (1) shall apply to the Corporation or to licensees carrying on programming undertakings on behalf of Her Majesty in right of a province.

[§104-74]

(4) **Debt due to Her Majesty.**--Fees payable by a licensee under this section and any interest thereon constitute a debt due to Her Majesty in right of Canada and may be recovered as such in any court of competent jurisdiction.

[§104-75]

(5) **Publication of proposed regulations.**--A copy of each regulation that the Commission proposes to make under this section shall be published in the *Canada Gazette* and a reasonable opportunity shall be given to licensees and other interested persons to make representations to the Commission with respect thereto. [1991, c.11, s.11]

History: Paragraph 11(1)(*a*) is based on paragraph 6(1)(vii) of the *Broadcasting Act*, R.S.C. 1985, c.B-9, which gave the Commission the authority to make regulations "with the approval of the Treasury Board, fixing the schedules of fees to be paid by licensees and providing for the payment thereof". The remainder of section 11 is new.

Commentary: This section is an expansion of the power of the CRTC to set licence fees. The expanded section reflects the intent of the government to make it possible for the CRTC to develop a "performance incentive" system as part of the regulations. For a description of how the incentive might work, see *Canadian Voices: Canadian Choices -- A New Broadcasting Policy for Canada*, June 23, 1988, at pp.30-32.

In the absence of the statement in subsection (2), there would be an implied obligation for the CRTC to set aggregate licence fees so as to recover no more than the costs associated with regulation: see *Attorney-General of Canada v. Compagnie de Publication La Presse Ltee*, [1967] S.C.R. 60, 63 D.L.R. (2d) 396 (S.C.C.). Under subsection 10(2) of the new Act, the fees can reflect "any criteria that the Commission deems appropriate".

By virtue of subsection 11(3), both the CBC and provincial Crown broadcasters are exempt from the requirement to pay licence fees. The CRTC *Broadcasting Licence Fee Regulations* enacted under the previous Act had in fact exempted the CBC; provincial educational broadcasters had paid a minimum fee of $25 per year, since the fee was calculated as a percentage of advertising revenue above $1.5 million.

Subsection (4) matches subsection 340.1(3) of the *Railway Act*, which was added in S.C. 1986, c.49, s.1, to enable the CRTC to impose fees on telecommunications carriers under its jurisdiction.

Subsection (5) repeats the language of subsection 10(3), above at §104-70.

[§104-76]

12. (1) **Inquiries.**--Where it appears to the Commission that

(*a*) any person has failed to do any act or thing that the person is required to do pursuant to this Part or to any regulation, licence, decision or order made or issued by the Commission under this Part, or has done or is doing any act or thing in contravention of this Part or of any such regulation, licence, decision or order, or

(*b*) the circumstances may require the Commission to make any decision or order or to give any approval that it is authorized to make or give under this Part or under any regulation or order made under this Part,

the Commission may inquire into, hear and determine the matter.

[§104-77]

(2) **Mandatory orders.**--The Commission may, by order, require any person to do, forthwith or within or at any time and in any manner specified by the Commission, any act or thing that such person is or may be required to do pursuant to this Part or to any regulation, licence, decision or order made or issued by the Commission under this Part and may, by order, forbid the doing or continuing of any act or thing that is contrary to this Part or to any such regulation, licence, decision or order.

[§104-78]

(3) **Referral to Commission.**--Where an inquiry under subsection (1) is heard by a panel established under subsection 20(1) and the panel issues an order pursuant to subsection (2) of this section, any person who is affected by the order may, within thirty days after the making thereof, apply to the Commission to reconsider any decision or finding made by the panel, and the Commission may rescind or vary any order or decision made by the panel or may rehear any matter before deciding it. [1991, c.11, s.12]

History: New.

Commentary: This section together with section 13 gives the CRTC a significant new power over licensees and other affected persons, namely, to issue mandatory orders and to enlist the courts in order to enforce such orders.

The model for this approach was sections 49 and 64 of the *National Telecommunications Powers and Procedures Act*, R.S.C. 1985, c.N-20, (later repealed and now reflected in sections 51 and 63 of the *Telecommunications Act*, S.C. 1993, c.38) which give a similar authority to the CRTC in regard to orders respecting telecommunications carriers made under the *Railway Act*. Sections 49 and 64 have been in the predecessor railway statutes since 1919.

There is a significant difference in the two regimes. Under the *Railway Act*, any application that is brought to the CRTC could have been said to be brought by virtue of section 49 of the *National*

Telecommunications Powers and Procedures Act, and any order or decision of the Commission, whether or not it was made under section 49, could be filed with the court under section 64. All such orders or decisions were subject to Commission review and variance by virtue of section 66; moreover, by virtue of section 52, the Commission could act on its own motion as if an application had been made to it.

The *Broadcasting Act* regime is quite different. Only mandatory orders made under subsection 12(2) can be filed with and enforced by the courts, not any decision or order made by the Commission. Moreover, unlike decisions or orders made by a panel relating to the issuance, amendment, renewal or suspension of licences made under section 9 which are final and conclusive by virtue of subsection 31(1), the Commission can rehear and vary any mandatory orders made by a panel under subsection 12(2).

Despite the broad language of subsections 12(1) and (2), it would not appear that the Commission could issue a mandatory order under subsection 12(2) unless there was a clear requirement or prohibition expressed elsewhere in the Act, e.g. the prohibition of carrying on a broadcasting undertaking without a licence in subsection 32(1), in one of its already issued or within its capacity to issue under section 9. Recalling that under section 9, the Commission cannot amend a condition of licence or add new conditions of licence during the first 5 years of a licence term except upon application of the licensee, it would not appear that it could issue a mandatory order having the same effect under subsection 12(2) within that 5 year period, unless it could find authority to do so of its own motion elsewhere in the Act.

The phrase "any person" in subsection 12(2) clearly extends to persons other than licensees. For example, the Commission could issue a mandatory order directed towards a person carrying on a broadcasting undertaking without a licence contrary to subsection 32(1) of the Act, or to a person aiding or abetting such a person, since such a person is made an equal party to an offence under section 32(1) by virtue of section 21 of the *Criminal Code*.

For the text of mandatory orders issued by the CRTC prohibiting the operations of broadcasting undertakings transmitting without a licence or applicable exemption order foreign religious programming obtained from a foreign satellite feed, see Public Notice CRTC 1992-34, May 8, 1992.

[§104-79]

13. (1) **Enforcement of mandatory orders.**--Any order made under subsection 12(2) may be made an order of the Federal Court or of any superior court of a province and is enforceable in the same manner as an order of the court.

[§104-80]

(2) **Procedure.**--To make an order under subsection 12(2) an order of a court, the usual practice and procedure of the court in such matters may be followed or, in lieu thereof, the Commission may file with the registrar of the court a certified copy of the order, and thereupon the order becomes an order of the court.

[§104-81]

(3) **Effect of variation or rescission.**--Where an order that has been made an order of a court is rescinded or varied by a subsequent order of the Commission, the order of the court shall be deemed to have been cancelled and the subsequent order may, in the same manner, be made an order of the court. [1991, c.11, s.13]

History: New.

Commentary: This section was modelled after section 64 of the *National Telecommunications Powers and Procedures Act*, R.S.C. 1985, c.N-20. See the commentary under §104-78 above.

Once the CRTC order is filed with the court, persons disobeying the order would be guilty of contempt of court. If the order is filed with the Federal Court, the following provisions of the *Federal Court Rules*, C.R.C. 1978, c.663, as amended, apply:

Rule 355. (1) Anyone is guilty of contempt of court who disobeys any process or order of the court or a judge thereof...

(2) Except where otherwise provided, anyone who is guilty of contempt of court is liable to a fine, which in the case of an individual shall not exceed $5,000, or to imprisonment for a period not exceeding one year. Imprisonment, and in the case of a corporation a fine, for refusal to obey any process or order may be repeatedly inflicted until the person condemned obeys.

(3) ...

(4) No one may be condemned for contempt of court committed out of the presence of the judge, unless he has been served with a show cause order ordering him to appear before the Court, on the day at the hour fixed to hear proof of the acts with which he is charged and to urge any grounds of defence that he may have. The show cause order issued by the judge of his own motion or on application must be served personally, unless for valid reasons another mode of service is authorized. The application for the issuance of the show cause order may be presented without its being necessary to have it served.

(5) The procedure set out in paragraph (4) is without prejudice to an application for committal under Division 1 of Part VII. The two methods of proceeding are alternatives and when one has been acted on, the other cannot be invoked. the other provisions in this Rule are without prejudice to the inherent powers of the Court; and both this Rule and the inherent powers can be invoked on any appropriate occasion...

Rule 1903. (1) Where

(*a*) a person required by a judgment or order to do an act within a time specified in the judgment or order refuses or neglects to do it within that time or, as the case may be, within that time as extended or abridged under these Rules, or

(*b*) a person disobeys a judgment or order requiring him to abstain from doing an act,

then, subject to the provision os these Rules, the judgment or order may be enforced by one or more of the following means, that is to say,

(i) with the leave of the Court, a writ of sequestration against the property for that person,

(ii) where that person is a body corporate, with the leave of the Court, a writ of sequestration against the property of any director or other officer of the body,

(iii) except where it is an order for payment of a debt or other obligation, with the leave of the Court, an order of committal against that person or, where that person is a body corporate, against any such officer.

(2) Where a judgment or order requires a person to do an act within a time therein specified and an order is subsequently made under Rule 1904 requiring the act to be done within some other time, references in paragraph (1) to a judgment or order shall be construed as references to the order made under Rule 1904...

Rule 2500. (1) The power of the Court to punish for contempt of court may be exercised by an order of committal.

(2) An application for an order of committal shall be made by motion and there must be at least 8 clear days between the service of the notice of motion and the day named therein for the hearing.

(3) Subject to paragraph (4), the notice of motion and a copy of the affidavit in support must be served personally on the person sought to be committed.

(4) The Court may dispense with service of the notice of motion and affidavit under this Rule if it thinks it just to do so.

(5) Nothing in the foregoing provision os this Rule shall be taken as affecting the power of the Court to make an order to committal of its own motion against a person guilty of contempt of Court.

(6) By leave of the Court, a writ of attachment may issue (Form 71) and a writ so issued shall be executed according to the exigency thereof.

(7) The person attached shall, without delay, be brought before the Court and if, after he has been given a full opportunity to answer what is alleged against him, the Court is satisfied that it is just to do so, the Court may order him to be committed (Forms 72 and 73).

(8) The order for committal shall be executed by the appropriate sheriff or such other person as may be designated by the order.

(9) The Court may by order direct that the execution of an order of committal shall be suspended for such period or on such terms or conditions as it may specify.

(10) Where execution of an order of committal is suspended by an order under paragraph (9), the applicant for the order of committal shall, unless the court otherwise directs, serve on the person against whom it was made a notice informing him of the making and terms of the order under that paragraph.

(11) The Court may, on the application of any person committed to prison for any contempt of court, or on the application of any other party or of its own motion discharge him.

(12) Where a person has been committed for failing to comply with a judgment or order requiring him to deliver any thing to some other person or to deposit it in court or elsewhere, and a writ of sequestration has also been issued to enforce that judgment or order, then, if the thing is in the custody or power of the person committed, the commissioners appointed by the writ of sequestration may take possession of it as if it were the property of that person and, without prejudice to the generality of paragraph (11), the Court may discharge the person committed and may give such directions for dealing with the thing taken by the commissioners as it thinks fit.

(13) Nothing in the foregoing provisions of this Rule shall be taken as affecting the power of the court to make an order requiring a person guilty of contempt of court, or a person punishable by virtue of any enactment in like manner as if he had been guilty of contempt of court, to pay a fine or to give security for his good behaviour, and those provisions, so far as applicable, and with the necessary modifications, shall apply in relation to an application for such an order as they apply in relation to an application for an order of committal.

(14) Nothing in the foregoing provisions of this Rule shall be taken as affecting the power of the court under Rule 355.

In cases where the CRTC order is filed with a superior court of a province, contempt proceedings to enforce such orders are governed by the Rules of Procedure of the particular court, or by the inherent jurisdiction of the superior courts to punish for contempt. In ontario, for example, motions for contempt orders may be obtained under the provisions of Rule 60.11 of the *Rules of Civil Procedure,* O.Reg. 560/84, as amended, which reads as follows:

Rule 60.11 (1) A contempt order to enforce an order requiring a person to do an act, other than the payment of money, or to abstain from doing an act, may be obtained only on motion to a judge in the proceeding in which the order to be enforced was made.

(2) The notice of motion shall be served personally on the person against whom a contempt order is sought, and not be an alternative to personal service, unless the court orders otherwise.

(3) An affidavit in support of a motion for a contempt order may contain statements of the deponent's information and belief only with respect to facts that are not contentious, and the source of the information and the fact of the belief shall be specified int he affidavit.

(4) A judge may issue a warrant (Form 60J) for the arrest of the person against whom a contempt order is sought where the judge is of the opinion that the person's attendance at the hearing is necessary in the interest of justice and it appears that the person is not likely to attend voluntarily.

(5) In disposing of a motion under subrule (1) the judge may make such other as is just and where a finding of contempt is made, the judge may order that the person in contempt.

(*a*) be imprisoned on such period and on such terms as are just;
(*b*) be imprisoned if he or she fails to comply with a term of the order;
(*c*) pay a fine;
(*d*) do or refrain from doing an act;
(*e*) pay such costs as are just; and
(*f*) comply with any other order that the judge considers necessary, and may grant leave to issue a writ of sequestration under rule 60.09 against the person's property.

(6) Where a corporation is in contempt, the judge may also make an order under subrule (5) against any officer or director of the corporation and may grant leave to issue a writ of sequestration under rule 60.09 against his or her property.

(7) An order under subrule (5) for imprisonment may be enforced by the issue of a warrant of committal (Form 60K).

(8) On motion, a judge may discharge, set aside, vary or give directions in respect of an order under subrule (5) or (6) and may grant such other relief and make such other order as is just.

(9) Where a person fails to comply with an order requiring him or her to do an act, other than the payment of money, a judge on motion may, instead of or in addition to making a contempt order, order the act to be done, at the expense of the disobedient person, by the party enforcing the order or any other person appointed by the judge.

(10) The party enforcing the order and any person appointed by the judge are entitled to the costs of the motion under subrule (9) and the expenses incurred in doing the act ordered to be done, fixed by the judge or assessed by an assessment officer in accordance with Rule 58.

It is also important to note that section 127(1) of the *Criminal Code* provides as follows:

"Every one who, without lawful excuse, disobeys a lawful order made by a court of justice or by a person or body of persons authorized by any Act to make or give the order, other than an order for the payment of money, is, unless a punishment or other mode of proceeding is expressly provided by law, guilty of an indictable offence and liable to imprisonment for a term not exceeding two years."

It has been held that the inherent power of the court to punish for contempt is not a mode of proceeding expressly provided by law within the meaning of the exception so as to bar a conviction under subsection 127(1) of the *Criminal Code: R. v. Clement* (1981), 61 C.C.C. (2d) 449, 23 C.R. (3d) 193, [1981] 2 S.C.R. 468.

[§104-82]

14. (1) **Research.**--The Commission may undertake, sponsor, promote or assist in research relating to any matter within its jurisdiction under this Act and in so doing it shall, wherever appropriate, utilize technical, economic and statistical information and advice from the Corporation or departments or agencies of the Government of Canada.

[§104-83]

(2) **Review of technical matters.**--The Commission shall review and consider any technical matter relating to broadcasting referred to the Commission by the Minister and shall make recommendations to the Minister with respect thereto. [1991, c.11, s.14]

History: Subsection 14(1) is comparable to section 9(1) of the *Broadcasting Act*, R.S.C. 1985, c.B-9. Subsection 14(2) is based on paragraph 7(1)(*f*) of the previous Act.

[§104-84]

15. (1) Hearings and reports.--The Commission shall, on request of the Governor in Council, hold hearings or make reports on any matter within the jurisdiction of the Commission under this Act.

[§104-85]

(2) **Consultation.**--The Minister shall consult the Commission with regard to any request proposed to be made by the Governor in Council under subsection (1). [1991, c.11, s.15]

History: New.

Commentary: There was no comparable provision to this in the *Broadcasting Act*, R.S.C. 1985, c.B-9. The section is based on language first proposed in Bill C-20, introduced on December 24, 1984. Among other matters, Bill C-20 would have added section 14.6 to the *Canadian Radio-television and Telecommunications Commission Act*, as follows:

> "The Governor in Council may require the Commission to hold hearings or to make reports on any matter that comes within the jurisdiction of the Commission."

Bill C-20 died on the order paper on August 28, 1986.

[§104-86]

16. Powers respecting hearings.--The Commission has, in respect of any hearing under this Part, with regard to the attendance, swearing and examination of witnesses at the hearing, the production and inspection of documents, the enforcement of its orders, the entry and inspection of property and other matters necessary or proper in relation to the hearing, all such powers, rights and privileges as are vested in a superior court of record. [1991, c.11, s.16]

History: Same as subsection 10(7) of the *Broadcasting Act*,. R.S.C. 1985, c.B-9.

Commentary: For the application of this section in the context of a decision by the CRTC to deny intervener status, see *City of Edmonton v. Canadian Radio-television and Telecommunications Commission*, [1983] 1 F.C. 358 (F.C.T.D.) Cf. *Saskatchewan Telecommunications v. Canadian Radio-television and Telecommunications Commission et al.*, [1980] 1 F.C. 505 (F.C.T.D.)

[§104-87]

17. Authority re questions of fact or law.--The Commission has authority to determine questions of fact or law in relation to any matter within its jurisdiction under this Act. [1991, c.11, s.17]

History: New.

Commentary: This section is based on the model found in subsection 49(3) of the *National Telecommunications Powers and Procedures Act*, R.S.C. 1985, c.N-20, (since repealed) which reads as follows:

> "For the purposes of this Part and the *Railway Act*, the Commission has full jurisdiction to hear and determine all matters whether of law or of fact."

A similar but not identical provision is now found in section 52 of the *Telecommunications Act*, S.C. 1993, c.38.

In Bill C-40, this section was originally proposed as part of what is now section 12 of the Act, and limited to the inquiries and orders arising out of that section. At the suggestion of the CRTC, however, Bill C-40 was amended at the committee stage to move this into a separate section of the

Act, and made applicable to all matters within the Commission's jurisdiction under the *Broadcasting Act*.

By virtue of this section, it is clear that the CRTC has the authority to rule on the constitutionality of the *Broadcasting Act* and whether that Act or conditions, orders or regulations issued under it violate the *Canadian Charter of Rights and Freedoms,* although it can expect no curial deference with respect to constitutional decisions: *Cuddy Chicks Ltd. v. Ontario Labour Relations Board et al.*, [1991] 2 S.C.R. 5 (Supreme Court of Canada).

Hearings and Procedure

[§104-88]

18. (1) **Where public hearing required.**--Except where otherwise provided, the Commission shall hold a public hearing in connection with

(*a*) the issue of a licence, other than a licence to carry on a temporary network operation;

(*b*) the suspension or revocation of a licence;

(*c*) the establishing of any performance objectives for the purposes of paragraph 11(2)(*b*); and

(*d*) the making of an order under subsection 12(2).

[§104-89]

(2) **Idem.**--The Commission shall hold a public hearing in connection with the amendment or renewal of a licence unless it is satisfied that such hearing is not required in the public interest.

[§104-90]

(3) **Where public hearing in Commission's discretion.**-- The Commission may hold a public hearing, make a report, issue any decision and give any approval in connection with any complaint or representation made to the Commission or in connection with any other matter within its jurisdiction under this Act if it is satisfied that it would be in the public interest to do so.

[§104-91]

(4) **Place of hearing.**--A public hearing under this section may be held at such place in Canada as the Chairman of the Commission may designate. [1991, c.11, s.18]

History: This section re-enacts, with only minor changes, provisions found in subsections 10(1), (2), (3) and (6) of the *Broadcasting Act,* R.S.C. 1985, c.B-9.

Commentary: The Act maintains the somewhat confusing dichotomy in the previous Act between "hearing" and "public hearing". The latter term, which is used throughout section 18, appears to mean an oral hearing, particularly in view of the language of subsection 18(4), where a location is specified.

On the other hand, the term "hearing" alone is used in sections 15, 16 and 28 of the Act, suggesting that a hearing might in some cases be in writing, with no witnesses appearing before the Commission and all evidence being received in document form.

In a written submission to the Standing Committee dated January 31, 1990, at pp.36-38, the CRTC suggested that the Act be modified to make it clear that a public hearing may be an oral hearing or a written hearing. However, this change was not made.

The leading case on the meaning of the term "public hearing" in the context of access by the public to information respecting the application is the judgment of Jackett C.J. in *Re Canadian Radio-Television Commission and in re London Cable TV Ltd.*, [1976] 2 F.C. 621, 67 D.L.R. (3d) 267 (Fed.C.A.) That judgment established the right of interveners to financial statements and projections filed by a cable system seeking a rate increase. However, the court declined to order access to certain staff documents, or to require the CRTC to permit cross-examination.

The denial by the Commission of the right to cross-examine in a hearing involving an application to acquire control of a cable television system was later upheld in *Lipkovits, Joy and Association of Public Broadcasting in British Columbia v. Canadian Radio-television and Telecommunications Commission et al.*, [1983] 2 F.C. 321 (Fed. C.A.).

[§104-92]

19. Notice of hearing.-- The Commission shall cause notice of

(*a*) any application received by it for the issue, amendment or renewal of a licence, other than a licence to carry on a temporary network operation,

(*b*) any decision made by it to issue, amend or renew a licence, and

(*c*) any public hearing to be held by it under section 18

to be published in the *Canada Gazette* and in one or more newspapers of general circulation within any area affected or likely to be affected by the application, decision or matter to which the public hearing relates. [1991, c.11, s.19]

History: This section is essentially the same as subsections 11(1) and (2) of the *Broadcasting Act*, R.S.C. 1985, c.B-9.

[§104-93]

20. (1) **Panels of Commission.**--The Chairman of the Commission may establish panels, each consisting of not fewer than three members of the Commission, at least two of whom shall be full-time members, to deal with, hear and determine any matter on behalf of the Commission.

[§104-94]

(2) **Powers.**--A panel that is established under subsection (1) has and may exercise and perform all the duties and functions of the Commission in relation to any matter before the panel.

[§104-95]

(3) **Decision.**--A decision of a majority of the members of a panel established under subsection (1) is a decision of the panel.

[§104-96]

(4) **Consultation.**--The members of a panel established under subsection (1) shall consult with the Commission, and may consult with any officer of the Commission, for the purpose of ensuring a consistency of interpretation of the broadcasting policy set out in subsection 3(1), the regulatory policy set out in subsection 5(2) and the regulations made by the Commission under sections 10 and 11. [1991, c.11, s.20]

History: Based on subsections 10(4) and (5) of the *Broadcasting Act*, R.S.C. 1985, c.B-9, but with significant revisions.

Commentary: This section introduces the concept that the Commission should decide matters through hearing panels. Under the previous Act, the Commission had the right to have panels of Commissioners *hear* applications; however, the actual decisions were required to be taken by a majority of the full-time members after consultation with a majority of the part-time members. As held in the leading case of *Canadian Radio-television and Telecommunications Commission* v. *CTV Television Network Limited et al.*, [1982] 1 S.C.R. 530, 134 D.L.R. (3d) 193 (S.C.C.), the rule that "those who hear, decide" did not apply to the Commission because of the specific statutory language stipulating that the quorum for decisions exceeded the quorum for hearings.

This has now been now changed. The hearing panel established by the Chairman to hear a particular matter, including both full-time and part-time members, now makes the decision on that matter, although before doing so, the panel is required to consult with the full Commission "for the purpose of ensuring a consistency of interpretation" of the policies and regulations.

In its submissions to the Standing Committee, the CRTC opposed the application of the "those who hear, decide" rule to its broadcasting proceedings. In particular, it made the following comments in a written submission dated January 30, 1990, at pp.13-14:

> "The Commission has had experience with the "they who hear, decide" approach and with the collegial approach. Both have advantages and drawbacks. In order to decide which best suits a situation, one has to look at the function being performed. In broadcasting regulation, which is basically cultural regulation, one has to recognize that the broadcasting industry is an evoling one, highly sensitive and complex, and thus each decision must be made in full awareness of its impact on the entire system. Decisions involving individual licensees should find their anchor in, and be consistent with, a national overview.
>
> "The current Act has guaranteed that each applicant will receive the considered judgement of the whole Commission. In arriving at its decisions, the Commission has benefited greatly from the discussion that takes place between all members and this has led to a consistency and quality of decision-making which would otherwise probably not be possible. It has also meant that all Commissioners are responsible for all decisions issued and all feel bound by them. We do not believe that the section of the proposed Act which requires panel members to consult with the Commission and which allows them to consult with officers of the Commission will ensure the consistency and quality of decisions. We believe that a "they who hear, decide" approach makes more sense for a fact finding body where the credibility of the witnesses is the central issue. The approach is more appropriate where there are detailed procedures and explicit rules which limit the scope of the decisions to be made. It makes little sense when applied to a body whose function it is to apply a parliamentary policy in order to ensure that the cultural identity of a nation is preserved and strengthened. In broadcasting matters generally, facts are seldom in issue -- it is the consequences which flow from those facts which must be determined."

Although the "those who hear, decide" rule would apply to public hearings held in regard to adjudicative matters, the CRTC is still free to deal with such matters on a collegial basis where it determines that a public hearing is not required and that it will simply proceed by way of a so-called "paper proceeding". In that event, no panel would have been appointed to deal with the matter under subsection 20(1). In addition, the CRTC can presumably deal with the issuance of policy guidelines and statements on a collegial basis even if a public hearing is called, since such statements are not binding under section 6 of the Act, and do not give rise to adjudicative rights. In the case of regulations or orders of a rule-making character, the CRTC can avoid the application of the "those who hear, decide" rule by conducting a paper proceeding. Alternatively, it may be that the chairman could appoint a panel for the limited purpose of investigating the matter through a public hearing held to hear representations, leaving the ultimate decision on the regulation or rule to the full Commission. However, this is not entirely clear from the wording of the Act.

[§104-97]

21. Rules.--The Commission may make rules

(*a*) respecting the procedure for making applications for licences, or for the amendment, renewal, suspension or revocation thereof, and for making representations and complaints to the Commission; and

(*b*) respecting the conduct of hearings and generally respecting the conduct of the business of the Commission in relation to those hearings. [1991, c.11, s.21]

History: Unchanged from section 12 of the *Broadcasting Act*, R.S.C. 1985, c.B-9.

Licences

[§104-98]

22. (1) **Conditions governing issue, amendment and renewal.**--No licence shall be issued, amended or renewed under this Part

(*a*) if the issue, amendment or renewal of the licence is in contravention of a direction to the Commission issued by the Governor in Council under subsection 26(1); and

(*b*) subject to subsection (2), unless the Minister certifies to the Commission that the applicant for the issue, amendment or renewal of the licence has satisfied the requirements of the *Radiocommunication Act* and the regulations made under that Act and has been or will be issued a broadcasting certificate with respect to the radio apparatus that the applicant would be entitled to operate under the licence.

[§104-99]

(2) **Exception.**-- The requirement set out in paragraph (1)(*b*) does not apply in respect of radio apparatus, or any class thereof, prescribed under paragraph 6(1)(*m*) of the *Radiocommunication Act*.

[§104-100]

(3) **Suspension or revocation of broadcasting certificate.**-- No licence is of any force or effect during any period when the broadcasting certificate issued under the *Radiocommunication Act* with respect to the radio apparatus that the holder of the licence is entitled to operate under that Act is suspended or revoked.

[§104-101]

(4) **Issue, etc., contravening this section.**-- Any licence issued, amended or renewed in contravention of this section is of no force or effect. [1991, c.11, s.22.]

History: Section 22 is based on section 13 of the *Broadcasting Act*, R.S.C. 1985, c.B-9, except that the specific list of matters upon which a direction can be issued by the Governor in Council has been moved to section 26, below at §104-112.

[§104-102]

23. (1) **Consultation between Commission and Corporation.**--The Commission shall, at the request of the Corporation, consult with the Corporation with regard to any conditions that the Commission proposes to attach to any licence issued or to be issued to the Corporation.

[§104-103]

(2) **Reference to Minister.**--If, notwithstanding the consultation provided for in subsection (1), the Commission attaches any condition to a licence referred to in subsection (1) that the Corporation is satisfied would unreasonably impede the Corporation in providing the programming contemplated by paragraphs 3(1)(*l*) and (*m*), the Corporation may, within thirty days after the decision of the Commission, refer the condition to the Minister for consideration.

[§104-104]

(3) **Ministerial directive.**--Subject to subsection (4), the Minister may, within ninety days after a condition is referred to the Minister under subsection (2), issue to the Commission a written directive with respect to the condition and the Commission shall comply with any such directive issued by the Minister.

[§104-105]

(4) **Consultation.**--The Minister shall consult with the Commission and with the Corporation before issuing a directive under subsection (3).

[§104-106]

(5) **Publication and tabling of directive.**--A directive issued by the Minister under subsection (3) shall be published forthwith in the *Canada Gazette* and shall be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the directive is issued. [1991, c.11, s.23]

History: Section 23 is based on section 8 of the *Broadcasting Act*, R.S.C. 1985, c.B-9.
Commentary: The only material change from the previous Act is that there is now a 30 day time limit for the exercise of a reference to the Minister by the CBC of conditions of licence set by the CRTC.

[§104-107]

24. (1) **Conditions governing suspension and revocation.**--No licence shall be suspended or revoked under this Part unless the licensee applies for or consents to the suspension or revocation or, in any other case, unless, after a public hearing in accordance with section 18, the Commission is satisfied that

(*a*) the licensee has contravened or failed to comply with any condition of the licence or with any order made under subsection 12(2) or any regulation made under this Part; or

(*b*) the licence was, at any time within the two years immediately preceding the date of publication in the *Canada Gazette* of the notice of the public hearing, held by a person to whom the licence could not have been issued at that time by virtue of a direction to the Commission issued by the Governor in Council under this Act.

[§104-108]

(2) **Licences of Corporation.**--No licence issued to the Corporation that is referred to in the schedule may be suspended or revoked under this Part except on application of or with the consent of the Corporation.

[§104-109]

(3) **Publication of decision.**--A copy of a decision of the Commission relating to the suspension or revocation of a licence, together with written reasons for the decision, shall, forthwith after the making of the decision, be forwarded by prepaid registered mail to all persons who were heard at or made any oral representations in connection with the hearing held under subsection (*l*), and a summary of the decision and of the reasons for the decision shall, at the same time, be published in the *Canada Gazette* and in one or more newspapers of general circulation within any area affected or likely to be affected by the decision. [1991, c.11, s.24]

History: Based on subsections 15(1) and (2) of the *Broadcasting Act*, R.S.C. 1985, c.B-9.

Commentary: There are two material changes in these provisions compared with the old ct. First, in the previous Act suspension or revocation of a licence could only be ordered for a breach of a condition of licence. In the new Act, a licence may also be suspended or revoked for a failure to comply with a mandatory order made under section 12(2) or for a breach of a regulation.

Second, the new Act adds subsection 24(2), which sets forth a schedule of licences issued to the CBC which cannot be suspended or revoked. (For the text of the Schedule, see below at §104-267).

Under the previous Act, no licence issued to the Corporation could be suspended or revoked. Under the new Act, only the so-called "core services" of the Corporation are so protected. In a clause-by-clause analysis of Bill C-136 dated August 1988 prepared by the Department of Communications, the following statement was made about this provision:

> "The schedule of CBC "core service" licences protects these from this clause, but leaves open any non-core services in which the CBC may have chosen to operate. The "core" services listed in the schedule -- and therefore not subject to licence revocation -- are the radio and television main network licences and the radio and television stations owned and operated by the Corporation. Specialty service licences held by the CBC alone or in concert with others (e.g. TV 5, All-News) would be subject to the same revocation procedures as other private or public (i.e. provincial, educational) licences."

Subsection (3) is the same as subsection 15(2) of the previous Act, except that the word "oral" is added before the word "representation". In a written submission dated January 31, 1990, filed with the Standing Committee, the CRTC urged that its obligation to serve a copy of the decision in this subsection be limited to those making oral representations at the hearing. In particular, the Commission expressed concern that the subsection might be read so as to require a copy of the decision to be served on each signatory to any petition filed with the Commission. However, the subsection was not amended as requested.

[§104-110]

25. (1) **Report of alleged contravention or non-compliance by Corporation.**--Where the Commission is satisfied, after a public hearing on the matter, that the Corporation has contravened or failed to comply with any condition of a licence referred to in the schedule, any order made under subsection 12(2) or any regulation made under this Part, the Commission shall forward to the Minister a report setting out the circumstances of the alleged contravention or failure, the findings of the Commission and any observations or recommendations of the Commission in connection therewith.

[§104-111]

(2) **Report to be tabled.**--The Minister shall cause a copy of the report referred to in subsection (1) to be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the report is received by the Minister. [1991, c.11, s.25]

History: Based on subsections 15(3) and (4) of the *Broadcasting Act*, R.S.C. 1985, c.B-9, without material change.

General Powers of the Governor in Council

[§104-112]

26. (1) **Directions.**--The Governor in Council may, by order, issue directions to the Commission

(*a*) respecting the maximum number of channels or frequencies for the use of which licences may be issued within a geographical area designated in the order;

(*b*) respecting the reservation of channels or frequencies for the use of the Corporation or for any special purpose designated in the order;

(*c*) respecting the classes of applicants to whom licences may not be issued or to whom amendments or renewals thereof may not be granted; and

(*d*) prescribing the circumstances in which the Commission may issue licences to applicants that are agents of a province and are otherwise ineligible to hold a licence, and the conditions on which those licences may be issued.

[§104-113]

(2) **Idem.**--Where the Governor in Council deems the broadcast of any program to be of urgent importance to Canadians generally or to persons resident in any area of Canada, the Governor in Council may, by order, direct the Commission to issue a notice to licensees throughout Canada or throughout any area of Canada, of any class specified in the order, requiring the licensees to broadcast the program in accordance with the order, and licensees to whom any such notice is addressed shall comply with the notice.

[§104-114]

(3) **Publication and tabling.**--An order made under subsection (1) or (2) shall be published forthwith in the *Canada Gazette* and a copy thereof shall be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the making of the order.

[§104-115]

(4) **Consultation.**--The Minister shall consult with the Commission with regard to any order proposed to be made by the Governor in Council under subsection (1). [1991, c.11, s.26]

History: Apart from paragraph 26(1)(*d*) and subsection (4), this section is substantially the same as subsections 18(1), 9(2) and 9(3) of the *Broadcasting Act*, R.S.C. 1985, c.B-9.

Commentary: Section 26 of the new Act sets out specific matters upon which the Governor in Council is authorized to issue directions to the Commission. These are based on the direction powers contained in paragraph 13(1)(*a*) of the former *Broadcasting Act*, incorporated by reference in section 18 of that Act.

Paragraph 25(1)(*d*) is a new provision permitting the Governor in Council to prescribe circumstances and conditions under which agents of a province who would otherwise be ineligible to hold a licence may do so.

Subsection 26(2) is a carry-over from subsection 9(2) of the former Act. This authority has never been exercised since the provision was added to the *Broadcasting Act* in 1968.

Subsection 26(4) is new. It was added to Bill C-136 at the request of the Commission, to ensure that the Commission would have input into the wording of any directions on eligibility issued to it.

[§104-116]

27. (1) **Directions re Free Trade Agreement.**--The Governor in Council may, either on the recommendation of the Minister made at the request of the Commission or on the Governor in Council's own motion, issue directions of general application respecting the manner in which the Commission shall apply or interpret paragraph 3 of Article 2006 of the Agreement.

[§104-117]

(2) **Effect of directions.**--A direction issued under subsection (1) is binding on the Commission from the time it comes into force and, unless otherwise provided therein, applies in respect of matters pending before the Commission at that time.

[§104-118]

(3) **Request of Commission.**--The Commission may, in order to request the issuance of a direction under subsection (1), suspend the determination of any matter of which it is seised.

[§104-119]

(4) **Definition of "Agreement".**--In this section, "Agreement" has the same meaning as in the *Canada-United States Free Trade Agreement Implementation Act*. [1991, c.11, s.27]

History: This section is the same as section 18.1 of the *Broadcasting Act*, R.S.C. 1985, c.B-9, which was added by the *Canada-United States Free Trade Agreement Implementation Act*, S.C. 1988, c.65, s.51, proclaimed in force on January 1, 1989. See also the commentary under subsections 9(2) and (3) of the Act, above at §104-65.

Commentary: In general, the CRTC is not bound by the provisions of international treaties entered into by the Canadian government save to the extent indicated in its governing legislation, although resort to such treaties may be had in order to interpret ambiguity in such legislation: see *Capital Cities Communications Inc. et al. v. CRTC et al.*, [1978] 2 S.C.R. 141, 81 D.L.R. (3d) 609. This section permits the Government to issue binding directions to the CRTC respecting the manner in which it is to apply Article 2006, paragraph 3, of the *Canada-U.S. Free Trade Agreement*, although its obligation to so apply the terms of the agreement is left implicit.

[§104-120]

28. (1) **Setting aside or referring decisions back to Commission.**--Where the Commission makes a decision to issue, amend or renew a licence, the Governor in Council may, within ninety days after the date of the decision, on petition in writing of any person received within forty-five days after that date or on the Governor in Council's own motion, by order, set aside the decision or refer the decision back to the Commission for reconsideration and hearing of the matter by the Commission, if the Governor in Council is satisfied that the decision derogates from the attainment of the objectives of the broadcasting policy set out in subsection 3(1).

[§104-121]

(2) **Order on reference back.**--An order made under subsection (1) that refers a decision back to the Commission for reconsideration and hearing shall set out the details of any matter that, in the opinion of the Governor in Council, may be material to the reconsideration and hearing.

[§104-122]

(3) **Powers on reference back.**--Where a decision is referred back to the Commission under this section, the Commission shall reconsider the matter and, after a hearing as provided for by subsection (1), may

(*a*) rescind the decision or the issue, amendment or renewal of the licence;

(*b*) rescind the issue of the licence and issue a licence on the same or different conditions to another person; or

(*c*) confirm, either with or without change, variation or alteration, the decision or the issue, amendment or renewal of the licence.

[§104-123]

(4) **Setting aside after confirmation.**--Where, pursuant to paragraph (3)(*c*), the Commission confirms the decision or the issue, amendment or renewal of a licence, the Governor in Council may, within sixty days after the confirmation, on petition in writing of any person received within thirty days after that date or on the Governor in Council's own motion, by order, set aside the decision or the issue, amendment or renewal if the Governor in Council is satisfied as to any of the matters referred to in subsection (1).

[§104-124]

(5) **Reasons.**--An order made under subsection (4) to set aside a decision or the issue, amendment or renewal of a licence shall set out the reasons of the Governor in Council therefor. [1991, c.11, s.28]

History: Based on section 14 of the *Broadcasting Act*, R.S.C. 1985, c.B-9, with some significant changes.

Commentary: Section 28 of the new Act constitutes a significant rewrite of the power of the Governor in Council in the previous Act to set aside or refer back CRTC decisions to issue, amend or renew broadcasting licences. In the *Report of the Task Force on Broadcasting Policy* (1986), at p.175, it was recommended that the power to set aside CRTC decisions should not be included in the new Act if the government also had a general policy direction power.

In the Fifth Report of the Standing Committee on Communications and Culture, April 18, 1987, by contrast, the Committee suggested that the power of review should not be eliminated but simply limited to cases of overriding importance or where the CRTC had misinterpreted or ignored a direction. In addition, the Fifth Report recommended that notice of any review be given to interested persons, that an opportunity be given for persons to comment, and that reasons should be given by the government where a determination was made to set aside a decision or to refer it back to the CRTC. See Fifth Report, Recommendations 14 to 17, at pp.47-49. These recommendations were largely adopted by the government in section 28, along with an extension of the appeal time from 60 days to 90 days. See *Canadian Voices: Canadian Choices*, June 23, 1988, at p.57. In Bill C-136 as tabled, the appeal time had been extended from 60 to 120 days. However, this was amended to 90 days when Bill C-40 reached the committee stage.

[§104-125]

29. (1) **Filing of petitions.**--Every person who petitions the Governor in Council under subsection 28(1) or (4) shall at the same time send a copy of the petition to the Commission.

[§104-126]

(2) **Notice.**--On receipt of a petition under subsection (1), the Commission shall forward a copy of the petition by prepaid registered mail to all persons who were heard at or made any oral representation in connection with the hearing held in the matter to which the petition relates.

[§104-127]

(3) **Register.**--The Commission shall establish and maintain a public register in which shall be kept a copy of each petition received by the Commission under subsection 28(1) or (4). [1991, c.11, s.29]

History: New.

Commentary: This section sets up a public register for petitions made to the Governor in Council under section 28. See the commentary at §104-124 above.

In permitting public access to petitions made to the Governor in Council, the Act addresses the problem noted in *Attorney General of Canada v. Inuit Tapirisat of Canada,* [1980] 2 S.C.R. 735, 115 D.L.R. (3d) 1, which held in the context of petitions to the Governor in Council under section 67 of the *National Telecommunications Powers and Procedures Act* (since repealed) that the Governor in Council did not need to give reasons for its decision, to hold any kind of hearing, or even to acknowledge the receipt of a petition. (Section 67 of the *NTPPA* has since been replaced by section 12 of the *Telecommunications Act*, S.C. 1993, c.38, which now includes procedures respecting petitions similar to those set out above.)

In a written submission dated January 31, 1990, filed with the Standing Committee, the CRTC urged that its obligation to serve a copy of the petition in subsection (2) be limited to those making oral representations at the hearing. In particular, the Commission expressed concern that the subsection might be read so as to require a copy of the petition to be served on each signatory to any petition filed with the Commission at the hearing. However, the subsection was not amended as requested.

[§104-128]

30. Amendment of schedule.--The Governor in Council may, on the recommendation of the Minister made on the request of the Commission and with the consent of the Corporation, amend the schedule. [1991, c.11, s.30]

History: New.

Commentary: The schedule referred to, set out at §104-267 below, is mentioned in subsection 24(2), above at §104-108.

Decisions and Orders

[§104-129]

31. (1) **Decisions and orders final.**--Except as provided in this Part, every decision or order of the Commission is final and conclusive.

[§104-130]

(2) **Appeal to Federal Court of Appeal.**--An appeal lies from a decision or order of the Commission to the Federal Court of Appeal on a question of law or a question of jurisdiction if leave therefor is obtained from that Court on application made within one month after the making of the decision or order sought to be appealed from or within such further time as that Court under special circumstances allows.

[§104-131]

(3) **Entry of appeal.**--No appeal lies after leave therefor has been obtained under subsection (2) unless it is entered in the Federal Court of Appeal within sixty days after the making of the order granting leave to appeal.

[§104-132]

(4) **Document deemed decision or order.**--Any document issued by the Commission in the form of a decision or order shall, if it relates to the issue, amendment, renewal, revocation or suspension of a licence, be deemed for the purposes of this section to be a decision or order of the Commission. [1991, c.11, s.31]

History: Based on sections 16 and 17 of the *Broadcasting Act*, R.S.C. 1985, c. B-9, without material change except for the omission of the words "minute or other record of the Commission" in describing what is a "decision or order" of the Commission in subsection (4).

Commentary: Subsection 31(1) has the effect of rendering the Commission *functus officio* whenever it has issued a licensing decision; in other words, it is generally unable to rehear and review its own decisions once they are issued. This contrast with the Commission's jurisdiction over telecommunications carriers, where it is empowered by section 66 of the *National Telecommunications Powers and Procedures Act* to "review, rescind, change, alter or vary any order or decision made by it or may re-hear any application before deciding it."

There are a number of circumstances, however, where the CRTC may review and rescind or vary its decision or orders. First, where the order is one made under subsection 12(2) of the Act, above at §104-77. Second, when the decision has been referred back to the CRTC for reconsideration by the Governor in Council under subsection 28(3) of the Act. Third, when the decision or order has been set aside and referred back to the Commission by the Federal Court of Appeal.

In addition, the *functus officio* limitation may not apply when the decisions or orders do not fall into the class defined in subsection (4), viz. decisions or orders relating to the issue, amendment, renewal, revocation or suspension of a licence.

An example would be an order to the Commission under paragraphs 9(1)(*a*), (*f*), (*g*) and (*h*) of the Act. If subsection 31(4) is intended to provide an exhaustive definition of what constitutes a decision or order for the purposes of the section, orders made under those paragraphs would not constitute a "decision or order" under section 31; thus, they would not necessarily be final or conclusive, and may be subject to reconsideration by the Commission.

There is support for this view in the structure of the Act. Decisions to issue or renew a licence are inherently time-limited to no more than 7 years, and the prohibition of amendment during the first 5 years of the term except upon the application of a licensee gives some stability and certainty to the licensee. By stipulating that licensing decisions are final and conclusive and that any court appeal thereof requires leave, this stability and certainty is enhanced. By contrast, orders made under paragraphs 9(1)(*f*), (*g*) and (*h*), which affect the relationship between a licensee and a carrier or between one licensee and another, may require adjustment from time to time as carrier tariffs are amended, new licensees emerge or existing licences are renewed or amended. Thus, if such changing circumstances are to be taken into account, Commission orders relating thereto should be able to be issued at any time, and be subject to reconsideration and reissuance at any time. Under this view,

judicial review of such orders would not be covered by section 31 of the *Broadcasting Act* but would be available under section 28 of the *Federal Court Act* and would not require leave.

The *functus officio* limitation may also be inapplicable where a decision is made conditional on a latter approval. In a 1979 case, the Commission licensed a new FM station "in principle" but made its approval subject to a condition that the licensee satisfy the Commission of certain programming matters through appropriate changes in its Promise of Performance. When the CRTC later denied the licence after a second public hearing, the Federal Court of Appeal upheld the Commission's decision, stating that its decision was not, in effect, a reconsideration and reversal of the earlier decision. See *Canadian Family Radio Ltd. and Ralph Jacobson v. Canadian Radio-television and Telecommunications Commission* (Fed. C.A., No. A689-80, Oct. 6, 1981), noted in *Canadian Communications Law and Policy* (1988), Volume 1, at §355-247.

The Commission has also occasionally issued "Corrections" to its decisions, correcting typographical or clerical errors. For a case involving such a correction notice, see *Association of Canadian Movie Production Companies et al.* v. *Canadian Radio-television and Telecommunications Commission et al.* (Fed.C.A., Sept.24, 1982), noted in *Canadian Communications Law and Policy* (1988), Volume 1, at §355-264.

The omission of the words "minute or other record of the Commission" in subsection 31(4) was requested by the Commission in order that the section would not apply to decisions as referred to in minutes of Executive Committee meetings, but rather to decisions formally issued or released by the Secretary General.

In *National Indian Brotherhood v. Juneau et al. (No. 2)*, [1971] F.C. 73, Jackett C.J. discussed whether rulings incidental to the conduct of CRTC hearings would constitute a "decision or order" subject to appeal or whether the term was intended to refer to the ultimate decision or order of the Commission. The latter conclusion was reached in *In re Anti-Dumping tribunal Act and in re Danmor Shoe Co. Ltd.*, [1974] F.C. 22.

Offences

[§104-133]

32. (1) **Broadcasting without or contrary to licence.**--Every person who, not being exempt from the requirement to hold a licence, carries on a broadcasting undertaking without a licence therefor is guilty of an offence punishable on summary conviction and is liable

(*a*) in the case of an individual, to a fine not exceeding twenty thousand dollars for each day that the offence continues; or

(*b*) in the case of a corporation, to a fine not exceeding two hundred thousand dollars for each day that the offence continues.

[§104-134]

(2) **Contravention of regulation or order.**--Every person who contravenes or fails to comply with any regulation or order made under this Part is guilty of an offence punishable on summary conviction and is liable

(*a*) in the case of an individual, to a fine not exceeding twenty-five thousand dollars for a first offence and not exceeding fifty thousand dollars for each subsequent offence; or

(*b*) in the case of a corporation, to a fine not exceeding two hundred and fifty thousand dollars for a first offence and not exceeding five hundred thousand dollars for each subsequent offence. [1991, c.11, s.32]

History: Section 32 of the Act is based on subsections 20(3)(*a*) and 20(1) of the *Broadcasting Act*, R.S.C. 1985, c.B-9, except that the fine for carrying on a broadcasting undertaking without a licence has been increased from $1,000 a day to $20,000 a day (individual) or $200,000 a day (corporation). The fine for a breach of a regulation (now expanded to include a breach of an order) has been increased from $25,000 (first offence) or $50,000 (subsequent offence) to $250,000 (first offence) or $500,000 (subsequent offence) applicable to corporate licensees.

Commentary: It should be noted that by virtue of sections 21 and 22 of the *Criminal Code*, a person can be a party to an offence under sections 32 and 33 of the *Broadcasting Act* whether they actually commit the offence, aid or abet someone else to commit it, or counsel someone to commit the offence. Section 21(1) of the *Criminal Code*, R.S.C. 1985, c.C-46, reads as follows:

21. (1) Every one is a party of an offence who

(*a*) actually commits it,

(*b*) does or omits to do anything for the purpose of aiding any person to commit it, or

(*c*) abets any person in committing it.

This section and section 22 which deals with counselling is made applicable to offences under the *Broadcasting Act* by virtue of subsection 34(2) of the *Interpretation Act*, R.S.C. 1985, c.1-21: see *R. v. Continental Cablevision Inc. et al.* (1974), 19 C.C.C. (2d) 540 at 551, appeal dismissed, (1975), 21 C.C.C. (2d) 497.

[§104-135]

33. Contravention of conditions of licence.--Every person who contravenes or fails to comply with any condition of a licence issued to the person is guilty of an offence punishable on summary conviction. [1991, c.11, s.33]

History: Expanded version of subsection 20(3)((*b*) of the *Broadcasting Act*, R.S.C. 1985, c. B-9.

Commentary: Under the previous Act, it was an offence for a network affiliate to operate other than in accordance with the conditions of the licence. This has been expanded in section 33 of the new Act to include breaches of conditions by any licensee. No specific fine is provided for this offence; hence, the penalties prescribed for summary conviction offences in the *Criminal Code* apply. The maximum penalties at present are $2,000 for individuals and $25,000 for corporations.

[§104-136]

34. Limitation.--Proceedings for an offence under subsection 32(2) or section 33, may be instituted within, but not after, two years after the time when the subject-matter of the proceedings arose. [1991, c.11, s.34]

History: New.

Commentary: Under the previous Act, there was a six month limitation period for prosecutions under the Act, applicable by virtue of subsection 786(2) of the *Criminal Code*, R.S.C. 1985, c.C-46. The six month limitation period continues to apply for prosecutions for carrying on a broadcasting undertaking without a licence under section 32(1); however, a two-year limitation period now applies to prosecutions under subsection 32(2) or section 33.

For the application of the six-month limitation period, see *Regina* v. *Newfoundland Broadcasting Co. Ltd.* (Prov.Ct. Nfld, August 3, 1978), noted in *Canadian Communications Law and Policy* (1988), Volume 1, at §355-188.

[§104-137]

PART III

CANADIAN BROADCASTING CORPORATION

Interpretation

[§104-138]

35. (1) **Definitions.**--In this Part,

[§104-139]

"auditor" means the auditor of the Corporation;

[§104-140]

"Board" means the Board of Directors of the Corporation;

[§104-141]

"Chairperson" means the Chairperson of the Board;

[§104-142]

"director" means a director of the Corporation;

[§104-143]

"President" means the President of the Corporation;

[§104-144]

"wholly-owned subsidiary" has the same meaning as in Part X of the *Financial Administration Act*.

History: The definitions for "director" and "President" are taken from section 23 of the *Broadcasting Act*, R.S.C. 1985, c.B-9. The other definitions are new.

[§104-145]

(2) **Interpretation.**--This Part shall be interpreted and applied so as to protect and enhance the freedom of expression and the journalistic, creative and programming independence enjoyed by the Corporation in the pursuit of its objects and in the exercise of its powers. [1991, c.11, s.35]

History: New.

Commentary: Neither the previous *Broadcasting Act* nor its predecessor statutes contained specific language establishing an arm's length relationship between the CBC and the government. Subsection 35(2), taken together with similar language in subsections 46(5) and 52(1), and paragraph 52(2)(*b*), seeks to provide certain assurances to the CBC of journalistic, programming and creative freedom, within the framework of financial accountability prescribed in the Act.

The issue of the CBC's financial management and accountability was the subject of the Fourth Report of the Standing Committee on Communications and Culture, February 12, 1987. Following

a review of the CBC's accounting problems, the Standing Committee made the following recommendations, at p.52:

"Recommendation 1

We recommend that on a selective basis, legislative provisions related to financial management and control, similar to those now applied to other Crown corporations under the *Financial Administration Act*, be made applicable to the Canadian Broadcasting Corporation through amendments to the *Broadcasting Act*...

The CBC should remain exempt from the power of direction provisions which are applicable to other Crown corporations under the *Financial Administration Act*, and from any other provisions which would compromise the "arm's-length" relationship of the CBC with the government.

Recommendation 2

We recommend that the *Broadcasting Act* be amended to provide for a Chairman of the Board, who shall be appointed by the Governor in Council on the recommendation of the Minister after consultation with the members of the CBC Board of Directors; and a President, who shall be appointed by and responsible to the Board of Directors. The Chairman shall be responsible primarily for the Corporation's policies, while the President shall be responsible for policy implementation."

In *Canadian Voices: Canadian Choices: A New Broadcasting Policy for Canada*, issued by the government on June 23, 1988, the changes made in the new Act to the institutional structure and responsibilities of the CBC were summarized as follows:

- The arm's length principle with respect to the journalistic, creative and programming independence of the CBC is explicitly protected...
- At the end of the term of the current incumbent, the position of President will be split into two distinct roles: Chairman of the Board and Chief Executive Officer (CE)). the CEO will be responsible to the Board for all operations of the Corporation.
- The position of Chairman will be an Order-in-Council appointment, for a term of five years.
- The Chief Executive Officer is to be appointed by the Board, subject to approval by Governor-in-General, to serve for a term of five years.
- Standing committees of the Board are established, one on French-language and one on English-language broadcasting.
- The CBC is subject to financial controls similar to those of the *Financial Administration Act* (FAA), but without that Act's strategic direction and control mechanisms.
- The power of the Board to approve property acquisitions and leases, without an Order-in-Council for each transaction, is increased substantially.
- The audit procedures for the CBC parallel the requirements of the FAA, particularly with respect to the Auditor General.
- The CBC is responsible for presenting a corporate plan to enable the Government to allocate resources appropriately. A summary of this plan is to be tabled in Parliament, but the plan itself is not for government approval, since that responsibility remains with the CBC Board.
- In tabling its corporate plan summary each year, the CBC will be confirming the amount appropriated for the next year, and will set out its five-year financial planning framework, including a forecast of future government appropriations. This allows the CBC to plan more realistically, and enables the CRTC to set conditions of licence that reflect the resources that are forecast to be available.

Continuation of Corporation

[§104-146]

36. (1) **Corporation continued.**--The corporation known as the Canadian Broadcasting Corporation is hereby continued and shall consist of those directors who from time to time compose the Board.

[§104-147]

(2) **Board of Directors.**--There shall be a Board of Directors of the Corporation consisting of fifteen directors, including the Chairperson and the President, to be appointed by the Governor in Council.

[§104-148]

(3) **Tenure.**--A director shall be appointed to hold office during good behaviour for a term not exceeding five years and may be removed at any time by the Governor in Council for cause.

[§104-149]

(4) **Reappointment.**--Subject to section 38, the Chairperson and the President are eligible for reappointment on the expiration of any term of office but any other director who has served two consecutive terms is not, during the twelve months following completion of the second term, eligible for appointment, except as Chairperson or President.

[§104-150]

(5) **Continuation in office.**--Notwithstanding subsections (3) and (4), if a director is not appointed to take office on the expiration of the term of office of an incumbent director, the incumbent director continues in office until a successor is appointed. [1991, c.11, s.36]

History: This section corresponds to section 24 of the *Broadcasting Act*, R.S.C. 1985, c.B-9, with minor changes.
Commentary: Note that the function of Executive Vice-President has been abolished, and the age limit for CBC corporate directors has been eliminated.

[§104-151]

37. Oath of office.--Every director shall, before entering on the director's duties, take and subscribe, before the Clerk of the Privy Council, an oath or solemn affirmation, which shall be filed in the office of the Clerk, in the following form:

I, ..., do solemnly swear (or affirm) that I will faithfully, truly and impartially, to the best of my judgment, skill and ability, execute and perform the office of ..... (*Add, in the case where an oath is taken,* "So help me God".) [1991, c.11, s.37]

History: Based on section 25 of the Broadcasting Act, R.S.C. 1985, c.B-9.

[§104-152]

38. (1) **Outside interests of directors.**--A person is not eligible to be appointed or to continue as a director if the person is not a Canadian citizen who is ordinarily resident in Canada or if, directly or indirectly, as owner, shareholder, director, officer, partner or otherwise, the person

(*a*) is engaged in the operation of a broadcasting undertaking;

(*b*) has any pecuniary or propriety interest in a broadcasting undertaking; or

(*c*) is principally engaged in the production or distribution of program material that is primarily intended for use by a broadcasting undertaking.

[§104-153]

(2) **Disposing of interest.**--A director in whom any interest prohibited under subsection (1) vests by will or succession for the director's own benefit shall, within three months thereafter, absolutely dispose of that interest. [1991, c.11, s.38]

History: Based on section 26 of the *Broadcasting Act*, R.S.C. 1985, c.B-9.

[§104-154]

39. Responsibility of directors.--Subject to this Part, the Board is responsible for the management of the businesses, activities and other affairs of the Corporation. [1991, c.11, s.39]

History: New.
Commentary: This section mirrors section 109 of the *Financial Administration Act*, R.S.C. 1985, c.F-11.

[§104-155]

40. Accountability of Corporation to Parliament.--The Corporation is ultimately accountable, through the Minister, to Parliament for the conduct of its affairs. [1991, c.11, s.40]

History: New.
Commentary: This provision is now routinely included by the Department of Justice in legislation dealing with Crown agencies.

Chairperson

[§104-156]

41. (1) **Powers, duties and functions.**--The Chairperson shall preside at meetings of the Board and may exercise such powers and shall perform such other duties and functions and may exercise such powers as are assigned to the Chairperson by the by-laws of the Corporation.

[§104-157]

(2) **Part-time.**--The Chairperson shall perform the duties and function of the office on a part-time basis.

[§104-158]

(3) **Absence, incapacity or vacancy of office.**--If the Chairperson is absent or incapacitated or if the office of Chairperson is vacant, the President shall act as Chairperson, and if both are absent or incapacitated or if both those offices are vacant, the Board may authorize a director to act as Chairperson, but no person so authorized by

the Board has authority to act as Chairperson for a period exceeding sixty days without the approval of the Governor in Council. [1991, c.11, s.41]

History: New.
Commentary: This section replaces section 27 of the *Broadcasting Act*, R.S.C. 1985, c.B-9, which set forth the role of the President. Under the new Act, the functions formerly carried out by the President are split between the new position of Chairman and the President, dealt with below in section 42. When initially introduced in Bill C-136, the role of CBC Chairman was a full-time position. However, this was changed to a part-time position in Bill C-40.

President

[§104-159]

42. (1) **Powers, duties and functions.**--The President is the chief executive officer of the Corporation and has supervision over and direction of the work and staff of the Corporation and may exercise such powers and shall perform such other duties and functions as are assigned to the President by the by-laws of the Corporation.

[§104-160]

(2) **Full-time.**--The President shall perform the duties and functions of the office on a full-time basis.

[§104-161]

(3) **Absence, incapacity or vacancy of office.**--If the President is absent or incapacitated or if the office of President is vacant, the Board may authorize an officer of the Corporation to act as President, but no person so authorized by the Board has authority to act as President for a period exceeding sixty days without the approval of the Governor in Council. [1991, c.11, s.42]

History: New.
Commentary: This section establishes the position of President of the Corporation who is appointed by the Board and serves for a term of up to five years. Under the previous Act, the President was an Order in Council appointment for seven years during good behaviour. Under the present Act, while the appointment and dismissal of the President is subject to approval by the Governor in Council, the position is not an Order in Council appointment.

Remuneration

[§104-162]

43. (1) **Chairperson's and President's remuneration.**--The Chairperson and the President shall be paid by the Corporation remuneration at the rate fixed by the Governor in Council.

[§104-163]

(2) **Fees of other directors.**--Each director, other than the Chairperson and the President, shall be paid by the Corporation such fees for attendance at meetings of the Board or any committee of directors as are fixed by the by-laws of the Corporation.

[§104-164]

(3) **Expenses.**--Each director is entitled to be paid by the Corporation such travel and living expenses incurred by the director in the performance of the duties of that director as are fixed by the by-laws of the Corporation. [1991, c.11, s.43]

History: Similar to section 28 of the *Broadcasting Act*, R.S.C. 1985, c.B-9.

Staff

[§104-165]

44. (1) **Employment of staff.**--The Corporation may, on its own behalf, employ such officers and employees as it considers necessary for the conduct of its business.

[§104-166]

(2) **Terms, etc. of employment.**--The officers and employees employed by the Corporation under subsection (1) shall, subject to any by-laws made under section 51, be employed on such terms and conditions and at such rates of remuneration as the Board deems fit.

[§104-167]

(3) **Not servants of Her Majesty.**--The officers and employees employed by the Corporation under subsection (1) are not officers or servants of Her Majesty. [1991, c.11, s.44]

History: Based on subsections 29(2) and (3) of the *Broadcasting Act*, R.S.C. 1985, c.B-9.

Standing Committees

[§104-168]

45. (1) **English and French language broadcasting committees.**--The Board shall establish a standing committee of directors on English language broadcasting and a standing committee of directors on French language broadcasting, each consisting of the Chairperson, the President and such other directors as the Board may appoint.

[§104-169]

(2) Chairperson or President shall preside.--The Chairperson, or in the absence of the Chairperson, the President, shall preside at meetings of each standing committee established pursuant to subsection (1).

[§104-170]

(3) **Absence of Chairperson and President.**--In respect of each standing committee established pursuant to subsection (1), the Chairperson shall designate one of the directors to preside at meetings thereof in the event of the absence of both the Chairperson and the President.

[§104-171]

(4) **Duties of committees.**--The standing committee on English language broadcasting shall perform such duties in relation to English language broadcasting, and the standing committee on French language broadcasting shall perform such duties in relation to French language broadcasting, as are delegated to the committee by the by-laws of the Corporation. [1991, c.11, s.45]

History: New.

Commentary: This section creates two standing committees on French-language and English-language activities under the umbrella of the Corporation. The concept may be said to reflect the policy expressed in paragraph 3(1)(*c*) of the Act, above at §104-25.

Objects and Powers

[§104-172]

46. (1) **Objects and powers.**--The Corporation is established for the purpose of providing the programming contemplated by paragraphs 3(*l*)(*l*) and (*m*), in accordance with the conditions of any licence or licences issued to it by the Commission and subject to any applicable regulations of the Commission, and for that purpose the Corporation may

(*a*) establish, equip, maintain and operate broadcasting undertakings;

(*b*) make operating agreements with licensees for the broadcasting of programs;

(*c*) originate programs, secure programs from within or outside Canada by purchase, exchange or otherwise and make arrangements necessary for their transmission;

(*d*) make contracts with any person, within or outside Canada, in connection with the production or presentation of programs originated or secured by the Corporation;

(*e*) make contracts with any person, within or outside Canada, for performances in connection with the programs of the Corporation;

(*f*) with the approval of the Governor in Council, make contracts with any person for the provision by the Corporation of consulting or engineering services outside Canada;

(*g*) with the approval of the Governor in Council, distribute or market outside Canada programming services originated by the Corporation;

(*h*) with the approval of the Minister, act as agent for or on behalf of any person in providing programming to any part of Canada not served by any other licensee;

(*i*) collect news relating to current events in any part of the world and establish and subscribe to news agencies;

(*j*) publish, distribute and preserve, whether for a consideration or otherwise, such audio-visual material, papers, periodicals and other literary matter as may seem conducive to the attainment of the objects of the Corporation;

(*k*) produce, distribute and sell such consumer products as may seem conducive to the attainment of the objects of the Corporation;

(*l*) acquire copyrights and trade-marks;

(*m*) acquire and use any patent, patent rights, licences or concessions that the Board considers useful for the purposes of the Corporation;

(*n*) make arrangements or agreements with any organization for the use of any rights, privileges or concessions that the Board considers useful for the purposes of the Corporation;

(*o*) acquire broadcasting undertakings either by lease or by purchase;

(*p*) make arrangements or agreements with any organization for the provision of broadcasting services;

(*q*) subject to the approval of the Governor in Council, acquire, hold and dispose of shares of the capital stock of any company or corporation that is authorized to carry on any business incidental or conducive to the attainment of the objects of the Corporation; and

(*r*) do all such other things as the Board deems incidental or conducive to the attainment of the objects of the Corporation.

[§104-173]

(2) **International service.**--The Corporation shall, within the conditions of any licence or licences issued to it by the Commission and subject to any applicable regulations of the Commission, provide an international service in accordance with such directions as the Governor or Council may issue.

[§104-174]

(3) **Power to act as agent.**--The Corporation may, within the conditions of any licence or licences issued to it by the Commission and subject to any applicable regulations of the Commission, act as an agent of Her Majesty in right of Canada or a province in respect of any broadcasting operations that it may be directed by the Governor in Council to carry out.

[§104-175]

(4) **Extension of services.**--In planning extension of broadcasting services, the Corporation shall have regard to the principles and purposes of the *Official Languages Act*.

[§104-176]

(5) **Independence.**--The Corporation shall, in the pursuit of its objects and in the exercise of its powers, enjoy freedom of expression and journalistic, creative and programming independence. [1991, c.11, s.46]

History: Based on subsections 30(1) and (2) of the *Broadcasting Act*, R.S.C. 1985, c.B-9. Subsections (2), (4) and (5) are new.

Commentary: Subsection 46(1) is the equivalent of subsection 30(1) of the previous Act. Paragraphs 46(1)(*f*), (*g*), (*k*) and (*p*) are new.

Under subsection 30(2) of the previous Act, the Governor in Council could direct the CBC to provide an international service. Subsection 46(2), as amended at the committee stage, now makes this a mandatory service.

For a discussion of the concept behind subsection (5), see the commentary above at §104-145.

Agent of Her Majesty

[§104-177]

47. (1) **Corporation an agent of Her Majesty.**--Except as provided in subsections 44(1) and 46(2), the Corporation is, for all purposes of this Act, an agent of Her Majesty, and it may exercise its powers under this Act only as an agent of Her Majesty.

[§104-178]

(2) **Contracts.**--The Corporation may, on behalf of Her Majesty, enter into contracts in the name of Her Majesty or in the name of the Corporation.

[§104-179]

(3) **Property.**--Property acquired by the Corporation is the property of Her Majesty and title thereto may be vested in the name of Her Majesty or in the name of the Corporation.

[§104-180]

(4) **Proceedings.**--Actions, suits or other legal proceedings in respect of any right or obligation acquired or incurred by the Corporation on behalf of Her Majesty, whether in its name or in the name of Her Majesty, may be brought or taken by or against the Corporation in the name of the Corporation in any court that would have jurisdiction if the Corporation were not an agent of Her Majesty. [1991, c.11, s.47]

History: Based on section 31 of the *Broadcasting Act, R.S.C. 1985, c.B-9*, without material change.
Commentary: For a summary of the court cases interpreting this section, see *Canadian Communications Law and Policy* (1988), Volume 1, at §371-4 and §376-9 (section 31).

[§104-181]

48. (1) **Acquisition and disposition of property.**--Subject to subsection (2), the Corporation may purchase, lease or otherwise acquire any real or personal property that the Corporation deems necessary or convenient for carrying out its objects and may sell, lease or otherwise dispose of all or any part of any property acquired by it.

[§104-182]

(2) **Restriction.**--The Corporation shall not, without the approval of the Governor in Council, enter into

(*a*) any transaction for the acquisition of any real property or the disposition of any real or personal property, other than program material or rights therein, for a consideration in excess of four million dollars or such greater amount as the Governor in Council may by order prescribe; or

(*b*) a lease or other agreement for the use or occupation of real property involving an expenditure in excess of four million dollars or such greater amount as the Governor in Council may by order prescribe.

[§104-183]

(3) **Retaining proceeds.**--Subject to subsection (4), the Corporation may retain and use all of the proceeds of any transaction for the disposition of real or personal property.

[§104-184]

(4) **Idem.**--In the case of a transaction for the disposition of real or personal property requiring the approval of the Governor in Council under subsection (2), the Corporation may retain and use all or any part of the proceeds therefrom unless otherwise directed by the Governor in Council. [1991, c.11, s.48]

History: Subsections 48(1) and (2) are based on section 32 of the *Broadcasting Act*, R.S.C. 1985, c.B-9. Subsections (3) and (4) are new.
Commentary: The maximum quantum for property transactions without Governor in Council approval has been raised from $250,000 to $4,000,000 or such greater amount as is prescribed by order.

[§104-185]

49. (1) **Expropriation.**--Where, in the opinion of the Corporation, the taking or acquisition of any land or interest therein by the Corporation without the consent of the owner is required for the purpose of carrying out its objects, the Corporation shall so advise the appropriate Minister in relation to Part I of the *Expropriation Act*.

[§104-186]

(2) **Application of Expropriation Act.**--For the purposes of the *Expropriation Act*, any land or interest therein that, in that opinion of the Minister referred to in subsection (1), is required for the purpose of carrying out the objects of the Corporation shall be deemed to be land or an interest therein that, in the opinion of the Minister, is required for a public work or other public purpose and, in relation thereto, a reference to the Crown in that Act shall be construed as a reference to the Corporation. [1991, c.11, s.49]

History: Based on section 33 of the *Broadcasting Act*, R.S.C. 1985, c.B-9.

Head Office and Meetings

[§104-187]

50. (1) **Head office.**--The head office of the Corporation shall be in the National Capital Region as described in the schedule to the *National Capital Act* or at such other place in Canada as the Governor in Council may specify.

[§104-188]

(2) **Meetings.**--The Board shall meet at least six times in each year.

[§104-189]

(3) **Telephone conferences.**--A director may, subject to the by-laws of the Corporation, participate in a meeting of the Board or a committee of directors by means of such telephone or other communication facilities as permit all persons participating in

the meeting to hear each other, and a director who participates in such a meeting by those means is deemed for the purposes of this Part to be present at the meeting. [1991, c.11, s.50]

History: Based on section 34 of the *Broadcasting Act*, R.S.C. 1985, c.B-9. Subsection (3) mirrors section 113 of the *Financial Administration Act*, R.S.C. 1985, c.F-11.

By-laws

[§104-190]

51. (1) **By-laws.**--The Board may make by-laws

(*a*) respecting the calling of meetings of the Board;

(*b*) respecting the conduct of business at meetings of the Board, the establishment of special and standing committees of directors, the delegation of duties to special and standing committees of directors, including the committees referred to in section 45, and the fixing of quorums for meetings thereof;

(*c*) fixing the fees to be paid to directors, other than the Chairperson and the President, for attendance at meetings of the Board or any committee of directors, and the travel and living expenses to be paid to directors;

(*d*) respecting the duties and conduct of the directors, officers and employees of the Corporation and the terms and conditions of employment and of termination of employment of officers and employees of the Corporation, including the payment of any gratuity to those officers and employees or any one or more of them, whether by way of retirement allowance or otherwise;

(*e*) respecting the establishment, management and administration of a pension fund for the directors, officers and employees of the Corporation and their dependants, the contributions thereto to be made by the Corporation and the investment of the pension fund moneys thereof; and

(*f*) generally for the conduct and management of the affairs of the Corporation.

[§104-191]

(2) **Certain by-laws subject to Minister's approval.**--No by-law made under paragraph (1)(*c*) or (*e*), and no by-law made under paragraph (*l*)(*d*) that provides for the payment of any gratuity as described in that paragraph, has any effect unless it is approved by the Minister. [1991, c.11, s.51]

History: Substantially the same as section 35 of the *Broadcasting Act*, R.S.C. 1985, c.B-9.

Financial Provisions

[§104-192]

52. (1) **Independence of the Corporation.**--Nothing in sections 53 to 70 shall be interpreted or applied so as to limit the freedom of expression or the journalistic, creative or programming independence enjoyed by the Corporation in the pursuit of its objects and in the exercise of its powers.

[§104-193]

(2) **Idem.**--Without limiting the generality of subsection (1), and notwithstanding sections 53 to 70 or any regulation made under any of those sections, the Corporation is not required to

(*a*) submit to the Treasury Board or to the Minister or the Minister of Finance any information the provision of which could reasonably be expected to compromise or constrain the journalistic, creative or programming independence of the Corporation; or

(*b*) include in any corporate plan or summary thereof provided to the Minister pursuant to section 54 or 55 any information the provision of which could reasonably be expected to limit the ability of the Corporation to exercise its journalistic, creative or programming independence. [1991, c.11, s.52]

History: New.
Commentary: For a general discussion of the arms-length status of the CBC and the purpose of this section, see the commentary at §104-145 above.

[§104-194]

53. Financial year.--The financial year of the Corporation is the period beginning on April 1 in one year and ending on March 31 in the next year, unless the Governor in Council otherwise directs. [1991, c.11, s.53]

History: New.
Commentary: This section authorizes the Corporation's current fiscal year.

[§104-195]

54. (1) **Corporate plan.**--The Corporation shall annually submit a corporate plan to the Minister.

[§104-196]

(2) **Scope of corporate plan.**--The corporate plan of the Corporation shall encompass all the businesses and activities, including investments, of the Corporation and its wholly-owned subsidiaries, if any.

[§104-197]

(3) **Contents of corporate plan.**--The corporate plan of the Corporation shall include

(*a*) a statement of

(i) the objects for which the Corporation is incorporated, as set out in this Act,

(ii) the Corporation's objectives for the next five years and for each year in that period and the strategy the Corporation intends to employ to achieve them, and

(iii) the Corporation's expected performance for the year in which the plan is submitted as compared to its objectives for that year, as set out in the last corporate plan;

(*b*) the capital budget of the Corporation for the next following financial year of the Corporation; and

(*c*) an operating budget for the next following financial year of the Corporation.

[§104-198]

(4) **Capital budgets.**--The Corporation shall submit the capital budget to the Minister in a corporate plan pursuant to paragraph (3)(*b*) for the approval of the Treasury Board.

[§104-199]

(5) **Notification of business activity.**--Where the Corporation or a wholly-owned subsidiary of the Corporation proposes to carry out a substantial change to business activities in any period in a manner that is not consistent with the last corporate plan of the Corporation in respect of that period, the Corporation shall forthwith notify the Minister in writing of the inconsistency in the manner of carrying on the business activity.

[§104-200]

(6) **Scope of budgets.**--The budgets of the Corporation referred to in paragraphs (3)(*b*) and (*c*) shall encompass all the businesses and activities, including investments, of the Corporation and its wholly-owned subsidiaries, if any.

[§104-201]

(7) **Form of budgets.**--The budgets of the Corporation referred to in paragraphs (3)(*b*) and (*c*) shall be prepared in a form that clearly sets out information according to the major businesses or activities of the Corporation and its wholly-owned subsidiaries, if any.

[§104-202]

(8) **Approval of multi-year items.**--The Treasury Board may approve any item in a capital budget provided pursuant to paragraph (3)(*b*) for any financial year or years following the financial year for which the budget is submitted. [1991, c.11, s.54]

History: New.

Commentary: Sections 54 to 60 and 62 to 70 of the Act are entirely new. They deal with the financial administration of the CBC and replace the pre-1984 provisions of the *Financial Administration Act*, which had been made applicable to the CBC by section 38 of the *Broadcasting Act*, R.S.C. 1985, c. B-9. Language similar to certain of these provisions appears in sections 122-126, 128-133 and 144-150 of the *Financial Administration Act*, R.S.C. 1985, c.F-11. For a general discussion of the policies sought to be implemented, see the commentary under §104-145 above.

[§104-203]

55. (1) **Summary of plan.**--The Corporation shall submit to the Minister, in respect of each financial year, a summary of the corporate plan submitted pursuant to section 54 that summarizes the information referred to in subsection 54(3), modified so as to be based on the financial resources proposed to be allocated to the Corporation as set out in the Estimates for that financial year that have been tabled in the House of Commons.

[§104-204]

(2) **Scope of summary.**--A summary shall encompass all the businesses and activities, including investments, of the Corporation and its wholly-owned subsidiaries, if any, and shall set out the major business decisions taken with respect thereto.

[§104-205]

(3) **Form of summary.**--A summary shall be prepared in a form that clearly sets out information according to the major businesses or activities of the Corporation and its wholly-owned subsidiaries, if any.

[§104-206]

(4) **Tabling in Parliament.**--The Minister shall cause a copy of every summary received pursuant to this section to be laid before each House of Parliament.

[§104-207]

(5) **Reference to committee.**--A summary laid before a House of Parliament pursuant to subsection (4) stands permanently referred to such committee of that House or of both Houses of Parliament as may be designated or established to review matters relating to the business and activities of the Corporation. [1991, c.11, s.55]

History: New.
Commentary: See the commentary under §104-145 and §104-202 above.

[§104-208]

56. Regulations.--The Treasury Board may make regulations prescribing the form in which corporate plans and summaries required pursuant to sections 54 and 55 shall be prepared, the information to be included therein, the information to accompany corporate plans, and the time at, before or within which they are to be submitted and summaries are to be laid before each House of Parliament. [1991, c.11, s.56]

History: New.
Commentary: See the commentary under §104-145 and §104-202 above.

[§104-209]

57. (1) **Bank accounts.**--The Corporation shall maintain in its own name one or more accounts with

(*a*) any member of the Canadian Payments Association;

(*b*) any local Cooperative Credit Society that is a member of a Central Cooperative Credit Society having membership in the Canadian Payments Association; and

(*c*) subject to the approval of the Minister of Finance, any financial institution outside Canada.

[§104-210]

(2) **Administration of Corporation funds.**--All moneys received by the Corporation through the conduct of its operations or otherwise shall be deposited to the credit of the accounts established pursuant to subsection (1) and shall be administered by the Corporation exclusively in the exercise of its powers and the performance of duties and functions.

[§104-211]

(3) **Investments.**--The Corporation may invest any moneys administered by it in bonds or other securities of, or guaranteed by, the Government of Canada.

[§104-212]

(4) **Proprietor's Equity Account.**--The Corporation shall, in its books of account, establish a Proprietor's Equity Account and shall credit thereto the amount of all money paid to the Corporation for capital purposes out of parliamentary appropriations. [1991, c.11, s.57]

History: New.
Commentary: See the commentary under §104-145 and §104-202 above.

[§104-213]

58. (1) **Receiver General account.**--The Corporation shall, if so directed by the Minister of Finance with the concurrence of the Minister, and may, if the Minister of Finance and the Minister approve, pay or cause to be paid all or any part of the money of the Corporation or of a wholly-owned subsidiary of the Corporation to the Receiver General to be paid into the Consolidated Revenue Fund and credited to a special account in the accounts of Canada in the name of the Corporation or subsidiary, and the Receiver General, subject to such terms and conditions as the Minister of Finance may prescribe, may pay out, for the purposes of the Corporation or subsidiary, or repay to the Corporation or subsidiary, all or any part of the money credited to the special account.

[§104-214]

(2) **Interest.**--Interest may be paid in respect of moneys credited to a special account pursuant to subsection (1), in accordance with and at rates fixed by the Minister of Finance with the approval of the Governor in Council. [1991, c.11, s.58]

History: New.
Commentary: See the commentary under §104-145 and §104-202 above.

[§104-215]

59. Payment over surplus money.--Subject to any other Act of Parliament, where the Minister and the Minister of Finance, with the approval of the Governor in Council, so direct, the Corporation shall pay or cause to be paid to the Receiver General so much of the money of the Corporation or of a wholly-owned subsidiary of the Corporation as those Ministers consider to be in excess of the amount required for the purposes of the Corporation or subsidiary, and any money so paid may be applied toward the discharge of any obligation of the Corporation or subsidiary to the Crown or may be applied as revenues of Canada. [1991, c.11, s.59]

History: New.
Commentary: See the commentary under §104-145 and §104-202 above.

[§104-216]

60. (1) **Books and systems.**--The Corporation shall cause

(*a*) books of account and records in relation thereto to be kept, and

(*b*) financial and management control and information systems and management practices to be maintained,

in respect of itself and each of its wholly-owned subsidiaries, if any.

[§104-217]

(2) **Idem.**--The books of account, records, systems and practices referred to in subsection (1) shall be kept and maintained in such manner as will provide reasonable assurance that

(*a*) the assets of the Corporation and of each subsidiary are safeguarded and controlled;

(*b*) the transactions of the Corporation and of each subsidiary are in accordance with this Part and the by-laws of the Corporation or subsidiary and, in the case of a subsidiary of the Corporation, its charter or any other document by or in accordance with which it is established; and

(*c*) the financial, human and physical resources of the Corporation and of each subsidiary are managed economically and efficiently and the operations of the Corporation and of each subsidiary are carried out effectively.

[§104-218]

(3) **Internal audit.**--The Corporation shall cause internal audits to be conducted in respect of itself and each of its wholly-owned subsidiaries, if any, to assess compliance with subsections (1) and (2).

[§104-219]

(4) **Financial statements.**--The Corporation shall cause financial statements to be prepared annually in respect of itself and its wholly-owned subsidiaries, if any, in accordance with generally accepted accounting principles, as supplemented or augmented by regulations made pursuant to subsection (6).

[§104-220]

(5) **Form of financial statements.**--The financial statements of the Corporation and of a wholly-owned subsidiary shall be prepared in a form that clearly sets out information according to the major businesses or activities of the Corporation or subsidiary.

[§104-221]

(6) **Regulations.**--The Treasury Board may, for the purposes of subsection (4), make regulations respecting financial statements of the Corporation, but those regulations shall only supplement or augment generally accepted accounting principles.

[§104-222]

(7) **Reports to Minister.**--The Board shall make to the Minister such reports of the financial affairs of the Corporation as the Minister requires. [1991, c.11, s.60]

History: New.

Commentary: See the commentary under §104-145 and §104-202 above.

[§104-223]

61. Auditor of the Corporation.--The Auditor General of Canada is the auditor of the Corporation. [1991, c.11, s.61]

History: Based on section 37 of the *Broadcasting Act*, R.S.C. 1985, c.B-9.

[§104-224]

62. (1) **Annual auditor's report.**--The Corporation shall cause an annual auditor's report to be prepared in respect of itself and its wholly-owned subsidiaries, if any, in accordance with the regulations, on the accounts and financial statements of the Corporation and of each subsidiary, and the report shall be made to the Board and to the Minister.

[§104-225]

(2) **Contents.**--A report prepared pursuant to subsection (1) shall

(*a*) include separate statements indicating whether, in the auditor's opinion,

(i) the financial statements are presented fairly in accordance with generally accepted accounting principles applied on a basis consistent with that of the preceding year,

(ii) any quantitative information in the Corporation's annual report in respect of which the Board has requested the auditor's opinion is accurate in all material respects and, if applicable, was prepared on a basis consistent with that of the proceeding year, and

(iii) the transactions of the Corporation and of each subsidiary that have come to the auditor's notice in the course of the examination for the report were in accordance with this Part and the by-laws of the Corporation or subsidiary; and

(*b*) call attention to any other matter falling within the scope of the examination for the report that, in the opinion of the auditor, should be brought to the attention of Parliament.

[§104-226]

(3) **Regulations.**--The Treasury Board may make regulations prescribing the form and manner in which the report referred to in subsection (1) is to be prepared.

[§104-227]

(4) **Other reports.**--The auditor shall prepare such other reports respecting the Corporation or any wholly-owned subsidiary of the Corporation as the Governor in Council may require.

[§104-228]

(5) **Examination.**--The auditor shall make such examination as the auditor considers necessary to enable the auditor to prepare a report pursuant to subsection (1) or (3).

[§104-229]

(6) **Reliance on internal audit.**--The auditor shall, to the extent the auditor considers practicable, rely on any internal audit of the Corporation that is conducted pursuant to subsection 60(3). [1991, c.11, s.62]

History: New.
Commentary: See the commentary under §104-145 and §104-202 above.

[§104-230]

63. (1) **Errors and omissions.**--A director or officer of the Corporation shall forthwith notify the auditor and the audit committee of the Corporation established under subsection 69(1) of any error or omission of which the director or officer becomes aware in a financial statement on which the auditor has reported or in a report prepared by the auditor pursuant to subsection 62(1).

[§104-231]

(2) **Idem.**--Where the auditor is notified or becomes aware of any error or omission in a financial statement on which the auditor has reported or in a report prepared by the auditor pursuant to subsection 62(1) and is of the opinion that the error or omission is material, the auditor shall forthwith notify each director of the error or omission.

[§104-232]

(3) **Correction.**--Where the auditor notifies the directors of an error or omission in a financial statement or report pursuant to subsection (2), the Corporation shall prepare a revised financial statement or the auditor shall issue a correction to the report, as the case may be, and a copy thereof shall be given to the Minister. [1991, c.11, s.63]

History: New.
Commentary: See the commentary under §104-145 and §104-202 above.

[§104-233]

64. (1) **Special examination.**--The Corporation shall cause a special examination to be carried out by the auditor in respect of itself and its wholly-owned subsidiaries, if any, to determine if the systems and practices referred to in paragraph 60(1)(*b*) were, in the period under examination, maintained in a manner that provided reasonable assurance that

(*a*) the assets of the Corporation and of each subsidiary were safeguarded and controlled; and

(*b*) the financial, human and physical resources of the Corporation and of each subsidiary were managed economically and efficiently, and the operations of the Corporation and of each subsidiary were carried out effectively.

[§104-234]

(2) **Time for examination.**--A special examination shall be carried out at least once every five years and at such additional times as the Governor in Council, the Minister or the Board may require.

[§104-235]

(3) **Plan.**--Before the auditor commences a special examination, the auditor shall survey the systems and practices of the Corporation to be examined and submit a plan for the examination, including a statement of the criteria to be applied in the examination, to the audit committee of the Corporation.

[§104-236]

(4) **Resolution of disagreements.**--Any disagreement between the auditor and the audit committee or the Board over a plan referred to in subsection (3) may be resolved

(*a*) in the case of the Corporation, by the Minister; and

(*b*) in the case of a wholly-owned subsidiary, by the Corporation.

[§104-237]

(5) **Reliance on internal audit.**--The auditor shall, to the extent considered practicable, rely on any internal audit of the Corporation conducted pursuant to subsection 60(3).

[§104-238]

(6) **Report.**--The auditor shall, on completion of the special examination, submit a report on the findings of the auditor to the Board.

[§104-239]

(7) **Contents.**--The report referred to in subsection (6) shall include

(*a*) a statement whether in the auditor's opinion, with respect to the criteria established pursuant to subsection (3), there is reasonable assurance that there are no significant deficiencies in the systems and practices examined; and

(*b*) a statement of the extent to which the auditor relied on internal audits.

[§104-240]

(8) **Special report to Minister.**--Where the auditor is of the opinion that the report referred to in subsection (6) contains information that should be brought to the attention of the Minister, the auditor shall, after consultation with the Board, report that information to the Minister and furnish the directors with a copy of the report.

[§104-241]

(9) **Idem.**--Where the auditor is of the opinion that the report referred to in subsection (6) contains information that should be brought to the attention of Parliament, the auditor shall, after consultation with the Minister and the Board, prepare a report thereon for inclusion in the next annual report of the Corporation and furnish the Board and the Minister with copies of the report. [1991, c.11, s.64]

History: New.

Commentary: See the commentary under §104-145 and §104-202 above.

[§104-242]

65. (1) **Right to information.**--On the demand of the auditor, the present or former directors, officers, employees or agents of the Corporation shall furnish the auditor with such

(*a*) information and explanations, and

(*b*) access to records, documents, books, accounts and vouchers of the Corporation or any of its subsidiaries

as the auditor considers necessary to enable the auditor to prepare any report required by this Part and that the directors, officers, employees or agents are reasonably able to furnish.

[§104-243]

(2) **Idem.**--On the demand of the auditor, the Board shall

(*a*) obtain from the present or former directors, officers, employees or agents of any subsidiary of the Corporation such information and explanations as the auditor considers necessary to enable the auditor to prepare any report required by this Part and that the present or former directors, officers, employees or agents are reasonably able to furnish; and

(*b*) furnish the information and explanations so obtained to the auditor. [1991, c.11, s.65]

History: New.
Commentary: See the commentary under §104-145 and §104-202 above.

[§104-244]

66. Restriction.--Nothing in this Part shall be construed as authorizing the auditor to express any opinion on the merits of matters of policy, including the merits of

(*a*) the objects for which the Corporation is incorporated, or the restrictions on the businesses or activities that it may carry on;

(*b*) the objectives of the Corporation; and

(*c*) any business or policy decision of the Corporation or of the Government of Canada. [1991, c.11, s.66]

History: New.
Commentary: See the commentary under §104-145 and §104-202 above.

[§104-245]

67. Qualified privilege.--Any oral or written statement or report made under this Part by the auditor has qualified privilege. [1991, c.11, s.67]

History: New.
Commentary: See the commentary under §104-145 and §104-202 above.

[§104-246]

68. Cost of audit and examinations.--The costs incurred by the auditor in preparing any report under subsection 62(1) or section 64 shall be disclosed in the next annual

report of the Auditor General of Canada and be paid out of the moneys appropriated for the office of the Auditor General of Canada. [1991, c.11, s.68]

History: New.
Commentary: See the commentary under §104-145 and §104-202 above.

[§104-247]

69. (1) **Audit committee.**--The Corporation shall establish an audit committee composed of not fewer than three directors.

[§104-248]

(2) **Duties.**--The audit committee shall

(*a*) review and advise the Board with respect to the financial statements that are to be included in the annual report of the Corporation;

(*b*) oversee any internal audit of the Corporation that is conducted pursuant to subsection 60(3);

(*c*) review and advise the Board with respect to the annual auditor's report of the Corporation referred to in subsection 62(1);

(*d*) where the Corporation is undergoing a special examination, review and advise the Board with respect to the plan and reports referred to in section 64; and

(*e*) perform such other functions as are assigned to it by the Board.

[§104-249]

(3) **Auditor's attendance.**--The auditor is entitled to receive notice of every meeting of the audit committee and to attend and be heard at each meeting and, if so requested by a member of the audit committee, the auditor shall attend any or every meeting of the committee.

[§104-250]

(4) **Calling meeting.**--The auditor or a member of the audit committee may call a meeting of the committee. [1991, c.11, s.69]

History: New.
Commentary: See the commentary under §104-145 and §104-202 above.

[§104-251]

70. Report on wholly-owned subsidiaries.--The Corporation shall forthwith notify the Minister and the President of the Treasury Board of the name of any corporation that becomes or ceases to be a wholly-owned subsidiary of the Corporation. [1991, c.11, s.70]

History: New.
Commentary: See the commentary under §104-145 and §104-202 above.

Report to Parliament

[§104-252]

71. (1) **Annual report.**--The Corporation shall, as soon as possible after, but in any case within three months after, the end of each financial year, submit an annual report on the operations of the Corporation in that year concurrently to the Minister and to the President of the Treasury Board, and the Minister shall cause a copy of the report to be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the Minister receives it.

[§104-253]

(2) **Reference to committee.**--An annual report laid before a House of Parliament pursuant to subsection (1) stands permanently referred to such committee of that House or of both Houses of Parliament as may be designated or established to review matters relating to the business and activities of the Corporation.

[§104-254]

(3) **Form and contents.**--The annual report of the Corporation shall include

(*a*) the financial statements of the Corporation referred to in section 60,

(*b*) the annual auditor's report referred to in subsection 62(1),

(*c*) a statement on the extent to which the Corporation has met its objectives for the financial year,

(*d*) quantitative information respecting the performance of the Corporation, including its wholly-owned subsidiaries, if any, relative to the Corporation's objectives, and

(*e*) such other information in respect of the financial affairs of the Corporation as is required by this Part or by the Minister to be included therein,

and shall be prepared in a form that clearly sets out information according to the major businesses or activities of the Corporation and its wholly-owned subsidiaries, if any. [1991, c.11, s.71]

History: Expanded version of section 39 of the *Broadcasting Act*, R.S.C. 1985, c.B-9.
Commentary: The form and content requirements prescribed by subsection (2) are new.

[§104-255]

PART IV

RELATED AND CONSEQUENTIAL AMENDMENTS, REPEAL, TRANSITIONAL AND COMING INTO FORCE

Related and Consequential Amendments

[§104-256]

[NOTE; Sections 72 to 88 of Bill C-40 contain related and consequential amendments to certain other statutes. These amendments are not here reproduced. However, for a consolidation of the *Canadian Radio-television and Telecommunications Commission Act* and the *Radiocommunication Act* which incorporates the amendments made to those Acts by Bill C-40, see §102-1 and §106-1 respectively.]

Repeal

[§104-257]

89. Repeal of R.S., c.B-9.--The *Broadcasting Act*, chapter B-9 of the Revised Statutes of Canada, 1985, is repealed. [1991, c.11, s.89]

Transitional

[§104-258]

90. (1) **Definitions.**--In this section,

"Executive Committee" means the Executive Committee of the Commission, as it existed on the day immediately before the coming into force of section 80;

"former Act" means the *Broadcasting Act*, chapter B-9 of the Revised Statutes of Canada, 1985.

[§104-259]

(2) **Pending Proceedings.**--Any proceedings pending before the Commission or Executive Committee on the day immediately before the coming into force of this subsection shall be taken up and continued before the Commission under and in conformity with this Act.

[§104-260]

(3) **Continuation of previous orders, etc.**--Every decision, order, rule and regulation issued, rendered or made under the former Act by the Commission or Executive Committee that is in force on the coming into force of this subsection and that is not inconsistent with this Act or any other Act of Parliament shall be deemed to have been issued, rendered or made by the Commission under this Act.

[§104-261]

(4) **Continuation of directions.**--Every direction issued to the Commission by the Governor in Council under the former Act that is in force on the day immediately preceding the coming into force of this subsection and that is not inconsistent with this Act or any other Act of Parliament shall be deemed to have been issued by the Governor in Council under this Act.

[§104-262]

(5) **Continuation of licences.**--Every broadcasting licence authorizing the carrying on of a broadcasting undertaking issued under the former Act and in effect on the day immediately preceding the coming into force of this subsection shall continue in effect for the unexpired portion of its term as if it were a licence authorizing the carrying on of a broadcasting undertaking issued under this Act and may be amended renewed, suspended or revoked in the manner provided in this Act. [1991, c.11, s.90.]

[§104-263]

91. (1) **Full-time members of Commission.**--Every person holding office as Chairman, Vice-Chairman or full-time member of the Commission immediately before the coming into force of section 76 shall continue in office and be deemed to have been appointed under section 3 of the *Canadian Radio-television and Telecommunications Commission Act*, as amended by this Act, to hold office for the remainder of the term for which the person has been appointed before the coming into force of section 76.

[§104-264]

(2) **Part-time members of Commission.**--The part-time members of the Commission holding office immediately before the coming into force of section 76 shall cease to hold office on the coming into force of that section. [1991, c.11, s.91.]

[§104-265]

92. Directors of Corporation.--Every person holding office as a director of the Corporation immediately before the coming into force of section 36 shall continue in office and be deemed to have been appointed under that section to hold office for the remainder of the term for which the person had been appointed before the coming into force of that section. [1991, c.11, s.92.]

Coming into Force

[§104-266]

93. Coming into force.--This act or any provisions thereof shall come into force on a day or days to be fixed by order of the Governor in Council. [Act proclaimed in force, June 4, 1991]

[§104-267]

SCHEDULE

(Sections 24, 25 and 30)

1. Any licence issued pursuant to C.R.T.C. Decision No. 87-140 of February 23, 1987.
2. Any licence issued pursuant to C.R.T.C. Decision No. 88-181 of March 30, 1988.
3. Any licence issued in connection with the operation of any radio or television station owned and operated by the Corporation.

History: New.
Commentary: For a discussion of this Schedule, see the commentary under §104-109 above.

[§106-1]

[CANADA]

Radiocommunication Act

[§106-2]

[R.S.C.1985, c. R-2, as amended by S.C.1987, c.4, and S.C.1989, c.17, in force October 4, 1989; 1991, c.11, ss.81-85, proclaimed in force June 4, 1991; 1992, c.47, s.84, not yet in force; 1993, c.38, ss.91 and 92, proclaimed in force October 25, 1993; and 1993, c.40, ss.23 to 26, proclaimed in force August 1, 1993.

This legislation governs the licensing and regulation of radio apparatus and the technical certification of broadcasting undertakings in Canada. The Art includes definitions of terms (s.2), and binds Her Majesty in right of Canada and each province (s.3). No person is permitted to install, operate or possess radio apparatus except in accordance with a licence, certificate or authorization issued by the Minister (s.4). Exemptions may be granted by the cabinet (s.6(1)(*m*)), and a statutory exemption applies for radio apparatus that is capable only to the reception of broadcasting (defined in pre-1991 terms) and that is not a distribution undertaking (s.4(1)(*b*)). The powers of the Minister of Communications to issue licences, certificates and authorizations are set forth (s.6), and the Minister can delegate any of his or her powers to officials (s.3(4)). The cabinet is empowered to make regulations on a number of matters, including tariffs of fees and the edibility of persons to be licensees (s.6). The government is given the power to assume possession of radio stations (s.7). The powers of inspectors are set forth including the issuance of search warrants (s.8), and their reports are admissible into evidence (s.16). The Act prohibits the transmission of false or fraudulent messages and the obstruction of radiocommunication (s.9(1)(*a*),(*b*)), and the use and divulging of radiocommunication other than broadcasting, except as permitted by the originator (s.9(2),(3)). In provisions added in 1991, the Act prohibits the decoding of encrypted subscription programming signals or encrypted network feeds otherwise than under and in accordance with an authorization from the lawful distributor of the signal or feed, or the operation of apparatus to receive such decoded signals or the retransmission of such decoded signals to the public (s.9(1)(*c*),(*d*),(*e*)). Penalties for offences under the Act are set forth, including matters affecting liability (ss.10, 11), and there are provisions for "ticket offences" (s.12). A one year limitation period that was formerly applicable has been extended to three years (s.10(6)). Provisions respecting the forfeiture of apparatus are included (s.13), as well as the disposition of fines (s.16), and the protection of Crown officers from personal liability (s.17). Finally, in a provision added in 1991, the Act makes any person who breaches the provisions respecting the decoding or use of encrypted signals without authorization liable for a civil action for damages or an injunction at the instance of an aggrieved person (s.18).]

AN ACT RESPECTING RADIOCOMMUNICATION IN CANADA

[1989, c.17, s.1]

[§106-3]

1. Short title.--This Act may be cited as the *Radiocommunication Act*. [Rep.& sub., 1989, c.17, s. 2]

[§106-4]

2. Definitions.--In this Act,

[§106-5]

"broadcasting" means any radiocommunication in which the transmissions are intended for direct reception by the general public; [R.S.C.1985, c. R-2, s.2(1).]

[§106-6]

"broadcasting certificate" means a certificate issued by the Minister under subparagraph 5(1)(*a*)(ii); [added by 1989, c.17, s. 3(3)]

[§106-7]

"broadcasting undertaking" includes any distribution undertaking, programming undertaking and network operation to which the *Broadcasting Act* applies;[*Rep. & sub.*, 1991, c.11, s.81(1).]

[§106-8]

"distribution undertaking" has the same meaning as in the *Broadcasting Act*; [*New*, 1991, c.11, s.81(2)]

[§106-9]

"encrypted" means treated electronically or otherwise for the purpose of preventing intelligible reception;[*New*, 1991, c.11, s.81(2).]

[§106-10]

"harmful interference" means an adverse effect of electromagnetic energy from any emission, radiation or induction that

(*a*) endangers the use or functioning of a safety-related radiocommunication system, or

(*b*) significantly degrades or obstructs, or repeatedly interrupts, the use or functioning of radio apparatus or radio-sensitive equipment; [*New*. 1989, c.17, s. 3(3)]

[§106-11]

"interference-causing equipment" means any device, machinery or equipment, other than radio apparatus, that causes or is capable of causing interference to radiocommunication; [*New.* 1989, c.17, s. 3(3)]

[§106-12]

"lawful distributor", in relation to an encrypted subscription programming signal or encrypted network feed, means a person who has the lawful right in Canada to transmit it and authorize its decoding; [*New.* 1991, c.11, s.81(2)]

[§106-13]

"Minister" means the Minister of Communications; [R.S.C.1985, c. R-2, s.2(1).

[NOTE: As a result of a cabinet reorganization in June, 1993, the functions of the Minister of Communications under the *Radiocommunication Act* were assigned to the Minister of Industry and Science, although the statutory references have not been changed. See P.C. 1993-1670, August 18, 1993; and P.C. 1993-1489, June 25, 1993.]

[§106-14]

"network" has the same meaning as in the *Broadcasting Act;* [*Rep. & sub.,* 1991, c.11, s.82(2).]

[§106-15]

"network feed" means any radiocommunication that is transmitted

(*a*) by a network operation to its affiliates,

(*b*) to a network operation for retransmission by it to its affiliates, or

(*c*) by a lawful distributor to a programming undertaking; [*New.* 1991, c.11, s.81(2).]

[§106-16]

"prescribed" means prescribed by regulations; [*New.* 1989, c.17, s.3(3).]

[§106-17]

"programming undertaking" has the same meaning as in the *Broadcasting Act*; [*New.* 1991, c11, s.81(2).]

[§106-71a]

"public" includes persons who occupy apartments, hotel rooms or dwelling units situated in multi-unit buildings; [*New.* 1991, c.11, 81(2).]

[§106-71b]

"public switched telephone network" means a telecommunication facility the primary purpose of which is to provide a land line-based telephone service to the public for compensation; [*New.* 1993, c.40, s.23.]

[§106-18]

"radio apparatus" means a device or combination of devices intended for, or capable of being used for, radiocommunication; [*Rep.& sub.*, 1989, c.17, s. 3(2)]

[§106-19]

"radio authorization" means a licence, certificate or authorization issued by the Minister under paragraph 5(1)(*a*); [*New.* 1989, c.17, s. 3(3)]

[§106-19a]

"radio-based telephone communication" means any radiocommunication that is made over apparatus that is used primarily for connection to a public switched telephone network; [*New.* 1993, c.40, s.23]

[§106-20]

"radio licence" means a licence issued by the Minister under subparagraph 5(1)(*a*)(i); [*New.* 1989, c.17, s. 3(3)]

[§106-21]

"radio operator certificate" means a certificate issued by the Minister under subparagraph 5(1)(*a*)(iii); [*New.* 1989, c.17, s.3(3)]

[§106-22]

"radio-sensitive equipment" means any device, machinery or equipment, other than radio apparatus, the use or functioning of which is or can be adversely affected by radiocommunication emissions; [*New.* 1989, c.17, s.3(3)]

[§106-23]

"radio station" or "station" means a place in which radio apparatus is located; [R.S.C. 1985, c. R-2, s.2(1).]

[§106-24]

"radiocommunication" or "radio" means any transmission, emission or reception of signs, signals, writing, images, sounds or intelligence of any nature by means of electromagnetic waves of frequencies lower than 3,000 GHz propagated in space without artificial guide; [R.S.C.1985, c. R-2, s.2(1).]

[§106-25]

"subscription programming signal" means radiocommunication that is intended for reception either directly or indirectly by the public in Canada or elsewhere on payment of subscription fee or other charge; [*New.* 1991, c. 11, s.81(2).]

[§106-26]

"technical acceptance certificate" means a certificate issued by the Minister under subparagraph 5(1)(*a*)(iv); [*New.* 1989, c.17, s.3(3).]

[§106-27]

[NOTE: definition of "telecommunication" repealed in 1993, c.38, s.91]

APPLICATION

[§106-28]

3. (1) **Application to Her Majesty and Parliament.--** Subject to subsection (2), this Act is binding on Her Majesty in right of Canada, on the Senate, the House of Commons and the Library of Parliament and on Her Majesty in right of a province. [*Rep.& sub.*, 1989, c.17, s. 4]

[§106-29]

(2) **Exemptions.--** The Governor in Council may by order exempt Her Majesty in right of Canada, or the Senate, House of Commons or Library of Parliament, as represented by the person or persons named in the order, from any or all provisions of this Act or the regulations, and such an exemption may be

(*a*) in the case of an exemption of Her Majesty in right of Canada, in respect of Her Majesty in right of Canada generally, or only in respect of a department or other body named in the order;

(*b*) either absolute or qualified; and

(*c*) of either general or specific application. [*Rep.& sub.*, 1989, c.17, s. 4]

[§106-30]

(3) **Geographical application.--** This Act applies within Canada and on board

(*a*) any ship, vessel or aircraft that is

(i) registered or licensed under an Act of Parliament, or

(ii) owned by, or under the direction or control of, Her Majesty in right of Canada or a province;

(*b*) any spacecraft that is under the direction or control of

(i) Her Majesty in right of Canada or a province,

(ii) a citizen or resident of Canada, or

(iii) a corporation incorporated or resident in Canada; and

(*c*) any platform, rig, structure or formation that is affixed or attached to land situated in those submarine areas adjacent to the coast of Canada and extending throughout the natural prolongation of the land territory of Canada to the outer edge of the continental margin or to a distance of two hundred nautical miles from the baselines from which the breadth of the territorial sea of Canada is measured, whichever is greater. [*Rep.& sub.*, 1989, c.17, s. 4]

[§106-31]

(4) **Powers, duties and functions of Minister.--** Any power, duty of function of the Minister under this Act or the regulations may be exercised or performed by any person authorized by the Minister to do so and, if so exercised or performed, shall be deemed to have been exercised or performed by the Minister. [*Rep.& sub.*, 1989, c.17, s. 4]

PROHIBITIONS

[§106-32]

4. (1) **Prohibitions.--** No person shall, except under and in accordance with a radio authorization, install, operate or possess radio apparatus, other than

(*a*) radio apparatus exempted by or under regulations made under paragraph 6(1)(*m*); or

(*b*) radio apparatus that is capable only of the reception of broadcasting and that is not a broadcasting receiving undertaking. [*Rep.& sub.*, 1989, c.17, s. 4]

[§106-33]

(2) **Idem.--** No person shall manufacture, import, distribute, lease, offer for sale of sell any radio apparatus, interference-causing equipment for which a technical acceptance certificate is required under this Act, otherwise than in accordance with such a certificate. [*Rep.& sub.*, 1989, c.17, s. 4]

[§106-34]

(3) **Idem.--** No person shall manufacture, import, distribute, lease, offer for sale or sell any radio apparatus, interference-causing equipment or radio-sensitive equipment for which technical standards have been established under paragraph 6(1)(*a*), unless the apparatus or equipment complies with those standards. [*Rep.& sub.*, 1989, c.17, s. 4]

MINISTER'S POWERS

[§106-35]

5. (1) **Minister's powers.--** Subject to any regulations made under section 6, the Minister may, taking into account all matters that the Minister considers relevant for ensuring the orderly establishment or modification of radio stations and the orderly development and efficient operation of radiocommunication in Canada,

(*a*) issue

(i) radio licences in respect of radio apparatus,

(ii) broadcasting certificates in respect of radio apparatus that form part of a broadcasting undertaking,

(iii) radio operator certificates,

(iv) technical acceptance certificates in respect of radio apparatus, interference-causing equipment and radio-sensitive equipment, and

(v) any other authorization relating to radiocommunication that the Minister considers appropriate,

and may fix the terms and conditions of any such licence, certificate or authorization including, in the case of a radio licence, terms and conditions as to the services that may be provided by the holder thereof;

(*b*) amend the terms and conditions of any licence, certificate or authorization issued under paragraph (*a*);

(*c*) make available to the public any information set out in radio licences or broadcasting certificates;

(*d*) establish technical requirements and technical standards in relation to
(i) radio apparatus,
(ii) interference-causing equipment, and
(iii) radio-sensitive equipment,
or any class thereof;
(*e*) plan the allocation and use of the spectrum;
(*f*) approve each site on which radio apparatus, including antenna systems, may be located, and approve the erection of all masts, towers and other antenna-supporting structures;
(*g*) test radio apparatus for compliance with technical standards established under this Act;
(*h*) require holders of, and applicants for, radio authorizations to disclose to the Minister such information as the Minister considers appropriate respecting the present and proposed use of the radio apparatus in question and the cost of installing or maintaining it;
(*i*) require holders of radio authorizations to inform the Minister of any material changes in information disclosed pursuant to paragraph (*h*);
(*j*) appoint inspectors for the purposes of this Act;
(*k*) take such action as may be necessary to secure, by international regulation or otherwise, the rights of Her Majesty in right of Canada in telecommunication matters, and consult the Canadian Radio-television and Telecommunications Commission with respect to any matter that the Minister deems appropriate;
(*l*) make determinations as to the existence of harmful interference and issue orders to persons in possession or control of radio apparatus, interference-causing equipment or radio-sensitive equipment that the Minister determines to be responsible for the harmful interference to cease or modify operation of the apparatus or equipment until such time as it can be operated without causing or being affected by harmful interference;
(*m*) undertake, sponsor, promote or assist in research relating to radiocommunication, including the technical aspects of broadcasting; and
(*n*) do any other thing necessary for the effective administration of this Act. [*Rep.& sub.*, 1989, c.17, s. 4]

[§106-35a]

(1.1) **Canadian telecommunications policy--** In exercising the powers conferred by subsection (1), the Minister may have regard to the objectives of the Canadian telecommunications policy set out in section 7 of the *Telecommunications Act*. [*New.* 1993, c.38, s.92]

[§106-36]

(2) **Suspension or revocation of radio authorization.--** The Minister may suspend or revoke a radio authorization
(*a*) with the consent of the holder thereof;

(*b*) after giving written notice to the holder and giving the holder a reasonable opportunity to make representations to the Minister with respect thereto, where the Minister is satisfied that

(i) the holder has contravened this Act, the regulations or the terms or conditions of the radio authorization, or

(ii) the radio authorization was obtained through misrepresentation; or

(*c*) on giving written notice of suspension or revocation to the holder, without having to give the holder an opportunity to make representations to the Minister with respect thereto, where the holder has failed to comply with a request to pay fees or interest due under paragraph 6(1)(*l*). [*Rep.& sub.*, 1989, c.17, s. 4]

POWERS OF GOVERNOR IN COUNCIL AND OTHERS

[§106-37]

6. (1) **Regulations.--** The Governor in Council may make regulations

(*a*) respecting technical requirements and technical standards in relation to

(i) radio apparatus,

(ii) interference-causing equipment, and

(iii) radio-sensitive equipment,

or any class thereof;

(*b*) prescribing the eligibility of persons to whom radio authorizations, or any class thereof, may be issued, including eligibility criteria based on

(i) in the case of an individual, citizenship or permanent residence, or

(ii) in the case of a corporation, residence, ownership or control of the corporation, and the citizenship or permanent residence status of the directors and officers of the corporation;

(*c*) prescribing the qualifications of persons to whom radio authorizations, or any class thereof, may be issued, including examinations to be administered;

(*d*) prescribing the procedure governing the making of applications for radio authorizations, or any class thereof, including form and manner, and prescribing the processing and disposition of those applications and the issuing of radio authorizations by the Minister;

(*e*) prescribing the terms and conditions of radio authorizations, including, in the case of a radio licence, terms and conditions as to the services that may be provided by the holder thereof;

(*f*) prescribing conditions and restrictions applicable in respect of any prescribed radio service;

(*g*) prescribing radio apparatus, interference-causing equipment and radio-sensitive equipment, or classes thereof, in respect of which a technical acceptance certificate is required;

(*h*) respecting the inspection, testing and approval of radio apparatus, interference-causing equipment and radio-sensitive equipment in relation to technical acceptance certificates;

(*i*) prohibiting or regulating, in relation to

(i) interference to radiocommunication, or

(ii) adverse effects of electromagnetic energy from any emission, radiation or induction,

the manufacture, importation, installation, distribution, lease, offering for sale, sale or use of radio apparatus, interference-causing equipment and radio-sensitive equipment;

(*j*) prescribing the eligibility and qualifications of persons who may be appointed as inspectors, and the duties of inspectors;

(*k*) for giving effect to international agreements, conventions or treaties respecting radiocommunication to which Canada is a party;

(*l*) prescribing fees

(i) for radio authorizations, applications therefor and examinations or testing in relation thereto, and

(ii) for services provided by the Department of Communications relating to spectrum management,

and respecting interest payable on unpaid fees so prescribed;

(*m*) prescribing radio apparatus, or any class thereof, that is exempt, either absolutely or subject to prescribed qualifications, from the application of subsection 4(1);

(*n*) prohibiting or regulating the further telecommunication, other than by persons operating broadcasting undertakings, of radiocommunications;

(*o*) for requiring, in a manner set out in the regulations, the reception or transmission of radiocommunication by any radio apparatus, or the exchange of radiocommunication by any radio apparatus with another radio apparatus;

(*p*) prescribing the manner in which radiocommunication is carried on in relation to any class of radio apparatus or radio service;

(*q*) prescribing the procedure to be followed with respect to the making of determinations under paragraph 5(1)(*l*), and prescribing the factors, including signal quality requirements, that the Minister shall take into account when making those determinations;

(*r*) prescribing maximum fines or maximum terms of imprisonment, or both, not exceeding those set out in subsection 10(1), for contravening or failing to comply with a regulation;

(*s*) prescribing anything that by this Act is to be prescribed; and

(*t*) generally for carrying out the purposes and provisions of this Act. [*Rep.& sub.*, 1989, c.17, s. 4]

[§106-38]

(2) **Incorporation of reference.--** A regulation made under subsection (1) incorporating by reference a classification, standard, procedure or other specification may incorporate the classification, standard, procedure or specification as amended from time to time. [*Rep.& sub.*, 1989, c.17, s. 4]

[§106-39]

7. (1) **Possession of Her Majesty.--** Her Majesty may assume, and for any length of time, retain possession of any radio station and all things necessary to the sufficient working of it and may, for the same time, require the exclusive service of the operators

and other persons employed in working the station. [R.S.C.1985, c. R-2, s.10(1); renumbered by 1989, c.17, s. 5]

[§106-40]

(2) **Control by Government.**-- The person who owns or controls the station of which possession is assumed pursuant to subsection (1) shall give up possession of it and the operators and other persons employed as described in that subsection shall, during the time of possession thereunder, diligently and faithfully obey such orders, and transmit and receive such signals, calls and radiograms, as they are required to receive and transmit by any duly authorized officer of the Government of Canada. [R.S.C.1985, c. R-2, s.10(2); renumbered by 1989, c.17, s. 5]

[§106-41]

(3) **Compensation.**-- Where the Minister and the person who owns or controls any radio station taken possession of by the Crown under this section cannot agree as to the compensation to be paid by the Crown for the taking of possession, the Minister shall refer the matter to the Federal Court for adjudication and the *Expropriation Act* is, with such modifications as the circumstances require, applicable for the purpose of determining the amount of the compensation, if any, and the amount of any judgment on proceedings instituted under this subsection is payable out of the Consolidated Revenue Fund. [R.S.C.1985, c.R-2, s.10(3); renumbered by 1989, c.17, s. 5]

[§106-42]

8. (1) **Powers of inspectors.**--Subject to subsection (2), an inspector appointed under paragraph 5(1)(*j*) may, at any reasonable time, for the purpose of enforcing this Act,

(*a*) enter any place in which the inspector believes on reasonable grounds there is any radio apparatus, interference-causing equipment or radio-sensitive equipment;

(*b*) examine any radio apparatus, interference-causing equipment or radio-sensitive equipment found therein; and

(*c*) examine any logs, books, reports, test data, records, shipping bills, bills of lading or other documents or papers found therein that the inspector believes on reasonable grounds contain information relevant to the enforcement of this Act, and make copies thereof or take extracts therefrom. [*Rep.& sub.*, 1989, c.17, s. 6]

[§106-43]

(2) **Dwelling-houses.**-- Where a place referred to in subsection (1) is a dwelling-house, an inspector may not enter that dwelling-house without the consent of the occupant, except

(*a*) under the authority of a warrant issued under subsection (3) or

(*b*) where, by reason of exigent circumstances, it would not be practical for the inspector to obtain a warrant

and, for the purposes of paragraph (*b*), exigent circumstances include circumstances in which the delay necessary to obtain a warrant would result in danger to human life or safety or the loss or destruction of evidence. [*Rep.& sub.*, 1989, c.17, s. 6]

[§106-44]

(3) **Warrants.**-- Where, on *ex parte* application, a justice of the peace is satisfied by information on oath that

(*a*) entry to a dwelling-house is necessary for the purpose of performing any duty of an inspector under this Act, and

(*b*) entry to the dwelling-house has been refused or that there are reasonable grounds for believing that entry thereto will be refused,

the justice may issue a warrant authorizing the inspector named therein to enter that dwelling-house, subject to any conditions specified in the warrant. [*Rep.& sub.*, 1989, c.17, s. 6]

[§106-45]

(4) **Use of force.**-- In executing a warrant issued under subsection (3), an inspector shall not use force unless the inspector is accompanied by a peace officer and the use of force is specifically authorized in the warrant. [*Rep.& sub.*, 1989, c.17, s. 6]

[§106-46]

(5) **Assistance to inspectors.**-- The owner or person in charge of a place entered by an inspector shall give the inspector all reasonable assistance to enable the inspector to carry out the inspector's duties under this Act, and shall give the inspector any information that the inspector reasonably requests. [*Rep.& sub.*, 1989, c.17, s. 6]

[§106-47]

(6) **Obstruction, false information.**-- Where an inspector is carrying out duties under this Act, no person shall

(*a*) resist or wilfully obstruct the inspector; or

(*b*) knowingly make a false or misleading statement, either orally or in writing, to the inspector. [*Rep.& sub.*, 1989, c.17, s. 6]

OFFENCES AND PUNISHMENT

[§106-48]

9. (1) **Prohibitions**-- No person shall

(*a*) knowingly send, transmit or cause to be sent or transmitted any false or fraudulent distress signal, message, call or radiogram of any kind; or

(*b*) without lawful excuse, interfere with or obstruct any radiocommunication. [*Rep.& sub.*, 1989, c.17, s. 6]

(*c*) decode an encrypted subscription programming signal or encrypted network feed, otherwise than under and in accordance with authorization from the lawful distributor of the signal or feed;

(*d*) operate a radio apparatus so as to receive an encrypted subscription programming signal or encrypted network feed that has been decoded in contravention of paragraph (*c*); or

(*e*) retransmit to the public an encrypted subscription programming signal or encrypted network feed that has been decoded in contravention of paragraph (*c*). [Paras. (*c*), (*d*) and (*e*) added by 1991, c.11, s.83(1).]

[§106-48a]

(1.1) **Prohibition--** Except as prescribed, no person shall make use of or divulge a radio-based telephone communication.

(*a*) if the originator of the communication or the person intended by the originator of the communication to receive it was in Canada when the communication was made; and

(*b*) unless the originator, or the person intended by the originator to receive the communication consents to the use or divulgence. [*New.* 1993, c.40, s.24.]

[§106-49]

(2) **Idem--** Except as prescribed, no person shall intercept and make use of, or intercept and divulge, any radiocommunication, except as permitted by the originator of the communication or the person intended by the originator of the communication to receive it. [*Rep.& sub.*, 1993, c.40, s.24]

[§106-50]

(3) **Exceptions--** Subsection (2) does not apply in respect of radiocommunication that consists of broadcasting, a subscription programming signal or a network feed. [*New.* 1991, c.11, s.83(2).]

[§106-50a]

9.1 Penalties-- Every person who contravenes subsection 9(1.1) or (2) is guilty of an offence punishable on summary conviction and liable

(*a*) in the case of an individual, to a fine nor exceeding twenty-five thousand dollars or to imprisonment for a term not exceeding one year, or to both; and

(*b*) in the case of a person other than an individual, to a fine not exceeding seventy-five thousand dollars. [*New.* 1993, c.40, s.25.]

[§106-51]

10. (1) **Offences.--** Every person who

(*a*) contravenes section 4 or paragraph 9(1)(*a*) or (*b*);

(*b*) without lawful excuse, manufacturers, imports, distributes, leases, offers for sale, sells, installs, modifies, operates or possesses any equipment or device, or any component thereof, under circumstances that give rise to a reasonable inference that the equipment, device or component has been used, or is or was intended to be used, for the purpose of contravening section 9,

(*c*) contravenes or fails to comply with an order issued by the Minister under paragraph 5(1)(*l*), or

(*d*) contravenes or fails to comply with a regulation, where no punishment is prescribed by regulations made under paragraph 6(1)(*r*) for that contravention or failure to comply,

is guilty of an offence punishable on summary conviction and is liable, in the case of an individual, to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year, or to both, or, in the case of a corporation, to a fine not exceeding twenty-five thousand dollars. [*Rep.& sub.* 1989, c.17, s. 6; 1991, c.11, s.84(1).]]

[§106-52]

(2) **Idem.**-- Every person who contravenes or fails to comply with subsection 8(5) or (6) is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding five thousand dollars. [*Rep.& sub.*, 1989, c.17, s. 6]

[§106-53]

(2.1) **Idem.**-- Every person who contravenes paragraph 9(1)(*c*) or (*d*) is guilty of an offence punishable on summary conviction and is liable, in the case of an individual, to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding six months, or to both, or, in the case of a corporation, to a fine not exceeding twenty-five thousand dollars.

[§106-54]

(2.2) **Idem.**-- Every person who contravenes paragraph 9(1)(*e*) is guilty of an offence punishable on summary conviction and is liable, in the case of an individual, to a fine not exceeding twenty thousand dollars or to imprisonment for a term not exceeding one year, or to both, or in the case of a corporation, to a fine not exceeding two hundred thousand dollars.

[§106-55]

(2.3) **Exception.**-- No person who decodes an encrypted subscription programming signal in contravention of paragraph 9(1)(*c*) shall be convicted of an offence under that paragraph if the lawful distributor had the lawful right to make the signal available, on payment of a subscription fee or other charge, to persons in the area where the signal was decoded but had not made the signal readily available to those persons.

[§106-56]

(2.4) **Not lawful excuse.**-- Nothing in subsection (2.3) shall constitute a lawful excuse for any person to manufacture, import, distribute, lease, offer for sale or sell any equipment or device, or any component thereof, in contravention of paragraph 1(*b*).]

[§106-56a]

(2.5) **Due diligence**-- No person shall be convicted of an offence under paragraph 9(1)(*c*), (*d*) or (*e*) if the person exercised all due diligence to prevent the commission of the offence. [ss.2.1 to 2.5 *new*, 1991, c.11, s.84(2).]

[§106-57]

(3) **Continuing offence.**-- Where an offence under this section is committed or continued on more than one day, the person who committed the offence is liable to be convicted for a separate offence for each day on which the offence is committed or continued. [*Rep.& sub.*, 1989, c.17, s. 6]

[§106-58]

(4) **Injunctions.**-- Where a court of competent jurisdiction is satisfied, on application by the Minister, that an offence under paragraph (1)(*a*) is being or is likely to be committed, the court may grant an injunction, subject to such conditions as the court considers appropriate, ordering any person to cease or refrain from any activity related to that offence. [*Rep.& sub.*, 1989, c.17, s. 6]

[§106-59]

(5) **Federal Court.**-- For the purposes of subsection (4), the Federal Court is a court of competent jurisdiction. [*Rep.& sub.*, 1989, c.17, s. 6]

[§106-60]

(6) **Limitation.**-- A prosecution for an offence under this Act may be commenced within, but not after, three years after the day on which the subject-matter of the offence arose. [*Rep.& sub.*, 1989, c.17, s. 6]

[§106-61]

11. Liability of directors, etc.-- Where a corporation commits an offence under this Act, any officer, director or agent of the corporation who directed, authorized, assented to or acquiesced or participated in the commission of the offence is a party to and guilty of the offence, and is liable to the punishment provided for that offence in respect of an individual, whether or not the corporation has been prosecuted or convicted. [*Rep.& sub.*, 1989, c.17, s. 6]

[§106-62]

12. (1) **Ticket offences.**-- The Governor in Council may make regulations designating any offence under this Act as an offence in respect of which

(*a*) any person appointed as an inspector may issue and serve a summons by completing a ticket in the prescribed form, signing it and

(i) delivering it to the accused at the time the offence is alleged to have been committed, or

(ii) mailing it to the accused at the accused's latest known address, and

(*b*) the information may be laid after the ticket is delivered or mailed,

and any regulations made under this section shall establish a procedure for voluntarily entering a plea of guilty and paying a fine in respect of each offence to which the regulations relate and shall prescribe the amount of the fine to be paid in respect of each such offence.

[§106-63]

(2) **Fines.**-- A fine prescribed by regulations made under subsection (1) in respect of an offence may be lower for a first offence than for a subsequent offence, but in no case shall it be greater than one thousand dollars.

[§106-64]

(3) **Failure to respond to ticket.**-- Where a person to whom a ticket is delivered or mailed does not enter a plea within the prescribed time, a justice shall examine the information referred to in subsection (1) and

(*a*) if the information is complete and regular on its face, the justice shall enter a conviction in the person's absence and impose a fine of the prescribed amount;

or

(*b*) if the information is not complete and regular on its face, the justice shall quash the proceedings. [*Rep.& sub.*, 1989, c.17, s. 6. *Note*: section 12 was repealed in 1992, c.47, s.84, to come into force by order of the Governor in Council, to be supplanted by the provisions of the *Contraventions Act*.]

[§106-65]

13. (1) **Forfeiture of radio apparatus.**-- In the case of a conviction for an offence under paragraph 10(1)(*a*), any radio apparatus in relation to which or by means of which the offence was committed may be forfeited to her Majesty in right of Canada by order of the Minister for such disposition, subject to subsections (2) to (6), as the Minister may direct. [*Rep.& sub.*, 1989, c.17, s. 6]

[§106-66]

(2) **Notice of forfeiture.**-- Where a radio apparatus is ordered to be forfeited under subsection (1), the Minister shall cause a notice of the forfeiture to be published in the *Canada Gazette*. [*Rep.& sub.*, 1989, c.17, s. 6]

[§106-67]

(3) **Application by person claiming interest.**-- Any person, other than a party to the proceedings that resulted in a forfeiture under subsection (1), who claims an interest in the apparatus as owner, mortgagee, lien holder or holder of any like interest may, within thirty days after the making of the order of forfeiture, apply to any superior court of competent jurisdiction for an order under subsection (6), whereupon the court shall fix a day for the hearing of the application. [*Rep.& sub.*, 1989, c.17, s. 6]

[§106-68]

(4) **Notice.**-- An applicant for an order under subsection (6) shall, at least thirty days before the day fixed for the hearing of the application, serve a notice of the application and of the hearing on the Minister and on all other persons claiming an interest in the apparatus that is the subject-matter of the application as owner, mortgagee, lien holder or holder of any like interest of whom the applicant has knowledge. [*Rep.& sub.*, 1989, c.17, s. 6]

[§106-69]

(5) **Notice of intervention.**-- Every person, other than the Minister, who is served with a notice under subsection (4) and who intends to appear at the hearing of the application to which the notice relates shall, at least ten days before the day fixed for the hearing, file an appropriate notice of intervention in the record of the court and serve a copy thereof on the Minister and on the applicant. [*Rep.& sub.*, 1989, c.17, s. 6]

[§106-70]

(6) **Order declaring nature and extent of interests.**-- Where, on the hearing of an application under this section, the court is satisfied that the applicant, or the interveners, if any, or any of them,

(*a*) are innocent of any complicity and collusion in any conduct that caused the apparatus to be subject to forfeiture, and

(*b*) in the case of owners, exercised all reasonable care in respect of the persons permitted to obtain possession and use of the apparatus to satisfy themselves that it was not likely to be used in the commission of an offence under paragraph 10(1)(*a*),

any applicant or intervener in respect of whom the court is so satisfied is entitled to an order declaring that his interest is not affected by the forfeiture and declaring the nature and extent of his interest and the priority of his interest in relation to other interests recognized pursuant to this subsection, and the court may, in addition, order that the apparatus to which the interests relate be delivered to one or more of the persons found to have an interest therein, or that an amount equal to the value of each of the interests so declared be paid to the persons found to have those interests. [*Rep.& sub.*, 1989, c.17, s. 6]

[§106-71]

14. [*Repealed.* 1989, c.17, s. 6.]

[§106-72]

15. Disposition of fines.-- All fines imposed by this Act or the regulations belong to Her Majesty in right of Canada and they shall be paid to the Receiver General. [R.S.C.1985, c. R-2, s.15.]

[§106-73]

16. (1) **Certificates or reports of inspectors.**-- In any proceeding under this Act, or in any other proceeding to which the legislative jurisdiction of Parliament extends, a certificate or report purporting to have been given by an inspector who did an inspection or test pursuant to this Act and to have been signed by that inspector is admissible in evidence and, in the absence of any evidence to the contrary, is proof of the matters stated therein relating to the inspection or test, without proof of the signature, official character or capacity of the person appearing to have signed the certificate or report. [*Rep.& sub.*, 1989, c.17, s. 7]

[§106-74]

(2) **No admissibility without notice.**-- No certificate or report shall be received in evidence pursuant to subsection (1) unless the party who intends to produce it has given to the party against whom it is intended to be produced reasonable notice of that intention, together with a copy of the certificate or report. [*Rep.& sub.*, 1989, c.17, s. 7]

[§106-75]

(3) **Attendance of inspector.**-- A party who receives notice under subsection (2) may, with leave of the court, require the attendance of the inspector for the purposes of cross-examination. [*Rep.& sub.*, 1989, c.17, s. 7]

[§106-76]

17. (1) **Protection from personal liability.**-- No action or other proceeding for damages lies or may be instituted against a Minister, servant or agent of the Crown for or in respect of anything done or omitted to be done, or purported to be done or omitted to be done, in good faith under this Act or any order or regulation issued or made under this Act. [*New.* 1989, c.17, s. 7.]

[§106-77]

(2) **Crown not relieved of liability.**-- Subsection (1) does not relieve the Crown of liability for the acts or omissions described therein, and the Crown is liable under the *Crown Liability Act* or any other law as if that subsection had not been enacted. [*New.* 1989, c.17, s. 7.]

[§106-78]

CIVIL ACTION

18. (1) **Right of civil action.**-- Any person who

(*a*) holds an interest in the content of a subscription programming signal or network feed, by virtue of copyright ownership or a licence granted by a copyright owner.

(*b*) is authorized by the lawful distributor of a subscription programming signal or network feed to communicate the signal or feed to the public,

(*c*) holds a licence to carry on a broadcasting undertaking issued by the Canadian Radio-television and Telecommunications Commission under the *Broadcasting Act*, or

(*d*) develops a system or technology, or manufacturers or supplies to a lawful distributor equipment, for the purpose of encrypting a subscription programming signal or network feed, or manufactures, supplies or sells decoders, to enable authorized persons to decode an encrypted subscription programming signal or encrypted network feed

may, where the person has suffered loss or damage as a result of conduct that is contrary to paragraph 9(1)(*c*), (*d*) or (*e*) or 10(1)(*b*), in any court of competent jurisdiction, sue for and recover from the person who engaged in the conduct an amount equal, subject to subsection (2), to the loss or damage proved to have been

suffered or obtain such other remedy, by way of injunction, accounting or otherwise, as the court considers appropriate.

[§106-79]

(2) **Rules applicable.--** In any action under subsection (1) against a person,

(*a*) a monetary judgment may not exceed one thousand dollars where the person is an individual and the conduct engaged in by the person is neither contrary to paragraph 9(1)(*e*) or 10(1)(*b*) nor engaged in for commercial gain; and

(*b*) the costs of the parties are in the discretion of the court.

[§106-80]

(3) **Evidence of prior proceedings.--** In any action under subsection (1) against a person, the record of proceedings in any court in which that person was convicted of an offence under paragraph 9(1)(*c*), (*d*) or (*e*) or 10(1)(*b*) is, in the absence of any evidence to the contrary, proof that the person against whom the action is brought engaged in conduct that was contrary to that paragraph, and any evidence given in those proceedings as to the effect of that conduct on the person bringing the action is evidence thereof in the action.

[§106-81]

(4) **Jurisdiction of Federal Court.--** For the purposes of an action under subsection (1), the Federal Court is a court of competent jurisdiction.

[§106-82]

(5) **Limitation.--** An action under subsection (1) may be commenced within, but not after, three years after the conduct giving rise to the action was engaged in.

[§106-83]

(6) **Copyright Act.--** Nothing in this section affects any right or remedy that an aggrieved person may have under the *Copyright Act*. [*New.* 1991, c.11, s.85.]

[§106-84]

19. (1) **Right of civil action--** Any person who has made or received a radio-based telephone communication that the person believes on reasonable grounds will be or has been divulged or will be used or has been made use of contrary to subsection 9(1.1) may, in any court of competent jurisdiction, bring an action to prevent the divulgence or use of or to recover damages from the person who will divulge or has divulged or who will make use of or has made use of the radio-based telephone communication, and in any such action the court may grant any remedy, by way of injunction, damages, accounting or otherwise, as the court considers appropriate.

[§106-85]

(2) **Evidence of prior proceedings--** In an action under subsection (1) against a person, the record of proceedings in any court in which that person was convicted of an offence under subsection 9(1.1) is, in the absence of any evidence to the contrary, proof

that the person against whom the action is brought divulged or made use of the radio-based telephone communication and any evidence given in those proceedings as to the effect of the divulgence or use on the person bringing the action is evidence thereof in the action.

[§106-86]

(3) **Jurisdiction of Federal Court--** For the purposes of an action under subsection (1), the Federal Court is a court of competent jurisdiction.

[§106-87]

(4) **Limitation--** An action under subsection (1) may be commenced within, but not after, three years after the conduct giving rise to the action was engaged in.

[§106-88]

(5) **Remedies not affected--** Nothing in this section affects any other right or remedy that an aggrieved person might otherwise have. [*New*. 1993, c.40, s.26.]

[§111-1]

[CANADA: GOVERNOR IN COUNCIL]

Direction to the CRTC (Eligible Canadian Corporations)

[§111-2]

[C.R.C.1978, c.376; as amended by SOR/93-236, May 11, 1993, 1993 *Gazette Part II,* p.2466.]

[§111-3]

DIRECTION ISSUED TO THE CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION RESPECTING THE ELIGIBILITY OF CERTAIN CANADIAN CORPORATIONS TO HOLD A BROADCASTING LICENCE

Short Title

[§111-4]

1. This Order may be cited as *Direction to the CRTC (Eligible Canadian Corporations)*.

Directions

[§111-5]

2. The Canadian Radio-television and Telecommunications Commission is hereby directed that, on and after January 12, 1971, broadcasting licences may not be granted to applicants of the classes described in section 3.

[§111-6]

3. The classes referred to in section 2 are as follows:

(*a*) persons who are not Canadian citizens or eligible Canadian corporations; and

(*b*) governments of countries other than Canada or of political subdivisions of countries other than Canada and agents of such governments.

[§111-7]

4. For the purposes of this Direction, an "eligible Canadian corporation" is a corporation

(*a*) that is incorporated under the laws of Canada or a province,

(*b*) of which the chairman or other presiding officer and each of the directors or other similar officers are Canadian citizens, and

(*c*) of which, if it is a corporation having share capital, at least four-fifths of the shares having full voting rights under all circumstances and shares representing in

the aggregate at least four-fifths of the paid-up capital are beneficially owned by Canadian citizens or by corporations other than corporations that are controlled directly or indirectly by citizens or subjects of a country other than Canada,

except that, in any case where, in the opinion of the Commission, notwithstanding that the corporation is one to which subparagraphs (*a*) to (*c*) apply, the corporation is effectively owned or controlled either directly or indirectly and either through the holding of shares of the corporation or any other corporation or through the holding of a significant portion of the outstanding debt of the corporation or in any other manner whatever, by or on behalf of any person, body or authority of a class described in section 3, the corporation shall be deemed not to be an eligible Canadian corporation.

[§111-8]

5. Notwithstanding section 4, a corporation that is

(*a*) one to which paragraphs 4(*a*) to (*c*) apply, and

(*b*) in the opinion of the Commission, effectively owned or controlled by a corporation to which paragraphs 4(*a*) and (*c*) apply but paragraph 4(*b*) does not,

shall, for the purposes of this Direction, be deemed to be an eligible Canadian corporation if

(*c*) at least four-fifths of the directors or other similar officers of the owning or controlling corporation, including the chairman or other presiding officer are Canadian citizens; and

(*d*) the Commission is satisfied that it would not be contrary to the public interest to grant a broadcasting licence or the renewal of a broadcasting licence to that corporation.

[§111-9]

6. With respect to any shares of a corporation of a particular class that, according to the relevant records that the corporation is required to keep under the law of the place of its incorporation, are held by individuals each of whom holds one per cent or less of the total number of issued shares of the corporation of that class, the Commission may, in the absence of any evidence to the contrary, accept as evidence that such shares are beneficially owned by Canadian citizens, a statement signed by the president, secretary or treasurer of the corporation, or by any other officer or person thereunto duly authorized by the board of directors or other governing body of the corporation, indicating

(*a*) that according to those records the individuals who hold the shares are individuals having addresses in Canada; and

(*b*) that the person by whom the statement is signed has no knowledge or reason to believe that the shares are not beneficially owned by Canadian citizens.

[§111-10]

7. An applicant for the renewal of a broadcasting licence that was outstanding on April 1, 1968, to whom, but for this paragraph, such renewal may not be granted by virtue of this Direction shall be deemed, for the purposes of that application only, not to be an applicant of a class described in section 3 if

(*a*) the Commission is satisfied that it would not be contrary to the public interest to grant the renewal applied for by the applicant;
(*b*) the Governor in Council, by order, approves of the grant of the renewal after submission to him by the Commission of the application, together with a statement of the Commission's reasons why it is satisfied that it would not be contrary to the public interest to grant the renewal.

[§111-11]

8. Nothing in this Direction shall be construed as limiting
(*a*) the power of the Governor in Council to direct that amendments of broadcasting licences may not be granted to applicants of a class described in section 3 or that broadcasting licences may not be issued and amendments or renewals of broadcasting licences may not be granted to applicants of classes other than a class described in section 3; or
(*b*) the power of the Canadian Radio-television and Telecommunications Commission, in carrying out its objects, to refuse to grant an amendment of a broadcasting licence to an applicant of a class described in section 3, or to refuse to issue a broadcasting licence to or to grant an amendment or renewal of a broadcasting licence to an applicant of a class other than a class described in section 3.

[§112-1]

[CANADA: GOVERNOR IN COUNCIL]

[§112-2]

Direction to the CRTC (Ineligibility to Hold Broadcasting Licences)

[§112-3]

[SOR/85-627, June 27, 1985, *1985 Canada Gazette Part II*, p.3058; revoking and replacing C.R.C.1978, c.377. This order was made by P.C.1985-2108, June 27, 1985.]

[§112-4]

ORDER ISSUING A DIRECTION TO THE CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION RESPECTING INELIGIBILITY TO HOLD BROADCASTING LICENCES

Short Title

[§112-5]

1. This Order may be cited as the *Direction to the CRTC (Ineligibility to Hold Broadcasting Licences)*.

Interpretation

[§112-6]

2. For the purposes of this Order,

[§112-7]

"agents of Her Majesty in right of any province" means any agent of Her Majesty in such right, but does not include municipal governments or an independent corporation;

[§112-8]

"independent corporation" means a corporation that the Commission is satisfied is not directly controlled by Her Majesty in right of any province or by a municipal government and that is designated by statute or by the lieutenant governor in council of a province for the purpose of broadcasting the following types of programming, namely,

(*a*) programming designed to be presented in such a context as to provide a continuity of learning opportunity aimed at the acquisition or improvement of knowledge or the enlargement of understanding of members of the audience to whom such programming is directed and under circumstances such that the acquisition or improvement of such knowledge or the enlargement of such understanding is subject to supervision or assessment by a provincial authority by any appropriate means, and

(*b*) programming providing information on the available courses of instruction or involving the broadcasting of special education events within the educational system, which programming, taken as a whole, shall be designed to furnish educational opportunities and shall be distinctly different from general broadcasting available on the national broadcasting service or on privately owned broadcasting undertakings;

Recent CRTC Decisions: For a 1991 decision which examined the issue of whether a Crown agent (Saskatchewan Communications Network Corporation) was an "independent corporation", see Decision CRTC 91-98, February 14, 1991.

[§112-9]

"municipal governments" means any municipal or public body empowered to perform a function of government in a province;

[§112-10]

"provincial authority" means such person, body or authority as may be designated by the lieutenant governor in council of a province as the provincial authority for that province for the purposes of this Direction.

Direction

[§112-11]

3. The Commission is hereby directed that, on and after June 27, 1985, broadcasting licences may not be issued and renewals of broadcasting licences may not be granted to applicants of the following classes:

(*a*) Her Majesty in right of any province;
(*b*) agents of Her Majesty in right of any province; and
(*c*) municipal governments.

[§112-12]

4. Where, in respect of an application for a broadcasting transmitting undertaking licence principally for the purpose of transmission of programming or a broadcasting receiving undertaking licence, or a renewal thereof, applied for by any person that, in the opinion of the Commission, is controlled by a municipal government, the Commission is satisfied that

(*a*) a substantial portion of the area served or sought to be served under the broadcasting licence is not served or to be served by a broadcasting receiving undertaking, other than an undertaking for which the applicant is the licensee, already authorized by the Commission,

(*b*) a refusal to issue the broadcasting licence applied for or grant a renewal thereof would be contrary to the public interest, and

(*c*) the community programming provided by the undertaking will provide a reasonable, balanced opportunity for the expression of differing views on matters of public concern,

the Commission may, notwithstanding section 3, issue a broadcasting transmitting undertaking licence principally for the purpose of retransmission of programming or a broadcasting receiving undertaking licence, or grant a renewal thereof.

[§112-13]

5. Nothing in this Direction shall be construed as limiting the power of the Governor in Council to direct that broadcasting licences may not be issued and amendments or renewals of broadcasting licences may not be granted to applicants of a class other than a class described in section 3 or as limiting the power of the Commission, in carrying out its objects, to refuse to issue a broadcasting licence or to grant an amendment or renewal of a broadcasting licence to an applicant of a class other than a class described in section 3.

[§113-1]

[CANADA: GOVERNOR IN COUNCIL]

Direction to the CRTC (Reservation of Cable Channels)

[§113-2]

[C.R.C.1978, c.378.]

[§113-3]

DIRECTION ISSUED TO THE CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION RESPECTING THE RESERVATION OF CABLE CHANNELS

Short Title

[§113-4]

1. This Order may be cited as *Direction to the CRTC (Reservation of Cable Channels)*.

[§113-5]

2. The Canadian Radio-television and Telecommunications Commission is hereby directed that on or after March 19, 1970, a licence to operate a broadcasting receiving undertaking may not be issued or renewed in respect of any such undertaking situated in a province where the provincial authority of the province has given notice in writing to the Commission that it desires that cable transmission facilities of that undertaking be reserved for the use of the provincial authority for the purpose of broadcasting, at times stipulated in the notice, the types of programming defined in the appendix, and has satisfied the Commission that it has the present intention of using such facilities within a reasonable period of time, unless the Commission stipulates that at least one channel of the undertaking be reserved for the use of the provincial authority for that purpose.

[§113-6]

3. In this Direction, "provincial authority" means a provincial authority defined in the appendix.

[§113-7]

APPENDIX

Definition of the Reservation of Educational Broadcasting Time and Facilities

[§113-8]

1. Where, within its jurisdiction, the Canadian Radio-television and Telecommunications Commission, on the direction of the Governor in Council stipulates that at least one channel of a cable transmission facility be set aside for the use of a provincial authority for educational broadcasting or where the Canadian Broadcasting Corporation acts as agent of Her Majesty in right of Canada in providing a transmission facility for the use of a provincial authority for educational broadcasting, the time reserved on such channel or transmission facility for the provincial authority shall be used for broadcasting the following types of programming:

(*a*) programming designed to be presented in such a context as to provide a continuity of learning opportunity aimed at the acquisition or improvement of knowledge or the enlargement of understanding of members of the audience to whom such programming is directed and under circumstances such that the acquisition or improvement of such knowledge or the enlargement of such understanding is subject to supervision or assessment by the provincial authority by any appropriate means; and

(*b*) programming providing information on the available courses of instruction or involving the broadcasting of special education events within the educational system.

[§113-9]

2. "Provincial authority", in relation to any province, means such person, body or authority as may be designated by the lieutenant governor in council of that province as the provincial authority for that province for the purposes of this definition.

[§113-10]

3. The intention of this Appendix is to ensure that such programming, taken as a whole, shall be designed to furnish educational opportunities and shall be distinctly different from general broadcasting available on the public or private channels.

[§121-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

CRTC Rules of Procedure

[§121-2]

[C.R.C.1978, c.375.]

[§121-3]

RULES RESPECTING THE PROCEDURE OF THE CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION

Short Title

[§121-4]

1. These Rules may be cited as the *CRTC Rules of Procedure*.

Interpretation

[§121-5]

2. In these Rules,

[§121-6]

"Act" means the *Broadcasting Act*;

[§121-7]

"intervener" means a person who files an intervention pursuant to section 15;

[§121-8]

"party", in relation to a hearing held or to be held by or on behalf of the Commission, means the applicant and any intervener;

[§121-9]

"Secretary" means the Secretary of the Commission.

Applications

[§121-10]

3. (1) Every application to the Commission for the issue, amendment or renewal of a licence shall be made in writing and addressed to the Secretary.

[§121-11]

(2) An application referred to in subsection (1) shall be in a form satisfactory to the Commission and shall

(*a*) contain a clear and concise statement of the relevant facts, the grounds of the application and the nature of the order applied for or decision requested;

(*b*) be divided into paragraphs, numbered consecutively, each of which shall be confined as nearly as possible to a distinct subject matter;

(*c*) set forth the name, address and telephone number of the applicant and his agent, if any;

(*d*) be signed by the applicant or his agent;

(*e*) where it is signed by the agent of the applicant, be accompanied by a copy of the document whereby the agent was appointed, which document shall be in the form set out in Schedule I;

(*f*) contain a list of any documents that may be useful in explaining or supporting the application;

(*g*) designate a place within the area to be served, where the application may be inspected by any person in accordance with section 6; and

(*h*) be filed with the Commission in duplicate together with a copy of the documents described in paragraph (*f*).

[§121-12]

(3) An application for a licence for a temporary network operation may be filed with the Commission by sending a telegram to the Secretary containing a clear and concise statement of the facts, the grounds of the application and the nature of the licence applied for.

[§121-13]

4. (1) Where the Secretary is of the opinion that an application does not comply with subsection 3(2), he shall notify the applicant of the deficiencies in the application and the application shall not be considered until it is in a form satisfactory to the Commission and the Secretary is satisfied that it otherwise complies with subsection 3(2).

[§121-14]

(2) When an application is in a form satisfactory to the Commission, the Secretary is satisfied that it otherwise complies with subsection 3(2) and the Commission proposes to hold a public hearing in respect of the application, the Secretary shall

(*a*) set the application down for public hearing at such date and place as the Chairman shall direct; and

(*b*) publish a notice of the application, in such form as may be prescribed by the Commission,

(i) in the *Canada Gazette* not less than 50 days before the day fixed for the commencement of the public hearing, and

(ii) in one or more newspapers of general circulation within the area normally served or to be served by the broadcasting undertaking to which the public hearing relates.

[§121-15]

5. (1) Subject to subsections (2) and (3), where the Commission proposes to hold a public hearing in respect of an application that was filed

(*a*) by a licensee who holds a licence for the area in respect of which the application was filed, or

(*b*) in respect of the broadcasting undertaking of a licensee,the licensee shall at his own expense, at least four times in the period commencing 50 days before and ending 40 days before the day fixed for the commencement of the public hearing, broadcast over his own facilities, if any, within the area normally served or to be served by the broadcasting undertaking to which the public hearing relates, a notice of the public hearing stating

(*c*) the date fixed for the commencement of the public hearing;

(*d*) the nature of the matters to be heard at the public hearing; and

(*e*) the rights of all persons in respect of the public hearing, including the time for filing an intervention.

[§121-16]

(2) The notice referred to in subsection (1) shall be broadcast,

(*a*) in the case of A.M. and F.M. broadcasting undertakings, between 0700 hours and 0900 hours, or between 1600 hours and 1800 hours, local time; and

(*b*) in the case of television or other broadcasting undertakings, between 1800 hours and 2300 hours, local time.

[§121-17]

(3) Where the Commission determines that broadcasts of a notice of a public hearing are not necessary it may, in lieu thereof, require the applicant to serve upon such persons as appear to have an interest in the application a notice of the public hearing stating the information described in paragraphs 5(1)(*c*) to (*e*).

[§121-18]

6. Where a notice has been published pursuant to sub-paragraph 4(2)(*b*)(i), any person may examine any application listed in the notice at the office of the Secretary at Ottawa and at such other place within the area served or to be served as shall be designated in the application.

[§121-19]

7. No application shall be considered or dealt with by the Commission until 50 days have elapsed from the day on which a notice in respect thereof has been published pursuant to subparagraph 4(2)(*b*)(i).

[§121-20]

8. No application may be amended or varied and no supplementary or additional document may be filed, after a notice in respect thereof has been published pursuant to subparagraph 4(2)(*b*)(i), except with permission of the Commission and upon such terms and conditions as it may determine.

Recent CRTC Decisions: For a case in which consumer demand surveys undertaken after notice of an application had been published in the *Canada Gazette* were not admitted into the record, see Decision CRTC 92-140, March 6, 1992.

Complaints and Representations

[§121-21]

9. Where a person wishes to lodge a complaint with or make any representation to the Commission with respect to any matter within the powers of the Commission that is not directed to any application, he shall mail or deliver to the Secretary a brief written submission signed by him setting out the nature of his complaint or representation.

[§121-22]

10. Where the Commission determines that a complaint or representation made pursuant to section 9 constitutes an application or an intervention, it may require the person who made the complaint or representation to comply with the procedure relating to applications or interventions, as the case may be.

[§121-23]

11. Where the Executive Committee is satisfied that it would be in the public interest to hold a public hearing in connection with a complaint or representation made pursuant to section 9, the Secretary shall notify the person who made the complaint or representation and the person against whom it is made of the date and place of the hearing.

[§121-24]

12. Where a complaint or representation is made on behalf of a group of persons or an organization, the person representing the group or organization at a public hearing shall file such evidence of his authority to speak for the group or organization as the Commission may require.

Interventions

[§121-25]

13. Any person who is interested in an application, or who wishes to lodge a complaint or make a representation that has been determined by the Commission to constitute an intervention, other than the applicant, may file with the Commission an intervention for the purpose of supporting, opposing or modifying the application.

Recent CRTC Decisions: In Decision CRTC 90-772, August 20, 1990, the licensee of radio station CHRC Quebec challenged the admissibility before the Commission of opposing interventions. The CRTC concluded that any person could intervene provided that the intervention was relevant and procedurally compliant.

[§121-26]

14. (1) An intervention shall

(*a*) describe the interest of the intervener;

(*b*) contain a clear and concise statement of the relevant facts and the grounds upon which the intervener's support for, opposition to or proposed modification of the application is based;

(*c*) be divided into paragraphs, numbered consecutively, each of which shall be confined as nearly as possible to a distinct subject matter;

(*d*) set forth the name, address and telephone number of the intervener and his agent, if any;

(*e*) be signed by the intervener or his agent;

(*f*) where it is signed by the agent of the applicant, be accompanied by a copy of the document whereby the agent was appointed, which document shall be in the form set out in Schedule I;

(*g*) contain a list of any documents that may be useful in explaining or supporting the intervention;

(*h*) state whether the intervener wishes to appear; and

(*i*) be filed with the Commission, together with a copy of the documents described in paragraph (*g*).

[§121-27]

(2) An intervener shall serve a true copy of his intervention upon the applicant in relation to whom his intervention is made and upon such other persons as the Commission may designate.

[§121-28]

15. An intervention shall be filed and served at least 20 days before the day fixed for the commencement of the public hearing as set out in the notice thereof published pursuant to paragraph 4(2)(*b*)(i) unless such notice or the Commission directs otherwise.

Reply to Interventions

[§121-29]

16. Within 10 days after an applicant is served with a copy of an intervention pursuant to subsection 14(2), he may mail or deliver to the Secretary a reply thereto, a true copy of which he shall serve upon the intervener.

[§121-30]

17. (1) An applicant in his reply may object to an intervention as being insufficient, stating the grounds of his objection, and may admit or deny any or all of the facts alleged in the intervention.

[§121-31]

(2) A reply shall be signed by the applicant or his agent and where it is signed by an agent, it shall be accompanied by a copy of the document whereby the agent was appointed, which document shall be in the form set out in Schedule I.

Service and Filing

[§121-32]

18. (1) A notice or document may be served upon an applicant or an intervener by personal delivery or by registered mail.

[§121-33]

(2) Where a notice or document is served by registered mail, it shall be deemed to have been served on the fourth day following the day on which it was mailed.

[§121-34]

19. (1) A notice or document may be filed with the Commission by personal delivery or by registered mail to the Secretary.

[§121-35]

(2) Where a notice or document is filed with the Commission by registered mail, it shall be deemed to have been filed on the date of receipt of such notice or document at the office of the Secretary.

Confidential Information

[§121-36]

20. The Commission may, at the request of an applicant, if in the opinion of the Commission the public interest will best be served by so doing, treat as confidential the following material or information, if such material or information can be separated from the application and is marked "Confidential", namely

(*a*) financial statements of an applicant who holds a licence;

(*b*) evidence of the financial capacity of any person participating in an application; and

(*c*) the names of prospective employees of an applicant.

Oaths

[§121-37]

21. Any person authorized to administer oaths in a province may administer oaths in that province for the purpose of any matter before the Commission.

[§121-38]

22. Declarations under oath for use in relation to any matter before the Commission shall be filed with the Commission.

[§121-39]

23. Where a declaration under oath is made as to belief, the grounds upon which the belief is based shall be set forth.

Proof of Service

[§121-40]

24. Where a document is required to be served by these Rules or the Commission directs service of a document, proof of service by declaration under oath or such other manner as shall be acceptable to the Commission shall, after the document has been served as required or directed, be filed forthwith with the Commission.

Verification

[§121-41]

25. (1) The Commission may, by notice, require an applicant or intervener to verify by declaration under oath the whole or any part of an application, intervention or reply made by him or his agent or any notice broadcast over his facilities pursuant to subsection 5(2).

[§121-42]

(2) Where an applicant or intervener fails to comply with a notice referred to in subsection (1), the Commission may set aside the application, intervention or reply made by the applicant or intervener, as the case may be, or strike out any part of the application, intervention or reply that is not verified as required by the notice.

Suspension of Proceedings

[§121-43]

26. The Commission may require any person who is a party to any proceeding before the Commission to provide such information, particulars or documents as it may

require and may adjourn the proceeding until such time as it receives the required information, particulars or documents.

Notices Relating to Hearings

[§121-44]

27. When an application has been set down for public hearing, the Secretary shall give notice to the applicant at least 10 days before the date fixed for the commencement of the public hearing, stating whether he is required to appear.

[§121-45]

28. Any person who tends to appear and make representations at a public hearing shall file with the Commission, at least 7 days prior to the date fixed for the commencement of the hearing, a list setting forth the name, title and position of each person who intends to appear with him at the hearing.

Conference

[§121-46]

29. The Commission may, at any time, request the parties to any proceeding to appear before a member or officer of the Commission at a specified time and place for a conference or to submit suggestions in writing for the purpose of formulating issues and considering

(*a*) the simplification of issues;

(*b*) the necessity or desirability of amending the application, intervention or reply for the purpose of clarification, amplification or limitation;

(*c*) the making of admissions of certain facts, the proof of facts by declaration under oath and the use by any party of matters of public records;

(*d*) the procedure to be followed at the hearing;

(*e*) the mutual exchange by the parties of documents and exhibits proposed to be submitted at the public hearing; and

(*f*) such other matters as may aid in the simplification of the evidence and disposition of the proceedings.

Production and Inspection of Documents

[§121-47]

30. (1) Subject to section 20, any party to a public hearing may, at any time before the public hearing, give notice in writing to any other party

(*a*) to produce any document referred to in that other party's application, intervention or reply for inspection by the party giving notice; and

(*b*) to permit the party giving notice to take copies of any document referred to in paragraph (*a*).

[§121-48]

(2) Where a party to a hearing fails to comply with a notice given under subsection (1) within 10 days from the receipt thereof, he may not put any documents in evidence to which the notice relates unless he satisfies the Commission that he had sufficient cause for not complying with the notice.

Witnesses

[§121-49]

31. (1) Where a public hearing is to be held under section 19 of the Act, the Secretary may, on behalf of and as authorized by the Commission, issue subpoenas in the form set out in Schedule II to compel the attendance of any person at the hearing as a witness.

[§121-50]

(2) A subpoena issued under subsection (1) shall be issued in such a manner that the party to the hearing who requests the subpoena may list in the subpoena the name or names of the person to be subpoenaed.

[§121-51]

(3) Where a subpoena has been issued order this section it may be served on the person to whom it is directed at any place in Canada.

The Public Hearing

[§121-52]

32. Witnesses at a public hearing may be examined orally upon oath or in such other manner as the Commission may direct.

[§121-53]

33. No evidence may be introduced at a public hearing except in support of statements contained in an application, intervention or reply, as the case may be, or in support of documents or material filed in support thereof.

[§121-54]

34. The Commission may, where it deems it advisable to do so, direct that written briefs be submitted by the parties to a hearing in addition to or in lieu of oral argument and, in such case, the briefs shall be served on such persons as the Commission may direct.

[§121-55]

35. Unless the Commission directs otherwise, the order of appearance at a public hearing shall be as follows:

(*a*) the applicant;

(*b*) the interveners;

(*c*) persons appearing pursuant to section 11; and

(*d*) the applicant in reply.

[§121-56]

36. Where two or more applicants are made in respect of the same area or locality or part thereof to be served, and where it can reasonably be foreseen that if one application is approved, the others will not be granted,

(*a*) each application shall be deemed to be an intervention in respect of the other such application, in which case sections 13 to 15 shall not apply.

(*b*) the order of appearance of the applicants or interveners, as the case may be, shall be determined by the Commission; and

(*c*) the applicants shall reply in reverse order to that in which they made their applications.

Comments by Community Groups or Individuals

[§121-57]

37. (1) Where, at least 2 clear days before the day fixed for the commencement of a public hearing, representations are made to the Commission with respect to matters of local interest in the region in which the public hearing is to be heard, the Commission may provide an opportunity at the public hearing for the hearing of comments by community groups or individuals with respect to those matters.

[§121-58]

(2) No Saturday or holiday shall be reckoned in the computation of the time mentioned in subsection (1).

[§121-59]

(3) Where any licensee or applicant is the object of comments by community groups or individuals heard at a public hearing pursuant to subsection (1), the licensee or applicant shall be given an opportunity to appear at the public hearing and be heard in reply.

[§121-60]

(4) Any person who is to be heard at a public hearing pursuant to subsection (1) or (2) shall be notified by the Secretary of the day and place where he may be heard by the Commission and of the maximum time allocated to him at the public hearing.

Objections Based on Form

[§121-61]

38. No proceedings shall be defeated by any objection based only upon defects in form.

Amendment

[§121-62]

39. The Commission may, upon such terms as it may determine, allow, or order an amendment to any application, intervention or reply that, in the opinion of the Commission, may tend to prejudice, embarrass, or delay a fair hearing of the case upon its merits or where, in the opinion of the Commission, such an amendment is necessary for the purpose of hearing and determining the real question in issue between the parties.

Adjournment

[§121-63]

40. The Commission may at any time adjourn any proceeding before it.

Orders and Decisions

[§121-64]

41. The Commission may approve the whole or any part of an application or grant such further or other relief, in addition to or in substitution for that applied for, as to the Commission deems just and proper.

[§121-65]

42. Subject to section 24 of the Act, the Commission may give orally or in writing the reasons for its orders or decisions.

[§121-66]

43. A decision of the Commission shall be effective the day on which it is made or on such later day as may be stated in the decision.

Change of Ownership or Control

[§121-67]

44. (1) Where, in the opinion of the Commission, an application concerns a change of ownership of a broadcasting undertaking or a change of ownership of securities of a licensee involving a change of ownership of control, directly or indirectly, the Commission may require any person directly or indirectly concerned in such change of ownership or change of control to

(*a*) complete and file with the Secretary prior to the public hearing a Promise of Performance Return in a form satisfactory to the Commission; and

(*b*) appear before the Commission.

[§121-68]

(2) For the purposes of this section, "securities" included

(*a*) any document, pledge, hypothec, instrument or writing commonly known as a security;
(*b*) any document constituting evidence of title to or interest in the capital, assets, property, profits, earnings or royalties of any person;
(*c*) any document constituting evidence of an opinion, subscription, escrow certificate or other interest present or future, in or to a security;
(*d*) any bond, debenture, share, unit, unit certificate, participation certificate, certificate of share or interest, warrant, share purchase warrant, voting trust certificate, pre-organization certificate or subscription; and
(*e*) any agreement providing that money received will be repaid or treated as a subscription to shares, stock, units or interests at the option of the recipient or of any person.

[§121-69]

SCHEDULE I
(ss.3, 14 and 17)
APPOINTMENT OF AGENT

To: The Canadian Radio-television and Telecommunications Commission

The undersigned applicant hereby appoints

his/its agent for an on his/its behalf and in his/its name to sign, serve and file an application (reply) to The Canadian Radio-Television and Telecommunications Commission and the undersigned does hereby ratify, confirm and adopt as his/its own act, such application (reply).

Dated at this day of 19

The Applicant

[§121-70]

SCHEDULE II
(s. 31)
THE CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION

Re:
To:

You are summoned and required to attend before The Canadian Radio-Television and Telecommunications Commission at a hearing to be heard at_____
in the _____ day of _____19__, _____
at the hour of _____o'clock in the _____noon and so on from day to day until the hearing is concluded, to give evidence on oath touching the matters in question in the proceeding and to bring with you and produce at the time and place

(herein set out in detail, materials to be produced)

_____
Dated this _____this ____day of _____19_____

Corporate Seal of
The Canadian Radio-
Television and Tele-
communications
Commission

THE CANADIAN RADIO-
TELEVISION AND TELE-
COMMUNICATIONS
COMMISSION
by:

_____

[§131-1]

[CANADIAN RADIO-TELEVISION AND
TELECOMMUNICATIONS COMMISSION]

Broadcasting Information Regulations, 1993

[§131-2]

[SOR/93-420, August 6, 1993, *1993 Canada Gazette Part II*, p.3515.]

[§131-3]

REGULATIONS RESPECTING BROADCASTING INFORMATION REQUIREMENTS

Short Title

[§131-4]

1. These Regulations may be cited as the *Broadcasting Information Regulations, 1993*. [SOR/93-420, in effect August 6, 1993]

Submission of Information

[§131-5]

2. (1) Subject to section 3, on or before November 30 of each year, a licensee shall submit to the Commission a statement of accounts, on the annual return of broadcasting licensee form, for the year ending on the previous August 31. [SOR/93-420, in effect August 6, 1993]

[§131-6]

(2) Subject to section 3, at the request of the Commission, a licensee shall provide the Commission with a response to any inquiry regarding the licensee's programming or ownership or any other matter within the Commission's jurisdiction that relates to the licensee's undertaking. [SOR/93-420, in effect August 6, 1993]

[§131-7]

3. Any licensee that is required by any other regulation made under the *Broadcasting Act* to submit to the Commission any information requested on the form referred to in subsection 2(1) or on any matter referred to in subsection 2(2) is not required to submit the information to the Commission pursuant to that subsection. [SOR/93-420, in effect August 6, 1993]

[§132-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Broadcasting Licence Fee Regulations

[§132-2]

[C.R.C.1978, c.373, as amended by SOR/82-144, January 22, 1982, *1982 Canada Gazette Part II*, p.453; SOR/85-842, August 28, 1985, *1985 Canada Gazette Part II*, p.3796; SOR/86-829, July 30, 1986, *1986 Canada Gazette Part II*, p.3331; and SOR/87-595, October 9, 1987, *1987 Canada Gazette Part II*, p.3936.

On March 2, 1994, in Public Notice CRTC 1994-20, set out below at §306, the CRTC proposed to amend subsections 4(1) and (2) of the Regulations, effective with the return year commencing Sept.1, 1993, to increase the threshold for the application of the fee structure for small radio stations. While these amendments had not been promulgated at the time of publication, they are indicated below in italics.]

[§132-3]

REGULATIONS RESPECTING LICENCE FEES

Short Title

1. These Regulations may be cited as the *Broadcasting Licence Fee Regulations*. [C.R.C., c.373.]

Interpretation

[§132-4]

2. In these Regulations,

[§132-5]

"associated corporation" has the meaning assigned to that expression in section 256 of the *Income Tax Act*; [C.R.C., c.373.]

[§132-6]

"fee revenue", in respect of a broadcasting undertaking, means the gross revenue derived from the licensed activity of the broadcasting undertaking whether received by the licensee of the broadcasting undertaking or by an associated corporation and, without limiting the generality of the foregoing, includes

(*a*) revenue that is derived from the sale of air time of the broadcasting undertaking by the Canadian Broadcasting Corporation and paid by the Corporation to the licensee, and

(*b*) where the broadcasting undertaking consists of an originating broadcasting transmitting station and one or more rebroadcasting transmitting stations, any revenue received in respect of such rebroadcasting transmitting stations; [SOR/85-842, in effect Sept.1, 1985]

[§132-7]

"rebroadcasting transmitting station" means a broadcasting transmitter that is licensed by the Commission for the sole purpose of retransmitting radio-communication signals received from an originating broadcasting transmitting station; [C.R.C., c.373.]

[§132-8]

"return year" means the period commencing September 1st in any year and terminating August 31st of the next following year. [C.R.C., c.373.]

Application

[§132-9]

3. These Regulations apply to all broadcasting undertakings other than

(*a*) rebroadcasting transmitting stations;

(*b*) student carrier broadcasting undertakings; and

(*c*) broadcasting undertakings carried on by the Canadian Broadcasting Corporation. [C.R.C., c.373.]

[§132-10]

4. (1) Subject to subsections (2) and (4), the licensee of each broadcasting undertaking shall pay to the Commission an annual licence fee based on the fee revenue of that undertaking during the return year or during that portion of the return year in which he held the licence to operate the undertaking, the amount of which shall be calculated as follows:

(*a*) for radio broadcasting undertakings,

(i) where the fee revenue in the return year is $500,000 or less, $25, or

(ii) where the fee revenue in the return year is greater than $500,000, $25 plus 1.8 per cent of the amount by which the fee revenue exceeds $500,000;

(*b*) for television broadcasting undertakings, multiple channel television and radio broadcasting network operations, pay television network operations and specialty programming services network operations,

(i) where the fee revenue in the return year is $1.5 million or less, $25 or,

(ii) where the fee revenue in the return year is greater than $1.5 million, $25 plus 1.8 per cent of the amount by which the fee revenue exceeds $1.5 million; and

(*c*) for broadcasting receiving undertakings,

(i) where the fee revenue in the return year is $175,000 or less, $25, or

(ii) where the fee revenue in the return year is greater than $175,000, $25 plus 1.8 per cent of the amount by which the fee revenue exceeds $175,000. [SOR/85-842, in effect Sept.1, 1985; SOR/86-829, in effect July 30, 1986]

[§132-10a]

[NOTE: On March 2, 1994, in Public Notice CRTC 1994-20, the CRTC proposed to repeal paragraph 4(1)(a) and substitute the following wording:

"(a) for radio broadcasting undertakings, commencing with the return year commencing September 1, 1993,

(i) where the fee revenue in the return year is $2 million or less, $25, or

(ii) where the fee revenue in the return year is greater than $2 million, $25 plus 1.8 per cent of the amount by which the fee revenue exceeds $500,000;"]

[§132-11]

(2) Where both an A.M. and F.M. radio broadcasting undertaking are operated by the same licensee, or a licensee and an associated corporation, in all or any part of the same market, a licence fee pursuant to subsection (1) shall be paid in respect of only one of such undertakings but the calculation of the licence fee shall be based on the combined fee revenue of both undertakings. [C.R.C., c.373.]

[§132-11a]

[NOTE: On March 2, 1994, in Public Notice CRTC 1994-20, the CRTC proposed to repeal subsection 4(2) and substitute the following wording:

"(2) Where both an A.M. and F.M. radio broadcasting undertaking are operated by the same licensee, or a licensee and an associated corporation, where any part of the F.M. 3 mV/m contour overlaps any part of the A.M. daytime 15 mV/m contour and

(a) where the combined fee revenue of the two undertakings is $4 million or less, the licence fees payable pursuant to subsection (1) for the two undertakings shall be combined, the amount of which shall be $25; and

(b) where the combined fee revenue of the two undertakings is greater than $4 million, the licence fees payable pursuant to subsection (1) for the two undertakings shall be combined, the amount of which shall be based on the combined fee revenue of the two undertakings."]

[§132-12]

(3) For the purpose of payment of licence fees prescribed in subsection (1), any payment made by the licensee of a broadcasting undertaking to the licensee of another broadcasting undertaking during that return year shall be excluded from the fee revenue of that other undertaking. [SOR/86-829, in effect July 30, 1986]

[§132-13]

(3.1) On or before November 30 in each year, every licensee shall file with the Commission in respect of each broadcasting undertaking that is carried on by him a licence fee return, in the appropriate form set out in the schedule. [SOR/85-842, in effect Sept.1, 1985]

[§132-14]

(3.2) A return filed pursuant to subsection (3.1) shall contain the information set out in the appropriate form set out in the schedule for the period commencing on September 1 of the year preceding the year in which the return is filed and ending on August 31 of the year in which the return is filed. [SOR/85-842, in effect Sept.1, 1985]

[§132-15]

(4) The licence fee calculated under this section is payable on or before November 30th of the return year following the return year on which the fee is based. [C.R.C., c.373]

[§132-16]

(5) [*Revoked*. SOR/82-144, in effect Jan.22, 1982]

[§132-17]

SCHEDULE

Canadian Radio-television and Telecommunications Commission

BROADCASTING RECEIVING UNDERTAKING (CATV) LICENCE FEE RETURN

Period Covered _____ 19_____ to August 31
Name of Licensee _____
Location _____ Licence Identifier _____
Address for Correspondence _____
Person to Contact _____ Tel No _____

REVENUE SUBJECT TO LICENCE FEE (All amounts to the nearest dollar)

(1) Basic Revenue $ _____

(2) Gross Pay TV Specialty Programming and Multiple Channel (Cancom) Subscriber Revenue $ _____

(3) Gross Non-Programming Revenue $ _____

(4) Other Licenced Services $ _____

Specify _____
_____
_____

(5) Total Revenue Subject to Licence Fee $ _____

(6) Less Basic Exemption $ 175,000

(7) Revenue in Excess of Basic Exemption $ _____

(8) Licence Fee - (1.8%) of Item 7 $ _____

(9) Basic Fee $ 25

(10) Total Fees Payable (Total of 8 & 9) $ _____

INDEPENDENT AUDITORS CERTIFICATION OR MANAGEMENT CERTIFICATION (OVER)

We have examined the above listed
revenues of _____
(Name of Broadcasting Receiving Undertaking)
for the _____ from _____ to _____
person date date

Our examination was made in accordance with generally accepted auditing standards and accordingly included such tests and other procedures as we considered necessary in the circumstances.

In our opinion these amounts constitute a full disclosure of the undertaking's revenues subject to licence fee as prescribed by the Broadcasting Licence Fee Regulations made pursuant to the Broadcasting Act, for the period specified above in accordance with generally accepted accounting principles on a basis consistent with that of the preceding year.

SIGNED _____

CITY _____

DATE OF CERTIFICATION _____

MANAGEMENT CERTIFICATION

I hereby am authorized to certify on behalf of

_____

_____
(Undertaking)

that the information reported on this Return is a full disclosure of the undertaking's revenues subject to licence fee as prescribed by the Broadcasting Licence Fee Regulations made pursuant to the

Broadcasting Act, for the period _____

_____
(Date)

in accordance with generally accepted accounting principles on a basis consistent with that of the preceding year and that the books and records of the undertaking will be made available to the Commission for verification of the said revenues if requested.

_____
(Position)

City:

Date of Certification:
[SOR/85-842]

[§132-18]

Canadian Radio-television and Telecommunications Commission

RADIO BROADCASTING UNDERTAKING LICENCE LEE RETURN

Period Covered _____ 19_____to August 31

Name of Licensee _____
Location _____ Licence Identifier _____
Address for Correspondence _____
Person to Contact _____ Tel No _____

REVENUE SUBJECT TO LICENCE FEE (All amounts to the nearest dollar)

(1) Gross Revenue from sale of Air Time

(2) Local Time Sales $ _____

(3) National Time Sales $ _____

(4) Network Payments from CBC $ _____

(5) **Total Revenue Subject to Licence Fee** $ _____

(6) Less Basic Exemption $ 500,000

(7) **Revenue in Excess of Basic Exemption** $ _____

(8) Licence Fee - (1.8%) of Item 7 $ _____

(9) Basic Fee $ 25

(10) **Total Fees Payable (Total of 8 & 9)** $ _____

INDEPENDENT AUDITORS CERTIFICATION OR MANAGEMENT CERTIFICATION (OVER)

We have examined the above listed
revenues of _____
(Name of Broadcasting Receiving Undertaking)
for the _____ from _____ to _____
person date date

Our examination was made in accordance with generally accepted auditing standards and accordingly included such tests and other procedures as we considered necessary in the circumstances.

In our opinion these amounts constitute a full disclosure of the undertaking's revenues subject to licence fee as prescribed by the Broadcasting Licence Fee Regulations made pursuant to the Broadcasting Act, for the period specified above in accordance with generally accepted accounting principles on a basis consistent with that of the preceding year.

SIGNED _____

CITY _____

DATE OF CERTIFICATION _____

MANAGEMENT CERTIFICATION

I hereby am authorized to certify on behalf of

_____

_____
(Undertaking)

that the information reported on this Return is a full disclosure of the undertaking's revenues subject to licence fee as prescribed by the Broadcasting Licence Fee Regulations made pursuant to the

Broadcasting Act, for the period _____

_____
(Date)

in accordance with generally accepted accounting principles on a basis consistent with that of the preceding year and that the books and records of the undertaking will be made available to the Commission for verification of the said revenues if requested.

_____

(Position)

City:

Date of Certification:
[SOR/85-842]

[§132-19]

Canadian Radio-television and Telecommunications Commission

TELEVISION BROADCASTING UNDERTAKING LICENCE FEE RETURN

Period Covered _____ 19 August 31

Name of Licensee _____
Location _____ Licence Identifier _____
Address for Correspondence _____
Person to Contact _____ Tel No _____

REVENUE SUBJECT TO LICENCE FEE (All amounts to the nearest dollar)

(1)	Gross Revenue from sale of Air Time		
(2)	Local Time Sales	$ _____	
(3)	National Time Sales	$ _____	
(4)	Network Payments from CBC	$ _____	
(5)	**Total Revenue Subject to Licence Fee**		$ _____
(6)	Less Basic Exemption		$ 1,500,000
(7)	**Revenue in Excess of Basic Exemption**		$ _____
(8)	Licence Fee - (1.8%) of Item 7		$ _____
(9)	Basic Fee		$ 25
(10)	**Total Fees Payable (Total of 8 & 9)**		$ _____

INDEPENDENT AUDITORS CERTIFICATION OR MANAGEMENT CERTIFICATION (OVER)

We have examined the above listed
revenues of _____
(Name of Broadcasting Receiving Undertaking)
for the _____ from _____ to _____
person date date

Our examination was made in accordance with generally accepted auditing standards and accordingly included such tests and other procedures as we considered necessary in the circumstances.

In our opinion these amounts constitute a full disclosure of the undertaking's revenues subject to licence fee as prescribed by the Broadcasting Licence Fee Regulations made pursuant to the Broadcasting Act, for the period specified above in accordance with generally accepted accounting principles on a basis consistent with that of the preceding year.

SIGNED _____

CITY _____

DATE OF CERTIFICATION _____

MANAGEMENT CERTIFICATION

I hereby am authorized to certify on behalf of

_____

_____
(Undertaking)

that the information reported on this Return is a full disclosure of the undertaking's revenues subject to licence fee as prescribed by the Broadcasting Licence Fee Regulations made pursuant to the

Broadcasting Act, for the period _____

_____
(Date)

in accordance with generally accepted accounting principles on a basis consistent with that of the preceding year and that the books and records of the undertaking will be made available to the Commission for verification of the said revenues if requested.

_____
(Position)

City:

Date of Certification:
[SOR/85-842, in effect Aug.28, 1985]

[§132-20]

Canadian Radio-television and Telecommunications Commission

PAY TELEVISION NETWORK, SPECIALTY PROGRAMMING SERVICES NETWORK AND MULTIPLE CHANNEL BROADCASTING NETWORK LICENCE FEE RETURN

Period Covered _____ 19 to August 31

Name of Licensee _____
Location _____ Licence Identifier _____
Address for Correspondence _____
Person to Contact _____ Tel No _____

REVENUE SUBJECT TO LICENCE FEE (All amounts to the nearest dollar)

(1)	Gross Revenue Subject to Licence Fees	$ _____
(2)	Less: Basic Exemption	$ 1,500,000
(3)	Revenue in Excess of Basic Exemption	$ _____
(4)	Licence Fee - (1.8%) of Item 3	$ _____
(5)	Basic Fee -	$ 25
(6)	Total Fees Payable (Total of Item 4 & 5)	$ _____

INDEPENDENT AUDITORS CERTIFICATION OR MANAGEMENT CERTIFICATION (OVER)

We have examined the above listed revenues of _____
(Name of Broadcasting Undertaking)
for the _____ from _____ to _____
person date date

Our examination was made in accordance with generally accepted auditing standards and accordingly included such tests and other procedures as we considered necessary in the circumstances.

In our opinion these amounts constitute a full disclosure of the undertaking's revenues subject to licence fee as prescribed by the Broadcasting Licence Fee Regulations made pursuant to the Broadcasting Act, for the period specified above in accordance with generally accepted accounting principles on a basis consistent with that of the preceding year.

SIGNED _____

CITY _____

DATE OF CERTIFICATION _____

MANAGEMENT CERTIFICATION

I hereby am authorized to certify on behalf of

_____

_____
(Undertaking)

that the information reported on this Return is a full disclosure of the undertaking's revenues subject to licence fee as prescribed by the Broadcasting Licence Fee Regulations made pursuant to the

Broadcasting Act, for the period _____

_____
(Date)

in accordance with generally accepted accounting principles on a basis consistent with that of the preceding year and that the books and records of the undertaking will be made available to the Commission for verification of the said revenues if requested.

_____
(Position)

City:

Date of Certification:
[SOR/86-829, in effect July 30, 1986]

[§133-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

[§133-2]

Cable Television Regulations, 1986

[§133-3]

[SOR/86-831, August 1, 1986, *1986 Canada Gazette Part II*, p.3334; as amended by SOR/87-424, July 15, 1987, *1987 Canada Gazette Part II*, p.2820; SOR/88-227, April 13, 1988, *1988 Canada Gazette Part II*, p.2237; SOR/88-251, April 26, 1988, *1988 Canada Gazette Part II*, p.2424; SOR/90-321, June 1, 1990, *1990 Canada Gazette Part II*, p.2326; SOR/91-96, January 10, 1991, *1991 Canada Gazette Part II*, p.599; SOR/91-543, September 17, 1991, *1991 Canada Gazette Part II*, p.3204; and SOR/92-610, October 13, 1992, *1992 Canada Gazette Part II*, p.4147; SOR/93-354, June 21, 1993, *1993 Canada Gazette Part II*, p.3077; SOR/94-133, January 25, 1994, *1994 Canada Gazette Part II*, p.995; and SOR/94-221, February 25, 1994, *1994 Canada Gazette Part II*, p.1323.

These Regulations repealed and replaced the *Cable Television Regulations*, C.R.C. 1978, c.374, as amended, effective August 1, 1986.

On December 21, 1992, the CRTC proposed certain amendments to the *Cable Television Regulations, 1986* in Public Notice CRTC 1992-86, set out below at §288. While these had not yet been enacted at the time of publication, the proposed amendments are included in italics below.]

[§133-4]

REGULATIONS RESPECTING BROADCASTING RECEIVING UNDERTAKINGS

Short Title

[§133-5]

1. These Regulations may be cited as the *Cable Television Regulations, 1986*.
[SOR/86-831, in effect August 1, 1986]

Interpretation

[§133-6]

2. In these Regulations,

[§133-6a]

"Act" means the *Broadcasting Act*; [SOR/94-221, in effect February 25, 1994]

[§133-7]

"alphanumeric service" means a service consisting of letters, numbers, graphic designs or still images, or any combination thereof, that may be accompanied by

(*a*) background music,

(*b*) the programming service of a licensed A.M. station or licensed F.M. station, other than an educational radio programming service the operation of which is the responsibility of an educational authority,

(*c*) the service of Weather Radio Canada,

(*d*) the Canadian programming service of a licensed national audio network operation, or

(*e*) spoken words that relate to what is represented by the letters, numbers, graphic designs or still images; [SOR/90-321, in effect June 1, 1990; para.(e) *rep.& sub.* by SOR/94-133, in effect Jan.25, 1994]

[§133-8]

"A.M. station" means a station that broadcasts in the A.M. frequency band of 525 to 1605 kHz, but does not include a carrier current undertaking or a transmitter that only rebroadcasts the radiocommunications of another station; [SOR/86-831, in effect August 1, 1986; "carrier current undertaking" added by SOR/94-133, in effect Jan.25, 1994]

[§133-9]

"audio channel" means a channel of an undertaking on which is distributed a frequency-modulated transmission capable of being received by subscribers by means of a conventional F.M. radio receiver; [SOR/86-831, in effect August 1, 1986]

[§133-10]

"base portion" means the basic monthly fee, exclusive of

(*a*) the pass-through portion increased pursuant to subsection 18(3), and

(*b*) that part of the basic monthly fee increased pursuant to subsection 18(6); [SOR/86-831, in effect August 1, 1986]

[§133-11]

"basic band" means the 12 channels that are commonly identified by designators 2 to 13 and that are used in the frequency bands 54 to 72 MHz, 76 to 88 MHz and 174 to 216 MHz; [SOR/86-831, in effect August 1, 1986]

[§133-12]

"basic monthly fee" means the total amount that a licensee is authorized by the Commission to charge to a subscriber on a monthly basis for provision of the basic service to a cable outlet to which a television receiver, FM receiver, channel converter or other terminal device may be connected, in the subscriber's household or premises, but does not include federal or provincial taxes; [SOR/91-543, in effect Sept.17, 1991]

[§133-13]

"basic service" means the services distributed by a licensee as a package and composed of the programming services the distribution of which is required by sections 9 and 16, or pursuant to a condition of its licence, and any other services that are included in the package for the basic monthly fee; [SOR/86-831, in effect August 1, 1986]

[§133-14]

"Canadian programming service" means a programming service originating entirely within Canada or transmitted by a licensed station, a programming service consisting of community programming, a pay television service or a specialty service; [SOR/86-831, in effect August 1, 1986]

[§133-14a]

[NOTE: In Public Notice CRTC 1992-86, December 21, 1992, set out below at §288, the CRTC proposed adding the following definition to section 2: "clock hour" means a period of 60 minutes beginning on each hour and ending immediately prior to the next hour;]

[§133-15]

"commercial message" means an advertisement intended to sell or promote goods, services or activities directly or indirectly or an announcement that mentions or displays in a list of prizes the name of the person selling or promoting those goods, services or activities; [SOR/86-831, in effect August 1, 1986]

[§133-16]

"community channel" means the channel of an undertaking that is used for the distribution of community programming; [SOR/86-831, in effect August 1, 1986]

[§133-17]

"community programming" means, in relation to an undertaking, programming that is produced

(*a*) by the licensee of that undertaking or by members of the community served by that undertaking.

(*b*) by the licensee of another undertaking or by the members of the community served by that other undertaking and that is relevant and of particular interest to the community referred to in paragraph (*a*), or

(*c*) by a network operator licensed to provide programming to a licensee for distribution on a community channel; [SOR/86-831, in effect August 1, 1986]

[§133-18]

"discretionary service" means a programming service that is not included in the basic service and that is distributed to subscribers on a discretionary basis for a fee separate from and in addition to the basic monthly fee; [SOR/86-831, in effect August 1, 1986]

[§133-19]

"distant television station" means a licensed television programming undertaking that is not a local television station, regional television station or an extra-regional television station; [SOR/94-221, in effect Feb.25, 1994]

[§133-20]

"distribution system" means the equipment and facilities used by a licensee for the distribution of its basic service from its processing facilities to the points at which that service is diverted for the exclusive benefit of a subscriber; [SOR/86-831, in effect August 1, 1986]

[§133-21]

"educational authority" means a body that is

(*a*) an independent corporation, as defined in the *Direction to the CRTC (Ineligibility to Hold Broadcasting Licences)*, or

(*b*) a provincial authority, as defined in the *Direction to the CRTC (Ineligibility to Hold Broadcasting Licences)*; [SOR/86-831, in effect August 1, 1986]

[NOTE: For the text of the Direction referred to, see above at §112.]

[§133-22]

"educational programming" means the programming described in the *Direction to the CRTC (Ineligibility to Hold Broadcasting Licences)*; [SOR/86-831, in effect August 1, 1986]

[NOTE: For the text of the Direction, see above at §112.]

[§133-23]

"educational radio programming service" means a radio programming service that provides educational programming; [SOR/86-831, in effect August 1, 1986]

[§133-24]

"educational television programming service" means a television programming service that provides educational programming; [SOR/86-831, in effect August 1, 1986]

[§133-25]

"election period" means

(*a*) in the case of a federal or provincial election or of a federal, provincial or municipal referendum, the period beginning on the date of the announcement of the election or referendum and ending on the date the election or referendum is held, or

(*b*) in the case of a municipal election, the period beginning two months before the date of the election and ending on the date the election is held; [SOR/86-831, in effect August 1, 1986]

[§133-26]

"ethnic station" means a station that is licensed as an ethnic station; [SOR/86-831, in effect August 1, 1986]

[§133-27]

"extra-regional television station" means, in relation to an undertaking, a licensed television station having

(*a*) a Grade A official contour or Grade B official contour that does not include any part of the licensed area of that undertaking, and

(*b*) a Grade B official contour that includes any point located 32 km or less from the local head end of that undertaking; [SOR/86-831, in effect August 1, 1986]

[§133-28]

"F.M. station" means a station that broadcasts in the F.M. frequency band of 88 to 108 MHz, but does not include a carrier current undertaking or a transmitter that only rebroadcasts the radiocommunications of another station; [SOR/86-831, in effect August 1, 1986; "carrier current undertaking" added by SOR/94-133, in effect Jan.25, 1994]

[§133-29]

"identical", in respect of two or more programming services, means that not less than 95 per cent of the video and audio components of those programming services, exclusive of commercial messages and of any part of the services carried on a subsidiary signal, are the same and are broadcast simultaneously; [SOR/86-831, in effect August 1, 1986]

[§133-30]

"licence" means a licence issued by the Commission to carry on an undertaking; [SOR/86-831, in effect August 1, 1986]

[§133-31]

"licensed" means licensed by the Commission pursuant to paragraph 9(1)(*b*) of the Act; [SOR/94-221, in effect Feb.25, 1994]

[NOTE: Paragraph 9(1)(*b*) of the *Broadcasting Act* is set out above at §104-64.]

[§133-32]

"licensed area" means the area for which a licensee has been licensed to provide service; [SOR/86-831, in effect August 1, 1986]

[§133-33]

"licensee" means a person to whom a licence has been issued; [SOR/86-831, in effect August 1, 1986]

[§133-34]

"local A.M. station" means, in relation to an undertaking, a licensed A.M. station having its principal studio located within 32 km of the local head end of the undertaking; [SOR/86-831, in effect August 1, 1986]

[§133-35]

"local F.M. station" means, in relation to an undertaking, a licensed F.M. station having a 500 microvolt-per-metre official contour that includes any part of the licensed area of the undertaking; [SOR/86-831, in effect August 1, 1986]

[§133-36]

"local head end" means

(*a*) the equipment and facilities at any specific location that are used for the reception and processing of 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, and for the processing of other services that are distributed by the licensee, or

(*b*) where there is more than one such location, the head end that receives the majority of the programming services referred to in paragraph (*a*); [SOR/86-831, in effect August 1, 1986]

[§133-37]

"local television station" means, in relation to an undertaking, a licensed television station that has

(a) a Grade A official contour that includes any part of the licensed area of the undertaking, or

(b) a transmitting antenna that is located within 15 km of the licensed area of the undertaking. [SOR/94-221, in effect Feb.25, 1994]

[§133-37a]

"multiplexed programming" means programming broadcast by a pay television service or pay-per-view programming undertaking and that is distributed on two or more channels. [SOR/94-133, in effect Jan.25, 1994]

[§133-38]

"network operator" means a person licensed to carry on a network; [SOR/86-831, in effect August 1, 1986]

[§133-39]

"non-Canadian programming service" means a programming service other than a Canadian programming service; [SOR/86-831, in effect August 1, 1986]

[§133-40]

"non-Canadian television station" means a television station having a transmitter site that is located outside of Canada; [SOR/86-831, in effect August 1, 1986]

[§133-41]

"official contour" means a service contour marked for a licensed television station, licensed A.M. station or licensed F.M. station on the map most recently published

pursuant to the *Department of Communications Act* by the Minister of Communications pertaining to that station; [SOR/86-831, in effect August 1, 1986]

[§133-42]

"Part II eligible satellite service" means a programming service included in the list of services authorized by the Commission for carriage by a licensee other than a Part III licensee; [SOR/86-831, in effect August 1, 1986]

[NOTE: For the currently applicable list for Part II licensees, see below at §302.]

[§133-43]

"Part III eligible Canadian satellite service" means a programming service available from a Canadian satellite and included in the list of services authorized by the Commission for carriage by a Part III licensee; [SOR/86-831, in effect August 1, 1986]

[NOTE: For the currently applicable list for Part III licensees, see below at §302.]

[§133-44]

"Part III eligible non-Canadian satellite service" means a programming service available from a non-Canadian satellite and included in the list of services authorized by the Commission for carriage by a Part III licensee; [SOR/86-831, in effect August 1, 1986]

[NOTE: For the currently applicable list for Part III licensees, see below at §302.]

[§133-45]

"Part III licensee" means

(*a*) the holder of a licence for an undertaking that, on April 14, 1981, had never been authorized to distribute the programming service of any non-Canadian television station received over the air or by microwave relay and the local head end of which is, on or after the date of coming into force of these Regulations, located within the Grade B official contour of two or fewer licensed television stations that are counted in the following manner:

(i) affiliates or members of the same network are counted as one station,

(ii) the CTV and TVA networks are considered as the same network,

(iii) the Corporation is counted as if it held a single network licence, and

(iv) an educational television programming service is not counted, or

(*b*) a licensee authorized by the Commission pursuant to a condition of its licence to act as a Part III licensee; [SOR/86-831, in effect August 1, 1986]

[§133-46]

"pass-through portion" means that part of the basic monthly fee that reflects the amount payable by a licensee to a third party for the transmission of programming services, where

(*a*) the amount varies in proportion to the number of subscribers to whom the licensee distributes those programming services,

(*b*) the third party is licensed to operate a broadcasting undertaking, and

(*c*) the Commission has authorized the amount as a condition imposed pursuant to subsection 9(1) of the *Broadcasting Act*; [SOR/91-96, in effect Jan.17, 1991; am. SOR/94-221, in effect Feb.25, 1994]

[NOTE: For the text of subsection 9(1) of the *Broadcasting Act*, see above at §104-64.]

[§133-47]

"pay television service" means a programming service provided pursuant to an agreement between a licensee and a person licensed to carry on a pay television programming undertaking or a pay television network. [SOR/94-221, in effect Feb.25, 1994]

[§133-48]

"programming service" means any combination of images, sounds or images and sounds including a commercial message, other than an alphanumeric service, that is designed to inform or entertain the public and is

(*a*) transmitted to a cable head end over the air, by microwave or satellite relay or by means of a hard wire feed, or

(*b*) distributed by a licensee; [SOR/86-831, in effect August 1, 1986]

[§133-49]

"regional television station" means, in relation to an undertaking, a licensed television station, other than a local television station, having a Grade B official contour that includes any part of the licensed area of that undertaking; [SOR/86-831, in effect August 1, 1986]

[§133-50]

"restricted channel" means any channel of an undertaking that is the same channel on which signals are transmitted by

(*a*) a local television station or a local F.M. station, or

(*b*) a local television station or an F.M. station having a transmitter site that is located outside of Canada within 60 km of any part of the licensed area of an undertaking; [SOR/86-831, in effect August 1, 1986]

[§133-51]

"specialty service" means a programming service provided pursuant to an agreement between a licensee and a person licensed to carry on a specialty programming undertaking or a specialty service network. [SOR/94-221, in effect Feb.25, 1994]

[§133-52]

"station" means a radio or television programming undertaking, a broadcasting transmitting undertaking, or a radiocommunication distribution undertaking that broadcasts a Canadian programming signal that is not encoded and for which no fee is payable to a third party in respect of the undertaking's right to distribute the signal; [SOR/94-221, in effect Feb.25, 1994]

[§133-53]

"subscriber" means

(*a*) a household of persons, whether occupying a single-unit or a multiple-unit residence, to which service is provided directly or indirectly by a licensee, or

(*b*) the owner or operator of a hotel, hospital, nursing home or other commercial or institutional premises to which service is provided by a licensee; [SOR/86-831, in effect August 1, 1986]

[§133-54]

"subscriber drop" means the equipment or facilities used by a licensee for the distribution of the programming services distributed on its basic band from the point at which these services are diverted from the distribution system to a television receiver, F.M. receiver, channel converter or other terminal device in a subscriber's household or premises for the exclusive benefit of that subscriber; [SOR/86-831, in effect August 1, 1986]

[§133-55]

"undertaking" means a cable distribution undertaking or a broadcasting receiving undertaking that distributes programming services to subscribers by means of cable. [SOR/94-221, in effect Feb.25, 1994]

[§133-56]

"unrestricted audio channel" means an audio channel of an undertaking that is not a restricted channel; [SOR/86-831, in effect August 1, 1986]

[§133-57]

"unrestricted channel" means a channel of an undertaking that is not a restricted channel. [SOR/86-831, in effect August 1, 1986]

[§133-57a]

[NOTE: In Public Notice CRTC 1992-86, December 21, 1992, set out below at §288, the CRTC proposed adding the following definitions to section 2:

"unserved community" means the licensed area of an undertaking where there is no local A.M. station, no local FM station and no local television station;

[§133-57b]

"video channel" means a channel of an undertaking on which is distributed a television signal that can be received by subscribers by means of a television receiver.]

[§133-58]

Part I

Use of Equipment and Facilities

[§133-59]

3. A licensee shall not use or permit the use of its local head end, distribution system or subscriber drop for the distribution of programming services except as required or authorized pursuant to its licence or these Regulations. [SOR/86-831, in effect August 1, 1986]

Ownership of Equipment and Facilities

[§133-60]

4. Except as otherwise provided pursuant to a condition of its licence, a licensee shall own and operate its local head end, amplifiers and subscriber drops. [SOR/86-831, in effect August 1, 1986]

Transfer of Ownership

[§133-61]

5. (1) For the purposes of this section,

"associate", when used to indicate a relationship with any person, includes

(*a*) a partner of the person,

(*b*) a trust or an estate in which the person has a substantial beneficial interest or in respect of which the person serves as a trustee or in a similar capacity,

(*c*) a spouse, common-law spouse, son, daughter, son-in-law or daughter-in-law of the person,

(*d*) a relative, not referred to in paragraph (*c*), of the person, or of the person's spouse or common-law spouse, who has the same residence as that person,

(*e*) a corporation of which the person alone, or a person together with one or more associates as described in this definition, has, directly or indirectly, control of more than 50 per cent of the voting interests,

(*f*) a corporation of which an associate, as described in this definition, of the person has, directly or indirectly, control of more than 50 per cent of the voting interests, and

(*g*) a person, with whom the person has entered into an arrangement, a contract, an understanding or an agreement in respect of the voting of shares of a licensee corporation or of a corporation that has, directly or indirectly, effective control of a licensee corporation, except where that person controls less than one per cent of all issued voting shares of a corporation whose shares are publicly traded on a stock exchange;

[§133-61a]

"common shares" means the shares that represent the residual equity in the earnings of a corporation, and includes the preferred shares to which are attached rights to participate in the earnings of the corporation with no upper limit;

[§133-61b]

"person" includes an individual, a partnership, a joint venture, an association, a corporation, a trust, an estate, a trustee, an executor an administrator, or a legal representative of any of them;

[§133-61c]

"voting interest", in respect of

(*a*) a corporation with share capital, means the vote attached to a voting share,

(*b*) a corporation without share capital, means an interest that entitles the owner to voting rights similar to those enjoyed by the owner of a voting share,

(*c*) a partnership, a trust, an association or a joint venture, means an ownership interest in the assets of it that entitles the owner to receive a share of the profits of it, to receive a share of the assets of it on dissolution and to participate directly in the management of it or to vote on the election of the persons to be entrusted with the power and responsibility to manage it;

[§133-61d]

"voting shares" means a share in the capital of a corporation, to which is attached one or more votes that are exercisable at meetings of shareholders of the corporation either under all circumstances or under a circumstance that has occurred and is continuing, and includes any security that is convertible into such a share at all times at the option of the holder. [SOR/93-354, in effect June 21, 1993]

[§133-62]

(2) For the purposes of this section, control of a voting interest by a person includes situations in which

(*a*) the person is, directly or indirectly, the beneficial owner of the voting interest; or

(*b*) the person, by means of an arrangement, a contract, an understanding or an agreement, determines the manner in which the interest is voted but the solicitation of proxies or the seeking of instructions with respect to the completion of proxies in respect of the exercise of voting interests is not considered to be such an arrangement, contract, understanding or agreement. [SOR/93-354, in effect June 21, 1993]

Recent CRTC Decisions: For cases in which the CRTC has addressed the issue of whether a transfer of effective control had already taken place prior to the application for approval, see Decision CRTC 93-200, June 10, 1993; and Public Notice CRTC 1991-27, March 1, 1991.

[§133-63]

(3) For the purposes of this section, effective control of a licensee or its undertaking includes situations in which

(*a*) a person controls, directly or indirectly, other than by way of security only, a majority of the voting interests of the licensee;

(*b*) a person has the ability to cause the licensee or its board of directors to undertake a course of action; or

(*c*) the Commission, after a public hearing of an application for a licence, or in respect of an existing licence, determines that a person has such effective control and sets out that determination in a decision or public notice. [SOR/93-354, in effect June 21, 1993]

[§133-64]

(4) Except as otherwise provided pursuant to a condition of its licence, a licensee shall obtain the prior approval of the Commission in respect of any act, agreement or transaction that directly or indirectly, would result in

(*a*) a change by whatever means of the effective control of its undertaking;

(*b*) a person alone

(i) who controls less than 30 per cent of the voting interests of the licensee, having control of 30 per cent or more of those interests,

(ii) who controls less than 30 per cent of the voting interests of a person who has, directly or indirectly, effective control of the licensee, having control of 30 per cent or more of those interests,

(iii) who owns less than 50 per cent of the voting interests of the licensee, owning 50 per cent or more of those shares but not having, directly or indirectly, effective control of the licensee, or

(iv) who owns less than 50 per cent of the voting interests of a person who has, directly or indirectly, effective control of the licensee, owning 50 per cent or more of those shares but not having, directly or indirectly, effective control of the licensee; or

(*c*) a person together with an associate

(i) who control less than 30 per cent of the voting interests of the licensee, having control of 30 per cent or more of those interests,

(ii) who control less than 30 per cent of the voting interests of a person who has, directly or indirectly, effective control of the licensee, having control of 30 per cent or more of those interests,

(iii) who own less than 50 per cent of the voting interests of the licensee, owning 50 per cent or more of those shares but not having, directly or indirectly, effective control of the licensee, or

(iv) who own less than 50 per cent of the voting interests of a person who has, directly or indirectly, effective control of the licensee, owning 50 per cent or more of those shares but not having, directly or indirectly, effective control of the licensee. [SOR/93-354, in effect June 21, 1993]

[§133-65]

(5) A licensee shall notify the Commission, within 30 days thereafter, of the occurrence of any act, agreement or transaction that, directly or indirectly, resulted in

(*a*) a person alone

(i) who controls less than 20 per cent of the voting interests of the licensee, having control of 20 per cent or more of those interests,

(ii) who controls less than 20 per cent of the voting interests of a person who has, directly or indirectly, effective control of the licensee, having control of 20 per cent or more but less than 30 per cent of those interests,

(iii) who controls less than 40 per cent of the voting interests of the licensee, having control of 40 per cent or more but less than 50 per cent of those interests but not having, directly or indirectly, effective control of the licensee, or

(iv) who controls less than 40 per cent of the voting interests of a person who has, directly or indirectly, effective control of the licensee, having control of 40 per cent or more but less than 50 per cent of those interests but not having, directly or indirectly, effective control of the licensee; or

(*b*) a person together with an associate

(i) who control less than 20 per cent of the voting interests of the licensee, having control of 20 per cent or more but less than 30 per cent of those interests,

(ii) who control less than 20 per cent of the voting interests of a person who has, directly or indirectly, effective control of the licensee, having control of 20 per cent or more but less than 30 per cent of those interests,

(iii) who own less than 40 per cent of the voting interests of the licensee, having control of 40 per cent or more but less than 50 per cent of those interests but not having, directly or indirectly, effective control of the licensee, or

(iv) who control less than 40 per cent of the voting interests of a person who has, directly or indirectly, effective control of the licensee, having control of 40 per cent or more but less than 50 per cent of those interests but not having, directly or indirectly, effective control of the licensee. [SOR/93-354, in effect June 21, 1993]

[§133-66]

(6) A notification referred to in subsection (5) shall set out the following information:

(*a*) the name of the person or the names of the person and the associate;

(*b*) the percentage of the voting interests controlled by the person or the person and the associate; and

(*c*) a copy or a complete description of the act, agreement or transaction. [SOR/93-354, in effect June 21, 1993]

Submission of Information

[§133-68]

6. (1) On or before November 30 of each year, a licensee shall submit to the Commission a statement of accounts, on the annual return of broadcasting licensee form, for the 12 month period ending on the previous August 31. [SOR/92-610, in effect October 13, 1992]

[§133-68a]

(2) At the request of the Commission, a licensee shall submit to the Commission information in accordance with the form entitled *Summary of Basic Tier/STV Fixed Assets*, and any other related forms attached thereto, that are issued by the Commission. [SOR/92-610, in effect October 13, 1992]

[§133-68b]

(3) At the request of the Commission, a licensee shall provide the Commission with a response to any inquiry regarding the licensee's programming, ownership or any other matter within the Commission's jurisdiction that relates to the licensee's undertaking; [SOR/92-610, in effect October 13, 1992]

[§133-69]

Part II

Application

[§133-70]

7. Subject to subsection 24(2), this Part does not apply to licensees that hold Class 2 licences and that have less than 2,000 subscribers or Part III licensees. [SOR/94-133, in effect Jan.24, 1994]

Class of Licence

[§133-71]

8. For the purposes of this Part,

(*a*) a Class 1 licence is a licence to carry on an undertaking having 6000 or more subscribers; and

(*b*) a Class 2 licence is a licence to carry on an undertaking having fewer than 6000 subscribers. [SOR/86-831, in effect August 1, 1986]

Television Service Priorities

[§133-72]

9. (1) Except as otherwise provided in this section or pursuant to a condition of its licence, a licensee shall distribute as part of its basic service, beginning with its basic band, in the following order of priority and to the extent of available channels:

(*a*) the programming services of all local television stations owned and operated by the Corporation;
(*b*) the educational television programming services received over the air or by satellite or microwave relay the operation of which is the responsibility of an educational authority designated by the province in which the licensed area of the undertaking is located;
(*c*) the programming services of all other local television stations;
(*d*) the programming service of a regional television station owned and operated by the Corporation, unless the licensee is distributing, pursuant to paragraph (*a*), the programming service of a local television station owned and operated by the Corporation that broadcasts in the same official language as the regional television station; [SOR/86-831, in effect August 1, 1986]
(*e*) the programming services of all other regional television stations unless the licensee is distributing, pursuant to paragraph (*a*), (*c*) or (*d*), the programming service of a television station that is an affiliate or member of the same network; [SOR/88-251, in effect April 26, 1988]
(*f*) the programming service of a television station owned and operated by the Corporation and distributed to the licensee by satellite or microwave relay, unless the licensee is distributing, pursuant to paragraph (*a*), (*c*), (*d*) or (*e*), the programming service of another television station owned and operated by, or that is an affiliate of, the Corporation that broadcasts in the same official language as the programming service distributed by satellite or microwave relay; [SOR/87-424, in effect July 15, 1987]
(*g*) community programming on the community channel;
(*h*) the programming service of an extra-regional television station owned and operated by the Corporation, unless the licensee is distributing, pursuant to paragraph (*a*), (*d*) or (*f*), the programming service of a television station owned and operated by the Corporation that broadcasts in the same official language as the extra-regional television station;
(*i*) the programming services of all other extra-regional television stations that are not affiliates or members of the network to which a station referred to in any of paragraphs (*a*) to (*h*) belongs. [SOR/86-831, in effect August 1, 1986]

[§133-72a]

[*NOTE: In Public Notice CRTC 1992-86, December 21, 1992, set out below at* §288, *the CRTC proposed to revoke all of subsection 9(1) preceding paragraph (a) and substitute the following therefor:*

9. (1) Except as otherwise provided in this section or subsection 13(1.3) or pursuant to a condition of its licence, a licensee shall distribute as part of its basic service, beginning with its basic band, in the following order of priority and to the extent of available channels, the following:]

[§133-73]

(2) Where a licensee receives educational television programming services that are identical, the licensee is required to distribute, pursuant to subsection (1), only one such service. [SOR/86-831, in effect August 1, 1986]

[§133-74]

(3) Where a licensee receives over the air an educational television programming service the operation of which is the responsibility of an educational authority designated by a province other than the province in which the licensed area of the undertaking is located, the licensee is not required to distribute the service pursuant to subsection (1) but may distribute the service as part of the basic service. [SOR/86-831, in effect August 1, 1986]

[§133-75]

(4) Where a licensee has satisfied the requirements set out in subsection (1) and 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 as part of the basic service, to the extent of available channels. [SOR/86-831, in effect August 1, 1986]

[§133-76]

(5) Where the programming services of two or more local television stations rank equally in the order of priority established by paragraph (1)(a) or (c), a licensee shall give priority

(*a*) to the programming service of the station the studio of which is located in the same province as the undertaking; or

(*b*) where the studios of two or more such stations are located in the same province as the undertaking, to the programming services of the stations in the order of the proximity of their studios to the local head end of the undertaking. [SOR/86-831, in effect August 1, 1986]

[§133-77]

(6) Where, pursuant to paragraph (1)(*d*) or (*e*), a licensee is required to distribute the programming service of a regional television station and 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, the licensee shall distribute the programming service of the affiliate or member

(*a*) the studio of which is located in the same province as the undertaking; or

(*b*) where the studio of two or more such affiliates or members are located in the same province as the undertaking, the studio of which is located closest to the local head end of the undertaking. [SOR/86-831, in effect August 1, 1986]

[§133-78]

(7) Where, pursuant to paragraph (1)(*h*) or (*i*), a licensee is required to distribute the programming service of an extra-regional television station and the programming services of two or more extra-regional television stations that are affiliates or members of the

same network are received at the local head, the licensee shall distribute the programming service of the affiliate or member

(*a*) the studio of which is located in the same province as the undertaking; or

(*b*) where the studios of two or more such affiliates or members are located in the same province as the undertaking, the studio of which is located closest to the local head end of the undertaking. [SOR/86-831, in effect August 1, 1986]

[§133-79]

10. (1) Except as provided pursuant to a condition of its licence, and subject to subsection (2), where a licensee satisfies the requirements set out in section 9 and the conditions of its licence, the licensee may distribute

(*a*) the programming service of any regional television station that is not distributed pursuant to section 9;

(*b*) the programming service of any extra-regional television station that is not distributed pursuant to section 9;

(*c*) any programming service comprising the proceedings of the House of Commons;

(*d*) any programming service comprising the proceedings of the legislature of the province in which the undertaking is located;

(*e*) any pay television service the originator of which is licensed to provide the service to all or any part of the licensed area of the undertaking;

(*f*) any specialty service the originator of which is licensed to provide the service to all or any part of the licensed area of the undertaking;

(*g*) the programming service of any non-Canadian television station that is received directly over the air at the local head end, unless

(i) the licensee is distributing the programming service of an affiliate of the network to which that non-Canadian television station belongs,

(ii) the programming service consists of programming with predominantly religious themes, or

(iii) the non-Canadian television station began operation after January 1, 1985;

(*h*) any Part II eligible satellite service;

(*i*) the programming service of any distant television station that is not a Part II eligible satellite service and that was distributed before June 3, 1993;

(*j*) the programming service provided by the licensee of a local television station or a specialty service and authorized by the Commission for distribution on program repeat channels, in accordance with Public Notice CRTC 1993-74, entitled *Structural Public Hearing*;

(*k*) the programming service of a cable temporary network special event type 2 undertaking within the meaning of Public Notice CRTC 1993-49, entitled *Exemption Order Respecting Cable Temporary Network Special Event Type 2 Undertakings*, where the operator of the undertaking is exempted from the requirements of Part II of the *Broadcasting Act* by the Commission pursuant to subsection 9(4) of that Act; and

(*l*) any programming service authorized by the Commission pursuant to a condition of its licence. [SOR/86-831, in effect August 1, 1986; paras. (*i*) and (*j*) *rep. & sub.* and paras. (*k*) and (*l*) added by SOR/94-133, in effect Jan.25, 1994]

[NOTE: For the text of *Structural Public Hearing*, Public Notice CRTC 1993-74, June 3, 1993, see below at §294. For the text of *Exemption Order Respecting Cable Temporary Network Special Event Type 2 Undertakings*, Public Notice CRTC 1993-49, see below at §161.]

[§133-80]

(2) Except as otherwise provided pursuant to a condition of its licence, where a licensee distributes a programming service referred to in paragraph (1)(*e*), (*f*) or (*h*), the licensee shall distribute the service in accordance with the rules governing the distribution of the services as set out in Public Notice CRTC 1993-75, entitled *Distribution and Linkage Requirements*. [SOR/94-133, in effect Jan.25, 1994]

[NOTE: For the text of *Distribution and Linkage Requirements*, Public Notice CRTC 1993-75, June 3, 1993, see below at §295.]

[§133-81]

(3) Where a licensee distributes a programming service comprising the proceedings of the House of Commons or the proceedings of the legislature of the province in which its undertaking is located, the licensee shall include that programming service as part of its basic service. [SOR/86-831, in effect August 1, 1986]

[§133-82]

11. (1) Except as otherwise provided pursuant to a condition of its licence, a licensee shall devote a greater number of the video channels of its undertaking to the distribution of Canadian programming services than to the distribution of non-Canadian programming services. [SOR/86-831, in effect August 1, 1986; renumbered as (1) by SOR/94-133, in effect Jan.25, 1994]

[§133-82a]

(2) For the purposes of subsection (1), Canadian programming services and non-Canadian programming services do not include multiplexed programming or the programming distributed on program repeat channels. [SOR/94-133, in effect Jan.25, 1994]

Restricted Channel

[§133-83]

12. Except as otherwise provided pursuant to a condition of its licence, a licensee shall not distribute on a restricted channel of its undertaking a programming service referred to in subsection 9(1) or (4) or 10(3). [SOR/86-831, in effect August 1, 1986]

Community Channel

[§133-84]

13. (1) Except as provided in subsections (2) and (3) or pursuant to a condition of its licence, a licensee shall not distribute on its community channel any service other than

(*a*) community programming;

(*b*) an announcement promoting services that the licensee is licensed to provide;

(*c*) a public service announcement;

(*d*) an announcement providing information about the programming to be distributed on the community channel;

(*e*) a commercial message that mentions or displays the name of a person who sponsored a community event or goods, services or activities sold or promoted by that person, where the mention or display of the name, goods, services or activities is in the course of and incidental to the production of community programming dealing with the event;

(*f*) an oral or a written acknowledgement contained in community programming that mentions no more than the name of a person, the goods, services or activities that are being sold or promoted by that person and the address or telephone number of that person, where the person provided direct financial assistance for the community programming in which the acknowledgement is contained;

(*g*) an oral or a written acknowledgement contained in community programming that mentions no more than the name of a person and goods or services provided by that person, where the person provided the goods or services free of charge to the licensee for use in connection with the production of the community programming in which the acknowledgement is contained; or

(*h*) an alphanumeric service that is produced by the licensee or by members of the community served by the undertaking and that does not contain commercial messages, other than commercial messages contained within the programming service of a licensed A.M. station or licensed F.M. station. [SOR/86-831, in effect August 1, 1986; preamble amended and para.(*h*) added in SOR/88-251, in effect April 26, 1988]

[§133-85]

(2) Whenever a licensee is not distributing community programming on its community channel, or is distributing on that channel community programming having no audio component, the licensee may distribute on that channel the programming service of a local F.M. station or a local A.M. station other than an educational radio programming service the operation of which is the responsibility of an educational authority. [SOR/86-831, in effect August 1, 1986]

[§133-86]

(3) Whenever a licensee holding a Class 2 licence is not distributing community programming on its community channel, the licensee may distribute the programming services referred to in Public Notice CRTC 1985-151, entitled *Complementary Programming on the Community Channel*. [SOR/86-831, in effect August 1, 1986]

[NOTE: For the text of *Complementary Programming on the Community Channel*, Public Notice CRTC 1985-151, July 18, 1985, see below at §216.]

[§133-86a]

[*NOTE: In Public Notice CRTC 1992-86, December 21, 1992, set out below at §288, the CRTC proposed to revoke subsections 13(1) and (2), and to substitute the following therefor:*

13. (1) Except as otherwise provided pursuant to a condition of its licence, a licensee shall devote one video channel of its undertaking to its community channel.

[§133-86b]

(1.1) Except as otherwise provided in subsection (1.3) or pursuant to a condition of its licence, a licensee shall distribute community programming on its community channel.

[§133-86c]

(1.2) A licensee may distribute on its community channel

(a) an announcement promoting services that the licensee is licensed to provide;

(b) a public service announcement;

(c) an information program funded by and produced for a federal, provincial or municipal government or agency or a public service organization;

(d) the question period portions of the proceedings of the legislature of the province in which the undertaking is located;

(e) an announcement providing information about the programming to be distributed on the community channel;

(f) a commercial message that mentions or displays the name of a person who sponsors a community event or the goods, services or activities sold or promoted by the person, where the mention or display of the name, goods, services of activities is in the course of, and incidental to the production of community programming dealing with the event;

(g) an oral or a written acknowledgement contained in community programming that mentions no more than the name of a person, the goods, services or activities that are being sold or promoted by the person and the address and telephone number of that person, where that person provides direct financial assistance for the community programming in which the acknowledgement is contained;

(h) an oral or a written acknowledgement contained in community programming that mentions no more than the name of a person, the goods or services provided by the person and the address and telephone number of that person, where that person provides the goods or services free of charge to the licensee for use in connection with the production of the community programming in which the acknowledgement is contained; or

(i) an alphanumeric service that is produced by the licensee or by members of the community served by the undertaking and that does not contain commercial messages, other than commercial messages contained within the programming service of a licensed A.M. station or licensed F.M. station.

[§133-86d]

(1.3) Except as otherwise provided pursuant to a condition of its licence, where a licensee has less than 2,000 subscribers on September 1 of any year, subsection (1.1) shall not apply to the licensee during the following twelve-month period beginning on September 1.

[§133-86e]

(2) Whenever a licensee is not distributing community programming on its community channel, the licensee may distribute on that channel the programming service of a local A.M. station or a local F.M. station other than an educational radio programming service the operation of which is the responsibility of an educational authority.]

[§133-86f]

[NOTE: In Public Notice CRTC 1992-86, December 21, 1992, set out below at §288, the CRTC proposed to add the following section:

13.1 Except as otherwise provided pursuant to a condition of its license and subject to subsection 13(1.3), a licensee serving fewer than 2,000 subscribers that provides service to an unserved community may distribute up to a maximum of 12 minutes of commercial messages during each clock hour of community programming.]

[§133-87]

14. (1) Except as otherwise provided pursuant to a condition of its licence, a licensee shall keep in a form acceptable to the Commission a program log or a machine readable record of programs distributed on its community channel and retain in for a period of one year after distribution of the programs and shall cause to be entered therein each day the following information in respect of each program:

(*a*) the date of distribution;

(*b*) the title;

(*c*) the name of the undertaking at which the program was produced;

(*d*) a brief description of the program including a statement as to whether it was produced by employees of the undertaking or by volunteers; and

(*e*) the duration. [SOR/86-831, in effect August 1, 1986]

[§133-87a]

[NOTE: In Public Notice CRTC 1992-86, December 21, 1992, set out below at §288, the CRTC proposed to delete the word "and" at the end of paragraph 14(1)(d) and add thereto the following paragraphs:

(f) the time of commencement of each commercial message, its duration and the name of the person selling or promoting the goods, services or activities; and

(g) the time of commencement of each alphanumeric service and its duration.]

[§133-88]

(2) A licensee shall retain a clear and intelligible audio or audiovisual recording of each program distributed, for a period of

(*a*) four weeks from the date of distribution of the program;

or

(*b*) where the Commission receives a complaint from any person regarding the program or where the Commission for any other reason wishes to investigate it and so notifies the licensee before the expiration of the period referred to in paragraph (*a*), eight weeks from the date of distribution of the program. [SOR/86-831, in effect August 1, 1986]

[§133-88a]

[NOTE: In Public Notice CRTC 1992-86, December 21, 1992, set out below at §288, the CRTC proposed to revoke all that portion of subsection 14(2) preceding paragraph (a) and to substitute the following therefor:

(2) A licensee shall retain a clear and intelligible audiovisual recording of each program distributed, for a period of]

[§133-89]

(3) Where, before the expiry of the relevant period referred to in subsection (1) or (2), the Commission requests from a licensee a program log, machine readable record or clear and intelligible audio or audiovisual recording of a program, the licensee shall furnish the log, record or recording to the Commission forthwith. [SOR/86-831, in effect August 1, 1986]

[§133-90]

15. Where a licensee provides time on its community channel during an election period for the distribution of programming of a partisan political character, the licensee shall allocate that time on an equitable basis to all accredited political parties and rival candidates. [SOR/86-831, in effect August 1, 1986]

[§133-90a]

[NOTE: In Public Notice CRTC 1992-86, December 21, 1992, set out below at §288, the CRTC proposed to add the following heading and section:

Programming Content

15.1 (1) For the purposes of subsection (2), "programming" means any programming service of a licensee that the licensee originates.

[§133-90b]

(2) No licensee shall distribute any programming that contains

(a) anything that contravenes any law;

(b) any abusive comment or abusive pictorial representation that, when taken in context, tends or is like 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.

[§133-90c]

(3) For the purposes of paragraph (2)(b), sexual orientation does not include the orientation towards any sexual act or activity that would constitute an offence under the Criminal Code.]

[§133-91]

16. (1) This section applies to all licensees holding a Class 1 licence and to any licensee holding a Class 2 licence that elects to distribute any programming service on the audio channels of its undertaking. [SOR/86-831, in effect August 1, 1986]

[§133-92]

(2) Except as otherwise provided pursuant to a condition of its licence, a licensee shall distribute on an unrestricted audio channel

(*a*) the programming services of all local A.M. stations;

(*b*) the programming services of all local F.M. stations; and

(*c*) where they are not distributed pursuant to paragraph (*a*) or (*b*),

(i) the programming services of at least one A.M. station or F.M. station owned and operated by the Corporation that broadcasts in English and at least one that broadcasts in French, and

(ii) the educational radio programming service of an educational authority designated by the province in which the licensed area of the undertaking is located,

that is received over the air or by means of satellite or microwave relay. [SOR/86-831, in effect August 1, 1986]

[§133-93]

(3) Except as otherwise provided pursuant to a condition of its licence, where a licensee satisfies the requirements set out in subsection (2), the licensee may distribute on an audio channel any audio programming service other than

(*a*) an audio non-Canadian programming service that is not

(i) the programming service of an F.M. station or an A.M. station receivable over the air at the local head end, or

(ii) an international radio service operated or funded by a national government or its agent;

(*b*) an audio non-Canadian programming service for which advertising is solicited in Canada;

(*c*) an audio non-Canadian programming service consisting of programming with predominantly religious themes;

(*d*) an audio programming service in a language other than French, English or a language spoken by an aboriginal people of Canada that contains commercial messages unless

(i) the licensee was authorized by the Commission to distribute that service on its undertaking on July 4, 1985, or

(ii) there is no local A.M. station or local F.M. station that is an ethnic station; or

(e) the audio programming service of a carrier current undertaking. [SOR/86-831, in effect August 1, 1986; para.(*e*) added by SOR/94-133, in effect Jan.25, 1994]

[§133-94]

(4) Except as otherwise provided pursuant to a condition of its licence, a licensee shall devote a greater number of audio channels of its undertaking to the distribution of Canadian programming services than to the distribution of non-Canadian programming services. [SOR/86-831, in effect August 1, 1986]

Installation and Provision of Basic Service

[§133-95]

17. (1) Subject to subsection (2), except as otherwise provided pursuant to a condition of its licence, a licensee shall

(*a*) install the distribution system necessary for the provision of its basic service at a household or premises within a reasonable time after a request therefor from a member of the household or an owner or operator of the premises if the household or premises are

(i) situated in a residential area within the licensed area, and

(ii) provided with water or sewer services by a municipal or other public authority;

(*b*) at the request of a member of a household or an owner or operator of premises referred to in paragraph (*a*), install the subscriber drop and provide the basic service to that household or those premises, unless that member, owner or operator has not complied with the licensee's request for payment of

(i) an amount not exceeding the amount of the non-recurring costs to be reasonably incurred by the licensee for the installation or reconnection of the subscriber drop, determined in accordance with *Circular No. 354 to All Class 1 & 2 Cable Licensees*, published by the Commission on November 29, 1988;

(ii) the licensee's fee for the provision of the basic service for one month to that household or those premises, or

(iii) an overdue debt for the provision of basic service that the member, owner or operator owes to the licensee; and

(*c*) provide the basic service to a subscriber as long as the subscriber pays in advance the fee for each month of the basic service. [SOR/86-831, in effect August 1, 1986; first four words of s.17 and portion after the word "drop" in para.(*b*)(i) added in SOR/91-96, in effect Jan.17, 1991]

[NOTE: For the text of *Circular No. 354 to All Class 1 & 2 Cable Licensees*, November 29, 1988, see below at §249.]

[§133-95a]

(2) Where a licensee has less than 2,000 subscribers on August 31 of any year, subsection (1) shall not apply to the licensee during the twelve month period beginning on January 1 of the following year; [SOR/91-96, in effect Jan.17, 1991]

Fees for Basic Service

[§133-96]

18. (1) Subject to subsection (1.1), a licensee shall not increase its basic monthly fee except in accordance with this section. [SOR/86-831, in effect August 1, 1986; first four words added by SOR/91-96, in effect Jan.17, 1991]

[§133-97]

(1.1) Except as otherwise provided pursuant to a condition of its licence, and subject to subsections (1.2) and (2), this section does not apply to a licensee that has less than

6,000 subscribers on the later of August 31, 1993 and the day on which the Commission first issued the license to carry on the undertaking. [SOR/94-133, in effect Jan.25, 1994]

[§133-98]

(1.2) The Commission may review increases in the basic monthly fee of a licensee having 2,000 or more but less than 6,000 subscribers where, within 60 days after receipt of notification of the increase, 10 per cent or more of the licensee's subscribers filed written complaints regarding the increase with the Commission. [SOR/94-133, in effect Jan.25, 1994]

[§133-99]

(2) The Commission, in reviewing an increase referred to in subsection (1.2), may do any or all of the following:

(a) request any information referred to in section 6;

(b) conduct a public hearing regarding the increase; and

(c) disallow all of part of the increase, beginning on the date of the disallowance. [SOR/94-133, in effect Jan.25, 1994]

[§133-99a]

[NOTE: Prior to its repeal on Jan.25, 1994, subsections 18(2) and (2.01) had included a provision allowing for the partial indexing of basic rates. The text of this provision read as follows (SOR/91-96):

18. (2) A licensee may increase its base portion during a twelve-month period beginning on January 1, 1992 where the difference between the increased base portion and the amount of the base portion charged on December 31, 1991, expressed as a percentage of that amount, is less than or equal to the lesser of

(*a*) 80 per cent of the percentage increase in the All-items Consumer Price Index for Canada, published by Statistics Canada for the fifteen month period ending on July 31, 1991, and

(*b*) the percentage increase in the All-items Consumer Price Index for Canada, published by Statistics Canada, for the fifteen month period ending on July 31, 1991, less 2 percentage points.

(2.01) A licensee may increase its base portion during the twelve month period beginning on January 1, 1993 and on January 1 of any year thereafter, where the difference between the increased base portion and the amount of the base portion charged on the preceding December 31, expressed as a percentage of that amount, is less than or equal to the lesser of

(*a*) 80 per cent of the percentage increase in the All-items Consumer Price Index for Canada, published by Statistics Canada, for the twelve month period ending on July 31 of the preceding year, and

(*b*) the percentage increase in the All-items Consumer Price Index for Canada, published by Statistics Canada, for the twelve month period ending on July 31 of the preceding year, less 2 percentage points.]

[§133-100]

(2.1) For the purpose of subsections (2.2) and (2.3), a licensee is considered to be operating in a francophone market where the population having French as its mother tongue represents more than 50 per cent of the total population of al cities, towns and municipalities, encompassed in whole or in part within the licensed area of the licensee, according to the most recent population figures published by Statistics Canada. [SOR/94-133, in effect Jan.25, 1994]

[§133-101]

(2.2) A licensee holding a Class 1 licence may increase its base portion by a maximum of

(*a*) $0.03 for each specialty service that it distributes as part of the basic service, where that licensee is operating in a francophone market; or

(*b*) $0.02 for each specialty service that it distributes as part of the basic service, where that licensee is not operating in a francophone market. [SOR/88-227, in effect April 13, 1988]

[§133-102]

(2.3) A licensee holding a Class 2 licence may increase its base portion by a maximum of

(*a*) $0.06 for each specialty service that it distributes as part of the basic service, where that licensee is operating in a francophone market; or

(*b*) $0.04 for each specialty service that it distributes as part of the basic service, where that licensee is not operating in a francophone market. [SOR/88-227, in effect April 13, 1988]

[§133-103]

(2.4) A licensee may increase its base portion by a maximum of $0.05 where it distributes as part of the basic service all specialty services that the Commission has authorized for distribution as part of the basic service and that are available for distribution. [SOR/88-227, in effect April 13, 1988]

[§133-104]

(2.5) Where a licensee has increased its base portion pursuant to subsection (2.2) or (2.3) 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 by an amount equal to the amount of the increase, as applicable. [SOR/88-227, in effect April 13, 1988]

[§133-105]

(2.6) Where a licensee has increased its base portion pursuant to subsection (2.4) and fails to distribute as part of the basic service any specialty service that the Commission has authorized for distribution as part of the basic service and that is available for distribution, the licensee shall decrease its base portion by an amount equal to the amount of the increase. [SOR/88-227, in effect April 13, 1988]

[§133-106]

(3) A licensee may increase its pass-through portion where the increase is less than or equal to the amount of an increase that is, after September 1, 1986, authorized by the Commission to be payable to a third party. [SOR/86-831, in effect August 1, 1986]

[§133-107]

(3.1) Where a licensee has increased its pass-through portion pursuant to subsection (3) with respect to a specialty service and ceases to distribute that service as part of the basic

service, the licensee shall decrease its pass-through portion by an amount equal to the amount of the increase. [SOR/88-227, in effect April 13, 1988]

[§133-108]

(3.2) Where a licensee has increased its pass-through portion pursuant to subsection (3) with respect to a service, other than a specialty service, and ceases to distribute that service as part of the basic service, the licensee shall decrease its pass-through portion by an amount equal to the amount of the increase. [SOR/91-543, in effect Sept.17, 1991]

[§133-109]

(3.3) Where a licensee has increased its pass-through portion pursuant to subsection (3) with respect to a service, other than a specialty service, and where a third party charges the licensee less than the amount in the pass-through portion that reflects the amount payable to the third party for the service, the licensee shall decrease its pass-through portion of an amount equal to the difference. [SOR/91-543, in effect Sept.17, 1991]

[§133-110]

(4) Where a licensee intends to increase its basic monthly fee pursuant to subsection (2.2), (2.3), (2.4) or (3), it shall not implement the increase unless

(*a*) it sends to each of its subscribers a written notice of the increase, setting out the amount of the increase, expressed in dollars, in each part of the basic monthly fee increased pursuant to subsection (2.2), (2.3), (2.4) or (3), as applicable.]

(*b*) it sends to the Commission

(i) a copy of the notice referred to in paragraph (*a*),

(ii) a declaration that the notice has been or will be sent at least 60 days prior to the proposed effective date of the increase,

(iii) in the case of an increase referred to in subsection (2.2) or (2.3), a list of the specialty services is sought,

(iv) in the case of an increase referred to in subsection (2.4), a list of all the specialty services distributed, and

(*c*) 60 days have elapsed following the receipt by the Commission of the copy of the notice and declaration referred to in paragraph (*b*). [SOR/86-831, in effect August 1, 1986; SOR/91-96, in effect Jan.17, 1991; provisions up to para.(*b*) *rep.& sub.* SOR/94-133, in effect Jan.25, 1994.]

[§133-111]

(5) For the purpose of subsection (6),

"capital expenditure" means the capital expenditures that a licensee has incurred in respect of an activity or transaction during the twelve-month period beginning on September 1 in any year, that would not have been incurred if the activity or transaction had not been undertaken, where the activity or transaction is

(*a*) the purchase or capital lease of the licensee's head end, to the extent that the purchase or capital lease relates to the reception or processing of the basic service,

(*b*) the replacement or rebuilding of the licensee's distribution system or subscriber drops to upgrade the quality of service provided, to the extent that the replacement or rebuilding relates to the distribution of the basic service,

(*c*) the purchase or capital lease of equipment used exclusively for community programming to enhance the quality or increase the quantity of community programming, or

(*d*) the purchase or capital lease, up to a maximum of $150.00, of one addressable digital decoder installed in a subscriber's household or premises. [SOR/94-133, in effect Jan.25, 1994]

[§133-112]

"head end" means the equipment and facilities used for the reception and processing of programming services that are distributed by a licensee. [SOR/86-831, in effect August 1, 1986]

[§133-113]

(6) Subject to subsections (7) and (9), a licensee may increase its basic monthly fee, during the twelve-month period beginning on January 1 in any year, by a maximum of

(*a*) the lesser of

(i) the result obtained by dividing 10 per cent of its capital expenditure under paragraphs (*a*), (*b*) and (*c*) of the definition "capital expenditure" in subsection (5), for the period ending on August 31 of the preceding year, by 12 times the number of subscribers to whom it sends a notice under paragraph (7)(*a*), and

(ii) three per cent of the base portion authorized as of August 31 of the preceding year; plus

(*b*) the lesser of

(i) the result obtained by dividing 10 per cent of its capital expenditure under paragraph (*d*) of the definition "capital expenditure" in subsection (5), for the period ending on August 31 of the preceding year by 12 times the number of subscribers to whom it sends a notice under paragraph (7)(*a*), and

(ii) three per cent of the base portion authorized as of August 31 of the preceding year. [SOR/94-133, in effect Jan.25, 1994]

[§133-114]

(6.1) Subject to subsection (6.3), where 60 months have elapsed following an increase pursuant to subsection (60 or that subsection as it read immediately prior to the coming into force of this subsection, that took effect on May 15, 1990 or later, a licensee shall decrease its basic monthly fee by an amount equal to that increase. [SOR/94-133, Jan.25, 1994]

[§133-115]

(6.2) Subject to subsection (6.3), on or before January 1, 1995, a licensee shall decrease its basic monthly fee by an amount equal to the total of all increases pursuant to subsection (6) as it read immediately prior to the coming into force of this subsection, that took effect during the period beginning on August 1, 1986 and ending on May 14, 1990. [SOR/94-133, Jan.25, 1994]

[§133-115a]

(6.3) The requirement to decrease the basic monthly fee pursuant to subsections (6.1) and (6.2) is suspended so long as a licensee contributes one half of the amount referred to in subsections (6.1) and (6.2) to the production of Canadian programming, as mentioned in Public Notice CRTC 1993-74. [SOR/94-133, Jan.25, 1994]

[NOTE: For the reference to the production of Canadian programming in *Structural Public Hearing*, Public Notice CRTC 1993-74, June 3, 1993, see below at §294-15. The terms of the production fund are set forth in *The Production Fund*, Public Notice CRTC 1994-10, February 10, 1994, set out below at §305.]

[§133-116]

(7) Where a licensee intends to increase its basic monthly fee by an amount permitted pursuant to subsection (6), it shall not implement the increase unless

(*a*) it sends to each of its subscribes a written notice of the increase that includes the relevant information set out in the schedule;

(*b*) it sends to the Commission

(i) a copy of the notice referred to in paragraph (*a*),

(ii) a declaration that the notice has been or will be sent to each of its subscribers at least 60 days prior to the proposed effective date of the increase, and

(iii) appropriate documentation to justify the proposed increase; and

(*c*) 60 days have elapsed following the receipt by the Commission of a copy of the notice, declaration and documentation referred to in paragraph (*b*). [SOR/86-831, in effect August 1, 1986; SOR/87-424, in effect July 15, 1987; SOR/91-96, in effect Jan.17, 1991; French version of para.(7)(*c*) *rep. & sub.* SOR/94-133, in effect Jan.25, 1994]

[§133-117]

(8) Subject to subsection (9), a licensee may increase the base portion of its basic monthly fee where

(*a*) it sends to each of its subscribers a written notice that includes the relevant information set out in the schedule;

(*b*) it sends to the Commission

(i) a copy of the notice referred to in paragraph (*a*),

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

(iii) appropriate documentation to justify the proposed increase; and

(*c*) 90 days have elapsed following receipt by the Commission of the copy of the notice, declaration and documentation referred to in paragraph (*b*). [SOR/86-831, in effect August 1, 1986; preamble *rep. & sub.* SOR/94-133, in effect Jan.25, 1994]

[NOTE: For criteria considered by the CRTC in determining whether a subsection 18(8) rate increase is warranted, see *New Assessment Guidelines for Fee Increases Under Subsection 18(8) of the Cable Television Regulations, 1986*, Public Notice 1993-146, October 21, 1993, set out at §302.]

[§133-118]

(9) The Commission may, prior to the date on which an increase in the basic monthly fee referred to in subsection (6) or an increase in the base portion of the basic monthly fee referred to in subsection (8) is to take effect,

(*a*) suspend the implementation of all or part of the increase pending further consideration of the increase and

(i) the receipt of additional information,

(ii) the completion of a public hearing into the increase, or

(iii) both the receipt of additional information and the completion of a public hearing into the increase; and

(*b*) disallow the implementation of all or part of the increase either without any suspension under paragraph (a) or after such a suspension. [SOR/86-831, in effect August 1, 1986]

[§133-119]

(10) The written notice sent to subscribers pursuant to paragraphs (4)(*a*), (7)(*a*) and (8)(*a*) shall be clearly identifiable as coming from the licensee and shall not be packaged with any material emanating from a person other than the licensee. [SOR/88-251, in effect April 26, 1988]

[§133-120]

(11) Where a licensee charges a fee for the provision of the basic service that is greater than the basic monthly fee, the licensee shall, on receipt of a notice from the Commission that the licensee's fee is greater than the basic monthly fee, provide to each subscriber who is so overcharged a refund or credit that is equal to the unauthorized amounts paid by the subscriber. [SOR/91-96, in effect January 17, 1991]

Alteration or Curtailment of Programming Service

[§133-121]

19. A licensee shall not alter or curtail any programming service or radiocommunication in the course of its distribution except

(*a*) as required or authorized pursuant to a condition to its licence or these Regulations;

(*b*) in accordance with an agreement entered into with a network operator; or

(*c*) for the purpose of complying with subsection 105(1) of the *Canada Elections Act*. [SOR/86-831, in effect August 1, 1986]

[NOTE: Subsection 105(1) has been renumbered as subsection 328(1) of R.S.C. 1985, c.E-2.]

Substitution of Identical Programming Services

[§133-122]

20. (1) For the purpose of this section,

"broadcaster" includes an educational authority responsible for an educational television programming service;

[§133-123]

"local television station" includes an educational authority responsible for an educational television programming service. [SOR/86-831, in effect August 1, 1986]

[§133-124]

(2) Except as otherwise provided in subsection (4) or pursuant to a condition of its licence, a licensee holding a Class 1 licence shall curtail its distribution of the programming service of a television station and substitute the identical programming service of a local television station or a regional television station where the local television station or regional television station has higher priority under section 9 and

(*a*) the licensee has, at least seven days prior to the date on which the programming service is broadcast, received from the broadcaster operating the local television station or regional television station a written request for the curtailment and substitution; or

(*b*) on agreement with the licensee, the broadcaster operating the local television station or regional television station effects the curtailment and substitution by means of a switching device operated from the station. [SOR/86-831, in effect August 1, 1986]

[§133-125]

(3) Except as otherwise provided in subsection (4) or pursuant to a condition of its licence, a licensee holding a Class 2 licence may curtail its distribution of the programming service of a local television station or regional television station in the circumstances where a licensee holding a Class 1 licence is required by subsection (2) to make such a curtailment and substitution. [SOR/86-831, in effect August 1, 1986]

[§133-126]

(4) A licensee shall not curtail the programming service of a television station and substitute that of another television station where the Commission notifies the licensee that the curtailment and substitution is not in the public interest because

(*a*) undue financial hardship would result for the operator of the television station; or

(*b*) the programming service contains subsidiary signals designed to inform or entertain and the programming service to be substituted does not contain the same or similar subsidiary signals. [SOR/86-831, in effect August 1, 1986]

[§133-127]

(5) A licensee may discontinue a curtailment and substitution made pursuant to subsection (2) or (3) where the licensee verifies that the programming service in respect of which the curtailment and substitution is made are not, or are no longer, identical. [SOR/86-831, in effect August 1, 1986]

[§133-128]

(6) Where, in the circumstances and in respect of the programming service referred to in subsection (2), a substitution is requested by more than one broadcaster, the licensee

shall substitute the programming service of the television station having the highest priority under section 9. [SOR/86-831, in effect August 1, 1986]

[§133-129]

Part III

Application

[§133-130]

21. This Part applies to Part III licensees and, except for section 23, to licensees that hold Class 2 licences and that have less than 2,000 subscribers. [SOR/94-133, Jan.25, 1994]

Television Service Priorities

[§133-131]

22. (1) Except as otherwise provided in subsection (2) or pursuant to a condition of its licence, a Part III licensee or a licensee that holds a Class 2 licence and that has less than 2,000 subscribers shall distribute on the basic band of its undertaking

(*a*) the programming services of all local television stations; and

(*b*) the programming services of all regional television stations other than affiliates or members of a network of which a local television station is an affiliate or member. [SOR/86-831, in effect August 1, 1986; SOR/87-424, in effect July 15, 1987; preamble *rep. & sub.* SOR/94-133, in effect Jan.25, 1994]

[§133-132]

(2) Where 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, the licensee is not required to distribute more than one of those programming services and may select which of the services to distribute. [SOR/86-831, in effect August 1, 1986]

Distribution of Programming Services

[§133-133]

23. Except as otherwise provided pursuant to a condition of its licence, where a Part III licensee elects to distribute a Part III eligible non-Canadian satellite service or a pay television service or specialty service delivered by satellite, the licensee shall distribute at least four television programming services at least one of which is a Canadian programming service, delivered to the licensee's local head end by a relay distribution undertaking or by a network operator which or who is licensed to extend television and radio services to remote and underserved communities. [SOR/94-221, in effect Feb.24, 1994]

[§133-134]

24. (1) Except as otherwise provided pursuant to a condition of its licence, a Part III licensee or a licensee that holds a Class 2 licence with less than 2,000 subscribers on the later of August 31, 1993 and the day on which the Commission first issued a licence to carry on the undertaking may distribute

(*a*) the programming service of any television station that is received directly over the air at the local head end other than

(i) a non-Canadian television station the programming of which has predominantly religious themes,

(ii) a non-Canadian television station that began operation later than January 1, 1985;

(*b*) community programming;

(*c*) any programming service comprising the proceedings of the House of Commons;

(*d*) any programming service comprising the proceedings of the legislature of the province in which the undertaking is located;

(*e*) any pay television service the originator of which is licensed to provide the service to all or any part of the licensed are of the undertaking;

(*f*) any specialty service the originator of which is licensed to provide the service to all or any part of the licensed area of the undertaking;

(*g*) any Part III eligible Canadian satellite service;

(*h*) any Part III eligible non-Canadian satellite service;

(*i*) any radio programming service other than

(i) an audio non-Canadian programming service that is not

(A) the programming service of an F.M. station or an A.M. station receivable over the air at the local head end, or

(B) an international radio service operated or funded by a national government or its agent,

(ii) an audio non-Canadian programming service for which advertising is solicited in Canada, or

(iii) an audio non-Canadian programming service consisting of programming with predominantly religious themes; and

(*j*) any programming service authorized by the Commission pursuant to a condition of its licence. [SOR/86-831, in effect August 1, 1986; preamble and French version of paras.(g) and (h) *rep. & sub.* SOR/94-133, in effect Jan.25, 1994]

Recent CRTC Decisions: For a case in which a Part III licensee was not permitted to drop the CANCOM service provided on basic service under section 23 of the Regulations, in favour of programming delivered in a satellite from Denver by an American distributor, see Decision CRTC 92-265, May 7, 1992.
Where the cable licensee repeatedly distributed unauthorized U.S. programming services (i.e. not included in the List of Part III Eligible non-Canadian Satellite Services), it was given an 18 month license renewal. See Decision CRTC 90-993, September 26, 1990.

[§133-135]

(2) Where a Part III licensee or a licensee that holds a Class 2 licence and that has less than 2,000 subscribers elects to distribute community programming pursuant to paragraph (1)(*b*), and the licensee shall comply with the requirements of sections 13 and 15. [SOR/94-133, in effect Jan.25, 1994]

[§133-135a]

[NOTE: In Public Notice CRTC 1992-86, December 21, 1992, set out below at §288, the CRTC proposed to revoke subsection 24(2) and substitute the following therefor:

(2) Where a Part III licensee elects to distribute community programming pursuant to paragraph (1)(b), the Part III licensee shall comply with sections 13, 13.1, 15 and 15.1.]

[§133-136]

25. A Part III licensee or a licensee that holds a Class 2 licence and that has less than 2,000 subscribers shall not alter or curtail any programming service or radiocommunication in the course of its distribution except

(*a*) as required or authorized pursuant to a condition of its licence;

(*b*) in accordance with an agreement entered into with a network operator; or

(*c*) for the purpose of complying with subsection 105(1) of the *Canada Elections Act*.

[SOR/86-831, in effect August 1, 1986; preamble and French version of para. (*a*) *rep.& sub.* SOR/94-133, in effect Jan.25, 1994]

[NOTE: Subsection 105(1) has been renumbered as subsection 328(1) of R.S.C. 1985, c.E-2.]

Recent CRTC Decision: Where a number of Part III systems interconnected with Class 1 and 2 systems, the CRTC added a condition of licence relieving the licensee from the section 25 requirement that it not alter or curtail any programming service or radiocommunication in the course of its distribution. See Decision CRTC 93-669, November 8, 1993.

[§133-137]

26. (1) Except as otherwise provided pursuant to a condition of its licence, a Part III licensee or a licensee that holds a Class 2 licence and that has less than 2,000 subscribers shall, where it utilizes any channels other than those of the basic band, devote a greater number of the video channels of its undertaking to the distribution of Canadian programming services than to the distribution of non-Canadian programming services. [SOR/94-133, in effect Jan.25, 1994]

[§133-138]

(2) For the purposes of subsection (1), Canadian programming services do not include multiplexed programming or the programming distributed on program repeat channels. [SOR/94-133, in effect Jan.25, 1994]

[§133-139]

(3) A licensee shall give priority to the distribution of licensed programming services over other services. [SOR/94-133, in effect Jan.25, 1994]

[§133-140]

PART IV

MEDIATION

Mediation and Resolution of Disputes

[§133-141]

27. (1) In this Part, "wholesale rate" means the fee payable on a monthly basis by a licensee to a programming undertaking in order to receive a programming service.

[§133-142]

(2) Where there is a dispute between the licensee of a programming undertaking and the licensee of a distribution undertaking concerning the carriage or terms of carriage of programming, including the wholesale rate, originated by the programming undertaking, one or both of the parties to the dispute may refer the matter to the Commission for mediation.

[§133-143]

(3) The Commission may appoint a person to mediate the dispute.

[§133-144]

(4) All matters relating to the mediation of a dispute will be kept confidential unless in the opinion of the Commission, the circumstances require otherwise, in which case the Commission may make any information relating to the mediation available to the public.

[§133-145]

(5) Information provided by a party for the purposes of the mediation shall not be used by the other party to the mediation for any other purpose except with the consent of that party.

[§133-146]

(6) During the mediation of a dispute, the mediator may request additional information from the parties, or require their attendance at a meeting in order to discuss the matters in dispute.

[§133-147]

(7) A mediator may refer a matter to the Commission where a party does not comply with a request o the mediator, and the Commission may require the additional information or attendance at a meeting in order to discuss the matters in dispute.

Agreement

[§133-148]

28. An agreement that is reached following mediation shall be in writing and signed by all parties to it and shall be considered by the Commission as binding on the parties.

[§133-149]

29. Where no agreement is reached by the parties, the mediator shall submit a report to the Commission concerning the mediation within the period established by the Commission.

Commission Determination

[§133-150]

30. The Commission may, where no agreement is reached following mediation, render a decision regarding carriage and the terms and conditions of carriage, including the wholesale rate of programming originated by the programming undertaking involved in the dispute.

Schedule

[§133-151]

(Subsections 18(7) and (8))

NOTICE TO SUBSCRIBERS

[§133-152]

(*Name of licensee*) is proposing to increase its basic monthly fee, in accordance with subsection(s) of the *Cable Television Regulations*. This (these) subsection(s) of the Regulations permit(s) a licensee to increase its basic monthly fee, unless the CRTC 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 documentation filed with the Commission, which is available for public inspection during normal business hours at (*address of licensee*) and at the offices of the CRTC, 1 Promenade du Portage, Hull, 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 mailing of the notice*). A copy of your letter must be sent to (*name of licensee's representative, title, address*).

[§133-153]

Item 1

Proposed amount of increase per subscriber per month

(*a*) for capital expenditure in the system $ _____

(*b*) for (*specify other purposes*) $ _____

Total 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 $ _____

[§133-154]

Item 2

Effective date of proposed increase

(*a*) for capital expenditure in the system $ _____

(*b*) for (*specify other purposes*) $ _____

[§133-155]

Item 3

Reason for proposed increase

(*Provide brief statement outlining purpose of capital expenditure (e.g. upgrade of quality, increase in channel capacity or addition of new facilities), expected time of completion of capital improvements, purpose of other increase, and other relevant information.*)

[SOR/86-831, in effect August 1, 1986]

[§134-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

[§134-2]

Pay Television Regulations, 1990

[§134-3]

[SOR/90-105, January 25, 1990, *1990 Canada Gazette Part II*, p.623; as amended by SOR/91-588, October 23, 1991, *1991 Canada Gazette Part II*, p.3432; SOR/93-356, June 21, 1993, *1993 Canada Gazette Part II*, p.3087; and SOR/94-224, February 25, 1994, *1994 Canada Gazette Part II*, p.1327.

These Regulations replaced the *Pay Television Regulations*, SOR/84-797, as amended.]

[§134-4]

REGULATIONS RESPECTING PAY TELEVISION NETWORKS

Short Title

[§134-5]

1. These Regulations may be cited as the *Pay Television Regulations, 1990*. [SOR/90-105, in effect January 31, 1990.]

Interpretation

[§134-6]

2. In these Regulations,

[§134-7]

"Act" means the *Broadcasting Act*; [SOR/90-105, in effect Jan.31, 1990]

[§134-8]

"Canadian program" means a program that qualifies as a Canadian program in accordance with the criteria established by the Commission in the Appendix to Public Notice CRTC 1984-94 dated 15 April, 1984 entitled *"Recognition for Canadian Programs, 15 April 1984* and published in the *Canada Gazette* Part I on April 28, 1984, as amended by the Appendix to Public Notice CRTC 1988-105 dated June 27, 1988, entitled *Recognition for Canadian Programs, 27 June 1988* and published in the *Canada Gazette* Part I on July 9, 1988; [SOR/90-105, in effect Jan.31, 1990]

[NOTE: For the text of Public Notice CRTC 1984-94, see below at §212. For the text of Public Notice CRTC 1988-105, see below at §241.]

[§134-9]

"commercial message" means an advertisement intended to sell or promote goods, services, natural resources or activities, and includes an advertisement that mentions or displays a list of prizes the name of a person selling or promoting those goods, services, natural resources or activities, but does not include any

(*a*) public service announcement,

(*b*) advertisement for a program distributed by a licensee,

(*c*) identification of a pay television network, or

(*d*) production credit; [SOR/90-105, in effect Jan.31, 1990]

[§134-10]

"filler programming" means programming, in no case longer than 30 minutes in duration, the purpose of which is to fill in the time between the presentation of the major programs distributed by the licensee, and includes material that promotes the programs or services provided by the licensee; [SOR/90-105, in effect Jan.31, 1990]

[§134-11]

"key figure" means a figure formed by a combination of alphanumeric characters set out in column II of an item Schedule I that corresponds to the description of the program set out in column I of that item; [SOR/90-105, in effect Jan.31, 1990]

[§134-12]

"licensee" means a person who is licensed by the Commission pursuant to paragraph 9(1)(*b*) of the Act to carry on a pay television programming undertaking or a pay television network; [SOR/94-224, in effect February 25, 1994]

[§134-13]

"produced" does not include

(*a*) the furnishing, on a commercial basis, of facilities, or technical personnel associated with facilities, necessary for the production or post-production processing of a program, or

(*b*) editing or formatting or other similar measures necessary to enable proper and effective distribution of programming by a licensee; [SOR/90-105, in effect Jan.31, 1990]

[§134-14]

"production credit" means an oral or written announcement, included as an integral part of a program supplied to a licensee, that is inserted by the producer at the beginning or end of the program and that

(*a*) where it appears at the beginning of the program, identifies a person who has contributed financially or in kind to the production of the program, without an indication of any product or service provided by that person, or

(*b*) where it appears at the end of the program, identifies a person who has contributed financially or in kind to the production of the program, with or without an indication or any product or service provided by that person; [SOR/90-105, in effect Jan.31, 1990]

[§134-15]

"program" means a broadcast presentation of sound and visual matter that is designed to inform or entertain and that falls into a category set out in column I of item 6 of Schedule I; [SOR/90-105, in effect Jan.31, 1990]

[§134-16]

"programming" means anything that is broadcast, but does not include visual images, whether or not combined with sounds, that consist predominantly of alphanumeric text; [SOR/94-224, in effect Feb.25, 1994]

[§134-17]

[Definition of "related", Revoked, SOR/93-356]

[§134-18]

[Definition of "associate", "person" and voting security", Revoked, SOR/93-356]

Programming Content

[§134-19]

3. (1) Paragraphs (2)(e) and (f) do not apply in respect of a licensee of an ethnic pay television network. [SOR/90-105, in effect Jan.31, 1990]

[§134-20]

(2) No licensee shall distribute programming

(*a*) that contains anything in contravention of the law;

(*b*) that contains any abusive comment or abusive pictorial representation that, when taken in context, tends to or is likely to expose an individual or a 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*) that contains any false or misleading news;

(*d*) that contains any commercial message;

(*e*) other than filler programming, that is produced by the licensee after the date of publication in the *Canada Gazette* of the initial decision of the Commission granting a licence to the licensee; or

(*f*) other than filler programming, that is produced by a person related to the licensee after the later of

(i) the date of publication in the *Canada Gazette* of the initial decision of the Commission granting a license to the licensee, and

(ii) the day on which the person became related to the licensee. [SOR/90-105, in effect Jan.31, 1990; para. (b) amended by SOR/91-588, in effect October 23, 1991]

[§134-21]

(3) For the purpose of paragraph (2)(*b*), sexual orientation does not include the orientation towards any sexual act or activity that would constitute an offence under the *Criminal Code*. [SOR/91-588, in effect October 23, 1991]

[§134-22]

Logs and Records

[§134-23]

4. (1) A licensee shall

(*a*) keep, in a form acceptable to the Commission, a program log or a machine-readable record of its programming;

(*b*) retain the log or record for a period of one year after the day on which the programming was distributed; and

(*c*) cause to be entered in the log or record each day the following information:

(i) the date;

(ii) an identification of the licensee or the service provided by the licensee, and

(iii) in relation to each program distributed,

(A) the title program, including, where applicable, the information referred to in subitems (3), (4), (5) and (6) column I of item 4 of Schedule I,

(B) subject to subsection (3), the key figure describing the program,

(C) the time at which the program begins and ends,

(D) in the case of the licensee of an ethnic pay television network, the code set out in column I of an item of Part C or D of Schedule II indicating the type or group of the program, as applicable,

(E) where applicable, the code set out in column I of an item of Part B of Schedule II indicating that the program is closed captioned,

(F) where applicable, the code set out in column I of an item of Part A of Schedule II indicating the language of the program, and

(G) where required by a condition of licence, a brief description of the content of the program. [SOR/90-105, in effect Jan.31, 1990, except for 4(1)(c)(iii)(B) which came into force on Sept.1, 1990, by virtue of s.7]

[§134-24]

(2) A licensee shall furnish to the Commission, within seven days after the end of each month, a program log or a machine readable record of its programming for the month, with a certificate by or on behalf of the licensee certifying the accuracy of the contents of the log or record. [SOR/90-105, in effect Jan.31, 1990]

[§134-25]

(3) Where more than one subitem of an item of Schedule I applies to a program, a licensee may, in respect of that program, cause to be entered in its program log or machine-readable record

(*a*) the key figures indicating the subitems that apply to each segment of the program, in the order in which the segments are distributed; and

(*b*) the starting time and duration of each segment of the program. [SOR/90-105, in effect Sept.1, 1990 by virtue of s.7.]

[§134-26]

(4) A licensee shall retain a clear and intelligible audiovisual recording of all of its programming:

(*a*) for a period of four weeks after the date of the distribution; or

(*b*) where the Commission receives a complaint from any person regarding any programming or for any other reason wishes to investigate the programming and so notifies the licensee before the expiration of the period referred to in paragraph (*a*), for a period of eight weeks after the date of the distribution. [SOR/90-105, in effect Jan.31, 1990]

[§134-27]

(5) Where, before the expiration of the applicable period referred to in subsection (4), the Commission requests from a licensee a clear and intelligible audio-visual recording of the licensee's programming, the licensee shall furnish the recording to the Commission forthwith. [SOR/90-105, in effect Jan.31, 1990]

Requests for Information

[§134-28]

5. (1) On or before November 30 of each year, a licensee shall file with the Commission a statement of accounts, on the annual return form issued by the Commission, for the year ending on the previous August 31. [SOR/90-105, in effect Jan.31, 1990]

[§134-29]

(2) At the request of the Commission, a licensee shall respond to:

(*a*) any complaint from any person regarding the licensee's programming, ownership or any other matter within the Commission's jurisdiction; or

(*b*) any inquiry respecting the licensee's adherence to industry standards, practices or codes or any other self-regulatory mechanism of the industry. [SOR/90-105, in effect Jan.31, 1990]

Transfer of Ownership or Control

[§134-30]

6. (1) For the purposes of this section,

"associate", when used to indicate a relationship with any person, includes

(*a*) a partner of the person,

(*b*) a trust or an estate in which the person has a substantial beneficial interest or in respect of which the person serves as a trustee or in a similar capacity,

(*c*) a spouse, common-law spouse, son, daughter, son-in-law or daughter-in-law of the person,

(*d*) a relative, not referred to in paragraph (*c*), of the person, or of the person's spouse or common-law spouse, who has the same residence as that person,

(*e*) a corporation of which the person alone, or a person together with one or more associates as described in this definition, has, directly or indirectly, control of more than 50 per cent of voting interests,

(*f*) a corporation of which an associate, as described in this definition, of the person has, directly or indirectly, control of more than 50 per cent of the voting interests, and

(*g*) a person, with whom the person has entered into an arrangement, a contract, an understanding or an agreement in respect of the voting of shares of a licensee corporation or a corporation that has, directly or indirectly, effective control of a licensee corporation, except where that person controls less than one per cent of all issued voting shares of a corporation whose shares are publicly traded on a stock exchange;

[§134-30a]

"common shares" means the shares that represent the residual equity in the earnings of a corporation, and includes the preferred shares to which are attached rights to participate in the earnings of the corporation with no upper limit;

[§134-30b]

"person" includes an individual, a partnership, a joint venture, an association, a corporation, a trust, an estate, a trustee, an executor and an administrator, or a legal representative of any of them;

[§134-30c]

"voting interest", in respect of

(*a*) a corporation with share capital, means the vote attached to a voting share,

(*b*) a corporation without share capital, means an interest that entitles the owner to voting rights similar to those enjoyed by the owner of a voting share,

(*c*) a partnership, a trust, an association or a joint venture, means an ownership interest in the assets of it that entitles the owner to receive a share of the profits of it, to receive a share of the assets of it on dissolution and to participate directly in the management of it or to vote on the election of the persons to be entrusted with the power and responsibility to manage it, and

(*d*) a not-for-profit partnership, trust, association or joint venture, means a right that entitles the owner to participate directly in the management of it or to vote on the election of the persons to be entrusted with the power and responsibility to manage it;

[§134-30d]

"voting share" means a share in the capital of a corporation, to which is attached one or more votes that are exercisable at meetings of shareholders of the corporation, either under all circumstances or under a circumstance that has occurred and is continuing, and includes any security that is convertible into such a share at all times at the option of the holder. [SOR/93-356, in effect June 21, 1993]

[§134-31]

(2) For the purposes of this section, control of a voting interest by a person includes situations in which

(*a*) the person is, directly or indirectly, the beneficial owner of the voting interest; or

(*b*) the person, by means of an agreement, determines the manner in which the interest is voted but the solicitation of proxies or the seeking of instructions with respect to the completion of proxies in respect of the exercise of voting interests is not considered to be such an arrangement, contract, understanding or agreement. [SOR/93-356, in effect June 21, 1993]

[§134-32]

(3) For the purposes of this section, effective control of a licensee or its undertaking includes situations in which

(*a*) a person controls, directly or indirectly, other than by way of security only, a majority of the voting interests of the licensee;

(*b*) a person has the ability to cause the licensee or its board of directors to undertake a course of action; or

(*c*) the Commission, after a public hearing of an application for a licence, or in respect of an existing licence, determines that a person has such effective control and sets out that determination in a decision or public notice. [SOR/93-356, in effect June 21, 1993]

[§134-33]

(4) Except as otherwise provided pursuant to a condition of its licence, a licensee shall obtain the prior approval of the Commission in respect of any act, agreement or transaction that directly or indirectly would result in

(*a*) a change by whatever means of the effective control of its undertaking;

(*b*) a person alone

(i) who controls less than 30 per cent of the voting interests of the licensee, having control of 30 per cent or more of those interests,

(ii) who controls less than 30 per cent of the voting interests of a person who has, directly or indirectly, effective control of the licensee, having control of 30 per cent or more of those interests,

(iii) who owns less than 50 per cent of the issued common shares of the licensee, owning 50 per cent or more of those shares but not having, directly or indirectly, effective control of the licensee, or

(iv) who owns less than 50 per cent of the issued common shares of a person who has, directly or indirectly, effective control of the licensee, owning 50 per cent or

more of those shares but not having, directly or indirectly, effective control of the licensee;

(*c*) a person together with an associate

(i) who control less than 30 per cent of the voting interests of the licensee, having control of 30 per cent or more of those interests,

(ii) who control less than 30 per cent of the voting interests of a person who has, directly or indirectly, effective control of the license, having control of 30 per cent or more of those interests,

(iii) who own less than 50 per cent of the issues common shares of the licensee, owning 50 per cent or more of those shares but not having, directly or indirectly, effective control of the licensee, or

(iv) who own less than 50 per cent of the issued common shares off a person who has, directly or indirectly, effective control of the licensee, owning 50 per cent or more of those shares but not having, directly or indirectly, effective control of the licensee; or

(*d*) a person licensed to operate a distribution undertaking or any broadcasting undertaking engaged in the exhibition of pay television, or any person who has, directly or indirectly, effective control of that person

(i) who controls less than 10 per cent of the voting interests of the licensee, having control of 10 per cent or more but less than 30 per cent of those interests,

(ii) who controls less than 10 per cent of the voting interests of a person who has, directly or indirectly, effective control of the licensee, having control of 10 per cent or more but less than 30 per cent of those interests.

[SOR/93-356, in effect June 21, 1993]

[§134-34]

(5) A licensee shall notify the Commission, within 30 days thereafter, of the occurrence of any act, agreement or transaction that, directly or indirectly, resulted in

(*a*) a person alone

(i) who controls less than 20 per cent of the voting interests of the licensee, having control of 20 per cent or more but less than 30 per cent of those interests,

(ii) who controls less than 20 per cent of the voting interests of a person who has, directly or indirectly, effective control of the licensee, having control of 20 per cent or more but less than 30 per cent of those interests,

(iii) who controls less than 40 per cent of the voting interests of the licensee, having control of 40 per cent or more but less than 50 per cent of those interests but not having, directly or indirectly, effective control of the licensee, or

(iv) who controls less than 40 per cent of the voting interests of a person who has, directly or indirectly, effective control of the licensee, having control of 40 per cent or more but less than 50 per cent of those interests but not having, directly or indirectly, effective control of the licensee; or

(*b*) a person together with an associate

(i) who control less than 20 per cent of the voting interests of the licensee, having control of 20 per cent or more but less than 30 per cent of those interests,

(ii) who control less than 20 per cent of the voting interests of a person who has, directly or indirectly, effective control of the licensee, having control of 20 per cent or more but less than 30 per cent of those interests,

(iii) who own less than 40 per cent of the voting interests of the licensee, having control of 40 per cent or more but less than 50 per cent of those interests but not having, directly or indirectly, effective control of the licensee, or

(iv) who control less than 40 per cent of the voting interests of a person who has, directly or indirectly, effective control of the licensee, having 40 per cent or more but less than 50 per cent of those interests but not having, directly or indirectly, effective control of the licensee. [SOR/93-356, in effect June 21, 1993]

[§134-35]

(6) A notification referred to in subsection (5) shall set out the following information:

(*a*) the name of the person or the names of the person and the associate;

(*b*) the percentage of the voting interests controlled by the person or by the person and the associate; and

(*c*) a copy or a complete description of the act, agreement or transaction. [SOR/93-356, in effect June 21, 1993]

[§134-36]

7. Clause 4(1)(*c*)(iii)(B) and subsection 4(3) shall come into force on September 1, 1990. [SOR/90-105, in effect Jan.31, 1990]

[§134-37]

SCHEDULE I
(Sections 2 and 4)

KEY FIGURES

Item	Column I Program Description	Column II Alphanumeric Characters 1st	2nd	3rd	4th	5th	6th	7th	8th
1.	*Origin*								
	(1) Canada	1							
	(2) United States (other than Disney Channel)	2							
	(3) United Kingdom	3							
	(4) France	4							
	(5) Disney Channel	6							
	(6) Other	7							
2.	*Investments*								
	(1) None from licensee or related person		0						
	(2) Some from licensee or related person		1						
3.	*Exhibition*								
	(1) Original exhibition of a program for which 150 per cent credit is given pursuant to a condition of licence			1					
	(2) Original exhibition of a program for which 150 per cent credit is not given pursuant to a condition of licence			2					
	(3) Repeat exhibition of a program referred to in subitem (1)			5					
	(4) Repeat exhibition of a program referred to in subitem (2)			6					
4.	*Production source*								
	(1) In-house (licensee)				1				
	(2) Affiliated production company				2				
	(3) TV station (include call sign)				3				
	(4) Over-the-air television network (include network identifier)				4				

(5) Canadian independent producer (include Commission "C" number or the number assigned by the Department of Communications	5				
(6) Co-venture (include Commission "S.R." number	6				
(7) Any other known source of a Canadian program	7				
(8) Any other source	8				
5. *Target audience*					
(1) Children (up to 11 years)		6			
(2) Youth (12 to 17 years)		7			
(3) Families		8			
(4) Specific identifiable target group not referred to in subitem (1), (2) or (3)		9			
(5) General audience		5			
6. *Categories*					
Information					
(1) News			0	1	0
(2) Analysis and interpretation			0	2	0
(3) Reporting and actualities			0	3	0
(4) Religion			0	4	0
(5) Education			0	5	0
Sports:					
(6) Sports			0	6	0
Music and Entertainment:					
(7) Drama:					
(a) Ongoing dramatic series			0	7	A
(b) Ongoing comedy series			0	7	B
(c) Specials, mini-series or made-for-TV feature films			0	7	C
(d) Feature films, theatrical releases			0	7	D
(e) Animated television programs or films			0	7	E
(f) Programs of comedy sketches			0	7	F
(g) Other			0	7	G
(8) Music and dance			0	8	0
(9) Variety			0	9	0
(10) Game shows			1	0	0
(11) Human interest			1	1	0
Other:					
(12) Filler programming			1	3	0

SCHEDULE II
(Section 4)

CODES

Part A

Code Indicating Program Language

Item	Column 1 Code	Column 11 Description
1.	(1) [Abbreviated name of language]	Language of the original production
	(2) [Abbreviated name of language]	Language of the program (for all programs of an ethnic station or for programs of a station where the language of the program differs from the official language for which the station is principally licensed)

Part B

Code Indicating Closed Caption Programming

Item	Column 1 Code	Column 11 Description
1.	CC [to be inserted following key figure]	Program contains closed captioning for the hearing impaired, which has been exhibited during the complete length of the program.

Part C

Code Indicating Type

Item	Column 1 Code	Column 11 Description
1.	Type A	A program in a language other than English, French or a language of the aboriginal peoples of Canada
2.	Type B	A program in English or in French that is directed toward a distinct ethnic group, the mother tongue or common language of which in its country of origin is English or French
3.	Type C	A program in English or in French that is directed toward a distinct ethnic group, the mother tongue of which is included Type A
4.	Type D	A bilingual program in English or in French as well as in a language other than English, French or in a language of the aboriginal peoples of Canada that is directed toward a distinct ethnic group
5.	Type E	A program in English or in French that is directed toward ethnic groups or toward the general public and that depicts Canada's cultural diversity through services that are multicultural, educational information or inter-cultural

Part D

Code Indicating Group

Item	Column 1 Code	Column 11 Description
1.	[Abbreviated name of ethnic group]	The distinct ethnic group toward which a program of Type A, B. C or D is directed

[SOR/90-105, in effect Jan.31, 1990]

[§135-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

[§135-2]

Radio Regulations, 1986

[§135-3]

[SOR/86-982, September 18, 1986, *1986 Canada Gazette Part II*, p.4192; as amended by SOR/88-549, October 25, 1988, *1988 Canada Gazette Part II*, p.4511; SOR/89-163, March 16, 1989, *1989 Canada Gazette Part II*, p.1924; SOR/91-517, August 27, 1991, *1991 Canada Gazette Part II*, p.3021; SOR/91-586, October 23, 1991, *1991 Canada Gazette Part II*, p.3430; SOR/92-609, October 13, 1992, *1992 Canada Gazette Part II*, p.4145; SOR/92-613, October 16, 1992, *1992 Canada Gazette Part II*, p.4150; SOR/93-209, April 26, 1993, *1993 Canada Gazette Part II*, p.2220; SOR/93-355, June 21 1993, *1993 Canada Gazette Part II*, p.3082; SOR/93-358, June 21, 1993, *1993 Canada Gazette Part II*, p.3097; SOR/93-517, November 4, 1993, *1993 Canada Gazette Part II*, p.3990; and SOR/94-222, February 25, 1994, *1994 Canada Gazette Part II*, p.1325.

These Regulations repealed and replaced the *Radio (A.M.) Broadcasting Regulations*, C.R.C.1978, c.379, as amended, and the *Radio (F.M.) Broadcasting Regulations*, C.R.C.1978, c.380, as amended.]

[§135-4]

REGULATIONS RESPECTING RADIO BROADCASTING

Short Title

[§135-5]

1. These Regulations may be cited as the *Radio Regulations, 1986*. [SOR/86-982, in effect Sept.18, 1986]

Interpretation

[§135-6]

2. In these Regulations,

[§135-7]

"Act" means the *Broadcasting Act*; [SOR/86-982, in effect Sept.18, 1986]

[§135-8]

"alcoholic beverage", in respect of a commercial message, means an alcoholic beverage the sale of which is regulated by the law of the province in which the commercial message is broadcast; [SOR/86-982, in effect Sept.18, 1986]

[§135-9]

"A.M. licensee" means a person licensed to operate an A.M. station; [SOR/86-982, in effect Sept.18, 1986]

[§135-10]

"A.M. station" means a station that broadcasts in the A.M. frequency band of 525 to 1605 kHz, but does not include a transmitter that only rebroadcasts the radiocommunications of a licensee; [SOR/86-982, in effect Sept.18, 1986]

[§135-11]

"broadcast day" means the total number of hours devoted to broadcasting for a period beginning at six o'clock in the forenoon and ending at midnight on the same day; [SOR/86-982, in effect Sept.18, 1986]

[§135-12]

"broadcast week" means seven consecutive broadcast days, beginning on Sunday; [SOR/86-982, in effect Sept.18, 1986]

[§135-13]

"Canadian" means

(*a*) a Canadian citizen,

(*b*) a permanent resident, as defined in the *Immigration Act, 1976*,

(*c*) a person whose ordinary place of residence was in Canada throughout the six months immediately preceding that person's contribution to a musical composition, performance or concert, or

(*d*) a licensee; [SOR/91-517, in effect Sept.1, 1991]

[§135-14]

"commercial message" means any broadcast matter that falls within content category 5; [SOR/86-982, in effect Sept.18, 1986]

[§135-15]

"content category" means any category of broadcast matter described in the appendix to Public Notice 1991-19 dated February 14, 1991 and entitled *Implementation of an F.M. Policy* and published in the *Canada Gazette* Part I on February 23, 1991; [SOR/91-517, in effect Sept.1, 1991]

[NOTE: For the text of the appendix referred to, see below at §265.]

[§135-16]

"content subcategory" means a subcategory of content of broadcast matter that is described in the appendix to Public Notice 1991-19 dated February 14, 1991 and entitled *Implementation of an F.M. Policy* and published in the *Canada Gazette* Part I on February 23, 1991; [SOR/91-517, in effect Sept.1, 1991]

[NOTE: For the text of the appendix referred to, see below at §265.]

[§135-17]

"election period" means

(*a*) in the case of a federal or provincial election or of a federal, provincial or municipal referendum, the period beginning on the date of the announcement of the election or referendum and ending on the date the election or referendum is held, or

(*b*) in the case of a municipal election, the period beginning two months before the date of the election and ending on the date the election is held; [SOR/86-982, in effect Sept.18, 1986]

[§135-18]

"ethnic program" means a program of Type A, B, C or D, as described in the schedule; [SOR/86-982, in effect Sept.18, 1986]

[§135-19]

"ethnic station" means an A.M. station or an F.M. station that is licensed as an ethnic station; [SOR/86-982, in effect Sept.18, 1986]

[§135-20]

"F.M. licensee" means a person licensed to operate an F.M. station; [SOR/86-982, in effect Sept.18, 1986]

[§135-21]

"F.M. station" means a station that broadcasts in the F.M. frequency band of 88 to 108 MHz, but does not include a transmitter that only rebroadcasts the radiocommunications of a licensee; [SOR/86-982, in effect Sept.18, 1986]

[§135-22]

"licensed" means licensed by the Commission pursuant to paragraph 9(1)(*b*) of the Act; [SOR/94-222, in effect February 25, 1994]

[§135-23]

"licensee" means a person licensed to operate an A.M. station, an F.M. station or a radio network; [SOR/88-549, in effect Oct.25, 1988]

[§135-24]

"network" means a licensed radio network; [SOR/88-549, in effect Oct.25, 1988]

[§135-25]

"official contour" means a service contour marked for a licensed A.M. station or a licensed F.M. station on the map most recently published pursuant to the *Department of Communications Act* by the Minister of Communications pertaining to that station; [SOR/86-982, in effect Sept.18, 1986]

[§135-26]

"quarter hour" means a period of 15 minutes, commencing on the hour, or 15, 30 or 45 minutes past the hour; [SOR/86-982, in effect Sept.18, 1986]

[§135-27]

[Definition of "spoken word". Revoked, SOR/93-358, in effect June 21, 1993]

[§135-28]

"station" means a radio programming undertaking or a broadcasting transmitting undertaking. [SOR/94-222, in effect Feb.25, 1994]

[§135-29]

Application

[§135-30]

2.1 (1) These Regulations do not apply in respect of programming that is broadcast by a licensee using a subsidiary communications multiplex operations channel. [SOR/89-163, in effect March 16, 1989]

[§135-31]

(2) For the purposes of this section,

"baseband" means signals in the frequency range of 0 to 99 kHz that are used as input to the transmitter of an F.M. station;

"subsidiary communications multiplex operations channel" means a frequency band containing one or more subcarriers that is centred at 76 kHz in the baseband during stereophonic or monophonic transmission in the main channel or at 59.5 kHz in the baseband where there is no stereophonic or monophonic transmission in the main channel. [SOR/89-163, in effect March 16, 1989]

Part I

Canadian and Musical Content

heading *rep.& sub.*SOR 93-517, in effect Nov.4, 1993]

[§135-32]

2.2 (1) For the purposes of this section, "ethnic programming period" means that portion of a broadcast week during which a licensee broadcasts ethnic programs. [SOR/91-517, in effect Sept.1, 1991]

[§135-33]

(2) For the purposes of this section, "Canadian selection" means a musical selection

(*a*) that meets at least two of the following conditions, namely,

(i) the music is or lyrics are performed principally by a Canadian,

(ii) the music is composed entirely by a Canadian,

(iii) the lyrics are written entirely by a Canadian,

(iv) the musical selection consists of a live performance that is

(A) recorded wholly in Canada, or

(B) performed wholly in and broadcast live in Canada, and

(v) the musical selection was performed live or recorded after September 1, 1991, and a Canadian who has collaborated with a non-Canadian receives at least fifty per cent of the credit as composer and lyricist according to the records of a recognized performing rights society;

(*b*) that is an instrumental performance of a musical composition that meets the conditions set out in subparagraph (*a*)(ii) or (iii);

(*c*) that is a performance of a musical composition that a Canadian has composed for instruments only; or

(*d*) that has already qualified as a Canadian selection under regulations previously in effect. [SOR/93-517, in effect November 4, 1993]

[§135-34]

(3) Except as otherwise provided pursuant to a condition of its licence, an A.M. or F.M. licensee shall, each broadcast week, devote 30 per cent or more of the licensee's musical selections from content category 2 and 10 per cent or more of the licensee's musical selections from content category 3 to Canadian selections and schedule those selections in a reasonable manner throughout each broadcast day. [SOR/91-517, in effect Sept.1, 1991]

Recent CRTC Decision: For cases where reductions in Canadian content have been considered, see Decision CRTC 93-687, November 23, 1993 (denied); Decision CRTC 93-52, February 11, 1993 (denied); Decisions CRTC 93-37 and 38, January 29, 1993 (allowed in part); Decision CRTC 92-406, June 29, 1992 (allowed); and Decision CRTC 92-18 January 23, 1992 (allowed).

Note that the CBC radio networks are required by condition of licence to ensure that at least 50% of content category 2 music and at least 20% of content category 3 music broadcast each week is Canadian. See Decisions CRTC 93-95, March 19, 1993 and CRTC 92-139, February 28, 1992.

For a discussion of what constitutes distribution of Canadian music "in a reasonable manner throughout each broadcast day" see Decisions CRTC 90-890, September 13, 1990; and Decisions CRTC 90-701 and 702, August 13, 1990.

To be considered a "musical selection", the piece must be at least one minute in duration. See Decision CRTC 90-509, June 5, 1990.

[§135-35]

(4) Where 7 per cent or more of the musical selections broadcast by a licensee during an ethnic programming period are Canadian selections and are scheduled in a reasonable manner throughout the period, subsection (3) shall apply only in respect of those musical selections that are broadcast during that part of the broadcast week that is not devoted to ethnic programs. [SOR/91-517, in effect Sept.1, 1991]

[§135-35a]

(5) Except as otherwise provided pursuant to a condition of its licence, an A.M. or F.M. licensee licensed to operate in the French language shall, each broadcast week, devote 65 per cent or more of its vocal musical selections from content category 2 to musical selections in the French language and schedule those selections in a reasonable manner throughout each broadcast day. [SOR/93-517, in effect November 4, 1993.]

Part I.1

[SOR/91-517, in effect Sept.1, 1991]

Broadcasting Content

[§135-36]

3. A licensee shall not broadcast

(*a*) anything in contravention of the law;

(*b*) any abusive comment that, when taken in context, tends or is likely to expose an individual or a 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;

(*d*) any false or misleading news; or

(*e*) any telephone interview or conversation, or any part thereof, with an person unless

(i) the person's oral or written consent to the interview or conversation being broadcast was obtained prior to the broadcast, or

(ii) the person telephoned the station for the purpose of participating in a broadcast. [SOR/86-982, in effect Sept.18, 1986; paragraph (*b*) amended in SOR/91-586, in effect Oct.23, 1991]

[§135-37]

3.1 For the purposes of paragraph 3(*b*), sexual orientation does not include the orientation towards any sexual act or activity that would constitute an offence under the *Criminal Code*. [SOR/91-586, in effect Oct.23, 1991]

[§135-38]

4. (1) Subject to subsection (3), a licensee shall not broadcast a commercial message advertising, directly or indirectly, an alcoholic beverage. [SOR/86-982, in effect Sept.18, 1986]

[§135-39]

(2) Subsection (3) does not apply in respect of any of the following alcoholic beverage:

(*a*) a spirituous liquor;

(*b*) a liqueur or an alcoholic cordial; or

(*c*) an alcoholic beverage for which a standard is not prescribed pursuant tot the *Food and Drugs Act*, that is a distillate or that contains a distilled spirit, and that contains more than 7 per cent ethyl alcoholic by volume. [SOR/86-982, in effect Sept.18, 1986]

[§135-40]

(3) A licensee may broadcast a commercial message advertising, directly or indirectly, an alcoholic beverage where

(*a*) the sponsor of the commercial message is a brewer, winery, cider-house or distiller;

(*b*) the sponsor is not prohibited from advertising the beverage by the laws of the province in which the commercial message is broadcast;

(*c*) subject to subsection (4), the commercial message is not designed to promote the general consumption of alcoholic beverages;

(*d*) the commercial message complies with the code entitled *Code for Broadcast Advertising of Alcoholic Beverages* established by the Commission and dated September, 1986; and

(*e*) the script of the commercial message has been approved by a representative of the Commission to indicate, to the extent that it is possible to so indicate on the basis of a script, that a commercial message conforming to the approved script would comply with paragraphs (*a*) to (*d*). [SOR/86-982, in effect Sept.18, 1986; preambular para.(a) amended and para.4(3)(e) amended by SOR/93-209, in effect April 26, 1993.]

[NOTE: For the text of the Code referred to, see below at §173.]

[§135-41]

(4) Paragraph (3)(*c*) does not apply so as to prohibit industry, public service or brand preference advertising. [SOR/86-982, in effect Sept.18, 1986]

[§135-42]

(5) The approval of the script of a commercial message referred to in paragraph (3)(*e*) does not indicate that the commercial message complies with paragraphs (3)(*a*) to (*d*). [SOR/86-982, in effect Sept.18, 1986]

[§135-43]

5. (1) A licensee shall not broadcast

(*a*) a commercial message for, or an endorsement of, a drug, cosmetic or device, other than a veterinary biologic, to which the *Food and Drugs Act* applies unless

(i) the script of the commercial message or endorsement has been approved by a representative of the Commission and by the Minister of National Health and Welfare to indicate, to the extent that it is possible to so indicate on the basis of a script, that a commercial message conforming to the approved script would comply with the applicable provisions, administered by that Minister, of the *Food and Drugs Act*, the *Narcotic Control Act* and regulations made pursuant to those Acts or to the *Department of National Health and Welfare Act*, and

(ii) the script bears the script number assigned to it by that Minister; or

(*b*) a recommendation for the treatment, preventative or cure of a disease, disorder or abnormal physical state unless

(i) the script of the recommendation has been approved by the Minister of National Health and Welfare to indicate, to the extent that it possible to so indicate on the basis of a script, that recommendation conforming to the approved script would

comply with the applicable provisions, administered by that Minister, of the *Food and Drugs Act*, the *Narcotic Control Act* and regulations made pursuant to those Acts or to the *Department of National Health and Welfare Act*, and

(ii) the script bears the script number assigned to it by that Minister. [SOR/93-209, in effect April 26, 1993.]

[§135-44]

(2) Where a licensee broadcasts a commercial message, endorsement or recommendation referred to in subsection (1), the licensee shall keep a record of the script for a period of one year after the date of the broadcast, which record shall contain

(*a*) the name of the drug or device to which the script relates;

(*b*) the name of the sponsor or advertising agency that submitted the script for approval; and

(*c*) the script number referred to in subparagraph (1)(*a*)(ii) or (1)(*b*)(ii). [SOR/93-209, in effect April 26, 1993.]

[§135-45]

(3) A licensee shall furnish the record required by subsection (2) to the Commission or to an inspector designated pursuant to the *Food and Drugs Act* where the Commission or the inspector so requests for the purpose of audit or examination. [SOR/93-209, in effect April 26, 1993.]

[§135-46]

(4) The approval of the script of a commercial message, endorsement or recommendation referred to in subsection (1) does not indicate that the commercial message endorsement or recommendation complies with the applicable legislation. [SOR/93-209, in effect April 26, 1993.]

Political Broadcasts

[§135-47]

6. During an election period, a licensee shall allocate time for the broadcasting of programs, advertisements or announcements of a partisan political character on an equitable basis to all accredited political parties and rival candidates represented in the election or referendum. [SOR/86-982, in effect Sept.18, 1986]

Ethnic Programs

[§135-48]

7. (1) The licensee of an ethnic station shall devote not less than 60 per cent of its broadcast week to ethnic programs. [SOR/86-982, in effect Sept.18, 1986]

[§135-49]

(2) The licensee of a station other than an ethnic station shall not devote more than 15 per cent of its broadcast week to ethnic programs unless it is authorized pursuant to a condition of its licence to devote up to 40 per cent of its broadcast week to ethnic programs. [SOR/86-982, in effect Sept.18, 1986]

Logs and Records

[§135-50]

8. (1) A licensee shall

(*a*) keep,in a form acceptable to the Commission, a program log or a machine readable record of the matter broadcast by the licensee;

(*b*) retain the log or record for a period of one year after the date when the matter was broadcast; and

(*c*) cause to be entered in the log or record each day the following information:

(i) the date,

(ii) the call letters, location and frequency of the licensee's station,

(iii) the time at which each station identification announcement is made,

(iv) in relation to each program broadcast,

(A) the title and a brief description,

(B) subject to subsection (2), the number of the relevant content category,

(C) the time at which the program begins and ends, and

(D) the code set out in the schedule indicating the origin of the program and where applicable the language, type or group, and

(v) in relation to each commercial message, the quarter hour during which it is broadcast, its duration and the number of the relevant content subcategory. [SOR/86-982, in effect Sept.18, 1986]

[§135-51]

(2) Where a program falls into more than one content category, a licensee shall cause to be entered in its program log or machine readable record the two principal content categories in descending order of their relative importance in terms of broadcast time. [SOR/86-982, in effect Sept.18, 1986]

[§135-52]

(3) The times required to be entered pursuant to subparagraph (1)(*c*)(iii), clause (1)(*c*)(iv)(C) and subparagraph (1)(c)(v) are local times. [SOR/86-982, in effect Sept.18, 1986]

[§135-53]

(4) A licensee shall furnish, to the Commission on request, its program log or machine readable record for any day, with a certificate by or on behalf of the licensee attesting to the accuracy of its content. [SOR/86-982, in effect Sept.18, 1986]

[§135-54]

(5) A licensee shall retain a clear and intelligible tape recording or other exact copy of all matter broadcast

(*a*) for four weeks from the date of the broadcast; or

(*b*) where the Commission receives a complaint from any person regarding the matter broadcast or for any other reason wishes to investigate it and so notifies the licensee before the expiration of the period referred to in paragraph (*a*), for eight weeks from the date of the broadcast. [SOR/86-982, in effect Sept.18, 1986]

[§135-55]

(6) Where, before the expiry of the applicable period referred to in subsection (5), the Commission requests from the licensee a clear and intelligible tape recording or other exact copy of matter broadcast, the licensee shall furnish it to the Commission forthwith. [SOR/86-982, in effect Sept.18, 1986]

[§135-56]

(7) Subsections (1) to (4) apply only in respect of A.M. and F.M.licensees. [SOR/88-549, in effect Oct.25, 1988]

Requests for Information

[§135-57]

9. (1) For the purposes of this section,

"Canadian musical selection" means a musical selection that meets the criteria set out in subsection 2.2(2); [SOR/92-609, in effect Oct.19, 1992]

[§135-58]

"hit" has the meaning indicated on pages 19 to 22 of Public Notice CRTC 1986-248 of September 19, 1986 entitled *Regulations Respecting Radio Broadcasting* and published in the *Canada Gazette* Part I on October 4, 1986, as amended by page 23 of Public Notice CRTC 1990-111 of December 17, 1990 entitled *An FM Policy for the Nineties* and published in the *Canada Gazette* Part I on December 29, 1990. [SOR/92-609, in effect Oct.19, 1992]

[NOTE: For the relevant text of Public Notice CRTC 1986-248, as amended by Public Notice CRTC 1990-111, see below at §222 and §263.]

[§135-58]

(2) On or before November 30 of each year, a licensee shall submit to the Commission a statement of accounts on the annual return of broadcasting licensee form, for the year ending on the previous August 31. [SOR/92-609, in effect Oct.19, 1992]

[§135-59]

(3) At the request of the Commission, a licensee shall submit for any period specified by the Commission in its request

(*a*) the information required by the most recent Station Self-assessment Report form issued by the Commission;

(*b*) a list of the musical selections in the order in which they are broadcast by the licensee during that period that includes the title and performer of each musical selection and a legend that identifies,

(i) any Canadian musical selection,

(ii) any hit,

(iii) any instrumental selection,

(iv) any category 3 musical selection within the meaning of Public Notice CRTC 1991-19 of February 14, 1991 entitled *Implementation of the FM Policy* and published in the *Canada Gazette* Part 1 on February 23, 1991, and

(v) the language of the musical selection, where the musical selection is not an instrumental selection. [SOR/92-609, in effect Oct.19, 1992]

[NOTE: For the text of Public Notice CRTC 1991-19, see below at §265.]

[§135-60]

(4) At the request of the Commission, a licensee shall provide the Commission with a response to any inquiry regarding the licensee's programming, ownership or any other matter within the Commission's jurisdiction that relates to the licensee's undertaking. [SOR/92-609, in effect Oct.19, 1992]

Affiliation

[§135-61]

10. (1) For the purposes of this section, "affiliation agreement" means an agreement between one or more A.M. licensees or F.M. licensees and another party, according to which programs provided by the other party will be broadcast by the licensee's station at a predetermined time. [SOR/88-549, in effect Oct.25, 1988]

[§135-62]

(2) An A.M. licensee or an F.M. licensee shall not enter into an affiliation agreement with a person falling within a class described in section 3 of the *Direction to the CRTC (Eligible Canadian Corporations)*. [SOR/88-549, in effect Oct.25, 1988]

[NOTE: For the text of section 3 of the Direction, see above at §111-6.]

[§136-62a]

Ownership of Equipment and Facilities

10.1 Except as otherwise provided pursuant to a condition of its licence, a licensee shall own and operate its transmitter. [SOR/93-355, in effect June 21, 1993.]

Transfer of Ownership or Control

[§135-63]

11. (1) For the purposes of this section,

"associate", when used to indicate a relationship with an person, includes

(*a*) a partner of the person,

(*b*) a trust or an estate in which the person has a substantial beneficial interest or in respect of which the person serves as a trustee or in a similar capacity,

(*c*) a spouse, common-law spouse, son, daughter, son-in-law or daughter-in-law of the person,

(*d*) a relative, not referred to in paragraph (*c*), of the person, or of the person's spouse or common-law spouse, who has the same residence as that person,

(*e*) a corporation of which the person alone, or a person together with one or more associates as described in this definition, has, directly or indirectly, control of more than 50 per cent of the voting interests,

(*f*) a corporation of which an associate, as described in this definition, of the person has, directly or indirectly, control of more than 50 per cent of the voting interests, and

(*g*) a person, with whom the person has entered into an arrangement, a contract, an understanding or an agreement in respect of the voting of shares of a licensee corporation or of a corporation that has, directly or indirectly, effective control of a licensee corporation, except where that person controls less than one per cent of all issued voting shares of a corporation whose shares are publicly traded on a stock exchange.

[§135-63a]

"common shares" means the shares that represent the residual equity in the earnings of a corporation, and includes the preferred shares to which are attached rights to participate in the earnings of the corporation with no upper limit;

[§135-63b]

"person" includes an individual, a partnership, a joint venture, an associate, a corporation, a trust, an estate, a trustee, an executor and an administrator, or a legal representative of any of them;

[§135-63c]

"voting interest", in respect of

(*a*) a corporation with share capital, means the vote attached to a voting share,

(*b*) a corporation without share capital, means an interest that entitles the owner to voting rights similar to those enjoyed by the owner of a voting share,
(*c*) a partnership, a trust, an association or a joint venture, means an ownership interest in the assets of it that entitles the owners to receive a share of the profits of it, to receive a share of the assets of it on dissolution and to participate directly in the management of it or to vote on the election of the persons to be entrusted with the power and responsibility to manage it, and
(*d*) a not-for-profit partnership, trust, association or joint venture, means a right that entitles the owner to participate directly in the management of it or to vote on the election of the persons to be entrusted with the power and responsibility to manage it;

[§135-63d]

"voting share" means a share in the capital of a corporation, to which is attached one or more votes that are exercisable at meetings of shareholders of the corporation, either under all circumstances or under a circumstance that has occurred and its continuing, and includes any security that is convertible into such a share at all times at the option of the holder. [SOR/93-355, in effect June 21, 1993]

[§135-64]

(2) For the purposes of this section, control of a voting interest by a person includes situations in which
(*a*) the person is, directly or indirectly, the beneficial owner of the voting interest; or
(*b*) the person, by means of an arrangement, a contract, an understanding or an agreement, determines the manner in which the interest is voted but the solicitation of proxies or the seeking of instructions with respect to the completion of proxies in respect of the exercise of voting interests is not considered to be such an arrangement, contract, understanding or agreement. [SOR/93-355, in effect June 21, 1993]

[§135-65]

(3) For the purposes of this section, effective control of a licensee or its undertaking includes situations in which
(*a*) a person controls, directly or indirectly, other than by way of security only, a majority of the voting interests of the licensee;
(*b*) a person has the ability to cause the licensee or its board of directors to undertake a course of action; or
(*c*) the Commission, after a public hearing of an application for a licence, or in respect of an existing licence, determines that a person who has such effective control and sets out that determination in a decision or public notice. [SOR/93-355, in effect June 21, 1993]

[§135-66]

(4) Except as otherwise provided pursuant to a condition of its licence, a licensee shall obtain the prior approval of the Commission in respect of any act, agreement or transaction that directly or indirectly would result in
(*a*) a change by whatever means of the effective control or its undertaking;
(*b*) a person alone

(i) who controls less than 30 per cent of the voting interests of the licensee, having control of 30 per cent or more of those interests,

(ii) who controls less than 30 per cent of the voting interests of a person who has, directly or indirectly, effective control of the licensee, having control of 30 per cent or more of those interests,

(iii) who owns less than 50 per cent of the issued common shares of the licensee owning 50 per cent or more of those shares but not having, directly or indirectly, effective control of the licensee, or

(iv) who owns less than 50 per cent of the issued common shares of a person who has, directly or indirectly, effective control of the licensee, owning 50 per cent or more of those shares but not having, directly or indirectly, effective control of the licensee; or

(*c*) a person together with an associate

(i) who control less than 30 per cent of the voting interests of the licensee, having control of 30 per cent or more of those interests,

(ii) who control less than 30 per cent of the voting interests of a person who has, directly or indirectly, effective control of the licensee, having control of 30 per cent or more of those interests,

(iii) who own less than 50 per cent of the issued common shares of the licensee, owning 50 per cent or more of those shares but not having, directly or indirectly, effective control of the licensee, or

(iv) who own less than 50 per cent of the issued common shares of a person who has, directly or indirectly, effective control of the licensee, owning 50 per cent or more of those shares but not having, directly or indirectly, effective control of the licensee. [SOR/93-355, in effect June 12, 1993]

[§135-67]

(5) A licensee shall notify the Commission, within 30 days thereafter, of the occurrence of any act, agreement or transaction that, directly or indirectly, resulted in

(*a*) a person alone

(i) who controls less than 20 per cent of the voting interests of the licensee, having control of 20 per cent or more but less than 30 per cent of those interests,

(ii) who controls less than 20 per cent of the voting interests of a person who has, directly or indirectly, effective control of the licensee, having control of 20 per cent or more but less than 30 per cent of those interests,

(iii) who controls less than 40 per cent of the voting interests of the licensee, having control of 40 per cent or more but less than 50 per cent of those interests but not having, directly or indirectly, effective control of the licensee, or

(iv) who controls less than 40 per cent of the voting interests of a person who has, directly or indirectly, effective control of the licensee, having control 40 per cent or more but less than 50 per cent of those interests but not having, directly or indirectly, effective control of the licensee; or

(*b*) a person together with an associate

(i) who control less than 20 per cent of the voting interests of the licensee, having control of 20 per cent or more but less than 30 per cent of those interests,

(ii) who control less than 20 per cent of the voting interests of a person who has, directly or indirectly, effective control of the licensee, having control of 20 per cent or more but less than 30 per cent of those interests,
(iii) who control less than 40 per cent of the voting interests of the licensee, having control of 40 per cent or more but less than 50 per cent of those interests but not having, directly or indirectly, effective control of the licensee, or
(iv) who control less than 40 per cent of the voting interests of a person who has, directly or indirectly, effective control of the licensee, having control of 40 per cent or more but less than 50 per cent of those interests but not having, directly or indirectly, effective control of the licensee. [SOR/93-355, in effect June 12, 1993]

[§135-68]

(6) A notification referred to in subsection (5) shall set out the following information:
(*a*) the name of the person or the names of the person and the associate;
(*b*) the percentage of the voting interests controlled by the person or by the person and the associate; and
(*c*) a copy or a description of the act, agreement or transaction. [SOR/93-355, in effect June 21, 1993]

[§135-69]

Part II

Application

[§135-70]

12. This Part applies to F.M. licensees only. [SOR/91-517, in effect Sept.1, 1991]

[§135-71]

13. *[Revoked. SOR/93-358, in effect June 21, 1993]*

Simulcasting

[§135-72]

14. (1) An F.M. licensee who also holds an A.M. licence shall not broadcast simultaneously on its F.M. station, during the broadcast day, the same matter that is being broadcast on its A.M. station if any part of the F.M. 3 mV/m contour overlaps any part of the A.M. daytime 15 mV/m contour. [SOR/91-517, in effect Sept.1, 1991]

[§135-73]

(2) Notwithstanding subsection (1), a licensee may broadcast simultaneously if the simultaneous broadcasting is authorized pursuant to a condition of the licensee's licence or if the broadcast consists of a special live program that includes commentary that is an integral part of the program and relates to
(*a*) a royal or vice-regal address, including a speech from the throne;

(*b*) an address by the prime Minister of Canada or the first minister of a province;
(*c*) the results of a federal, provincial or municipal election or referendum;
(*d*) a federal, provincial or municipal budget; or
(*e*) an announcement of an emergency situation or disaster as issued by a policy department, fire department or any organization designated by a federal, provincial or municipal government as being responsible for the coordination of emergency relief.
[SOR/91-517, in effect Sept.1, 1991]

SCHEDULE

(Sections 2 and 8)

[§135-74]

CODES INDICATING ORIGIN, LANGUAGE, TYPE AND GROUP OF PROGRAMMING

A. *Code Indicating Origin*

[§135-75]

Item	Column I Code	Column II Description
1.	Local	Local programming, as defined in Public Notice CRTC 1993-38 dated April 19, 1993, published in the *Canadian Gazette* Part I on May 1, 1993, as amended from time to time
2.	Net (to be followed by the name of the of the network)	Programming obtained from a network licensed by the Commission
3.	Reboard	Programming rebroadcast from another station, other than a network
4.	Other	Programming other than local programming, network programming or rebroadcasts from another station

[SOR/93-517, in effect November 4, 1993.]

B. *Code Indicating Language*

[§135-76]

Item	Column I Code	Column II Description
1.	[Abbreviated name]	Programming in a language other than the official language for which the station was principally licensed or, in the case of an ethnic station, the language of the spoken word content of the program.

C. *Code Indicating Type*

[§135-77]

Item	Column I Code	Column II Description
1.	Type A	A program the spoken word content which is in a language other than French, English or a language of the aboriginal peoples of Canada
2.	Type B	A program the spoken word content which is in French or English and that is directed toward a distinct ethnic group the mother tongue or common language of which in its country of origin is French or English
3.	Type C	A program the spoken word content which is in French or English and that is directed toward a distinct ethnic group the mother tongue of which is included in Type A
4.	Type D	A bilingual program the spoken word content which is in French or English as well as a language other than French, English or a language of the aboriginal peoples of Canada and that is directed toward a distinct ethnic group
5.	Type E	A program the spoken word content of which is in French or English and that is directed towards ethnic groups of the general public and that depicts Canada's cultural diversity through services that are multicultural, cross-cultural or inter-cultural

D. *Code Indicating Group*

[§135-78]

Item	Column I Code	Column II Description
1.	[Abbreviated name]	The distinct ethnic group at which a program of Type A, B, C or D is directed

[SOR/86-982, in effect Sept.18, 1986, am. SOR/91-517, in effect Sept.1, 1991]

[§136-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

[§136-2]

Specialty Services Regulations, 1990

[§136-3]

[SOR/90-106, January 25, 1990, *1990 Canada Gazette Part II*, p.633; as amended by SOR/91-589, October 23, 1991, *1991 Canada Gazette Part II*, p.3435; and SOR/92-614, October 16, 1992, *1992 Canada Gazette Part II*, p.4151; SOR/93-210, April 26, 1993, *1993 Canada Gazette Part II*, p.2222; SOR/93-357, June 21, 1993, *1993 Canada Gazette Part II*, p.3092; and SOR/94-223, February 25, 1994, *1994 Canada Gazette Part II*, p.1326.]

[§136-4]

REGULATIONS RESPECTING SPECIALTY SERVICES TELEVISION NETWORKS

Short Title

[§136-5]

1. These Regulations may be cited as the *Specialty Services Regulations, 1990.* [SOR/90-106, in effect Jan.31, 1990]

Interpretation

[§136-6]

2. In these Regulations,

[§136-7]

"Act" means the *Broadcasting Act;*

[§136-8]

"advertising material" means

(*a*) a commercial message,

(*b*) a public service announcement, or

(*c*) programming, other than station or network identification or the announcement of an upcoming program voiced over credits, that promotes a station, network or program; [SOR/90-106, in effect Jan.31, 1990]

[§136-8a]

[NOTE: On February 16, 1994, in Public Notice CRTC 1994-14, the CRTC proposed to replace the definition of "advertising material" with the following wording to provide consistency in the definition between the Television Broadcasting Regulations, 1987, and these Regulations:

"advertising material" means any commercial message, public service announcement, or programming that promotes a station, network or program, but does not include

(a) a station or network identification,

(b) the announcement of an upcoming program that is voiced over credits, or

(c) a promotion for a Canadian program to be broadcast by a licensee, notwithstanding that a sponsor is identified in the title of the program or is identified as a sponsor of the program where the identification is limited to the name of the sponsor only and does not include a description or representative of the sponsor"s products or services or any attributes of the sponsor's products or services;]

[§136-9]

"alcoholic beverage", in respect of a commercial message, means an alcoholic beverage the sale of which is regulated by the law of the province in which the licensee's transmission of the commercial message originates; [SOR/90-106, in effect Jan.31, 1990]

[§136-10]

"Canadian program" means a program that qualifies as a Canadian program in accordance with the criteria established by the Commission in the appendix to Public Notice CRTC 1984-94 dated April 15, 1984, entitled *Recognition for Canadian Programs, 15 April 1984* and published in the *Canada Gazette* Part I on April 28, 1984, as amended by the appendix to Public Notice CRTC 1988-105 dated June 27, 1988, entitled *Recognition for Canadian Programs, 27 June 1988* and published in the *Canada Gazette* Part I on July 9, 1988; [SOR/90-106, in effect Jan.31, 1990]

[NOTE: For the text of Public Notice CRTC 1984-94, see below at §212. For the text of Public Notice CRTC 1988-105, see below at §241.]

[§136-11]

"commercial message" means an advertisement intended to sell or promote goods, services, natural resources or activities, and includes an advertisement that mentions or displays in a list of prizes the name of a person selling or promoting those goods, services, natural resources or activities; [SOR/90-106, in effect Jan.31, 1990]

[§136-12]

"election period" means

(*a*) in the case of a federal or provincial election or of a federal, provincial or municipal referendum, the period beginning on the day the announcement of the election or referendum is made and ending on the day the election or referendum is held, or

(*b*) in the case of a municipal election, the period beginning two months before the day the election is to be held and ending on the day the election is held; [SOR/90-106, in effect Jan.31, 1990]

[§136-13]

"key figure" means a figure formed by a combination of alphanumeric characters set out in column II of an item of Schedule I that corresponds to the description of the program set out in column I of that item; [SOR/90-106, in effect Jan.31, 1990]

[§136-14]

"licensee" means a person who is licensed by the Commission pursuant to paragraph 9(1)(*b*) of the Act to carry on a specialty programming undertaking or a specialty services network; [SOR/94-223, in effect Feb.25, 1994]

[§136-15]

"program" means a broadcast presentation of sound and visual matter that is designed to inform or entertain and that falls into a category set out in column I of item 6 of Schedule I; [SOR/90-106, in effect Jan.31, 1990]

[§136-16]

"program delivery agreement" means an agreement between a licensee and another person according to which the licensee will distribute programs provided by the other person at a time set out in the agreement; [SOR/90-106, in effect Jan.31, 1990]

[§136-17]

"programming" means anything that is broadcast, but does not include visual images, whether or not combined with sounds, that consist predominantly of alphanumeric text. [SOR/94-223, in effect Feb.25, 1994]

Programming Content

[§136-18]

3. No licensee shall distribute programming that contains

(*a*) anything in contravention of the law;

(*b*) any abusive comment or abusive pictorial representation that, when taken in context, tends to or is likely to expose an individual or a 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 obscene or profane pictorial representation; or

(*d*) any false or misleading news. [SOR/90-106, in effect Jan.31, 1990; para.(*b*) amended by SOR/91-589, in effect Oct.23, 1991]

[§136-19]

3.1 For the purposes of paragraph 3(*b*), sexual orientation does not include the orientation towards any sexual act or activity that would constitute an offence under the *Criminal Code*. [SOR/91-589, in effect Oct.23, 1991]

[§136-20]

4. (1) Subject to subsection (3), a licensee shall not distribute a commercial message advertising, directly or indirectly, an alcoholic beverage. [SOR/90-106, in effect Jan.31, 1990]

[§136-21]

(2) Subsection (3) does not apply in respect of

(*a*) a spirituous liquor;

(*b*) a liqueur or an alcoholic cordial; or

(*c*) an alcoholic beverage for which a standard is not prescribed pursuant to the *Food and Drugs Act*, that is a distillate or that contains a distilled spirit, and that contains more than 7 per cent ethyl alcohol by volume. [SOR/90-106, in effect Jan.31, 1990]

[§136-22]

(3) A licensee may distribute a commercial message advertising, directly or indirectly, an alcoholic beverage where

(*a*) the sponsor of the commercial message is a brewer, winery, cider-house or distiller;

(*b*) the sponsor is not prohibited from advertising the alcoholic beverage by the laws of the province in which the licensee's transmission of the commercial message originates;

(*c*) subject to subsection (4), the commercial message is not designed to promote the general consumption of alcoholic beverages;

(*d*) the commercial message complies with the *Code for Broadcast Advertising of Alcoholic Beverages* published by the Commission in September 1986; and

(*e*) the script of the commercial message has been approved by a representative of the Commission and bears the number assigned to it by the Commission to indicate, to the extent that it is possible to so indicate on the basis of a script, that a commercial message conforming to the approved script would comply with paragraphs (*a*) to (*d*). [SOR/90-106, in effect Jan.31, 1990; preambular para.(a) amended and para. 4(3)(e) amended SOR/93-210, in effect April 26, 1993.]

[NOTE: For the text of the Code, see below at §173.]

[§136-23]

(4) Paragraph (3)(c) does not apply so as to prohibit industry, public service or brand preference advertising. [SOR/90-106, in effect Jan.31, 1990]

[§136-24]

(5) The approval of the script of a commercial message referred to in paragraph (3)(*e*) does not indicate that the commercial message complies with paragraphs (3)(*a*) to (*d*). [SOR/90-106, in effect Jan.31, 1990]

[§136-25]

5. (1) No licensee shall distribute

(*a*) a commercial message for, or an endorsement of, a drug, cosmetic or device, other than a veterinary biologic, to which the *Food and Drugs Act* applies unless

(i) the script of the commercial message or endorsement has been approved by a representative of the Commission and by the Minister of National Health and Welfare to indicate, to the extent that it is possible to so indicate on the basis of a script, that a commercial message conforming to the approved script would comply with the applicable provisions, administered by that Minister, of the *Food and Drugs Act*, the *Narcotic Control Act* and regulations made pursuant to those Acts or to the *Department of National Health and Welfare Act*, and

(ii) the script bears the number assigned to it by that Minister; or

(*b*) a recommendation for the treatment, preventative or cure of a disease, disorder or abnormal physical state unless

(i) the script of the recommendation has been approved by the Minister of National Health and Welfare to indicate, to the extent that it possible to so indicate on the basis of a script, that recommendation conforming to the approved script would comply with the applicable provisions, administered by that Minister, of the Food and Drugs Act, the Narcotic Control Act and regulations made pursuant to those Acts or to the Department of National Health and Welfare Act, and

(ii) the script bears the number assigned to it by that Minister. [SOR/93-210, in effect April 26, 1993.]

[§136-26]

(2) Where a licensee distributes a commercial message, endorsement or recommendation referred to in subsection (1), the licensee shall keep a record of the script for a period of one year after the date of the broadcast, which record shall contain

(*a*) the name of the drug or device to which the script relates;

(*b*) the name of the sponsor or advertising agency that submitted the script for approval; and

(*c*) the applicable number referred to in subparagraph (1)(*a*)(ii) or (1)(*b*)(ii). [SOR/93-210, in effect April 26, 1993.]

[§136-27]

(3) A licensee shall furnish the record required by subsection (2) to the Commission or to an inspector designated pursuant to the *Food and Drugs Act* where the Commission or the inspector so requests for the purpose of audit or examination. [SOR/93-210, in effect April 26, 1993.]

[§136-28]

(4) The approval of the script of a commercial message, endorsement or recommendation referred to in subsection (1) does not indicate that the commercial message, endorsement or recommendation complies with the applicable legislation. [SOR/90-106, in effect Jan.31, 1990]

Political Broadcasts

[§136-29]

6. Where a licensee provides time on its service during an election period for the distribution of programs, advertisements or announcements of a partisan political character, the licensee shall allocate the time on an equitable basis to all accredited political parties and rival candidates represented in the election or referendum. [SOR/90-106, in effect Jan.31, 1990]

Logs and Records

[§136-30]

7. (1) A licensee shall

(*a*) keep, in a form acceptable to the Commission, a program log or a machine-readable record to its programming;

(*b*) retain the log or record for a period of one year after the day on which the programming was distributed; and

(*c*) cause to be entered in the log or record each day the following information:

(i) the date,

(ii) an identification of the licensee or the service provided by the licensee,

(iii) the time at which advertising material begins, the duration of the advertising material and, in the case of a commercial message, the name of the person selling or promoting goods, services, natural resources or activities,

(A) the title of the program, including, where applicable, the information referred to in subitems (3), (4), (5) and (6) in column I of item 4 of Schedule I,

(B) subject to subsection (3), the key figure describing the program,

(C) the time at which the program begins and ends,

(D) where applicable, the code set out in column I of an item of Part A, C or D of Schedule II indicating the language, type or group of the program,

(E) where applicable, the code set out in column I of an item of Part B of Schedule II indicating that the program is closed captioned, and

(F) where required by a condition of licence, a brief description of the content of the program,

(v) in relation of each music video clip

(A) the title of the clip,

(B) the name of and language used by the performer,

(C) an indication as to whether the clip is Canadian,

(D) the key figure describing the clip, and

(E) where applicable, the code set out in column I of an item of Part B of Schedule II indicating that the clip is closed captioned, and

(vi) where the licensee distributes its programming in a multi-hour block, the time at which each block begins and ends. [SOR/90-106, in effect Jan.31, 1990, except for clauses 7(1)(c)(iv)(B) and (v)(D) which came into effect on Sept.1, 1990, by virtue of s.11]

[§136-31]

(2) A licensee shall furnish to the Commission, within seven days after the end of each month, a program log or machine-readable record of its programming for the month, with a certificate by or on behalf of the licensee certifying the accuracy of the contents of the log or record. [SOR/90-106, in effect Jan.31, 1990]

[§136-32]

(3) Where more than one subitem of an item of Schedule I applies to a program, a licensee may, in respect of that program, cause to be entered in its program log or machine-readable record

(*a*) the key figures indicating the subitems that apply to each segment of the program, in the order in which segments are distributed; and

(*b*) the starting time and duration of each segment of the program. [SOR/90-106, in effect Sept.1, 1990, by virtue of s.11]

[§136-33]

(4) A licensee shall retain a clear and intelligible audiovisual recording of all of its programming

(*a*) for a period of four weeks after the date of the distribution; or

(*b*) where the Commission receives a complaint from any person regarding any programming or for any other reason wishes to investigate the programming and so notifies the licensee before the expiration of the period referred to in paragraph (*a*), for a period of eight weeks after the date of the distribution. [SOR/90-106, in effect Jan.31, 1990]

[§136-34]

(5) Where, before the expiration of the applicable period referred to in subsection (4), the Commission requests from a licensee a clear and intelligible audio-visual recording of the licensee's programming, the licensee shall furnish the recording to the Commission forthwith. [SOR/90-106, in effect Jan.31, 1990]

Requests for Information

[§136-35]

8. (1) On or before November 30 of each year, a licensee shall file with the Commission a statement of accounts, on the annual return form issued by the commission, for the year ending on the previous August 31. [SOR/90-106, in effect Jan.31, 1990]

[§136-36]

(2) At the request of the Commission, a licensee shall respond to

(*a*) any complaint from any person regarding the licensee's programming, ownership or any other matter within the Commission's jurisdiction; and

(*b*) any inquiry respecting the licensee's adherence to industry standards, practices or codes or any other self-regulatory mechanism of the industry. [SOR/90-106, in effect Jan.31, 1990]

Program Delivery Agreement

[§136-37]

9. No licensee shall enter into a program delivery agreement with a person falling within a class described in section 3 of the *Direction to the CRTC (Eligible Canadian Corporations)*. [SOR/90-106, in effect Jan.31, 1990]

[NOTE: For the text of section 3 of the Direction, see above at §111-6.]

Transfer of Ownership or Control

[§136-38]

10. (1) For the purposes of this section,

"associate", when used to indicate a relationship with any person, includes

(*a*) a partner of the person,

(*b*) a trust or an estate in which the person has a substantial beneficial interest or in respect of which the person serves as a trustee or in a similar capacity,

(*c*) a spouse, common-law spouse, son, daughter, son-in-law or daughter-in-law of the person,

(*d*) a relative, not referred to in paragraph (*c*), of the person, or of the person's spouse or common-law spouse, who has the same residence as that person

(*e*) a corporation of which the person alone, or a person together with one or more associates as described in this definition has, directly or indirectly, control of more than 50 per cent of the voting interests,

(*f*) a corporation of which an associate, as described in this definition, of the person has, directly or indirectly, control of more than 50 per cent of the voting interests, and

(*g*) a person, with whom the person has entered into an arrangement into an arrangement, a contract, an understanding or an agreement in respect of the voting of shares of a licensee corporation or of a corporation that has, directly or indirectly, effective control of a licensee corporation, except where that person controls less than one per cent of all issued voting shares of a corporation whose shares are publicly traded on a stock exchange; [SOR/93-357, in effect June 21, 1993.]

[§136-38a]

"common shares" means the shares that represent the residual equity in the earnings of a corporation, and includes the preferred shares to which are attached rights to

participate in the earnings of the corporation with no upper limit; [SOR/93-357, in effect June 21, 1993.]

[§136-38b]

"person" includes an individual, a partnership, a joint venture, an association, a corporation, a trust, an estate, a trustee, an executor and an administrator, or a legal representative of any of them; [SOR/93-357, in effect June 21, 1993.]

[§136-38c]

"voting interest", in respect of

(*a*) a corporation with share capital, means the vote attached to a voting share,

(*b*) a corporation without share capital, means an interest that entitles the owner to voting rights similar to those enjoyed by the owner of a voting rights similar to those enjoyed by the owner of a voting share,

(*c*) a partnership, a trust, an association or a joint venture, means an ownership interest in the assets of it that entitles the owner to receive a share of the profits of it, to receive a share of the assets of it on dissolution and to participate directly in the management of it or to vote on the election of the persons to be entrusted with the power and responsibility to manage it, and

(*d*) a not-for-profit partnership, trust, association or joint venture, means a right that entitles the owner to participate directly in the management of it or to vote on the election of the persons to be entrusted with the power and responsibility to manage it; [SOR/93-357, in effect June 21, 1993.]

[§136-38d]

"voting share" means a share in the capital of a corporation, to which is attached one or more votes that are exercisable at meetings of shareholders of the corporation, either under all circumstances of under a circumstance that has occurred and is continuing, and includes any security that is convertible into such a share at all times at the option of the holder. [SOR/93-357, in effect June 21, 1993.]

[§136-40]

(2) For the purposes of this section, control of a voting interest by a person includes situations in which

(*a*) the person is, directly or indirectly, the beneficial owner of the voting interest; or

(*b*) the person, by means of an arrangement, a contract, an understanding or an agreement, determines the manner in which the interest is voted but the solicitation of proxies or the seeking of instructions with respect to the completion of proxies in respect of the exercise of voting interests is not considered to be such an arrangement, contract, understanding or agreement. [SOR/93-357, in effect June 21, 1993.]

[§136-41]

(3) For the purposes of this section, effective control of a licensee or its undertaking includes situations in which

(*a*) a person is directly or indirectly, other than by way of security only, a majority of the voting interests of the licensee;

(*b*) a person has the ability to cause the licensee or its board of directors to undertake a course of action; or

(*c*) the Commission, after a public hearing of an application for a licence, or in respect of an existing licence, determines that a person has such effective control and sets out that determination in a decision or public notice. [SOR/93-357, in effect June 21, 1993]

[§136-42]

(4) Except as otherwise provided pursuant to a condition of its licence, a licensee shall obtain the prior approval of the Commission in respect of any act, agreement or transaction that directly or indirectly would result in

(*a*) a change by whatever means of the effective control of its undertaking;

(*b*) a person alone

(i) who controls less than 30 per cent of the voting interests of the licensee, having control of 30 per cent or more of those interest,

(ii) who controls less than 30 per cent of the voting interests of a person who has, directly or indirectly, effective control of the licensee, having control of 30 per cent or more of those interests,

(iii) who owns less than 50 per cent of the issued common shares of the licensee, owning 50 per cent or more of those shares but not having, directly or indirectly, effective control of the licensee, or

(iv) who owns less than 50 per cent of the issued common shares of a person who has, directly or indirectly, effective control of the licensee, owning 50 per cent or more of those shares but not having, directly or indirectly, effective control of the licensee;

(*c*) a person together with an associate

(i) who control less than 30 per cent of the voting interests of the licensee, having control of 30 per cent or more of those interests,

(ii) who control less than 30 per cent of the voting interests of a person who has, directly or indirectly, effective control of the licensee, having control of 30 per cent or more of those interests,

(iii) who own less than 50 per cent of the issued common shares of the licensee, owning 50 per cent or more of those shares but not having, directly or indirectly, effective control of the licensee, or

(iv) who own less than 50 per cent of the issued common shares of a person who has, directly or indirectly, effective control of the licensee, owning 50 per cent or more of those shares but not having, directly or indirectly, effective control of the licensee; or

(*d*) a person licensed to operate a distribution undertaking or any broadcasting undertaking or any broadcasting undertaking engaged in the exhibition of specialty services, or any person who has, directly or indirectly, effective control of that person

(i) who controls less than 10 per cent of the voting interests of the licensee, having control of 10 per cent or more but less than 30 per cent of those interests,

(ii) who controls less than 10 per cent of the voting interests of a person who has, directly or indirectly, effective control of the licensee, having control of 10 per cent or more but less than 30 per cent of those interests. [SOR/93-357, in effect June 21, 1993]

[§136-43]

(5) A licensee shall notify the Commission, within 30 days thereafter, of the occurrence of any act, agreement or transaction that, directly or indirectly, resulted in

(*a*) a person alone

(i) who controls less than 20 per cent of the voting interests of the licensee, having control of 20 per cent or more but less than 30 per cent of those interests,

(ii) who controls less than 20 per cent of the voting interests of a person who has, directly or indirectly , effective control of the licensee, having control of 20 per cent or more but less than 30 per cent of those interests,

(iii) who controls less than 40 per cent of the voting interests of the licensee, having control of 40 per cent or more but less than 50 per cent of those interests but not having, directly or indirectly, effective control of the licensee, or

(iv) who controls less than 40 per cent of the voting interests of a person who has, directly or indirectly, effective control of the licensee, having control of 40 per cent or more but less than 50 per cent of those interests but not having, directly or indirectly, effective control of the licensee; or

(*b*) a person together with an associate

(i) who control less than 20 per cent of the voting interests of the licensee, having control of 20 per cent or more but less than 30 per cent of those interests,

(ii) who control less than 20 per cent of the voting interests of a person who has, directly or indirectly, effective control of the licensee, having control of 20 per cent or more but less than 30 per cent of those interests,

(iii) who control less than 40 per cent of the voting interests of the licensee, having control of 40 per cent or more but less than 50 per cent of those interests but not having, directly or indirectly, effective control of the licensee, or

(iv) who control less than 40 per cent of the voting interests of a person who has, directly or indirectly, effective control of the licensee, having control of 40 per cent or more but less than 50 per cent of those interests but not having, directly or indirectly, effective control of the licensee. [SOR/93-357, in effect June 21, 1993]

[§136-44]

(6) A notification referred to in subsection (5) shall set out the following information:

(*a*) the name of the person or the names of the person and the associate;

(*b*) the percentage of the voting interests controlled by the person or the person and the associate; and

(*c*) a copy or other complete description of the act, agreement or transaction. [SOR/93-357, in effect June 21, 1993]

Coming into Force

[§136-45]

11. Clauses 7(1)(*c*)(iv)(B) and (v)(D) and subsection 7(3) shall come into force on September 1, 1990. [SOR/90-106, in effect Jan.31, 1990]

[§136-46]

SCHEDULE I
(Sections 2 and 7)

KEY FIGURES

Item	Column I Program Description	Column II Alphanumeric Characters 1st	2nd	3rd	4th	5th	6th	7th	8th
1.	*Origin*								
	(1) Canada (other than Quebec)	1							
	(2) United States (other than Disney Channel)	2							
	(3) United Kingdom	3							
	(4) France	4							
	(5) Quebec	5							
	(6) Disney Channel	6							
	(7) Other	7							
2.	*Miscellaneous* (No information required under this item pursuant to these Regulations.)								
3.	*Exhibition*								
	(1) Original exhibition of a program that has been distributed by another broadcasting undertaking licenced by the Commission			1					
	(2) Original, first-run program (original exhibition of a program that has not been distributed by another broadcasting undertaking licenced by the Commission			2					
	(3) Repeat exhibition of a program referred to in subitem (1)			3					
	(4) Repeat exhibition of a program block			4					
4.	*Production source*								
	(1) In-house (licensee)				1				

SCHEDULE I -- *Continued*

Item	Column I Program Description	Column II Alphanumeric Characters 1st	2nd	3rd	4th	5th	6th	7th	8th
	(2) Affiliated production company				2				
	(3) TV station (include call sign)				3				
	(4) Over-the-air television network (include network identifier)				4				
	(5) Canadian independent producer (include Commission "C" number or the number				5				
	(6) Co-venture (include Commission "S.R." number				6				
	(7) Any other known source of a Canadian program				7				
	(8) Any other source of a non-Canadian program				8				
5.	*Target audience*								
	(1) Children (up to 5 years)					1			
	(2) Children (6 to 11 years)					2			
	(3) Children and Youth (6 to 17 years)					3			
	(4) Youth (12 to 14 years)					4			
	(5) Families					8			
	(6) Specific identifiable target group not referred to in subitem (1) to (5)					9			
	(7) General audience					5			
6.	*Categories*								
	Information								
	(1) News						0	1	0
	(2) Analysis and interpretation						0	2	0
	(3) Reporting and actualities						0	3	0
	(4) Religion								
	(a) Cornerstone						0	4	A
	(b) Mosaic						0	4	B
	(c) Other						0	4	C
	(5) Education								
	(a) Formal						0	5	A
	(b) Informal						0	5	B

SCHEDULE I -- *Concluded*

Item	Column I Program Description	Column II Alphanumeric Characters 1st	2nd	3rd	4th	5th	6th	7th	8th
	Sports:								
(6)	(a) Professional sports						0	6	A
	(b) Amateur sports						0	6	B
	(c) Audience participation						0	6	C
	Music and Entertainment:								
(7)	Drama:								
	(a) Ongoing dramatic series						0	7	A
	(b) Ongoing comedy series						0	7	B
	(c) Specials, mini-series or made-for-TV feature films						0	7	C
	(d) Feature films, theatrical releases						0	7	D
	(e) Animated television programs or films						0	7	E
	(f) Programs of comedy sketches						0	7	F
	(g) Other						0	7	G
(8)	Music and dance								
	(a) music and dance other than a music video clip						0	8	A
	(b) music video clip						0	8	B
(9)	Variety						0	9	0
(10)	Game shows						1	0	0
(11)	Human interest						1	1	0
	Other:								
(12)	Filler programming						1	3	0

[SOR/90-106, in effect Jan.31, 1990]

SCHEDULE II
(Section 7)

CODES
Part A
Code Indicating Program Language

Item	Column 1 Code	Column 11 Description
1.	[Abbreviated name of language]	Language of the program (for all programs of an ethnic station or for programs of a station where the language of the program differs from the official language for which the station is principally licensed)

Part B
Code Indicating Closed Caption Programming

Item	Column 1 Code	Column 11 Description
1.	CC [to be inserted following key figure]	Program contains closed captioning for the hearing impaired, which has been exhibited during the complete length of the program.

Part C
Code Indicating Type

Item	Column 1 Code	Column 11 Description
1.	Type A	A program in a language other than English, French or a language of the aboriginal peoples of Canada
2.	Type B	A program in English or in French that is directed toward a distinct ethnic group, the mother tongue or common language of which in its country of origin is English or French
3.	Type C	A program in English or in French that is directed toward a distinct ethnic group, the mother tongue of which is included in Type A
4.	Type D	A bilingual program in English or in French as well as in a language other than English, French or in a language of

SCHEDULE II - *Continued*

		the aboriginal peoples of Canada that is directed toward a distinct ethnic group
5.	Type E	A program in English or in French that is directed toward ethnic groups or toward the general public and that depicts Canada's cultural diversity through services that are multicultural, educational information or inter-cultural

Part D
Code Indicating Group

Item	Column 1 Code	Column 11 Description
1.	[Abbreviated name of ethnic group]	The distinct ethnic group toward which a program of Type A, B. C or D is directed

[§137-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

[§137-2]

Television Broadcasting Regulations, 1987

[§137-3]

[SOR/87-49, January 9, 1987, *1987 Canada Gazette Part II*, p.336; as amended by SOR/87-425, July 15, 1987, *1987 Canada Gazette Part II*, p.2822; SOR/88-415, August 4, 1988, *1988 Canada Gazette Part II*, p.3600; SOR/89-162, March 16, 1989, *1989 Canada Gazette Part II*, p.1923; SOR/90-320, May 31, 1990, *1990 Canada Gazette Part II*, p.2325; SOR/91-587, October 23, 1991, *1991 Canada Gazette Part II*, p.3431; SOR/92-429, July 8, 1992, *1992 Canada Gazette Part II*, p.3124; SOR/92-611, October 13, 1992, *1992 Canada Gazette Part II*, p.4148; and SOR/92-615, October 16, 1992, *1992 Canada Gazette Part II*, p.4152; SOR/93-208, April 26, 1993, *1993 Canada Gazette Part II*, p.2218; SOR/93-353, June 21, 1993, *1993 Canada Gazette Part II*, p.3072; and SOR/94-220, February 25, 1994, 1994 *Canada Gazette Part II*, p.1321.

These Regulations repealed and replaced the *Television Broadcasting Regulations*, C.R.C.1978, c.381, as amended.

On October 7, 1993, in Public Notice CRTC 1993-137, the CRTC proposed an amendment to section 11 of the Regulations to permit television licensees to broadcast in excess of 12 minutes of advertising in each clock hour if they obtained a condition of licence to this effect. The text of the proposed amendment is set forth in italics below. However, on March 29, 1994, the Commission expanded this proposal and suggested that television licensees (and possibly specialty services) be permitted to air non-traditional forms of advertising, in particular "infomercials", during the broadcast day. For the text of the CRTC proposal in this regard, including proposed guidelines for infomercials, see Public Notice CRTC 1994-37, below at §308.]

[§137-4]

REGULATIONS RESPECTING TELEVISION BROADCASTING

Short Title

[§137-5]

1. These Regulations may be cited as the *Television Broadcasting Regulations, 1987*. [SOR/87-49, in effect Jan.9, 1987]

Interpretation

[§137-6]

2. In these Regulations,

[§137-7]

"Act" means the *Broadcasting Act*; [SOR/87-49, in effect Jan.9, 1987]

[§137-8]

"advertising material" means any commercial message, public service announcement and programming that promotes a station, network or program, but does not include

(*a*) a station or network identification,

(*b*) the announcement of an upcoming program that is voiced over credits,

(*c*) a program that consists exclusively of classified announcements, if the program is broadcast not more than once during a broadcast day and has a duration of not more than one hour, or

(*d*) a promotion for a Canadian program to be broadcast by a station or network notwithstanding that a sponsor is identified in the title of the program or is identified as a sponsor of that program, where the identification is limited to the name of the sponsor only and does not include a description or representation of the products or services or any attributes of the sponsor's products or services; [SOR/92-429, in effect July 13, 1992]

[§137-9]

"affiliation agreement" means an agreement between one or more stations and another party according to which programs provided by the other party will be broadcast by the stations at a predetermined time; [SOR/87-49, in effect Jan.9, 1987]

[§137-10]

"alcoholic beverage", in respect of a commercial message, means an alcoholic beverage the sale of which is regulated by the law of the province in which the commercial message is broadcast; [SOR/87-49, in effect Jan.9, 1987]

[§137-11]

"baseband" means signals in the frequency range 0 to 120 kHz that are used as input to the sound transmitter of a station; [SOR/87-49, in effect Jan.9, 1987]

[§137-12]

"broadcast day", in respect of a licensee, means the period of up to 18 consecutive hours, beginning each day not earlier than six o'clock in the morning and ending not later than one o'clock in the morning of the following day, as selected by the licensee; [SOR/87-49, in effect Jan.9, 1987]

[§137-13]

"broadcast month", in respect of a licensee, means the total number of hours devoted by the licensee to broadcasting during the aggregate of the broadcast days in a month; [SOR/87-49, in effect Jan.9, 1987]

[§137-14]

"broadcast year", in respect of a licensee, means the total number of hours devoted by the licensee to broadcasting during the aggregate of the broadcast months in a 12 month period, beginning on September 1 in any year; [SOR/87-49, in effect Jan.9, 1987]

[§137-15]

"Canadian program" means a program that qualifies as a Canadian program in accordance with the criteria established by the Commission in the Appendix to Public Notice CRTC 1984-94 dated April 15, 1984, entitled "Recognition for Canadian Programs, 15 April 1984" and published in the *Canada Gazette* Part I on April 28, 1984, as amended by the Appendix to Public Notice CRTC 1988-105 dated June 27, 1988, entitled "Recognition for Canadian Programs, 27 June, 1988" and published in the *Canada Gazette* Part 1, on July 9, 1988; [SOR/88-415, in effect Aug.10, 1988]

[NOTE: For the text of Public Notice CRTC 1984-94, see below at §212. For the text of Public Notice CRTC 1988-105, see below at §241.]

[§137-16]

"classified announcement" means an advertisement respecting goods or services offered or sought by a person not engaged in the business of dealing in those goods or services; [SOR/87-49, in effect Jan.9, 1987]

[§137-17]

"clock hour" means a period of 60 minutes beginning on each hour and ending immediately prior to the next hour; [SOR/87-49, in effect Jan.9, 1987]

[§137-18]

"commercial message" means an advertisement intended to sell or promote goods, services, natural resources or activities and includes an advertisement that mentions or displays in a list of prizes the name of the person selling or promoting these goods, services, natural resources or activities; [SOR/87-49, in effect Jan.9, 1987]

[§137-19]

"election period" means

(*a*) in the case of a federal or provincial election or of a federal, provincial or municipal referendum, the period beginning on the date of the announcement of the election or referendum and ending on the date of the election and ending on the date the election is held;

(*b*) in the case of a municipal election, the period beginning two months before the date of the election and ending on the date the election is held; [SOR/87-49, in effect Jan.9, 1987]

[§137-20]

"ethnic program" means a program of Type A, B, C or D, as described in Schedule II; [SOR/87-49, in effect Jan.9, 1987]

[§137-21]

"ethnic station" means a station that is licensed as an ethnic station; [SOR/87-49, in effect Jan.9, 1987]

[§137-22]

"licensed" means licensed by the Commission pursuant to paragraph 9(1)(b) of the Act;] [SOR/94-220, in effect Feb.25, 1994]

[§137-23]

"licensee" means a station operator or a network operator; [SOR/87-49, in effect Jan.9, 1987]

[§137-24]

"multiplex channel" means a frequency band centered at 102.27 kHz in the baseband containing a frequency modulated subcarrier; [SOR/87-49, in effect Jan.9, 1987]

[§137-25]

"network operator" means a person licensed to carry on a television network; [SOR/87-49, in effect Jan.9, 1987]

[§137-26]

"official contour" means a service contour marked for a licensed television station on the map most recently published pursuant to the *Department of Communications Act* by the Minister of Communications pertaining to that station; [SOR/87-49, in effect Jan.9, 1987]

[§137-27]

"private licence" means a licence issued by the Commission to a person other than the Corporation; [SOR/87-49, in effect Jan.9, 1987]

[§137-28]

"program" means a broadcast presentation of sound and visual matter that is designed to inform or entertain and that is described by a key figure determined under Schedule I, but does not include visual images, whether or not combined with sounds, that consist predominantly of alphanumeric text; [SOR/94-220, in effect Feb.25, 1994]

[§137-29]

"programming" means anything that is broadcast, but does not include visual images, whether or not combined with sounds, that consist predominantly of alphanumeric text; [SOR/94-220, in effect Feb.25, 1994]

[§137-30]

"public licence" means a licence issued by the Commission to the Corporation; [SOR/87-49, in effect Jan.9, 1987]

[§137-31]

"remote station" means a station that is licensed as a remote station; [SOR/87-49, in effect Jan.9, 1987]

[§137-32]

"reserved time" means the predetermined time during which a station broadcasts programs pursuant to an affiliation agreement; [SOR/87-49, in effect Jan.9, 1987]

[§137-33]

"second audio program channel" means a frequency band centered at 78.67 kHz in the baseband containing a frequency modulated subcarrier for audio programming; [SOR/87-49, in effect Jan.9, 1987]

[§137-34]

"station" means a television programming undertaking that transmits sounds and images or a broadcasting transmitting undertaking that transmits sounds and images, but does not include a broadcasting undertaking that only rebroadcasts the radiocommunications of another licensed broadcasting undertaking; [SOR/94-220, in effect Feb.25, 1994]

[§137-35]

"station operator" means a person licensed to carry on a station. [SOR/87-49, in effect Jan.9, 1987]

[§137-36]

"vertical blanking interval" means the brief period of time which recurs approximately 60 times per second between successive scans of television pictures. [SOR/89-162, in effect March 16, 1989]

Application

[§137-37]

3. These Regulations do not apply in respect of programming that is broadcast by a licensee using a signal contained in a second audio program channel or in a multiplex channel or during the vertical blanking interval. [SOR/89-162, in effect March 16, 1989]

Canadian Programs

[§137-38]

4. (1) *[Revoked. SOR/94-220, in effect Feb.25, 1994]*

[§137-39]

(2) For the purposes of this section,

[§137-40]

"ethnic programming period" means that portion of the broadcast year during which a licensee broadcasts ethnic programs;

[§137-41]

"evening ethnic programming period" means that portion of the evening broadcast period during which a licensee broadcasts ethnic programs;

[§137-42]

"evening broadcast period" means the total time devoted to the broadcasting of programs between six o'clock in the afternoon and midnight during each broadcast year. [SOR/87-49, in effect Jan.9, 1987]

[§137-43]

(3) for the purposes of this section, the time devoted to the broadcasting of a program includes any time devoted to advertising material that is inserted

(*a*) within the program;

(*b*) in breaks within the program; or

(*c*) between the end of the program and the beginning of the following program. [SOR/87-49, in effect Jan.9, 1987]

[§137-44]

(4) Subsections (6), (7), (9) and (10) do not apply to the licensee of an ethnic station. [SOR/87-49, in effect Jan.9, 1987]

[§137-45]

(5) Subsections (6) and (7) do not apply to the licensee of a remote station. [SOR/87-49, in effect Jan.9, 1987]

[§137-46]

(6) Subject to subsection (9), a licensee shall devote not less than 60 per cent of the broadcast year and of any six month period specified in a condition of licence to the broadcasting of Canadian programs. [SOR/87-49, in effect Jan.9, 1987]

[§137-47]

(7) Subject to subsection (10),

(*a*) a licensee holding a public licence shall devote not less than 60 per cent of the evening broadcast period to the broadcasting of Canadian programs; and

(*b*) a licensee holding a private licence shall devote not less than 50 per cent of the evening broadcast period to the broadcasting of Canadian programs. [SOR/87-49, in effect Jan.9, 1987]

[§137-48]

(8) Except where authorized by a condition of licence designed to enhance the quality or diversity of Canadian programs, the licensee of an ethnic station or of a remote station shall devote not less than

(*a*) 60 per cent of the broadcast year and of any six month period specified in a condition of licence to the broadcasting of Canadian programs; and

(*b*) 50 per cent of the evening broadcast period to the broadcasting of Canadian programs. [SOR/87-49, in effect Jan.9, 1987]

[§137-49]

(9) Where a licensee is authorized by a condition of licence to devote less than 60 per cent of the ethnic programming period to the broadcasting of Canadian programs and does so, subsection (6) applies to that part of the broadcast year and of any six month period specified in a condition of licence during which the licensee is not broadcasting ethnic programs. [SOR/87-49, in effect Jan.9, 1987]

[§137-50]

(10) Where a licensee is authorized by a condition of licence to devote less than the required percentage referred to in subsection (7) to the broadcasting of Canadian programs during the evening ethnic programming period and does so, subsection (7) applies only to that portion of the evening broadcast period during which ethnic programs are not broadcast. [SOR/87-49, in effect Jan.9, 1987]

[§137-51]

(11) Where, in the calculation of the time devoted by a licensee to Canadian programs that are broadcast during a broadcast day, inequities arise among licensees because their stations are located in different time zones, the Commission may vary the application of this section in order that licensees receive equitable treatment in the calculation of their Canadian programs. [SOR/87-49, in effect Jan.9, 1987]

Programming Content

[§137-52]

5.(1) A licensee shall not broadcast

(*a*) anything in contravention of the law;

(*b*) any abusive comment or abusive pictorial representation that, when taken in context, tends or is likely to expose an individual or a group of 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. [SOR/87-49, in effect Jan.9, 1987; para.(*b*) amended by SOR/91-587, in effect Oct.23, 1991]

[§137-53]

(1.1) For the purposes of paragraph (1)(*b*), sexual orientation does not include the orientation towards any sexual act or activity that would constitute an offence under the *Criminal Code*; [SOR/91-587, in effect Oct.23, 1991]

[§137-54]

(2) *[Revoked. SOR/94-220, in effect Feb.25, 1994.]*

[§137-55]

6. (1) Subject to subsection (3), a licensee shall not broadcast a commercial message advertising, directly or indirectly, an alcoholic beverage. [SOR/87-49, in effect Jan.9, 1987]

[§137-56]

(2) Subsection (3) does not apply in respect of any of the following alcoholic beverages:

(*a*) a spirituous liquor;

(*b*) a liqueur or an alcoholic cordial; or

(*c*) an alcoholic beverage for which a standard is not prescribed pursuant to the *Food and Drugs Act*, that is a distillate or that contains a distilled spirit, and that contains more than 7 per cent ethyl alcohol by volume. [SOR/87-49, in effect Jan.9, 1987]

[§137-57]

(3) A licensee may broadcast a commercial message advertising, directly or indirectly, an alcoholic beverage where

(*a*) the sponsor of the commercial message is a brewer, winery, cider-house or distiller;

(*b*) the sponsor is not prohibited from advertising the beverage by the laws of the province in which the commercial message is broadcast;

(*c*) subject to subsection (4), the commercial message is not designed to promote the general consumption of alcoholic beverages;

(*d*) the commercial message complies with the code entitled *Code for Broadcast Advertising of Alcoholic Beverages* established by the Commission and dated September 1986; and

(*e*) the script of the commercial message has been approved by a representative of the Commission and bears the number assigned to it by the Commission to indicate, to the extent that it is possible to so indicate on the basis of a script, that a commercial message conforming to the approved script would comply with paragraphs (*a*) to (*d*); [SOR/87-49, in effect Jan 9, 1987; preambular para.(a) amended and para.6(3)(*e*) amended SOR/93-208, in effect April 26, 1993.]

[NOTE: For the text of the Code, see below at §173.]

[§137-58]

(4) Paragraph (3)(*c*) does not apply so as to prohibit industry, public service or brand preference advertising. [SOR/87-49, in effect Jan.9, 1987]

[§137-59]

(5) The approval of the script of a commercial message referred to in paragraph (3)(*e*) does not indicate that the commercial message complies with paragraphs (3)(*a*) to (*d*). [SOR/87-49, in effect Jan.9, 1987]

[§137-60]

7. (1) A licensee shall not broadcast

(*a*) a commercial message for, or an endorsement of, a drug, cosmetic or device, other than a veterinary biologic, to which the *Food and Drugs Act* applies unless

(i) the script of the commercial message or endorsement has been approved by a representative of the Commission and by the Minister of National Health and Welfare to indicate, to the extent that it is possible to so indicate on the basis of a script, that a commercial message conforming to the approved script would comply with the applicable provisions, administered by that Minister, of the *Food and Drugs Act*, the *Narcotic Control Act* and regulations made pursuant to those Acts or to the *Department of National Health and Welfare Act*, and

(ii) the script bears the script number assigned to it by that Minister; or

(*b*) a recommendation for the treatment, preventative or cure of a disease, disorder or abnormal physical state unless

(i) the script of the recommendation has been approved by the Minister of National Health and Welfare to indicate, to the extent that it possible to so indicate on the basis of a script, that recommendation conforming to the approved script would comply with the applicable provisions, administered by that Minister, of the *Food and Drugs Act*, the *Narcotic Control Act* and regulations made pursuant to those Acts or to the *Department of National Health and Welfare Act*, and

(ii) the script bears the script number assigned to it by that Minister. [SOR/93-208, in effect April 26, 1993.]

[§137-61]

(2) Where a licensee broadcasts a commercial message, endorsement or recommendation referred to in subsection (1), the licensee shall keep a record of the script for a period of one year after the date of the broadcast, which record shall contain

(*a*) the name of the drug or device to which the script relates;

(*b*) the name of the sponsor or advertising agency that submitted the script for approval; and

(*c*) the script number referred to in subparagraph (1)(*a*)(ii) or (1)(*b*)(ii). [SOR/93-208, in effect April 26, 1993.]

[§137-62]

(3) A licensee shall furnish the record required by subsection (2) to the Commission or to an inspector designated pursuant to the *Food and Drugs Act*, acting on behalf of the Commission, where the Commission or the inspector so requests for the purpose of audit or examination. [SOR/93-208, in effect April 26, 1993.]

[§137-63]

(4) The approval of the script of a commercial message, endorsement or recommendation referred to in subsection (1) does not indicate that the commercial message, endorsement or recommendation complies with the applicable legislation. [SOR/93-208, in effect April 26, 1993.]

Political Broadcasts

[§137-64]

8. During an election period, a licensee shall allocate time for the broadcasting of programs, advertisements or announcements of a partisan political character on an equitable basis to all accredited political parties and rival candidates represented in the election or referendum. [SOR/87-49, in effect Jan.9, 1987]

Ethnic Programs

[§137-65]

9. (1) On or before January 31 of each year, the licensee of an ethnic station shall submit to the Commission, for approval, a calendar that

(*a*) covers a period of 52 or 53 weeks;

(*b*) begins on the Monday of the week during which the next broadcast year begins; and

(*c*) is divided into 12 periods of four or five weeks. [SOR/90-320, in effect June 1, 1990]

[§137-66]

(1.1) The licensee of an ethnic station shall devote to ethnic programs not less than 60 per cent of the total number of hours devoted to broadcasting during the aggregate of the broadcast days in each of the four or five week periods in the calendar approved by the Commission and referred to in subsection (1). [SOR/90-320, in effect June 1, 1990]

[§137-67]

(2) Unless authorized by condition of licence to devote up to 40 per cent of the broadcast month to ethnic programs, where the Grade B official contour of a station other than an ethnic station intersects the Grade B official contour of an ethnic station, the licensee of the first mentioned station shall not devote more than 10 per cent of the broadcast month to ethnic programs. [SOR/87-49, in effect Jan.9, 1987]

[§137-68]

(3) Unless authorized by condition of licence to devote up to 40 per cent of its broadcast month to ethnic programs, where the Grade B official contour of a station other than an ethnic station does not intersect the Grade B official contour of an ethnic station, the licensee of the first mentioned station shall not devote more than 15 per cent of the broadcast month to ethnic programs. [SOR/87-49, in effect Jan.9, 1987]

Logs and Records

[§137-69]

10. (1) Subject to any condition of licence, a licensee shall

(*a*) keep, in a form acceptable to the Commission, a program log or a machine readable record of its programming;

(*b*) retain the log or record for a period of one year after the date when the programming was broadcast; and

(*c*) cause to be entered in the log or record each day the following information:

(i) the date,

(ii) the call letters, location and channel of the licensee's station,

(iii) the time at which each station identification announcement is made,

(iv) the time of commencement of advertising material, its duration and, in the case of a commercial message, the name of the person selling or promoting goods, services, natural resources or activities, and

(v) in relation to each program broadcast,

(A) its title including the information referred to in subitems 4(4) to (7) and subitem 6(7), as the case may be, of Schedule I,

(B) subject to subsection (4), the key figure set out in Schedule I describing the program,

(C) the time at which the program begins and ends,

(D) the code set out in Schedule II indicating the language, type or group, as applicable, and

(E) where applicable, the code set out in Schedule II indicating a closed captioned program. [SOR/87-49, in effect Jan.9, 1987]

[§137-70]

(2) The times required to be entered pursuant to subparagraphs (1)(*c*)(iii) and (iv) and clause (1)(*c*)(v)(C) are local times. [SOR/87-49, in effect Jan.9, 1987]

[§137-71]

(3) A licensee shall furnish to the Commission, within 30 days after the end of each month, the program log or machine readable record of the licensee for that month, together with a certificate signed by or on behalf of the licensee attesting to the accuracy of the contents of the log or record. [SOR/94-220, in effect Feb.25, 1994]

[§137-72]

(4) Where more than one subitem of Schedule I applies to a program, a licensee may, in respect of that program, cause to be entered in its program log or machine readable record

(*a*) the key figures indicating the subitems that apply to each segment of the program, in the order in which the segments are broadcast; and

(*b*) the start time and duration of each segment of the program. [SOR/87-425, in effect July 15, 1987]

[§137-73]

(5) A licensee shall retain a clear and intelligible audio-visual recording of all of its programming. [SOR/94-220, in effect Feb.25, 1994]

[§137-74]

(6) Where, before the expiry of the applicable period referred to in subsection (5), the Commission requests from a licensee a clear and intelligible audio or audiovisual recording of its programming, the licensee shall furnish it to the Commission forthwith. [SOR/87-49, in effect Jan.9, 1987]

[§137-75]

(7) Where a program is broadcast during reserved time by a station operator who operates as part of a television network, subsection (5) applies only to the network operator. [SOR/87-49, in effect Jan.9, 1987]

[§137-76]

(8) This section does not apply to the licensee of a remote station where logging or record-keeping requirements are set out in a condition of licence. [SOR/87-49, in effect Jan.9, 1987]

[§137-77]

Advertising Material

[§137-78]

11. (1) Subject to subsections (2), (3) and (4), a licensee shall not broadcast more than 12 minutes of advertising material during each clock hour in the broadcast day. [SOR/92-429, in effect July 13, 1992]

[§137-78a]

[NOTE: On October 7, 1993, in Public Notice CRTC 1993-137, the CRTC proposed to delete subsection 11(1) and replace it with the following:

"11. (1) Except as otherwise provided in subsections (2) and (3) or by a condition of its licence, a licensee shall not broadcast more than 12 minutes of advertising material in any clock hour in a broadcast day."

This proposal was later expanded with a proposal to allow television licensees to air "infomercials" during the broadcast day. See Public Notice CRTC 1994-37, March 29, 1994, set out below at §308.]

[§137-79]

(2) Where a program occupies time in two or more consecutive clock hours, a licensee may exceed the maximum number of minutes of advertising material set out in subsection (1) during any of those clock hours if the average number of minutes of advertising material in the clock hours occupied by the program does not exceed 12 minutes. [SOR/92-429, in effect July 13, 1992]

[§137-80]

(3) In addition to the maximum of 12 minutes of advertising material referred to in subsection (2), a licensee may broadcast, during each clock hour, a maximum of 30 seconds of advertising material that consists of unpaid public service announcements. [SOR/92-429, in effect July 13, 1992]

[§137-81]

(4) This section does not apply to the licensee of a remote station where the time devoted to the broadcasting of advertising material is restricted by a condition of licence. [SOR/92-429, in effect July 13, 1992.]

[§137-81a]

[NOTE: On October 7, 1993, in Public Notice 1993-137, the CRTC proposed to revoke this subsection.]

Submission of Information

[§137-82]

12. (1) On or before November 30 of each year, a licensee shall submit to the Commission a statement of accounts, on the annual return of broadcasting licensee form, for the 12 month period ending on the previous August 31. [SOR/92-611, in effect Oct.19, 1992]

[§137-83]

(2) On or before September 1 of each year, a licensee shall submit to the Commission a program schedule for the 12 month period ending on August 31 of the following year. [SOR/92-611, in effect Oct.19, 1992]

[§137-84]

(3) At the request of the Commission, a licensee shall provide the Commission with a response to any inquiry regarding the licensee's programming, ownership or any other matter within the Commission's jurisdiction that relates to the licensee's undertaking. [SOR/92-611, in effect Oct.19, 1992]

Affiliation

[§137-85]

13. A licensee shall not enter into an affiliation agreement with a person falling within a class described in section 3 of the *Direction to the CRTC (Eligible Canadian Corporations)*. [SOR/87-49, in effect Jan.9, 1987]

[NOTE: For the text of section 3 of the Direction, see above at §111-6.]

Ownership of Equipment and Facilities

[§137-86]

13.1 Except as otherwise provided pursuant to a condition of its licence, a licensee shall own and operate its transmitter. [SOR/93-353, in effect June 21, 1993.]

[§137-87]

14. (1) For the purposes of this section,

"associate", when used to indicate a relationship with any person, includes

(*a*) a partner of the person,

(*b*) a trust or an estate in which the person has a substantial beneficial interest or in respect of which the person serves as a trustee or in a similar capacity,

(*c*) a spouse, common-law spouse, son, daughter, son-in-law or daughter-in-law of the person,

(*d*) a relative, not referred to in paragraph (*c*), of the person, or of the person's spouse or common-law spouse, who has the same residence as that person,

(*e*) a corporation of which the person alone, or a person together with one or more associates as described in this definition, has directly or indirectly, control of more than 50 per cent of the voting interests,

(*f*) a corporation of which an associate, as described in this definition, of the person has, directly or indirectly, control of more than 50 per cent of the voting interests, and

(*g*) a person, with whom the person has entered into an arrangement, a contract, an understanding or an agreement in respect of the voting of shares of a licensee corporation or of a corporation that has, directly or indirectly, effective control of a licensee corporation, except where that person controls less than one per cent of all issued voting shares of a corporation whose shares are publicly traded on a stock exchange;

[§137-87a]

"common shares" means the shares that represent the residual equity in the earnings in a corporation, and includes the preferred shares to which are attached rights to participate in the earnings of the corporation with no upper limit;

[§137-87b]

"person" includes an individual, a partnership, a joint venture, an association, a corporation, a trust, an estate, a trustee, an executor and an administrator, or a legal representative of any of them;

[§137-87c]

"voting interest", in respect of

(*a*) a corporation with share capital, means the vote attached to a voting share,

(*b*) a corporation without share capital, means an interest that entitles the owner to voting rights similar to those enjoyed by the owner of a voting rights similar to those enjoyed by the owner of a voting share,

(*c*) a partnership, a trust, an association or a joint venture, means an ownership interest in the assets of it that entitles the owner to receive a share of the profits of it, to receive a share of the assets of it on dissolution and to participate directly in the management of it or to vote on the election of the persons to be entrusted with the power and responsibility to manage it, and

(*d*) a not-for-profit partnership, trust, association or joint venture, means a right that entitles the owner to participate directly in the management of it or to vote on the election of the persons to be entrusted with the power and responsibility to manage it;

[§137-87d]

"voting share" means a share in the capital of a corporation, to which is attached one or more votes that are exercisable at meetings of shareholders of the corporation, either under all circumstances of under a circumstance that has occurred and is continuing, and includes any security that is convertible into such a share at all times at the option of the holder. [SOR/93-353, in effect June 21, 1993.]

[§137-88]

(2) For the purposes of this section, control of a voting interest by a person includes situations in which

(*a*) the person is, directly or indirectly, the beneficial owner of the voting interest; or

(*b*) the person, by means of an arrangement, a contract, an understanding or an agreement, determines the manner in which the interest is voted but the solicitation of proxies or the seeking of instructions with respect to the completion of proxies in respect of the exercise of voting interests is not considered to be such an arrangement, contract, understanding or agreement. [SOR/93-353, in effect June 21, 1993.]

[§137-89]

(3) For the purposes of this section, effective control of a licensee or its undertaking includes situations in which

(*a*) a person is directly or indirectly, other than by way of security only, a majority of the voting interests of the licensee;

(*b*) a person has the ability to cause the licensee or its board of directors to undertake a course of action; or

(*c*) the Commission, after a public hearing of an application for a licence, or in respect of an existing licence, determines that a person has such effective control and sets out that determination in a decision or public notice. [SOR/93-353, in effect June 21, 1993]

[§137-90]

(4) Except as otherwise provided pursuant to a condition of its licence, a licensee shall obtain the prior approval of the Commission in respect of any act, agreement or transaction that directly or indirectly would result in

(*a*) a change by whatever means of the effective control of its undertaking;

(*b*) a person alone

(i) who controls less than 30 per cent of the voting interests of the licensee, having control of 30 per cent or more of those interest,

(ii) who controls less than 30 per cent of the voting interests of a person who has, directly or indirectly, effective control of the licensee, having control of 30 per cent or more of those interests,

(iii) who owns less than 50 per cent of the issued common shares of the licensee, owning 50 per cent or more of those shares but not having, directly or indirectly, effective control of the licensee, or

(iv) who owns less than 50 per cent of the issued common shares of a person who has, directly or indirectly, effective control of the licensee, owning 50 per cent or more of those shares but not having, directly or indirectly, effective control of the licensee;

(*c*) a person together with an associate

(i) who control less than 30 per cent of the voting interests of the licensee, having control of 30 per cent or more of those interests,

(ii) who control less than 30 per cent of the voting interests of a person who has, directly or indirectly, effective control of the licensee, having control of 30 per cent or more of those interests,

(iii) who own less than 50 per cent of the issued common shares of the licensee, owning 50 per cent or more of those shares but not having, directly or indirectly, effective control of the licensee, or

(iv) who own less than 50 per cent of the issued common shares of a person who has, directly or indirectly, effective control of the licensee, owning 50 per cent or more of those shares but not having, directly or indirectly, effective control of the licensee; [SOR/93-353, in effect June 21, 1993]

[§137-91]

(5) A licensee shall notify the Commission, within 30 days thereafter, of the occurrence of any act, agreement or transaction that, directly or indirectly, resulted in

(*a*) a person alone

(i) who controls less than 20 per cent of the voting interests of the licensee, having control of 20 per cent or more but less than 30 per cent of those interests,

(ii) who controls less than 20 per cent of the voting interests of a person who has, directly or indirectly , effective control of the licensee, having control of 20 per cent or more but less than 30 per cent of those interests,

(iii) who controls less than 40 per cent of the voting interests of the licensee, having control of 40 per cent or more but less than 50 per cent of those interests but not having, directly or indirectly, effective control of the licensee, or

(iv) who controls less than 40 per cent of the voting interests of a person who has, directly or indirectly, effective control of the licensee, having control of 40 per cent or more but less than 50 per cent of those interests but not having, directly or indirectly, effective control of the licensee; or

(*b*) a person together with an associate

(i) who control less than 20 per cent of the voting interests of the licensee, having control of 20 per cent or more but less than 30 per cent of those interests,

(ii) who control less than 20 per cent of the voting interests of a person who has, directly or indirectly, effective control of the licensee, having control of 20 per cent or more but less than 30 per cent of those interests,

(iii) who control less than 40 per cent of the voting interests of the licensee, having control of 40 per cent or more but less than 50 per cent of those interests but not having, directly or indirectly, effective control of the licensee, or

(iv) who control less than 40 per cent of the voting interests of a person who has, directly or indirectly, effective control of the licensee, having control of 40 per cent or more but less than 50 per cent of those interests but not having, directly or indirectly, effective control of the licensee. [SOR/93-353, in effect June 21, 1993]

[§137-92]

(6) A notification referred to in subsection (5) shall set out the following information:

(*a*) the name of the person or the names of the person and the associate;

(*b*) the percentage of the voting interests controlled by the person or the person and the associate; and

(*c*) a copy or other complete description of the act, agreement or transaction. [SOR/93-353, in effect June 21, 1993]

[§137-93]

SCHEDULE I

(Sections 2 and 10)

KEY FIGURES

Item	Column I Program Description	Column II Alphanumeric Characters 1st	2nd	3rd	4th	5th	6th	7th	8th
1.	*Country of Origin*								
	(1) Canada	1							
	(2) United States	2							
	(3) United Kingdom	3							
	(4) France	4							
	(5) Other	5							
2.	*Broadcast origination point*								
	(1) Local		1						
	(2) Other		2						
	(3) Network		3						
3.	*Composition*								
	(1) Live Program			1					
	(2) Recording of Live Program			2					
	(3) Other Recorded Programs (first play)			3					
	(4) Repeat Broadcast of a Program referred to in subitem (1),(2) or (3)			4					
4.	*Production source*								
	(1) Local Station				1				
	(2) Local Program produced by Affiliated Production company				2				
	(3) Other Canadian Program produced by Affiliated Production Company				3				
	(4) Other Station (include (call sign)				4				
	(5) Network (include identification if different from primary network to which the station is affiliated				5				
	(6) Canadian Independent Producer (include Commission "C" number or the number assigned by the								

	Department of Communications			6	
	(7) Special Recognition (include Commission "S.R." number)			7	
	(8) Other Canadian Program from any other source			8	
	(9) Non-Canadian Program from any source (include indication of lip synchronization credit where applicable)			9	
5.	*Audience Target*				
	(1) Children (up to 11 years)		1		
	(2) Youth (12 to 17 years)		2		
	(4) Other specific identifiable group not referred to in subitem (1) or (2)		3		
	(5) General audience Categories		4		
6.	*Categories*				
	Information				
	(1) News	0	1	0	
	(2) Analysis and interpretation	0	2	0	
	(3) Reporting and actualities	0	3	0	
	(4) Religion	0	4	0	
	(5) Education				
	(A) Formal	0	5	A	
	(B) Informal	0	5	B	
	Sports:				
	(6) Sports	0	6	0	
	Music and Entertainment:				
	(7) Drama: (include the Commission drama credit where applicable)				
	(A) Ongoing Dramatic Series	0	7	A	
	(B) Ongoing Comedy Series	0	7	B	
	(c) Specials, Mini-Series or Made-for-TV Feature Films	0	7	C	
	(d) Feature Films, Theatrical Release	0	7	D	
	(e) Animated Television Programs and Films	0	7	E	
	(f) Programs of Comedy Sketches	0	7	F	
	(g) Others	0	7	G	
	(8) Music and Dance	0	8	0	
	(9) Variety	0	9	0	
	(10) Game shows	1	0	0	
	(11) Human Interest	1	1	0	

[SOR/87-49, in effect Jan.9, 1987; SOR/87-425, in effect July 15, 1987; SOR/94-220, in effect Feb.25, 1994]

[§137-98]

SCHEDULE II

(Section 2 and 10)

CODE INDICATING LANGUAGE, TYPE AND GROUP OF PROGRAMMING AND CLOSED CAPTION PROGRAMMING

A. *Code Indicating Language*

Item	Column I Code	Column II Description
1.	[Abbreviated name of language]	A program in a language other than the official language for which the station was principally licensed or, in the case of an ethnic station, the language of the program

[§137-99]

B. *Code Indicating Type*

Item	Column I Code	Column II Description
1.	Type A	A program in a language other than French, English or a language of the aboriginal peoples of Canada
2.	Type B	A program in French or in English that is directed toward a distinct ethnic group, the mother tongue or common language of which in its country of origin is French or English
3.	Type C	A program in French or in English that is directed toward a distinct ethnic group the mother tongue of which is included in Type A
4.	Type D	A bilingual program in French or English as well as a language other than French, English or a language of the aboriginal peoples of Canada that is directed toward a distinct ethnic group
5.	Type E	A program in French or English and that is directed toward ethnic groups or toward the general public and that depicts Canada's cultural

diversity through services that are multicultural, educational, informational, or intercultural.

[§137-100]

C. *Code Indicating Group*

Item	Column I Code	Column II Description
1.	[Abbreviated name of ethnic group]	The distinct ethnic group at which a program of Type A, B, C or D is directed

[§137-101]

D. *Code Indicating a Closed Caption Program*

Item	Column I Code	Column II Description
1.	CC [to be inserted following key figure]	Program contains closed captioning for the hearing impaired

[SOR/87-49, in effect Jan.9, 1987; am. SOR/87-425, in effect July 15, 1987]

[§151-1]

[CANADIAN RADIO-TELEVISION AND
TELECOMMUNICATIONS COMMISSION]

Resource Development Installation Licence Order

[Public Notice CRTC 1981-79, October 19, 1981, 7 C.R.T. (Part 2) 36]

[§151-2]

In a public announcement dated 28 August 1981, the Commission proposed to exempt from licensing persons meeting the criteria described in the proposed "Resource Development Installation Licence Order" and invited written comments to be submitted no later than 30 September 1981. Representations were submitted in response to this announcement and the views expressed were taken into account by the Commission in its deliberation.

The Commission having prescribed the class of licence described below, the Executive Committee, on 7 October 1981, exempted from licensing all persons carrying on an undertaking qualified to hold such a licence:

[§151-3]

"**1.** This order may be referred to as the *Resource Development Installation Licence Order*.

2. The Commission hereby prescribes a class of broadcasting receiving undertaking licence to be known as the "Resource Development Installation Licence."

3. Broadcasting receiving undertakings in Canada which meet all of the following criteria shall constitute a class, the appropriate licence for which shall be the Resource Development Installation Licence:

(*a*) The entire broadcasting receiving undertaking is operated by or on behalf of the person who owns or leases all of the property on which the undertaking is located and that operator also supplies to the population of the installation served by the undertaking such common amenities as food and shelter.

(*b*) The undertaking is not connected by any form or means of transmission of signals to any land now owned or leased by the owner or lessee described above and such transmissions do not cross any public street or highway.

(*c*) No separate charge is levied or direct commercial gain obtained for any signal or service provided through the distribution cable used by the undertaking or for the use of any part of the distribution system.

(*d*) The operator of the undertaking distributes through its system the signals of all local Canadian television stations, in each case with no degradation of received signal.

(*e*) Where satellite signals are received, the person carrying on the undertaking has executed a contract for the provision of such signals with the licensed provider of such satellite signals.

(*f*) The only satellite signals received and distributed are from a licensed Canadian operator.

(*g*) No part of the undertaking is located within the area licensed to be served by any cable television licensee.

4. For the purposes of this order:

(*a*) "signal" and

(*b*) "local television station"

carry the meanings as defined in the *Cable Television Regulations*, and "licensed" means "licensed by the CRTC"."

[§151-4]

Accordingly, persons meeting *all* of the foregoing criteria need not apply for a licence to operate a broadcast receiving undertaking (i.e. a cable television undertaking).

[§152-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Exemption Order Respecting Master Antenna Television Systems

[§152-2]

[Public Notice CRTC 1993-54, April 30, 1993, as corrected by Public Notice CRTC 1993-54-1, January 14, 1994. This exemption order replaced an earlier order, attached to Public Notice CRTC 1989-47, May 18, 1989, which in turn had replaced an order issued on November 10, 1983. On October 21, 1993, in Public Notice CRTC 1993-145, the Commission called for public comment on proposals to amend exemption criteria 2 and 5. Later, on March 2, 1994, in Public Notice CRTC 1994-18, the Commission announced that it had decided to amend criterion 2(b); in addition, however, it called for further comment on a proposal to include optical fibre transmission as a means of reception of conventional off-air signals.

The exemption order set out below includes references to the above public notices in the annotations.]

[§152-3]

The Commission, pursuant to subsection 9(4) of the *Broadcasting Act*, by this order, exempts from the requirements of Part II of the Act and any regulations, those persons carrying on broadcasting undertakings of the class defined by the following criteria:

[§152-4]

Purpose

These radiocommunication distribution undertakings, commonly referred to as satellite Master Antenna Television (SMATV) systems, or more simply as Master Antenna

Television (MATV) systems, have as their general purpose the distribution to the temporary or permanent residents of multiple unit dwellings such as hotels, apartment buildings, condominiums and row houses, of services generally accessible by residents of single unit dwellings.

[§152-5]

Description

1. The entire undertaking:
   a) is situated exclusively on land owned or leased by the person carrying on the undertaking, or, in the case of an undertaking carried on by a condominium corporation, by such corporation or any of its members; or
   b) is effectively controlled by and provides service only to an educational institution, including residential buildings owned by and forming a part of such institution.

NOTE: In Public Notice CRTC 1989-47, May 18, 1989, the Commission made the following comment on the effect of this paragraph:
"... The Commission has decided that no change to criterion 1 of the 1983 criteria is warranted. The Commission notes, however, that criterion 1(a), as presently drafted, does not prohibit a person carrying on an MATV undertaking from contracting with a third party for the provision of services in connection with establishing or operating the undertaking. Moreover, the charges for the provision of these services may include a reasonable profit component for the service company."

[§152-6]

2. The undertaking is not connected by any form or means of transmission, apart from the direct over-the-air reception of conventional broadcast signals or the direct satellite or microwave reception of services
   a) to any land not owned or leased by the person or persons described above, or
   b) over any public street or highway, except in the case of an undertaking carried on by a condominium corporation, or by a registered cooperative society, all of whose members reside on the land on which the undertaking is situated, or by an educational institution described in 1.(b).

[NOTE: In Public Notice CRTC 1994-18, March 2, 1994, the CRTC announced that it proposed to amend the opening words of criterion 2 as underlined below, and that it had decided to amend paragraph (b) also as underlined:

2. The undertaking is not connected by any form of transmission, apart from (i) the direct over-the-air reception, or the reception by microwave or optical fibre, of conventional broadcast signals (i.e. terrestrial radiocommunications, including distant Canadian and foreign signals), or (ii) the satellite reception of services
a) to any land not owned or leased by the person or persons described above, or
b) crossing over or under any public street or highway (or, in the case of any MATV system fully built before 2 March 1994, over any public street or highway), except in the case of an undertaking carried on by a condominium corporation, or by a registered cooperative society, all of whose members reside on the land on

which the undertaking is situated, or by an educational institution described in 1.(b).

In making its decision on the amendments to criterion 2(b), the CRTC made the following comments in Public Notice CRTC 1994-18:

"There were essentially two opposing points of view on the proposal that MATV systems connected by crossing under any public street or highway not be exempt from licensing requirements (with certain expectations). These views focused on whether the proposed changes should affect MATV systems that are already in existence or should only affect MATV systems constructed after the date that the Commission adopts the proposed changes.

"The cable industry argued that any MATV undertaking not currently meeting this criterion should not qualify as an exempt undertaking and should therefore be required to obtain a licence from the Commission. Representatives from the MATV industry argued the contrary.

"The Commission has reviewed this matter and is satisfied that to "grandfather" existing situations would be the most reasonable and equitable approach. Nevertheless, under the amended criterion, an operator of an existing MATV system who is currently exempted from licensing requirements would have to apply for and receive a licence before proceeding with any *new* construction that would have the undertaking cross over or under a public street or highway. The Commission has therefore decided to *amend* criterion 2(b) of the exemption criteria respecting MATV undertakings in the following manner:

b) crossing over or under any public street or highway (or, in the case of any MATV system fully built before 2 March 1994, over any public street or highway), except in the case of an undertaking carried on by a condominium corporation, or by a registered cooperative society, all of whose members reside on the land on which the undertaking is situated, or by an educational institution described in 1.(b)."

However, the Commission delayed publishing the modified exemption criteria until it had received and received and evaluated further comments regarding its proposal to amend the preambular portion of criterion 2, as underlined above. Its comments on this matter were as follows:

"Comments submitted by the representatives of MATV interests in response to Public Notice CRTC 1993-145 strongly supported the addition of optical fibre to the permissible methods of receiving signals by an exempt MATV system. They considered such a change to reflect the realities of technological change (including the move towards increased utilization of optical fibre in place of microwave), and that it would thus bring to an end what they claimed to be inequities in the current exemption criteria.

"The cable industry strongly opposed the addition of optical fibre to the permissible methods of receiving signals by an exempt MATV system. It was argued, among other things, that permitting an exempt MATV undertaking to receive service through optical fibre connected to land not owned or leased by the person carrying on the undertaking would allow any person with access to public rights of way to establish an unregulated "cable" system feeding residential buildings with television signals through optical fibre.

"The Commission considers that the comments submitted with regard to the proposed amendment raise substantive issues requiring additional consideration. It has therefore decided to initiate a further public process by calling for public comment on a revised text regarding optical fibre transmission [NOTE: see above]...

"The proposed amendments, as revised, is intended to prevent a third party from using optical fibre to provide a service, by direct feed, to households or other buildings within an area served by a licensed cable operator, while permitting MATV operators to use fibre technology or microwave technology for receipt of conventional broadcast signals."]

[§152-7]

3. a) No separate charge is levied, or direct commercial gain obtained, for the use of any part of the undertaking or for any service provided thereover, except for a charge levied in proportionate amount on subscribers to recover:

i) interest on money borrowed and depreciation, maintenance and administration expenses as reasonably incurred by the operator of the undertaking in connection with the establishment and maintenance of the undertaking, and

ii) the reasonable charge or fee payable by the operator of the undertaking to the distributor of a service or to an agent appointed by the operator of the undertaking to act on its behalf in arranging and administering agreements with service distributors.

b) No operator of an undertaking shall have any legal or beneficial ownership interest in any third party providing to the operator, but that undertaking, any services for which separate charges are levied with respect to the matters authorized under paragraphs 3(a)(i) and (ii), unless a contract was entered into on or before 18 May 1989, in which case the application of this subsection to that relationship will only become effective upon the expiration of the term of the said contract.

NOTE: In Public Notice CRTC 1989-47, May 18, 1989, the Commission made the following comment on the effect of this paragraph:

"... The Commission has decided not to permit a person carrying on an exempt MATV undertaking to realize any commercial gain or profit from the MATV undertaking. Moreover, in order to preclude the indirect realization of commercial gain or profit, persons carrying on an exempt MATV undertaking may not have any legal or beneficial ownership interest in any third party providing services to the undertaking. Contractual relationships that would otherwise be precluded by this requirement are permitted in respect of the individual MATV undertakings to which such relationships relate provided the contract was entered into on or before 18 May 1989.

"The Commission has decided, however, to expand criterion 3 to permit a person carrying on an exempt MATV undertaking to levy separate fees over and above a fee payable to a distributor of a programming service. The following charges may be included in the fees levied by MATV operators: interest on money borrowed and depreciation, maintenance and administration costs as reasonably incurred by the operator of the undertaking in connection with the establishment and maintenance of the undertaking. The MATV operator may also include the reasonable charge or fee payable to the distributor of a service or to an agent appointed by the operator of an undertaking to act on his behalf in arranging and administering agreements with service distributors."

The Commission has also commented on the wholesale rates to be charged by pay and specialty services to MATV operators. In Public Notice CRTC 1989-47, May 18, 1989, it included the following commentary on this point:

"... The Commission has decided that a specialty programming service provider whose wholesale rate is regulated by condition of licence should charge MATV and cable operators the same wholesale rate for its service. Therefore the Commission confirms that "exhibitor", as it appears in the conditions of licence of certain Canadian specialty service networks includes exempt MATV undertakings, as well as licensed operators. The Commission expects The Sports Network and MuchMusic, whose conditions of licence now require them to charge the Commission-approved wholesale rates to "cable television licensees", to charge exempt MATV undertakings the same rate that is charged to licensed cable operators. The Commission also expects that pay television licensees will charge exempt MATV operators the same rates as those charged to cable operators."

[§152-8]

4. All signals of local Canadian television stations are distributed over the undertaking, in each case with no degradation of received signal.

"Signals of local Canadian television stations" means the signals of all television broadcasting stations licensed by the Commission having Grade A "official contours"

(as defined in the *Cable Television Regulations, 1986*, (as amended) enclosing the area in which the undertaking in question is carried on.
[NOTE: For the definition refereed to, see above at §133-41.]

[§152-9]

5. No service received over-the-air or by satellite or microwave transmission is distributed over the undertaking, other than a service that the Commission by regulation, condition of licence, or otherwise has authorized the licensee of a cable distribution undertaking serving the area within which the undertaking is situated to distribute on its undertaking, whether or not the licensee is actually distributing the service.

Subject to paragraph 4 above, the signals distributed by the exempt undertaking need not be identical to those signals distributed by the licensed cable distribution undertaking serving the area, so long as they are signals of affiliates of the same network.

[NOTE: In Public Notice CRTC 1993-145, October 21, 1993, the CRTC proposed to amend criterion 5 by adding the words "by optical fibre" after the words "satellite or microwave". In Public Notice CRTC 1994-18, March 2, 1994, the Commission reiterated this proposal, and added a further proposal to amend the preambular portion of criterion 2, as noted further above.]

NOTE: The Commission made the following comments on the signal carriage rules in criterion 5 in Public Notice CRTC 1989-47, May 18, 1989:

"The cable industry and programming service providers generally supported the position that MATV systems should be restricted to distributing signals identical to those distributed by the cable licensee serving the same area. These parties argued that criterion 5 of the 1983 criteria should be amended so as to preclude MATV distribution of over-the-air U.S. border signals not authorized for distribution on cable systems.

"Many of the parties also addressed the issue of what services should be required to be distributed on exempt MATV systems. All parties supported the existing requirement that local over-the-air signals must be distributed. The cable industry and the Government of Ontario suggested that MATV operators should be required to distribute a preponderance of Canadian signals as is required of cable licensees. Some service providers and the Canadian Association of Broadcasters suggested that regional and extra-regional stations should be added to the list of services that MATV operators are required to distribute.

"The MATV industry generally supported the Commission's existing policy of permitting MATV operators to distribute the service of any network affiliate where the local cable system is authorized to distribute the service of that station or of any other affiliate of the same network. They also submitted that any service authorized for cable distribution should be interpreted to permit MATV distribution of these services even though they may not actually be carried by the local cable licensee. MATV interests also argued that identical priority distribution requirements should not be imposed on MATV operators due to technical limitations that are characteristic of these installations.

"The Commission has decided to amend criterion 5 to clarify that exempt MATV operators may distribute all signals that the local cable licensee is authorized by the *Cable Television Regulations, 1986*, as amended, or by its conditions of licence or otherwise to distribute whether or not the licensee is actually distributing the service. In order to ensure equitable treatment for MATV and cable undertakings, the Commission has determined that this provision should apply to signals received "over-the-air" as well as those received by satellite or microwave transmission. Exempt MATV

undertakings are, therefore, not permitted to distribute U.S. border stations received "over-the-air" if they are not authorized for distribution on the cable system.

"The Commission has also revised criterion 5 to clarify that the signals carried by MATV systems need not be identical to those signals carried by the cable system serving the same area so long as they are the signals of affiliates of the same network.

"The Commission has accepted the argument that it would be impractical, for technical reasons, to impose the priority distribution rules applicable to cable licensees on MATV undertakings. However, in order to ensure equitable treatment of MATV and cable operations, the Commission has decided to require exempt MATV undertakings to distribute a preponderance of Canadian programming services."

[§152-10]

6. A greater number of the video channels of the undertaking is devoted to the distribution of Canadian programming services than to the distribution of non-Canadian programming services.

[§152-11]

7. No feature motion picture locally originated is distributed over the undertaking.

[§152-12]

8. Notwithstanding paragraphs 5 and 7 above, an undertaking serving the temporary residents of hotels, motels and hospitals or the inmates of prisons may distribute the programming authorized for distribution by *Closed Circuit Video Programming Undertakings*, as set out in Public Notice CRTC 1993-50 dated 30 April 1993.

NOTE: For the text of *Closed Circuit Video Programming Undertakings*, Public Notice CRTC 1993-50, April 30, 1993, see below at §162.

[§153-1]

[CANADIAN RADIO-TELEVISION AND
TELECOMMUNICATIONS COMMISSION]

CBC Radio Licence Partial Exemption Order

[*Order CRTC 91-1*, Public Notice CRTC 1991-93, August 30, 1991]

[§153-2]

In this public notice, the Commission, pursuant to Section 9 of the *Broadcasting Act*, establishes a class of licence to be known as *CBC Radio Licences*, which includes all A.M. and F.M. stations licensed to the Canadian Broadcasting Corporation.

Pursuant to subsection 9(4) and effective 1 September 1991, the Commission exempts the Corporation from the application of subsection 14(1) of the *Radio Regulations, 1986*, as amended, with respect to its broadcasting undertakings that fall into the class referred to in the above paragraph.

[§154-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Order Exempting Certain Shortwave Broadcasting Undertakings

[Public Notice CRTC 1991-105, October 8, 1991]

[§154-2]

WHEREAS the Commission is satisfied that compliance with Part II of the *Broadcasting Act* (the "Act") by the class of broadcasting undertakings described below will not contribute in a material manner to the implementation of the broadcasting policy set out in subsection 3(1) of the Act,

[§154-3]

THEREFORE the Commission, by order pursuant to subsection 9(4) of the Act, hereby exempts from the requirements of Part II of the Act those persons carrying on broadcasting undertakings of the class consisting of shortwave radio broadcasting undertakings that:

- operate on the high frequency band 3 MHz to 30 MHz;
- the Commission would not be prohibited from licensing pursuant to any Direction to the Commission by the Governor General in Council;
- provide a service that is intended only for reception outside Canada and that is receivable only outside Canada, except for limited spillover reception in Canada that cannot be avoided close to the transmitter site or because the desired coverage outside Canada could not otherwise be attained, and that,
- broadcast or rebroadcast no programming other than
  a) programming of, or supplied by, a publicly funded government agency whose mandate is to provide an international radio service, such as, for example, the Canadian Broadcasting Corporation's Radio Canada International, and
  b) simple statements of sponsorship that identify the sponsors of a program or of the station. Such statements may incorporate the name of the sponsor and a brief general description of the types of services or products the sponsor provides, including the price, name and brand name of the product. Such statements must not contain language that attempts to persuade consumers to purchase and thus must not contain references to convenience, durability or desirability or contain other comparative or competitive references.

[§154-4]

For the purpose of clarification, persons carrying on broadcasting undertakings falling within the class defined above are only exempted from the requirements of Part II of the Act in their carrying on of the undertakings of the said class.

[§155-1]

[CANADIAN RADIO-TELEVISION AND
TELECOMMUNICATIONS COMMISSION]

House of Commons and Provincial or Territorial Legislature Proceedings Exemption Order

[Public Notice CRTC 1992-6, January 17, 1992]

[§155-2]

Pursuant to the exemption power accorded the Commission under the new *Broadcasting Act* (the Act), the Commission has examined the rationale behind the licensing of persons carrying on undertakings of various classes...

[§155-3]

As part of its examination, the Commission has come to the conclusion that compliance with the requirements of Part II of the Act or of any regulations by persons carrying on undertakings providing coverage of the proceedings of the House of Commons and provincial or territorial legislatures to distribution undertakings will not contribute in any material manner to the implementation of the broadcasting policy set out in subsection 3(1) of the Act. The Commission is satisfied that the availability of the type of programming described below is in the public interest and, because there would be no editorial comment contained in the programming services, the Commission has no concerns regarding their content. The Commission, therefore, by this order, and pursuant to subsection 9(4) of the Act, exempts from the requirements of Part II of the Act and any regulations, those persons carrying on broadcasting undertakings of the class defined by the following criteria:

[§155-4]

(*a*) The programming service provided by the undertaking consists of coverage of the proceedings of the House of Commons or of the legislature of a province or territory of Canada, including its various committees.

(*b*) No fee is charged for the service by the operator of the undertaking.

(*c*) The programming service provided by the undertaking is made available to all distribution undertakings, in the case of the House of Commons, throughout Canada, and in the case of a provincial or territorial legislature, throughout the province or territory involved.

(*d*) The programming service provided by the undertaking contains no advertising material.

(*e*) Any programming that is included in the service, but is in addition to the coverage of the proceedings themselves, is limited to a description of the processes of the House of Commons or legislature involved or an agenda (including calls for submissions by committees, etc.) of upcoming activities,

without any comment or analysis of the particular proceedings themselves. The operator of the undertaking may offer a translation of the proceedings and may offer closed captioning or signing.

(*f*) Except as permitted under sections (*g*) and (*h*) below, the programming service provided by the undertaking covers the entire proceedings of the House of Commons or the legislature involved from beginning to end and does not offer selected excerpts of the proceedings, i.e. the coverage is "gavel to gavel".

(*g*) The programming provided by the undertaking may include a repeat broadcast of the relevant question period.

(*h*) The operator of the undertaking may provide coverage of committee meetings on a selective basis, where the appropriate Speaker is satisfied that such coverage is equitable.

(*i*) Control over the programming provided by the undertaking is retained by the appropriate Speaker.

[§155-5]

Accordingly, persons operating undertakings within the class defined by all of the foregoing criteria need not apply for a licence to operate a broadcasting undertaking.

[§156-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Exemption Order Respecting Low-Power Radio: Temporary Resource Development Distribution Undertakings

[Public Notice CRTC 1993-44, April 30, 1993, as corrected by Public Notice CRTC 1993-44-1, January 14, 1994]

[§156-2]

The Commission, pursuant to subsection 9(4) of the *Broadcasting Act*, by this order exempts from the requirements of Part II of the Act and any regulations, those persons carrying on broadcasting undertakings of the class defined by the following criteria:

[§156-3]

Purpose

The purpose of these radio programming undertakings is to make available to employees of temporary mining, logging and other such temporary installations, rebroadcasts of Canadian radio stations, for the duration of the use of the installation.

[§156-4]

Description

1. The undertaking operates between 525 and 1705 kHz in the AM frequency band, or between 88 and 108 MHz in the FM frequency band.
2. The undertaking broadcasts at a power of less than 100 watts transmitter power for AM, or with an Effective Radiated Power (ERP) of 50 watts or less for FM.
3. The undertaking operates in an area that is not within the 0.5 millivolt per metre (mV/m) daytime contour of a protected AM station licensed by the Commission, or the 0.5 mV/m *realistic* contour of a protected FM station licensed by the Commission, broadcasting in the same language as the undertaking.
4. The Commission would not be prohibited from licensing the undertaking by virtue of any direction to the Commission by the Governor in Council.
5. The undertaking meets all technical requirements of the Department of Communications and has acquired all authorizations or certificates prescribed by the Department.
6. The undertaking is operated by or on behalf of the person who owns or leases all of the property on which the undertaking is situated and who supplies the population of the installation served by the undertaking with such common amenities as food and shelter.
7. The undertaking discontinues operation upon completion of the work project.

8. The undertaking originates no programming itself.
9. The undertaking distributes, without curtailment or alteration, the signal of a Canadian station licensed or exempted by the Commission.

[§156-5]

[NOTE: In *Exemptions from Licensing Requirements*, Public Notice CRTC 1993-43, April 30, 1993, the CRTC made the following comment concerning the purpose of the low power radio exemptions:

"The Commission notes that there is no allotment plan for low-power AM or FM stations. Frequencies approved by the DOC for low-power undertakings are unprotected. Consequently, if an application for a licence to operate a conventional AM or FM station on the same frequency in the same service area were approved, the low-power station affected would have to change to another frequency or cease operation. The only protection they now enjoy is from interference created by any low-power AM or FM frequencies that may be approved for use in their areas in the future. The DOC advises that these provisions will continue to hold for exempted as well as for non-exempted undertakings.

"The criteria that the Commission has adopted for exempting Temporary Resource Development Distribution Undertakings, Special Event Facilitating Undertakings and Ultra Low-Power Announcement Service (LPAS) Undertakings, are substantially the same as those proposed in Public Notice CRTC 1992-5. The Commission emphasizes that this exemption order does not apply to Low-Power Television (LPTV) Undertakings."]

[§157-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Exemption Order Respecting Low-Power Radio: Limited Duration Special Event Facilitating Undertakings

[Public Notice CRTC 1993-45, April 30, 1993, as corrected by Public Notice CRTC 1993-45-1, January 14, 1994]

[§157-2]

The Commission, pursuant to subsection 9(4) of the *Broadcasting Act*, by this order, exempts from the requirements of Part II of the Act and any regulations, those persons carrying on broadcasting undertakings of the class defined by the following criteria:

[§157-3]

Purpose

The purpose of these radio programming undertakings is to allow those attending special, generally recognized events a fuller appreciation of those events through provision of locally originated information programming related directly to these events.

[§157-4]

Description

1. The undertaking operates between 525 and 1705 kHz in the AM frequency band, or between 88 and 108 MHz in the FM frequency band.
2. The undertaking broadcasts at a power of less than 100 watts transmitter power for AM, or with an Effective Radiated Power (ERP) of 50 watts or less for FM.
3. The Commission would not be prohibited from licensing the undertaking by virtue of any direction to the Commission by the Governor in Council.
4. The undertaking meets all technical requirements of the Department of Communications and has acquired all authorizations or certificates prescribed by the Department.
5. The undertaking originates all of its programming from the property upon which the event takes place.
6. The undertaking does not rebroadcast programming of any other undertaking.
7. The undertaking operates as ancillary to and for the purpose of facilitating a special event.
8. The undertaking restricts its programming to the specific recognized (sports, cultural or touristic) event and does not duplicate the programming service of any licensed or exempted radio undertaking or the audio portion of a licensed or exempted television undertaking.
9. The undertaking does not broadcast programming that is religious or political nature.
10. The undertaking is operated for a single period consisting of no more than 28 consecutive days in any calendar year.
11. The undertaking limits on-air commercial activity to sponsorship identification or sponsor mention as defined in Appendix 2 of Public Notice CRTC 1990-111 - *"An FM Policy for the 90's"*, as amended from time to time by the Commission.

[NOTE: For the definition referred to in item 11, see below at §265-8.]

[§157-5]

[NOTE: In *Exemptions from Licensing Requirements*, Public Notice CRTC 1993-43, April 30, 1993, the CRTC made the following comment concerning the purpose of the low power radio exemptions:

"The Commission notes that there is no allotment plan for low-power AM or FM stations. Frequencies approved by the DOC for low-power undertakings are unprotected. Consequently, if an application for a licence to operate a conventional AM or FM station on the same frequency in the same service area were approved, the low-power station affected would have to change to another frequency or cease operation. The only protection they now enjoy is from interference created by any low-power AM or FM frequencies that may be approved for use in their areas in the future. The DOC advises that these provisions will continue to hold for exempted as well as for non-exempted undertakings.

"The criteria that the Commission has adopted for exempting Temporary Resource Development Distribution Undertakings, Special Event Facilitating Undertakings and Ultra Low-Power Announcement Service (LPAS) Undertakings, are substantially the same as those proposed in Public Notice CRTC 1992-5. The Commission emphasizes that this exemption order does not apply to Low-Power Television (LPTV) Undertakings."]

[§158-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Exemption Order Respecting Low-Power Radio: Ultra Low-Power Announcement Service (LPAS) Undertakings

[Public Notice CRTC 1993-46, April 30, 1993, as corrected by Public Notice CRTC 1993-46-1, January 14, 1994]

[§158-2]

The Commission, pursuant to subsection 9(4) of the *Broadcasting Act*, by this order, exempts from the requirements of Part II of the Act and any regulations, those persons carrying on broadcasting undertakings of the class defined by the following criteria:

[§158-3]

Purpose

The purpose of these radio programming undertakings is to allow those such as real estate agents, store owners and local authorities to communicate to the public messages of an informative, sometimes commercial nature, regarding their activities by means of ultra low-power transmitters, e.g. "talking signs".

[§158-4]

Description

1. The undertaking operates between 525 and 1705 kHz in the AM frequency band, or between 88 and 107.5 MHz in the FM frequency band.
2. In the case of an undertaking using the AM broadcasting band, the maximum power output of the transmitter into its antenna, without modulation, does not produce a field strength, as measured at a distance of 30 metres, of more than 0.25 millivolts per meter (mV/m) and, in the case of an undertaking using the FM broadcasting band, the maximum power output of the transmitter into its antenna, without modulation, does not produce a field strength, as measured at a distance of 30 metres, of more than 0.1 mV/m.
3. The Commission would not be prohibited from licensing the undertaking by virtue of any direction to the Commission by the Governor in Council.
4. The undertaking meets all technical requirements of the Department of Communications and has acquired all authorizations or certificates prescribed by the Department.
5. The undertaking originates all of its programming.
6. The undertaking does not rebroadcast programming of any other undertaking.

7. The undertaking does not broadcast programming that is religious or political in nature.
8. The undertaking, if it promotes commercial activity, e.g., "talking signs", or is commercially oriented, does not broadcast the same message on more than one transmitter.

[§158-5]

[NOTE: In *Exemptions from Licensing Requirements*, Public Notice CRTC 1993-43, April 30, 1993, the CRTC made the following comment concerning the purpose of the low power radio exemptions:

"The Commission notes that there is no allotment plan for low-power AM or FM stations. Frequencies approved by the DOC for low-power undertakings are unprotected. Consequently, if an application for a licence to operate a conventional AM or FM station on the same frequency in the same service area were approved, the low-power station affected would have to change to another frequency or cease operation. The only protection they now enjoy is from interference created by any low-power AM or FM frequencies that may be approved for use in their areas in the future. The DOC advises that these provisions will continue to hold for exempted as well as for non-exempted undertakings.

"The criteria that the Commission has adopted for exempting Temporary Resource Development Distribution Undertakings, Special Event Facilitating Undertakings and Ultra Low-Power Announcement Service (LPAS) Undertakings, are substantially the same as those proposed in Public Notice CRTC 1992-5. The Commission emphasizes that this exemption order does not apply to Low-Power Television (LPTV) Undertakings."]

[§159-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Exemption Order Respecting Carrier Current Undertakings Whose Services are not Carried on Cable Systems

[Public Notice CRTC 1993-47, April 30, 1993, as corrected by Public Notice CRTC 1994-47-1, January 14, 1994]

[§159-2]

The Commission, pursuant to subsection 9(4) of the *Broadcasting Act*, by this order, exempts from the requirements of Part II of the Act and any regulations, those persons carrying on broadcasting undertakings of the class defined by the following criteria:

[§159-3]

Purpose

The purpose of these carrier current undertakings is to provide a locally originated programming service for the benefit of residents of such institutions as colleges and universities.

[§159-4]

Description

1. The undertaking operates between 525 and 1705 kHz in the AM frequency band, using a transmitter that radiates a signal solely through the electrical system of a building or adjacent buildings.
2. The undertaking operates so that the maximum power output of the transmitter into the electrical system of the building(s) does not produce a field strength exceeding 15 microvolts-per-metre (μV/m) at a distance from the property served given by the equation:

$$d = \frac{48{,}000}{f}$$

where d is the distance in metres, and f is the frequency in kHz.

3. The Commission would not be prohibited from licensing the undertaking by virtue of any direction to the Commission by the Governor in Council.
4. The undertaking meets all technical requirements of the Department of Communications and has acquired all authorizations or certificates prescribed by the Department.
5. The programming of the undertaking is not distributed by any cable distribution undertaking.

[§159-5]

[NOTE: In *Exemptions from Licensing Requirements*, Public Notice CRTC 1993-43, April 30, 1993, the CRTC made the following comment concerning the purpose of this exemption:

"Carrier current stations generally are in-house university and college campus operations that make use of low-power AM transmitters that radiate a signal through the electrical system of one or more buildings. The signal can only be received by AM receivers in or near these buildings.

"The Commission's licensing policy with respect to student carrier current operations was intended to allow a campus radio club to formalize operations, as an introductory step toward full-fledged campus FM operations, and to facilitate their carriage by cable.

The Commission considers that the student carrier current policy has been effective in ensuring the emergence of campus radio as a valuable contributor to the overall programming fare in many Canadian communities. With this maturation of campus broadcasting, the need for licensing carrier current operations has significantly diminished, particularly for those carrier current operations whose programming is not extended beyond the campus. For these reasons, the Commission determined in Public Notice CRTC 1992-38 to exempt from licence requirements those persons operating carrier current systems that are not carried on a cable system.

Current Commission policy and regulations require student carrier current operators to program a Canadian content level of at least 30% and to maintain program logs and logger tapes. While compliance with these requirements will not longer be obligatory for the operators of these exempted undertakings, the Commission is confident that they will continue to program a high proportion of Canadian music."]

[§160-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Exemption Order Respecting Radio and Television Temporary Network Special Event Type 1 Undertakings

[Public Notice CRTC 1993-48, April 30, 1993, as corrected by Public Notice CRTC 1993-48-1, January 14, 1994]

[§160-2]

The Commission, pursuant to subsection 9(4) of the *Broadcasting Act*, by this order, exempts from the requirements of Part 1 of the Act and any regulations, those persons carrying on broadcasting undertakings of the class defined by the following criteria:

[§160-3]

Purpose

The purpose of these radio and/or television network undertakings is to supply radio and/or television stations licensed or exempted by the Commission with coverage of unexpected, non-recurring events, such as special concerts and commemorative programs, or of public emergencies such as natural disasters and major accidents.

[§160-4]

Description

1. The Commission would not be prohibited from licensing the undertaking by virtue of any direction to the Commission by the Governor in Council.
2. The undertaking meets all technical requirements of the Department of Communications and has acquired all authorizations or certificates prescribed by the Department.
3. The undertaking is a network operation and, in Canada, distributes programming to licensed or exempted radio or television undertakings only.
4. The undertaking
   a) distributes its programming for a period of less than 24 consecutive hours, where the broadcast is of a one-time, non-recurring event, or
   b) distributes its programming over a period of not more than seven consecutive days, where the broadcast is of a public emergency.
5. The programming is distributed live or on a tape-delayed basis and, if taped, is distributed within 24 hours of the time of the original recording.
6. The undertaking does not broadcast programming that is religious or political in nature.

[§160-5]

[NOTE: In *Exemptions from Licensing Requirements*, Public Notice CRTC 1993-43, April 30, 1993, the CRTC made the following comment concerning the purpose of this exemption:

"With respect to temporary networks, the Commission will maintain the two classes proposed in Public Notice CRTC 1992-5. It notes that the first class is applicable to radio or television or both, while the second is applicable only to cable.

"Radio and Television Temporary Network Special Event Type 1 Undertakings are those undertakings providing live or same-day coverage of unexpected, non-recurring, one-time events of relatively short duration (a maximum of one consecutive 24-hour period). Regularly-scheduled programs and concerts, or recurring events such as sports play-off series, do not qualify for this exemption. Also in the first class are undertakings providing live or same-day coverage of *public emergencies* over a period not exceeding seven consecutive days. The program coverage must be distributed live or on a tape-delayed basis and, if taped, must be distributed within a 24-hour period of the original recording."]

[§161-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Exemption Order Respecting Cable Temporary Network Special Event Type 2 Undertakings

[Public Notice CRTC 1993-49, April 30, 1993, as corrected by Public Notice CRTC 1993-49-1, January 14, 1994]

[§161-2]

The Commission, pursuant to subsection 9(4) of the *Broadcasting Act*, by this order, exempts from the requirements of Part II of the Act and any regulations, those persons carrying on broadcasting undertakings of the class defined by the following criteria:

[§161-3]

Purpose

The purpose of these cable network undertakings is to supply cable systems with coverage of not-for-profit or charitable events such as the Special Olympics or telethons raising money for certain charities.

[§161-4]

Description

1. The Commission would not be prohibited from licensing the undertaking by virtue of any direction to the Commission by the Governor in Council.
2. The undertaking meets all technical requirements of the Department of Communications and has acquired all authorizations or certificates prescribed by the Department.

3. The undertaking is a network operation and, in Canada, distributes it's programming to cable distribution undertakings only.
4. The undertaking provides coverage of a Canadian event that is not-for-profit in nature.
5. The programming distributed by the undertaking does not contain any conventional commercial activity. Sponsorship and contra messages are allowed provided that such messages meet the restrictions applicable to the community channel as are found in Public Notice CRTC 1991-59 or the *Cable Television Regulations, 1986* as amended from time to time by the Commission.
6. The undertaking does not operate outside of a single period consisting of a maximum of 28 consecutive days per year.
7. The undertaking distributes programming to cable undertakings that carry it only on their community programming channel or a special programming channel.
8. The programming is distributed live or on a tape-delayed basis and, if taped, is distributed within 24 hours of the time of the original recording.
9. The undertaking does not broadcast programming that is religious or political in nature.

[§161-5]

[NOTE: In *Exemptions from Licensing Requirements*, Public Notice CRTC 1993-43, April 30, 1993, the CRTC made the following comment concerning the purpose of this exemption:

"Cable Temporary Network Special Event Type 2 Undertakings offer live or same-day coverage of special not-for-profit events of limited duration, such as the Montreal Jazz Festival or The Alberta Summer Games. The program coverage must be distributed live or on a tape-delayed basis and, if taped, must be distributed within a 24-hour period of the original recording. The Commission intends soon to propose for public comment an appropriate amendment to the *Cable Television Regulations, 1986* with a view to authorizing cable television licensees to distribute the programming service of an exempt Cable Temporary Network Special Event Type 2 Undertaking. [NOTE: This was proposed in Public Notice CRTC 1993-137, October 7, 1993, and later adopted in SOR/94- . For the proposed wording see §133-79a above.]

"Coverage of these events -- up to a maximum of 28 consecutive days -- is restricted to distribution by cable licensees, and must be presented on either special programming or community channels. While such events may have commercial sponsorship, the network coverage must not include any conventional commercial activity. Sponsorship and contra messages must meet the restrictions applicable to the community channel, as contained in Public Notice CRTC 1991-59 [NOTE: See §269] or regulations as amended from time to time by the Commission. No separate charge may be made to subscribers for the delivery of the network programming.

"The programming carried on this second class of temporary network must have a Canadian source or cover a Canadian event. Accordingly, networks providing coverage of such annual fundraising events as those carried out by the Jerry Lewis and the Children's Miracle networks will still require a licence.

[§162-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Exemption Order Respecting Closed Circuit Video Programming Undertakings

[Public Notice CRTC 1993-50, April 30, 1993, as corrected by Public Notice CRTC 1993-50-1, January 14, 1994]

[§162-2]

The Commission, pursuant to subsection 9(4) of the *Broadcasting Act*, by this order, exempts from the requirements of Part II of the Act and any regulations, those persons carrying on broadcasting undertakings of the class defined by the following criteria:

[§162-3]

Purpose

The purpose of these television programming undertakings is to provide a programming service, whether for a separate fee or not, to temporary residents of hotels, motels and hospitals or to the inmates of prisons only, and not to residents of permanent dwelling places. The programming consists only of feature motion pictures intended for theatrical release, or information about the city or about the premises served by the undertaking, and does not contain any commercial messages.

[§162-4]

Description

1. The Commission would not be prohibited from licensing the undertaking by virtue of any direction to the Commission by the Governor in Council.
2. The undertaking meets all technical requirements of the Department of Communications and has acquired all authorizations or certificates prescribed by the Department.
3. The undertaking does not broadcast programming that is religious or political in nature, excepting feature motion picture films intended for theatrical release.
   a) background music;
   b) the programming service of any licensed or exempted AM station or FM station other than an educational radio or programming service, the operation of which is the responsibility of an educational authority;
   c) the service of Weather Radio Canada;
   d) the programming service of a licensed or exempted national audio programming undertaking; or
   e) spoken words that relate to what is represented by the still image.

[§162-6]

[NOTE: In *Exemptions from Licensing Requirements*, Public Notice CRTC 1993-43, April 30, 1993, the CRTC made the following comment concerning the purpose of this exemption:

"With respect to Closed Circuit Video Programming Undertakings, the Commission has decided to adopt a somewhat simpler approach than that proposed in Public Notice CRTC 1992-5. Taking into account the fact that such undertakings, primarily Closed Circuit Hotel Pay-per-View (PPV) systems, have been in operation for several years without regulation and with negligible impact on licensed broadcasters, the Commission has decided not to adopt any detailed criteria as to the nature and source of the programming provided.

"The Commission has determined not to prohibit the broadcast by Closed Circuit Video Programming Undertakings of feature films intended for theatrical release that may contain religious or political subject matter.

"As proposed in Public Notice CRTC 1992-5, the exemption of Closed Circuit Video Programming Undertakings necessitates certain changes to the MATV exemption criteria (Public Notice CRTC 1989-47 dated 18 May 1989). In order to permit certain non-residential MATV systems to distribute the services of Closed Circuit Video Programming Undertakings, namely those distributing close-circuit PPV programming, the seven existing criteria that, together, define MATV undertakings qualifying for exemption must be expanded through inclusion of the following:

"8. Notwithstanding paragraphs 5 and 7 above, an undertaking serving the temporary residents of hotels, motels and hospitals or the inmates of prisons may distribute the programming authorized for distribution by Closed Circuit Video Programming Undertakings, as set out in Public Notice CRTC 1993-50 dated 30 April 1993...

"The new exemption order differs from the [proposed version] in certain other respects. The changes, however, are either minor in nature or have been made to include reference to the appropriate subsections of the Act.

"No Closed Circuit Video Programming Undertaking exempted under the accompanying orders may be carried on cable, unless authorized by the Commission."

[§163-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Exemption Order Respecting Still Image Programming Service Undertakings

[Public Notice CRTC 1993-51, April 30, 1993, as corrected by Public Notice CRTC 1993-51-1, January 14, 1994]

[§163-2]

The Commission, pursuant to subsection 9(4) of the *Broadcasting Act*, by this order, exempts from the requirements of Part II of the Act and any regulations, those persons carrying on broadcasting undertakings of the class defined by the following criteria:

[§163-3]

Purpose

The purpose of these television undertakings is to provide distribution undertakings with programming consisting of still images, (including graphic images) with or without

an audio component, and with or without a fee being charged to any distribution undertaking receiving the service.

[§163-4]

Description

1. The Commission would not be prohibited from licensing the undertaking by virtue of any direction to the Commission by the Governor in Council.
2. The undertaking meets all technical requirements of the Department of Communications and has acquired all authorizations or certificates prescribed by the Department.
3. The undertaking does not broadcast programming that is religious or political in nature.
4. The undertaking's programming is provided exclusively to distribute undertakings, and consists entirely of still images with or without alphanumeric text, and with or without an audio component consisting of:
   a) background music;
   b) the programming service of any licensed or exempted AM station or FM station other than an educational radio or programming service, the operation of which is the responsibility of an educational authority;
   c) the service of Weather Radio Canada;
   d) the programming service of a licensed or exempted national audio programming undertaking; or
   e) spoken words that relate to what is represented by the still image.

[§163-6]

[NOTE: In *Exemptions from Licensing Requirements*, Public Notice CRTC 1993-43, April 30, 1993, the CRTC made the following comment concerning this exemption:

"The Commission has decided to make one substantive change to the criteria proposed in Public Notice CRTC 1992-5. After considering the comments of a number of parties concerning the restrictive nature of the proposed spoken word content of an exempt service, the Commission has decided to amend this criterion so as to allow spoken words that relate to what is represented by the visual component of the programming.

"The Commission also wishes to confirm that graphic designs may be included within the still image format of an exempt undertaking. The Commission notes that it will soon be proposing for public comment an appropriate amendment to the *Cable Television Regulations, 1986*, with a view to authorizing cable licensees to distribute the programming service provided by an exempt Still Image Programming Service Undertaking." [NOTE: This was proposed in Public Notice CRTC 1993-137, October 7, 1993, and implemented in SOR/94-. For the proposed wording see §133-7a above.]

[§164-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Exemption Order Respecting Community Programming Network Undertakings

[Public Notice CRTC 1993-52, April 30, 1993, as corrected by Public Notice CRTC 1993-52-1, January 14, 1994]

[§164-2]

The Commission, pursuant to subsection 9(4) of the *Broadcasting Act*, by this order, exempts from the requirements of Part II of the Act and any regulations, those persons carrying on broadcasting undertakings of the class defined by the following criteria:

[§164-3]

Purpose

The purpose of these cable network undertakings is to distribute portions of one licensee's community programming to the licensees of other distribution undertakings serving a common urban area.

[§164-4]

Description

1. The Commission would not be prohibited from licensing the undertaking by virtue of any direction to the Commission by the Governor in Council.
2. The undertaking meets all technical requirements of the Department of Communications and has acquired all authorizations or certificates prescribed by the Department.
3. The undertaking only distributes community programming, as defined in the *Cable Television Regulations, 1986* as amended from time to time by the Commission, to the licensees of cable distribution undertakings serving a common urban area and all of the programming distributed by the undertaking is produced by the operator of the undertaking of by members of the community served by the undertaking.
4. The operator of the undertaking is licensed by the Commission to carry on a cable distribution undertaking in the common urban area in which it distributes its programming.

[§164-5]

[NOTE: In *Exemptions from Licensing Requirements*, Public Notice CRTC 1993-43, April 30, 1993, the CRTC made the following comment concerning this exemption:

"In response to comments received, the Commission has deleted the requirement that only adjacent cable systems may carry programming received from an exempt undertaking. It has substituted therefor

a requirement that the cable systems participating in such a network serve a common urban area. In addition, the Commission has removed restrictions on the technical means of interconnection so as to make it technology-neutral."]

[§165-1]

[CANADIAN RADIO-TELEVISION AND
TELECOMMUNICATIONS COMMISSION]

Exemption Order Respecting Terrestrial Relay Distribution Network Undertakings

[Public Notice CRTC 1993-53, April 30, 1993, as corrected by Public Notice CRTC 1993-53-1, January 14, 1994]

[§165-2]

The Commission, pursuant to subsection 9(4) of the *Broadcasting Act*, by this order, exempts from the requirements of Part II of the Act and any regulations, those persons carrying on broadcasting undertakings of the class defined by the following criteria:

[§165-3]

Purpose

The purpose of these terrestrial relay distribution network undertakings is to receive the programming services of radio or television stations, foreign or domestic, and distribute those programming services, unaltered, to affiliated distribution undertakings, with or without a fee, on a local or regional basis.

[§165-4]

Description

1. The Commission would not be prohibited from licensing the undertaking by virtue of any direction to the Commission by the Governor in Council.
2. The undertaking meets all technical requirements of the Department of Communications and has acquired all authorizations or certificates prescribed by the Department.
3. The undertaking makes use of any technology other than satellite to distribute programming to distribution undertakings licensed or exempted from licensing by the Commission.
4. The undertaking does not originate any programming, nor does it alter or curtail any programming that it receives and distributes.
5. The undertaking is local or regional in nature and not national.

[§165-5]

[NOTE: In *Exemptions from Licensing Requirements*, Public Notice CRTC 1993-43, April 30, 1993, the CRTC made the following comment concerning this exemption:

"With respect to Terrestrial Relay Distribution Network Undertakings, the Commission has adopted criteria substantially the same as those proposed in Public Notice CRTC 1992-5. The Commission has considered the proposal put forward in one of the comments received that the exemption criteria should not prohibit the use of satellites for the distribution of programming. In the Commission's view, this proposal goes beyond the scope of the exemption contemplated in Public Notice CRTC 1992-5, and raises a number of policy issues that need to be addressed before such a proposal may be considered."

[§166-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Proposed Exemption Order Respecting Canadian Direct-to-Home Satellite Distribution Undertakings

[§166-2]

[Attachment to Public Notice CRTC 1994-19, 2 March 1994, which issued the following proposed exemption order for public comment. For excerpts from the public notice explaining the purpose and context of the proposed order, see below at §166-6.]

[§166-3]

The Commission, pursuant to subsection 9(4) of the *Broadcasting Act* (the Act), by this order, exempts from the requirements of Part II of the Act and any regulations, those persons carrying on broadcasting undertakings of the class defined by the set out below.

[§166-4]

I Purpose

The purpose of these Canadian Direct-To-Home (DTH) distribution undertakings is to receive the programming service of radio, television, specialty and pay television (including pay-per-view) undertakings that are licensed or authorized by the Commission, and to distribute those programming services locally, regionally or nationally to viewers on a DTH basis, with or without a fee, using Canadian satellite facilities.

[§166-5]

II Description

1. The Commission would not be prohibited from licensing the undertaking by virtue of any Act of Parliament, of the *Direction to the CRTC (Eligible Canadian Corporations)* or of any direction to the Commission by the Governor in Council.
2. The undertaking meets all technical requirements of the Department of Communications and has acquired all authorizations or certificates prescribed by the Department.
3. The undertaking makes use of Canadian satellite facilities to distribute programming services to viewers on a DTH basis.
4. Subject to criterion 5, the undertaking may distribute programming services indirectly to viewers through cable distribution undertakings, radiocommunication distribution undertakings, or satellite master antenna television (SMATV) undertakings.
5. The undertaking does not distribute the service of a programming undertaking licensed by the Commission:

a) to any Canadian cable or radiocommunication distribution undertaking that is, itself, not permitted by regulation or otherwise authorized by the Commission to distribute that programming service, or;

b) to any SMATV undertaking located outside of the authorized service area* established by the Commission for that programming undertaking, unless the SMATV undertaking is located inside the authorized service area of a cable or radiocommunication distribution undertaking that is permitted by regulation, or otherwise authorized by the Commission, to distribute that programming service.

c) to any DTH subscribers situated outside of the programming undertaking's authorized service area unless that service is specified in the Lists of Part II and Part III Eligible Satellite Services, as amended from time to time, and which are incorporated by reference into the *Cable Television Regulations, 1986*.

6. The undertaking does not originate any programming.
7. The undertaking distributes no non-Canadian programming services other than those specified in the Lists of Part II and Part III Eligible Satellite Services, as amended from time to time, and which are incorporated by reference into the *Cable Television Regulations, 1986*.
8. The undertaking devotes a greater number of both video and audio channels to the distribution of programming services licensed by the Commission than to the distribution of non-Canadian programming services.

* "Authorized service area" means, in respect of a pay television (including pay-per-view) or specialty programming undertaking, the service area specified by the Commission for the service in the terms or conditions of its licence. In respect of a television programming undertaking, "authorized service area" means the undertaking's official Grade B contour.

[§166-6]

NOTE: In Public Notice CRTC 1994-19, March 2, 1994, the Commission made the following comments explaining the context for the foregoing proposed exemption order:

Background

In Public Notice CRTC 1987-254, dated 26 November 1987, the Commission established a licensing policy for Canadian undertakings distributing broadcasting services using direct-to-home (DTH) transmissions. DTH transmissions are defined as those that are distributed via Canadian satellite, whether or not in encrypted form, and are intended for direct reception by individuals, generally at their residences.

Under this policy, Canadian undertakings that deliver existing programming services on a DTH basis, or that produce, assemble or originate programming for the DTH market, would require a broadcasting licence. In general, however, the licensee of an existing programming undertaking, including a radio, television, pay television, specialty or a pay-per-view undertaking, may deliver its service to the DTH market without any additional licensing action, provided the service is marketed only within its licensed service area. Under the policy, the Commission does not regulate subscribers rates for DTH services.

To date, no undertaking has been licensed for the provision of DTH services only. Programming services that are currently available to the DTH market are either provided by undertakings that distribute programming to cable system headends and already hold a licence from the Commission, or are offered through marketing "agents".

In Public Notice CRTC 1993-74, dated 3 June 1993 and issued following the March 1993 "Structural hearing", the Commission made the following comments respecting the provision of DTH broadcasting services:

As the use of satellite technology increases, particularly through the application of digital technology, the Commission considers that DTH delivery of programming services will play a greater role in the Canadian broadcasting system....

The Commission is encouraged that both programmers and distributors have demonstrated a renewed interest in providing Canadian services to the Canadian DTH marketplace. The Commission supports this renewed interest, and emphasizes hat it considers to be am important vehicle for providing programming services to Canadians. The Commission considers that the emergence of a strong Canadian DTH industry may provide a degree of price competition to service delivered within Canada by other distribution technologies, and will form an effective part of the overall response by the Canadian broadcasting system to non-Canadian DBS services.

[§166-7]

Proposed Exemption Order

Subsection 9(4) of the *Broadcasting Act* (the Act) states that:

> The Commission shall, by order, on such terms and conditions as it deems appropriate, exempt persons who on broadcasting undertakings of any class specified in the order from any or all of the requirements of this Part or of regulations made under this Part where the Commission is satisfied that compliance with those requirements will not contribute in a material manner to the implementation of the [broadcasting policy of Canada].

The Commission has recently received separate proposals from Telesat Canada (Telesat) and TEE-COMM Electronics Inc. (TEE-COMM) suggesting that the Commission exempt from licensing requirements persons who carry on Canadian undertakings distributing DTH services. The Commission also received requests from a number of interested parties that the Commission undertake a public process to consider the exemption proposals.

As stated in its 3 June 1993 notice, the Commission considers that the distribution by Canadians of DTH services can become an important element of the Canadian broadcasting system. The Commission considers, however, that to require the operators of certain Canadian DTH distribution undertakings (those described in the proposed exemption order) to comply with part II of the Act or with all regulations will not contribute in a material manner to the implementation of the broadcasting policy for Canada. Instead, the Commission considers that establishing exemption criteria may provide an appropriate degree of regulation for Canadian DTH distribution undertakings, while ensuring that such DTH services contribute to achieving the objectives of the Act. To the extent that an exemption approach may facilitate the development of new Canadian DTH undertakings by removing licensing requirements, such undertakings may also contribute to the introduction of a "head-end in the sky" (HITS) to serve small cable systems and satellite master antennae television systems (SMATV), thus offering an attractive Canadian alternative to emerging non-Canadian direct broadcast satellite (DBS) services.

Accordingly, the Commission is seeking public comment on the proposed exemption order for Canadian DTH services contained in the attachment to this notice. Canadian DTH distribution undertakings that do not meet these criteria would require a licence from the Commission to operate in Canada. Licensees of existing Canadian programming undertakings would be able to deliver their services to the DTH market without any additional regulatory approval, provided the service is operated in accordance with the proposed criteria set out in the attachment to this notice. Consistent with current policy, exempt DTH undertakings would not be subject to rate regulation by the Commission.

[§166-8]

In addition to public comment on the criteria contained in the proposed exemption order, the Commission seeks the views of interested parties on certain other policy issues related to the packaging of programming services and the ownership of exempt DTH undertakings. In particular:

- Should an exempt DTH undertaking be required to adhere to the distribution and linkage requirements established for cable television distribution undertakings in Public Notice CRTC 1993-75, as amended from time to time? The Commission notes that such a requirement was proposed by Telesat.
- Should there be any restrictions on the ownership of an exempt DTH distribution undertaking? For example, the Commission notes that TEE-Comm proposed that a Canadian carrier, within the meaning

of the Telecommunications Act, or the licensee of a Class 1 cable television system in Canada, or an affiliate of either, should be prohibited from owning exempt DTH distribution undertakings.

Interested parties should also note that the proposed exemption order, as drafted, would permit DTH distribution undertaking operators who are exempted from licensing requirements to distribute certain signals to viewers, indirectly, through cable distribution undertakings, radiocommunication undertakings or SMATV undertakings. Such distribution has been referred to as a headend in the sky.

[Procedural comments are omitted.]

[§167-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Proposed Exemption Order Respecting Experimental Video-on-Demand Programming Undertakings

[§167-2]

[Attachment to Public Notice CRTC 1994-33, March 23, 1994, which issued the following proposed exemption order for public comment. For excerpts from the public notice explaining the purpose and context of the proposed order, see below at §167-6.]

[§167-3]

The Commission, pursuant to subsection 9(4) of the *Broadcasting Act* (the Act), by this order, exempts from the requirements of Part II of the Act and any regulation made thereunder, those persons carrying on broadcasting undertakings of the class defined by the following criteria:

[§167-4]

I. Purpose

The purpose of these programming undertakings is to conduct a limited field trial or experiment of video-on-demand (VOD) technology using the public telecommunications network of a Canadian carrier, or the distribution facilities of a cable distribution undertaking licensed by the Commission, to determine the feasibility of delivering video-on-demand programming over that network or those facilities.

[§167-5]

II. Description

1. The Commission would not be prohibited from licensing the undertaking by virtue of any Act of Parliament, of the *Direction to the Commission (Eligible Canadian Corporations)* or of any other direction to the Commission by the Governor in Council.
2. The undertaking meets all technical requirements of the Department of Communications and has acquired all authorizations or certificates prescribed by the Department.

3. The undertaking uses the facilities of a Canadian carrier within the meaning of the *Telecommunications Act* or a cable distribution undertaking licensed by the Commission.
4. The programming service of the undertaking is not generally available on the facilities of the Canadian carrier or on those of the cable distribution undertaking licensed by the Commission. The selected portion of those facilities on which it is available is limited,
   a) in the case of a carrier, to not more that either 400 terminals 95 per cent of which are located in the same local calling area, or 5 per cent of the terminals in a single calling area, whichever is the lesser or,
   b) in the case of a cable distribution undertaking licensed by the Commission, to not more that either 400 subscribers or 5 per cent of its subscribers, whichever is the lesser.
5. The experiment is less than two years in duration.
6. Unless the experiment involves the distribution of course materials by schools, colleges or universities, or unless the equipment used is substantially different from that used in any other similar experiment previously carried on by the undertaking, the experiment is conducted only once, using any part of the facilities of a Canadian carrier of cable distribution undertaking licensed by the Commission.
7. The undertaking obtains from a programming undertaking licensed by the Commission the right to distribute any feature motion picture film originally intended for theatrical release or any programming originally intended for broadcast by conventional television stations.
8. The undertaking is conducted on a not-for-profit basis.
9. The undertaking distributes no advertising material as defined in the *Television Broadcasting Regulations, 1987* as amended from time to time.

[§167-6]

NOTE: In Public Notice CRTC 1994-33, March 23, 1994, the Commission made the following comments explaining the context for the foregoing proposed exemption order:

Introduction

In Public Notice CRTC 1993-74 dated 3 June 1993 and issued following the March 1993 "Structural" hearing, the Commission made the following comment respecting the evolving communications environment:

> The Commission is committed to ensuring that Canadians continue to have maximum access to Canadian programming services, and that they are served by the most efficient distribution technology. In this regard, the traditional delivery technologies of over-the-air broadcasting services and cable will face increasing competitive challenges from new and emerging distribution systems, including MDS (multipoint distribution systems), satellite services, telephone carriers and other communication services.

The Commission is aware of interest by several parties in experimenting with various technological developments that would permit potential subscribers to access programming by means of a switched distribution architecture over broadband and narrowband local networks.

The Commission considers that any undertaking involved in video-on-demand (VOD) experiments or trials where switched networks are employed to deliver programming to the public may well fall within the definition of a broadcasting undertaking set out in the *Broadcasting Act* (the Act), and hence, would fall within the Commission's jurisdiction.

[§167-7]

Proposed Exemption Order

Subsection 9(4) of the Act states that:

> The Commission shall, by order, on such terms as it deems appropriate, exempt persons who carry on broadcasting undertakings of any class specified in the order from any or all requirements of this Part or of a regulation made under this Part where the Commission is satisfied that compliance with those requirements will not contribute in a material manner to the implementation of the [broadcasting policy for Canada].

The Commission considers that to require the operators of certain experimental VOD programming undertakings to comply with Part II of the Act or with all regulations made thereunder will not contribute in a material manner to the implementation of the broadcasting policy for Canada. Instead, the Commission considers that establishing exemption criteria can provide an appropriate degree of regulation for such experimental programming undertakings at this time. Moreover, the Commission considers that an exemption approach to experimental VOD trials may facilitate the development of new distribution technologies and new programming service concepts that would strengthen the Canadian broadcasting system. The Commission also recognizes its responsibility as set out in subsection 5(2) of the Act to ensure that the Canadian broadcasting system is regulated and supervised in a flexible manner that "is readily adaptable to scientific and technological change" and "does not inhibit the development of information technologies and their application or the delivery of resultant services to Canadians".

Accordingly, the Commission calls for public comment on the criteria set out in the proposed exemption order for Canadian experimental VOD programming undertakings contained in the attachment to this notice. Experimental VOD programming undertakings that do not meet these criteria would require a licence from the Commission to operate in Canada.

To ensure that exempt VOD programming undertakings do not negatively affect the acquisition of program rights by licensed programming undertakings, the proposed order requires the operators of exempt VOD programming undertakings to acquire commercial programming rights from licensees of the Commission. This requirement also reflects the Commission's position, stated in its 3 June 1993 notice, that broadcasting and telecommunications services should explore opportunities for co-operative ventures at this time to strengthen the Canadian broadcasting system.

[Procedural comments are omitted.]

[§168-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Proposed Exemption Order Respecting Video Game Programming Service Undertakings

[§168-2]

[Attachment to Public Notice CRTC 1994-34, March 23, 1994, which issued the following proposed exemption order for public comment. For excerpts from the public notice explaining the purpose and context of the proposed order, see below at §168-6.]

[§168-3]

The Commission, pursuant to subsection 9(4) of the *Broadcasting Act* (the Act), by this order, exempts from the requirements of Part II of the Act and any regulations made

thereunder, those persons carrying on broadcasting undertakings of the class defined by the following criteria:

[§168-4]

I. Purpose

The purpose of these programming undertakings is to provide the subscribers of cable distribution undertakings with programming consisting of software and related information distributed through the facilities of those distribution undertakings, to enable the subscribers to select and play video games using facilities located at their premises.

[§168-5]

II. Description

1. The undertaking meets all technical requirements of the Department of Communication and has acquired all authorizations or certificates prescribed by that Department.
2. The undertakings does not broadcast programming that is religious or political in nature.
3. The undertaking provides its programming to subscribers using the facilities of a distribution undertaking licensed by the Commission.
4. The undertaking provides a programming service consisting only of:
   a) software and related information which will enable a person to select and play video games using broadcasting receiving apparatus located at the subscriber's premises and
   b) ancillary programming consisting of promotional information concerning the programming service, video games and related services or products, provided such programming is broadcast in conjunction with programming set out in a) above.
5. The video games offered via the undertaking's programming service are categorized and information is provided to subscribers indicating, at a minimum, the suitability of individual games for use by children and adolescents.
6. The undertaking's programming complies with the Canadian Association of Broadcasters' *Sex-Role Portrayal Code for Television and Radio Programming*, *Voluntary Code Regarding Violence in Television Programming* and *Broadcast Code for Advertising to Children*, as amended from time to time and approved by the Commission.

NOTE: For the text of the Codes referred to in criterion 6, see below at §174, §176 and §181.]

[§168-6]

NOTE: In Public Notice CRTC 1994-34, March 23, 1994, the Commission made the following comments explaining the context for the foregoing proposed exemption order:

The Commission notes that interest has been expressed in providing video game services to cable television subscribers through the facilities of cable distribution undertakings licensed by the Commission. In particular, Sega of Canada, Inc. (Sega Canada) has requested that the Commission established a regulatory framework that would permit the provision of video game services by such means.

The Commission considers that any undertaking involved in such activities, in particular those described in the attachment to this notice, may fall within the definition of a broadcasting undertaking set out in the *Broadcasting Act* (the Act), and hence, would fall within the Commission's jurisdiction.

[§168-7]

Proposed Exemption Order

Subsection 9(4) of the Act states that:

> The Commission shall, by order, on such terms as it deems appropriate, exempt persons who carry on broadcasting undertakings of any class specified in the order from any or all requirements of this Part or a regulation made under this Part where the Commission is satisfied that compliance with those requirements will not contribute in a material manner to the implementation of the [broadcasting policy for Canada].

The Commission considers that to require the operators of certain video game programming service undertakings to comply with Part II of the Act or with all regulations made thereunder will not contribute in a material manner to the implementation of the broadcasting policy for Canada. Instead, the Commission considers that establishing exemption criteria can provide an appropriate degree of regulation for such programming undertakings at this time. The Commission also recognizes its responsibility, as set out in subsection 5(2) of the Act, to ensure that the Canadian broadcasting system is regulated and supervised in a flexible manner that:

> (c) is readily adaptable to scientific and technological change;
>
> (f) does not inhibit the development of information technologies and their application or the delivery of resultant services to Canadians.

Accordingly, the Commission calls for public comment on the criteria set out in the proposed exemption order for Canadian video game programming service undertakings contained in the attachment to this notice. Video game programming service undertakings that do not meet these criteria would require a licence from the Commission to operate in Canada.

[Procedural comments are omitted.]

[§171-1]

[CANADIAN PAY TELEVISION LICENSEES]

Pay Television Programming Standards and Practices

[This document is based on a statement dated February 15, 1984, which was filed by the pay television licensees with the CRTC and included as an appendix in *Statement concerning the publication by pay television licensees of an industry code for pay television programming standards and practices*, Public Notice CRTC 1984-46, February 29, 1984, 9 C.R.T. (Part 2) 180. The document below includes minor revisions made in 1986 at the time of the reorganization of pay television.]

[§171-2]

A. Introduction

Pay television network licensees in Canada are committed to the presentation of programming services which are well balanced, of high quality, and of interest to a wide number of Canadians. The programming so presented is intended to appeal to a variety of interests and tastes.

A major appeal of the premium pay television services in Canada as well as in the United States is the ability to see feature films and other programming material in their original theatrical form, uninterrupted by commercials.

Pay television is distinguished from conventional television as it requires an affirmative decision by a subscriber to receive it "unscrambled" in the home. As a discretionary service, pay television has more latitude to program material that is intended for mature audiences than is the case with conventional television.

Therefore, pay television network licensees have a responsibility to ensure that the programming they provide is of high quality and meets general community standards within the context of a discretionary service.

[§171-3]

B. Selection of Programs

1. *Responsibility for Selection.* As provided in the *Broadcasting Act* and in the conditions of licence, selection of programs is the responsibility of the particular pay television licensee. The network licensee is by law responsible for what is distributed and will not delegate this responsibility.

2. *Relationship with Producers.* In the course of approving the production, particularly prior to commencement of filming or taping, or in approving any changes during production, pay television licensees can influence producers positively in their exercise of good judgment and taste. In order to raise issues of concern with independent producers, pay television network licensees will distribute a copy of this document to all independent producers who apply for script and concept development funding, for pre-licensing of product, and to all regular program suppliers, whether Canadian or foreign.

3. *Exercise of Discretion*. The discretion in the selection of programs will be exercised by the programming personnel of the pay television network licensee, as directed by this policy statement, and by the management of the licensee. All material will be fully screened prior to airing.

4. *Basis of Discretion*. The discretion of programming personnel will be exercised responsibly and in good taste. In particular, no material should be selected that is

(*a*) contrary to law, or

(*b*) offensive to general community standards.

"Community standards" will necessarily change over time and therefore will be subject to continuing review and evaluation. Pay television licensees will not select programming that would go beyond an "R-rating" or its equivalent, as established under Part C hereof.

5. *Previews*. Notwithstanding the above, where the program is aired in preview periods (i.e. when the programming is unscrambled and may be received whether or not the subscriber ordered it), pay television licensees will select programming that meets the same standards of scheduling and content that apply to conventional broadcasters.

[§171-4]

C. Classification and Cautionary Warnings

1. *Program Guide*. In order that viewers will be able to exercise an informed choice on what they wish to watch on pay television, pay television licensees will provide a monthly program guide to their subscribers. They will also send out program information to all media for inclusion in their television listings. In addition to the single-letter classifications described below, pay television licensees will provide in their program guide where possible and appropriate, short descriptive warnings as to the nature of the material, e.g., "Adult situations and language", "graphic violence", "some nudity".

2. *Single-Letter Classification*. In order to provide broad guidance as to the suitability of the programming, pay television network licensees regularly provide at least the following classifications in their guides for each of their programs:

First Choice and Superchannel

G Suitable for viewing by a general audience of all ages;

PG Parental Guidance suggested. Some material may not be suitable for children.

A Parents are strongly cautioned that some material may be unsuitable for children and young teenagers. Discretion is advised.

R Contains material that is recommended for adult viewing only.

Super Ecran

Tous For all

14 and over

18 and over

3. *On-Air Warning*. Where appropriate, pay television licensees will provide a cautionary warning on-the-air at the beginning of the program, indicating the information set out in Appendix "A".

4. *Decision on Classification*. The decision as to classification will be made by the particular pay television licensee involved, based on screening the particular version

intended to be aired. However, pay licensees will attempt to coordinate ratings of films so that the same warnings are used on all pay networks where material is duplicated. In making this decision, licensees should take into consideration any ratings or classifications that may have been given to the program by other appropriate industry or government bodies. In some cases, however, there may be no other ratings upon which a comparison can be made; in such cases, the pay television licensee will use its best judgment in assigning an equivalent rating. All programs will be rated. X-rated films will not be shown. Descriptions of the meaning of classifications will be included in the program guide each month.

[§171-5]

D. Program Concerns

1. *Sex-Role Stereotyping*. This question has been extensively explored in the Report of the Task Force on Sex-Role Stereotyping to the CRTC. While pay television networks depend on major studios as the primary source of their movie product, licensees have a responsibility to raise the issue with producers who seek script and concept development funding and prelicensing of product. Pay television networks will seek to fund programming that provides a balanced view of sex roles and will adhere to the CAB Sex-Role Stereotyping Guidelines in this respect.

2. *Gratuitous Violence*. The portrayal of violence which when taken in context is gratuitous will not be shown and pay television licensees will reflect this policy in their selection process described in there guidelines. (Programming personnel will exercise particular care and discretion in prescreening material and considering the context of any possibly objectionable material.)

[§171-6]

E. Scheduling of Programs

1. *Scheduling*. Pay television generally includes fewer programs per month than conventional broadcasting, but such programs are repeated more frequently to suit the convenience of the schedules of the subscribers. At the same time, pay television licensees are sensitive to the concerns expressed by some that mature material should not be scheduled in periods when school-age children are home. There may also be certain mature material that should only be programmed in late evening or early morning hours.

2. *Family Viewing*. Pay Television licensees will exercise particular care for all time periods in the scheduling of programs that are likely to be considered as not suitable in a family context.

3. *Adult Movies or Programming*. In addition, pay television licensees will exercise their discretion carefully in regard to programs of which sexually explicit and/or violent material is the dominant element, so that such programming will be scheduled in the late evening or early morning hours only.

[§171-7]

APPENDIX A

1. "Pay licensee" is proud to present this program which is suitable for viewing by all ages.
2. The following program contains scenes of violence and therefore viewer discretion is advised.
3. The following program contains scenes which use coarse language. Viewer discretion is advised.
4. The following program contains scenes of nudity. Viewer discretion is advised.
5. The following program deals with mature subject matter. Viewer discretion is advised.
6. The following program contains scenes of extreme violence. Viewer discretion is advised.
7. The following program contains scenes of violence and coarse language. Viewer discretion is advised.
8. The following program contains scenes of nudity and violence. Viewer discretion is advised.
9. The following program deals with mature subject matter and contains scenes of violence and nudity. Viewer discretion is advised.
10. The following program contains scenes of nudity and coarse language. Viewer discretion is advised.
11. The following program deals with mature subject matter and contains scenes of nudity and coarse language. Viewer discretion is advised.
12. The following program contains scenes of extreme violence and coarse language. Viewer discretion is advised.
13. The following program contains scenes of explicit sexuality and nudity and may be offensive to some viewers. Therefore, this film is recommended for mature audiences only.
14. The following program contains scenes of extreme violence, nudity and coarse language. Therefore, this film is recommended for mature audiences only.

[§172-1]

[CANADIAN ASSOCIATION OF BROADCASTERS/
CANADIAN ASSOCIATION OF ETHNIC (RADIO) BROADCASTERS]

Industry Code for Brokerage

[§172-2]

[This Code was prepared by the Canadian Association of Ethnic (Radio) Broadcasters (CAEB) in consultation with the Canadian Association of Broadcasters (CAB) and filed with the CRTC on December 17, 1985, further to the discussion noted in *A Broadcasting Policy Reflecting Canada's Linguistic and Cultural Diversity*, Public Notice CRTC 1985-139, July 4, 1985, set out below at §215. The code is also included in the CAB 1988 publication, *A Broadcaster's Guide to Canada's Cultural Mosaic: Programming Opportunities and Community Relations*. Adherence to the code has been made a condition of selected radio and television licences by the CRTC.]

[§172-3]

Background

Third-language broadcasting in Canada has come a long way since the late forties. With its continued development over the years, third-language broadcasting has finally etched for itself a permanent place in the Canadian Broadcasting System with the introduction by the Canada Radio-television and Telecommunications Commission of *A Broadcasting Policy Reflecting Canada's Linguistic and Cultural Diversity.* (CRTC 1985-139). [NOTE: See below, at §215.]

Ethnic broadcasting, as it is more familiarly known today, gained its foothold through the enterprising concept of brokerage. This broadcasting concept was developed to the delight and benefit of a diversity of peoples of immigrant cultures.

In some instances, brokerage brought with it a less than professional level in the production process and it occasionally seemed that some licensees fell short of fulfilling their responsibility under the *Broadcasting Act* during brokered time periods.

[§172-4]

The Ethnic Broadcasting Policy

In spite of this apparent situation, there has been an increasing demand for ethnic broadcasting. Indeed, the growth which ethnic broadcasting has been since the early '60s has been due to brokers and independent producers who entrepreneured their access to the airwaves in order to create such programming.

In response to the increased demand for more ethnic broadcasting services, the CRTC published "A Proposal for an Ethnic Broadcasting Policy for Canada," Public Notice CRTC 1984-237 (October 1, 1984) in which the Commission asked for comments on how best to ensure that licensees who provide brokered programs fulfill their responsibility under the *Broadcasting Act*.

As a result of comments received, the Commission concluded that while recognizing the potential brokerage has for reducing a licensee's control over program content, it

acknowledged the access to the airwaves which brokerage has provided for viable ethnic programming. The Commission, out of concern for the requirements of the *Broadcasting Act*, had requested the Canadian Association of Ethnic (Radio) Broadcasters (CAEB) and the Canadian Association of Broadcasters (CAB) to consult with all interested parties with a view to developing an Industry Code for Brokerage. The Code which was developed to fit the needs of both ethnic and conventional brokerage situations is contained in this report.

[§172-5]

INDUSTRY CODE FOR BROKERAGE

Definitions:

Broker: In the Code, the word 'broker' refers to an independent program producer or a producer who purchases blocks of time from a station for the purpose of broadcasting programming in which commercial content booked by the Producer will be placed.

Producer: For the purpose of this Code the word 'producer' includes an announcer or presenter of programs contracted by the station as a non-staff performer.

[§172-6]

Application:

This Code is applicable to all radio and television stations.

[§172-7]

Code Specifics:

1. The promise of adherence to this Code shall be mandatory on the part of any broker and a statement of adherence shall form part of an agreement between the broker and the station licensee.
2. The broker hereby recognizes the privilege to broadcast is subject to the rules and regulations of the Canadian Radio-television and Telecommunications Commission.
3. The broker agrees to provide programming in language, format, style, content and taste in accordance with programming requirements of the licensee, by virtue of the station's policy, Promise of Performance and Conditions of Licence as applicable.
4. The broker acknowledges the licensee's responsibility under the *Broadcasting Act* for all program content (including advertising) and agrees:
   (a) In regard to editorial responsibility, to
      (i) provide the licensee with relevant information in advance of broadcast (with a time limit imposed by agreement), on any interview, controversial subject matter, or guest; and
      (ii) give reasonable, equitable opportunity in a future program for editorial reply.
   (b) to provide original scripts or tapes and exact translations in respect to Ethnic Programs of Types A & D for any broadcast matter.
5. The broker shall endeavour to provide and utilize resources which will produce programs of high standard and quality.

6. The broker shall take measures to avoid abusive comment on any race, national or ethnic origin, colour, religion, sex, age or mental or physical disability in broadcasts.
7. The broker should maintain awareness of the existence of a Broadcast Code for Advertising to Children which is a CRTC Condition of Licence.
8. The broker should always reflect in broadcast programming an awareness of and sensitivity to the problems related to sex role stereotyping.

[§173-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Code for Broadcast Advertising of Alcoholic Beverages

[§173-2]

[This Code was issued as an appendix to Public Notice CRTC 1986-247, September 19, 1986. It is incorporated by reference into subsection 4(3) of the *Radio Regulations, 1986* and the *Specialty Services Regulations, 1990*, and subsection 6(3) of the *Television Broadcasting Regulations, 1987.*]

[§173-3]

This Code applies to radio and television commercial messages, as the case may be, for alcoholic beverages ("product").

For the purposes of this Code, "portray" means depict or refer to, visually or in sound".

Such messages shall not:

(a) attempt to influence non-drinkers to drink;
(b) portray an unrealistic or excessive number of cases or containers;
(c) show or use language that suggests, in any way, product misuse or product dependency;
(d) refer to the feeling and effect caused by alcohol consumption or show or convey the impression that the people involved are under the influence of alcohol;
(e) portray persons with any such product in situations in which the consumption of alcohol is prohibited;
(f) associate the consumption of any such product with the operation of any motorized vehicle, e.g. by suggesting or implying that any such product is or should be consumed prior to or during the operation of a motor vehicle;
(g) associate the consumption of any such product with any activity requiring a significant degree of skill, care or mental alertness or involving an obvious element of danger until such activity has been clearly completed, e.g. by suggesting or implying that any such product is or should be consumed prior to or during any such activity; - a flat label or symbol associated with a brand or

brand name reference, used for brand identification, will not in itself be considered to suggest consumption of that brand;

(h) be directed at persons under the legal drinking age, associate any such product with youth or youth symbols, or portray persons under the legal drinking age or persons who could reasonably be mistaken for such persons in a context where any such product is being shown or promoted;

(i) attempt to establish any such product as a status symbol, a necessity for the enjoyment of life, or an escape from life's problems;

(j) imply directly or indirectly that social acceptance, personal success, business of athletic achievement may be acquired, enhanced or reinforced through consumption of any such product;

(k) contain an endorsement of any such product, personally or by implication, either directly or indirectly, by any person, character or group who is or is likely to be a role model for minors because of achievement, reputation or exposure in the mass media;

(l) contain scenes in which any such product is consumed or give the impression, visually or in sound, that it is being or has been consumed;

(m) portray any such product, or its consumption, in an immoderate way; and

(n) exaggerate the importance or effect of any aspect of the product or its packaging.

[§174-1]

[CANADIAN ASSOCIATION OF BROADCASTERS]

Sex-Role Portrayal Code for Television and Radio Programming

[§174-2]

[This Code, issued by the Canadian Association of Broadcasters, and administered by the Canadian Broadcast Standards Council, was approved by the CRTC in *Industry Guidelines for Sex-Role Portrayal*, Public Notice CRTC 1990-99, October 26, 1990.]

[§174-3]

Introduction

This Code reflects the responsibility of licensees, under the *Broadcasting Act*, to assure that their programming and broadcast services achieve the highest professional standards and demonstrates the broadcasters' commitment to the fair and equitable portrayal of all persons in television and radio programming.

Negative or inequitable portrayal and representation of women or men can be expressed explicitly in programs and commercial messages, as well as implicity through images, dialogue and character portrayal. Canadian broadcasters recognize the cumulative effect of negative and inequitable sex-role portrayal, and seek to address this

issue effectively and responsibility with this Code, which replaces the previous CAB *Voluntary Guidelines on Sex-Role Stereotyping*.

This Code was developed in consultation with public representatives, including the Academy of Canadian Television and Radio Artists [ACTRA], the Canadian Advisory Council on the Status of Women [CACSW], the Canadian Coalition Against Media Pornography [CCAMP], Canadians concerned About Violent Entertainment [C-CAVE], Children's Broadcast Institution, la Federation des femmes du Québec, the National Action Committee on the Status of Women [NACSW], the National Watch on images of Women in the Media Inc. [MediaWatch], and Toronto Women in Film and Video. Further public consultation occurred with individuals recognized as knowledgeable in this field.

The purpose of this Code is to serve as an effective guide to program development, production, acquisition and scheduling, recognizing that there can be no clearly defined set of criteria universally applicable to all Canadian communities at all times.

While the development of this Code, and other initiatives undertaken by Canadian private broadcasters in the area of sex-role portrayal are certain to have a positive effect, it needs to be understood that these guidelines can have minimal effect on broadcast signals or programs available in Canada which originate in other countries.

This Code of conduct dealing with sex-role portrayal in television and radio programming is designed to complement the general principles of the CAB *Code of Ethics* and other CAB voluntary codes.

[§174-3]

Background

In 1979, the Canadian Radio-television and Telecommunications Commission [CRTC] formed a Task Force on Sex-Role Stereotyping to encourage the elimination of sex-role stereotyping in the broadcast media. Among the CAB's recommendations to that Task Force were amendments to the CAB *Code of Ethics* to include clauses reflecting sensitivity to sex-role stereotyping.

The 1982 CRTC Report of the Task Force, *Images of Women,* directed private broadcasters to organize industry initiatives to address the issue of stereotyping in the broadcast media. In response to that challenge, and its own commitment, the CAB created and publicized the CAB *Voluntary Guidelines on Sex-Role Stereotyping*.

In January 1986, the CRTC released its review of the steps undertaken by broadcasters to sensitize licensees to the issue and to reduce the incidence of unequal portrayal of the sexes in broadcast programming. Following three public hearings, in which the CAB participated, the CRTC issued its conclusions in December 1986.

This CRTC Policy acknowledged a considerable increase in awareness of and commitment to the issue. It also praised the CAB's Voluntary Guidelines as "excellent statements of principles". In response to various concerns of the public, as well as broadcasters and the CRTC, the Commission also set challenges for the CAB which included the revision of those Guidelines.

This CAB *Code for Television and Radio Programming* is the response of the Canadian Association of Broadcasters to those challenges. It is intended to be administered by the Canadian Broadcast Standards Council.

[§174-4]

Statement of Intent

It is the intent of this Code that broadcasters shall advance the awareness of, and sensitivity to, the problems related to the negative or inequitable sex-role portrayal of persons. This Code is intended to assist in overcoming systemic discrimination portrayed in broadcast programming, based on gender.

Television and radio programming and commercial messages shall strive to present an equitable representation of women and men in various social and occupational roles, at home and at work outside the home.

It is the responsibility of television and radio broadcasters to ensure that the provisions of the Code are brought to the attention of those persons within their employee entrusted with program development and production, program acquisition decisions, and commercial message production.

[§174-6]

General Principles

(a) The objective of equal representation is recognized and the portrayal of women and men shall be comparable to, and reflective of, their actual social and professional achievements, contributions, interests and activities.

(b) In addressing the issue of sex-role portrayal of women and men, broadcasters shall seek to broaden the comparable diversity of roles for all individuals.

(c) Nothing in this Code should be interpreted as censoring the depiction of healthy sexuality. However, broadcasters shall avoid and eliminate the depiction of gratuitous harm toward individuals in a sexual context, as well as the promotion of sexual hatred and degradation. Neither sex should be subject to degradation from gratuitous acts of violence. Television broadcasters and the public should also refer to the CAB *Voluntary Code Regarding Violence in Television Programming,* which contains a general provision concerning violence against women.

(d) Broadcasters shall be sensitive to the sex-role models provided to children by television and radio programming. In the context, programmers shall make every effort to continue to eliminate negative sex-role portrayals, thereby encouraging the further development of positive and progressive sex-role models. The "sexualization" of children in programming is not acceptable, unless in the context of a dramatic or information program dealing with the issue.

(e) In the scheduling of programs, broadcasters shall evaluate individual programs within the context of their overall program schedule, and within the context of broadcast services available within their market, to ensure a varied approach to programming content.

(f) Assessment of a station's performance in relation to program development, acquisition, and scheduling, should take into account the station's overall schedule ad record on the issue of sex-role portrayal. The availability of any program to viewers, from other sources within a broadcaster's coverage area, should also be a recognized factor in assessing program selection.

(g) The Code is to be interpreted in a manner consistent with the *Canadian Charter of Rights and Freedoms and the Broadcasting Act.*

(h) No Code can reasonably anticipate every circumstance of negative sex-role portrayal. Therefore, the CAB expects such circumstances to be dealt with in the spirit and intent of this Code.

[§174-7]

Interpretation

The CAB Sex-Role Guidelines are designed so that any interpretation of sex-role differentiation in television and radio programming is assess in the dramatic or informational context of a program, feature, character, dialogue, voice-over or visual interpretation; recognizing that balance in presentation within a specific or individual program is not always possible or desirable.

[§174-8]

Code Application and Administration

Application of thi scope is the responsibility of the individual licensee. Complaints and inquiries should be addressed to and dealt with by the broadcasting entity involved.

Complaints not resolved between the complainant and the television/radio station may be referred to the *Canadian Broadcast Standards Council,* which is charged with the enforcement of this Code, and the process which that entails.

The CAB will work with the *Canadian Broadcast Standards Council* to create awareness of this Code, by distributing copies to interested parties, as well as encouraging those broadcasters who subscribe to the Code to broadcast relevant public service announcements.

[§174-9]

The Canadian Association of Broadcasters
Sex-Role Portrayal Guidelines for
Television and Radio Programming

Definitions:

Non-Sexist Language is language that does not exclude one se or give inequitable treatment on the basis of gender.

Negative or Inequitable Sex-Role Portrayal refers to language, attitudes or representations which tend to associate particular roles, modes of behaviour, characteristics, attributes or products to people on the basis of gender, without taking them into consideration as individuals. Negative or Inequitable portrayal of women and men can be both explicit and implied.

Systematic Discrimination refers to action or treatment by organizations or a society which is categorically prejudiced against an individual or another group on the basis of gender, and which denies opportunity and advancement to an individual or group.

Voice-Overs are the audio overlays of dialogue, monologue or conversation in a television program, program segment, commercial, promotion or station break that do not come directly from the mouths of characters appearing on screen. This definition does not apply to portions of a news item, which are part of a stand-alone news report done by an individual correspondent. In radio, *voice-over* refers to the statement of

information in station-produced advertising in which the announcer does not assume a particular character and is essentially anonymous.

(1) Changing Interaction:

Broadcasters recognize the changing interaction of women and men in today's society. Women and men shall be portrayed, in programming, in a wide range of roles, both traditional and non-traditional, in paid work, social, family and leisure activities.

Guidance: The roles and opportunities for both sexes are becoming more diverse due to such factors as the elimination of female-only and male-only occupations, changing patterns of parenting and lifestyles. Women and girls should be portrayed in a range of roles as diverse as that shown for men and boys. Men should not always be portrayed as the aggressor in personal relationships. Women and men should be portrayed as working together in circumstances where the "power" balance does not always favour the man by virtue of his position or personal attributes.

(2) Diversity:

(a) Television and radio programming shall portray contemporary family structures with an emphasis on the evolving range and diversity of families.

Guidance: Canadian society has evolved to where there is no single contemporary family structure, but rather a range of family lifestyles and
family arrangements which differ across cultures, geographic regions and economic circumstances. The concept of "contemporary family structure" is meant to include a variety of family units such as marriages between persons of different races, single parents, families blended from different marriages and relationships, childless marriages and relationships, couples with adopted children, as well as the circumstances created by divorce and separation.

(b) Television and radio programming shall portray all persons as supporting participants in family, home management and household tasks. Women and men should participate on an equitable basis in organizing such family activities as health care and financial matters, encompassing a wide range of responsibilities and decision-making roles.

Guidance: The interpretation of this provision depends to a large extent on individual experience and beliefs, and is therefore open to discussion. For example, in one family, the sharing in all chores and responsibilities related to family and home may be on a 50-50 basis, while in another, it may mean that one partner contributes as the wage-earner while the other offers an equitable contribution as home manager, performer of domestic tasks and/or caregiver to spouse and children.

(c) Television and radio programming shall respect the principles of intellectual and emotional equality of both sexes and the dignity of all individuals. Television and radio programming should portray women and men as equal beneficiaries of the positive attributes of family or single-person life. Women and men should perform in a range of occupations and function as intellectual and emotional equals in all

types of thematic circumstances. This should be the case for both work and leisure activities requiring varying degrees of intellectual competence.

Guidance: Women and men should be portrayed as working toward a comfortable existence through mutual support, both economically and emotionally, and in both public and private spheres. Despite the problems of societal systemic discrimination, television and radio programming should reflect an awareness of the need to avoid and overcome discrimination on the basis of gender.

(3) Demographic Spectrum:

Television and radio programming shall portray the wide spectrum of Canadian life. Women and men shall be portrayed with fair and equitable demographic diversity taking into account age, civil status, race, ethnocultural origin, physical appearance, sexual orientation, background, religion, occupation, socio-economic condition and leisure activities, while actively pursuing a wide range of interests. Portrayals should also take into account the roles and contributions of the mentally, physically and socially challenged.

Guidance: Compared to men, the portrayal of women in television programming has often been more restricted with respect to age, appearance, background, occupation, lifestyles and interests. Additionally, the elderly, the disabled, and native peoples have also been under-represented. Special attention should be paid to increasing the portrayal of ethnic and visible minorities, whose presence constitutes an ever-expanding aspect of Canadian society.

(4) Exploitation:

Television and radio programming shall refrain from the exploitation of women, men and children. Negative or degrading comments on the role and nature of women, men or children in society shall be avoided. Modes of dress, camera focus on areas of the body and similar modes of portrayal should not be degrading to either sex. The sexualization of children through dress or behaviour is not acceptable.

Guidance: "Sex-ploitation" through dress is one area in which the sexes have traditionally differed, with more women portrayed in scant clothing and alluring postures.

(5) Non-Sexist Language:

Equality of the sexes must be recognized and reinforced through the proper use of language and terminology. Broadcasters shall employ language of a non-sexist nature in their programming, by avoiding, whenever possible, expressions which relate to only one gender.

Guidance: Sexist language is language that unnecessarily excludes one sex or gives unequal treatment to women and men. Such language may perpetuate attitudes or representations of persons which tend to attribute particular roles and characteristics on the basis of their gender, without taking them into consideration as individuals. Examples of non-sexist language are the use of occupational titles such as "fire fighters" instead of "fireman" and avoiding the exclusive use of masculine words in making general references, e.g. "synthetic" instead of "man-made". Broadcasters should refer to the CAB *Guidelines for Non-Sexist Language* for further assistance.

(6) Balance:

Broadcasters shall achieve a realistic balance in the use of women and men as voice-overs and as experts and authorities. In news and public affairs programming, women and men should appear equitably, in a wide range of occupations and decision/policy making roles.

Guidance: Significant positive change toward an eventual goal of equal representation should be demonstrated. The objective should be accomplished in realistic and progressive increments.

(7) Visibility and Involvement:

Broadcasters shall increase the visibility and involvement of women in broadcasting, both on and off the air.

Guidance: The objective of equal participation by women and men as both performers and policy/decision makers in the industry is recognized. Significant positive change should be demonstrated, e.g. more women in program credits. The objective should be accomplished in realistic and progressive increments, and in a manner consistent with the broadcast industry's responsibilities pursuant to Employment Equity legislation. Initiatives in this area should include women and men who are disabled, as well as persons who are members of ethnic and visible minorities.

(8) Program Development and Acquisition:

Broadcasters shall exercise sensitivity to and awareness of the problems associated with sex-role portrayal in the development of domestic programming, and in the acquisition of non-Canadian programming for broadcast.

Guidance: In the development of domestic programs, broadcasters shall make station production staff aware of the Code, to ensure that local station programming conforms to the various aspects of sex-role portrayal outlined in the Code.

In the development, financing or acquisition of domestic programs produced by other than station or network staff, broadcasters shall ensure that participating independent producers and syndicators are aware of the Code.

In the acquisition of, or involvement in, non-Canadian programming, broadcasters should make every effort to evaluate program concepts relative to the Code.

(9) Commercial Messages:

The various aspects of sex-role portrayal dealt with in the appropriate clauses of the Code shall apply to portrayal in commercial messages. Women and men should be portrayed in commercial messages with diversity in age, abilities, physical appearance, ethnic origin, occupation, family structure and household responsibilities.

Guidance: Station staff responsible for the production of locally-created messages shall be advised of the provisions of the Code, to be taken into account in the production of local commercial messages.

In terms of nationally-created commercial messages, broadcasters shall work closely with established organizations, such as the Telecaster Committee and the Canadian Advertising Foundation (CAF), to advocate the provisions of the Code in the advertising industry.

Non-sexist language shall be used whenever possible. Overt sexual exploitation of either sex and gratuitous violence is to be avoided.

Commercial messages should reflect a balance of women and men as presenters and as voice-overs.

[§175-1]

[CANADIAN ADVERTISING FOUNDATION]

Gender Portrayal Guidelines for Advertising

[§175-2]

[These guidelines were published by the Canadian Advertising Foundation on November 26, 1993, and replace earlier *Sex-Role Stereotyping Guidelines for Advertising* issued by the CAF in 1987. The 1987 guidelines were approved by the CRTC in *Industry Guidelines for Sex-Role Portrayal*, Public Notice CRTC 1990-99, October 26, 1990.]

[§175-3]

INTRODUCTION

Advertising is first and foremost a business tool, a means of communicating product and service information to potential customers. As such it is a pervasive and powerful mode of communication. Practitioners should recognize and reflect the transformations occurring in our society, not only as a social responsibility but primarily because it makes good business sense to do so.

The social and professional roles of men and women in Canadian society have changed dramatically. Women and men now participate at every level of society and communication is changing to reflect this reality. However, sexual and sex-role stereotyping, demeaning references or images and words that exclude women are still found in everyday dialogue and in the media. Such portrayals are incompatible with the goal of gender equality.

The following Gender Portrayal Guidelines are based on the Canadian Advertising Foundation's experience in dealing with comments and concerns about the roles and portrayal of women and men in advertising over the past 15 years. They are not a "how to" guide, nor do they cover all situations which require care in gender portrayal. They do, however, provide direction in those areas which, based on the number and/or type of consumer complaints received by the CAF, appear to have been most problematic.

These guidelines are designed to help creators of advertising develop positive images of men and women and eliminate systemic discrimination based on gender. Advertisers and their agencies are reminded that consultation with the CAF at the storyboard or concept stage, can help avoid the expense of producing messages which in their final form may conflict with the guidelines.

[§175-4]

INTERPRETATION GUIDE

1. Caution should be taken to ensure that the overall impression of an ad does not violate the spirit of gender equality even though the individual elements of the ad may not violate any particular guideline.
2. While the guidelines pertain to both women and men, some clauses are particularly directed to the portrayal of women. Men and women are not at equal risk of being negatively portrayed and these guidelines recognize that fact.
3. Humour, works of art and historical settings can all be positive elements in advertising. However, these techniques should not serve as an excuse to stereotype women or men or to portray behaviour which is not acceptable today.
4. The Advisory Panel on Gender Portrayal may consider the nature of the media used when assessments are made. Sensitivity should be demonstrated in choosing media vehicles for certain product categories, such as intimate or personal products.

[§174-5]

1. *Authority*

Advertising should strive to provide an equal representation of women and men in roles of authority both for the characters within the actual advertising scenario and when representing the advertiser through announcers, voice-overs, experts and on-camera authorities.

Comment

While advertisers have made noticeable progress in providing equal representation of men and women in roles of authority, some disparity still exists. In particular, individual advertisers should give equal consideration to women in the area of voice-overs.

[§175-6]

2. *Decision-Making*

Women and men should be portrayed equally as single decision decision-makers for all purchases including big-ticket items. Where joint decision-making is reflected, men and women should be portrayed as equal participants in the decision-making process whether in the workplace or at home.

Comment

Both women and men are active decision-markers for all categories of personal and household purchases as well in the workforce. Advertising should reflect this reality.

[§175-7]

3. *Sexuality*

Advertising should avoid the inappropriate use or exploitation of sexuality of both women and men.

Comment

Exploiting is interpreted as a presentation in which sexuality is on display merely for the gratification of others.

When sexuality is relevant to the product being advertised or is part of the creative scenario, it should be treated with sensitivity and respect for the individual(s).

Advertising should specifically avoid the following:

(i) Sexualization

There is nothing wrong with positive, relevant sexuality in advertising which portrays a person in control of and celebrating her/his own sexuuality. However, people must not be portrayed as primarily sexual or defined by their sexuality, Clothes, behaviours, positions and poses, camera angles, camera as voyeur, language, audio track, and/or product placement can all contribute, implicity or explicitly, to sexualization.

(ii) Sexualization of Children

Boys and girls under 16 must not be portrayed as displaying adult sexual characteristics. Similarly, adult women must not be portrayed as girls or with child-like characteristics while maintaining adult sexual characteristics.

(iii) Gender Role Stereotype

Social and sexual interactions must portray women and men as equals and must not reinforce stereotypes, such as, male dominant/female submissive.

(iv) Irrelevant Associations

a) Using or displaying a woman's sexuality in order to sell a product that has no relation to sexuality is by definition sexually exploitative.

b) Advertising must avoid the exploitation of nudity and the irrelevant segmentation of body parts.

(v) Sexual Harassment

Advertising must not portray sexual harassment as acceptable or normal behaviour in either covert or overt ways, and should avoid representing women as prey or objects of uncontrolled desire.

(vi) Objectification and Commodization

People must not be sexually portrayed as objects, toys, animals or with animal-like characteristics. Nor should products be attributed with negative gender stereotypical characteristics.

[§175-8]

4. *Violence*

Neither sex should be portrayed as exerting domination over the other by means of overt or implied threats, or actual force.

Comment

Men and women should be portrayed equally as in control of their person and their surroundings. Images and texts which imply domination, aggression or violence, or enjoyment of the same, should not be used.

[§175-9]

5. *Diversity*

Advertising should portray both women and men in the full spectrum of diversity and as equally competent in a wide range of activities both inside and outside the home.

Comment

Today in Canadian society there is no single contemporary family structure. Men and women take part in a broad variety of responsibilities, occupations, lifestyles and activities. This diversity should be portrayed in advertising.

Further, women and men of various ages, appearances and backgrounds should be considered when creating advertising.

[§175-10]

6. *Language*

Advertising should avoid language that misrepresents, offends or excludes women or men.

Comment

The equality of the sexes should be reflected through the use of gender neutral language, e.g. fire fighter instead of fireman and synthetic instead of man-made. Language should also reflect the equal dignity of both genders e.g. men and women rather than men and girls; and must not include pejorative or inappropriate terms.

[§175-11]

HISTORY AND ADMINISTRATION

Sex-role Stereotyping Guidelines were originally developed by the Canadian Radio-Television Telecommunications Commission Task Force on Sex-role Stereotyping in the Broadcast Media in 1981. The Canadian Advertising Foundation, on behalf of the advertising industry, accepted responsibility for their administration and extended their purview to all Canadian paid media. The guidelines were revised in 1987 and this document, renamed Gender Portrayal Guidelines, is the 1992 revision. The revision took place after an extensive consultation process with advertising industry and public representatives. The guidelines are administered by the Canadian Advertising Foundation through French and English Advisory Panels on Gender Portrayal.

These guidelines represent on important element of the Canadian advertising industry's commitment to self-regulation. Experience has shown that self-regulation, involving industry and public representatives, is effective in creating positive change and is more flexible and less costly to administer than government regulation.

The following associations and organizations have endorsed the guidelines and support the activities of the Panels: [list is omitted]

[§175-12]

THE ADVISORY PANELS ON GENDER PORTRAYAL

Composition and Mandate

Each Panel includes members from the following sectors:

Advertiser/Advertising Agency/Broadcast Media/CBC And Private/Print Media/Public (2)

As deemed necessary, the Panel is responsible for on-going information and sensitization programs within the advertising industry, complaint-handing and public awareness programs.

Each Panel meets at least once a quarter, more frequently if circumstances warrant.

Should a message be found in violation of the Guidelines, the Panel will seek the cooperation of the advertiser, advertising agency and the media in having the message amended or removed.

[§175-13]

Points to Remember:

1) An advertiser's need to target identified purchasing groups is recognized within the context of the guidelines. This principle is accepted providing the portrayals within the advertising adhere to the guidelines.
2) These guidelines apply to both Canadian produced and imported advertisements which appear in or on Canadian media.
3) Members of the public are encouraged to send the Panel complaints about advertising which they feel is not in accord with the guidelines, keeping in mind that:
   a) The Panel makes no judgement on products or services which may be advertised, only the manner in which they are advertised in the context of these guidelines.
   b) When complaints are received about advertising appearing in or on out-of country media, CAF will contact, where possible, Canadian representatives of the advertiser to negotiate a resolution.

English complaints should be sent to:

Canadian Advertising Foundation
350 Bloor Street East
Suite 402
Toronto, Ontario
M4W 1H5
(416) 961-6311

Les plaintes d'expressions française doivent être acheminées à:

Le Conseil Des Normes De La Publicité
4823, rue Sherbrooke ouest
Suite 130
Montréal, Quebec
H3Z 1G7
(514) 931-8060

[§176-1]

[CANADIAN ASSOCIATION OF BROADCASTERS]

The Broadcast Code for Advertising to Children

[§176-2]

[The CAB Broadcast Code for Advertising to Children, administered by the Canadian Advertising Foundation, was originally created in 1971. Since 1974, the CRTC has made adherence to the Code a condition of licence for originating television stations, and since 1977 for licensees of FM radio stations. After revisions in 1987, the Code was approved by the Commission in CRTC Circular No. 341, February 5, 1988. On January 23, 1991, in *Proposed Amendments to Broadcast Code for Advertising to Children*, Public Notice CRTC 1991-11, the Commission noted the non-adherence by some stations with certain provisions, notably paragraphs 6(a) and (b), and the proposal by the Canadian Association of Broadcasters to revise and clarify these and other provisions. The CRTC called for comments on these revisions, as well as on the addition of a new paragraph 6(d). On April 16, 1993, the CAB submitted a revised Code which the Commission accepted and approved effective July 1, 1993 in *Revised Broadcast Code for Advertising to Children*, Public Notice CRTC 1993-99, June 30, 1993. The text of the new Code is set out below.]

[§176-3]

I. Background

The Broadcast Code for Advertising to Children is designed to complement the general principles for ethical advertising outlined in the Canadian Code of Advertising Standards which applies to all advertising. Both Codes are supplementary to all federal and provincial laws and regulations governing advertising, including those regulations and procedures established by the Canadian Radio-television and Telecommunications Commission (CRTC), the Department of Consumer and Corporate Affairs and Health and Welfare Canada.

The purpose of the Code is to serve as a guide to advertisers and agencies in preparing commercial messages which adequately recognize the special characteristics of the children's audience. Children, especially the very young, live in a world that is part imaginary, part real and sometimes do not distinguish clearly between the two. Children's advertising should respect and not abuse the power of the child's imagination.

Discretion and sensitivity will be exercised by the clearance committee when reviewing children's advertising, particularly with reference to sex-role stereotyping and violence consistent with the principles of industry broadcast self regulatory codes such as those endorsed by the Canadian Association of Broadcasters (CAB), the Canadian Advertising Foundation (CAF) and the Canadian Broadcasting Corporation (CBC).

The foregoing does not imply a call for the elimination of fantasy in children's advertising. Many childhood possessions become particularly meaningful as they are

incorporated into the child's fantasy world and it is natural and appropriate to communicate with this audience in their own terms. But such presentations should not stimulate unreasonable expectations of product or premium performance.

Imitation and exploration have always been part of the child's learning process and the broadcast media now form part of that experience. It is recognized, of course, that it remains the primary responsibility of parents "to instruct a child in the way that he/she should go". The Code and the Guidelines that are issued from time to time are designed to help advertisers avoid making that task more difficult.

The Broadcast Code for Advertising to Children is endorsed by the CRTC and may constitute a condition of broadcasting licenses.

[§176-4]

II. *THE CODE*

1. Definitions

(a) "Children's advertising" refers to any paid commercial message that is carried in or immediately to a children's program. Children's advertising also includes any commercial message that is determined by the broadcaster as being directed to children and is carried in or immediately adjacent to any other program.

(b) Children - "Children" refers to persons under 12 years of age.

(c) A Child Directed Message - "A child directed message" is a commercial message of behalf of a product or service for which children are the only users or form a substantial part of the market as users, and the message (i.e. language, selling points, visuals) is presented in a manner that is directed primarily to children.

(d) Children's Program - A "children's program" is a program that is directed to the under-12 audience, as defined by the broadcaster.

(e) Commercial Message - A "commercial message" has the same meaning as that defined in the Television Broadcasting Regulations, 1987.

(f) Premium - A "premium" is anything offered with or without additional cost, and is conditional upon the purchase of the advertiser's regular product or service.

(g) The Code - This code shall be known as "The Broadcast Code for Advertising to Children" and shall hereinafter be referred to as "the Code".

2. Jurisdiction

All children's advertising must conform to the Code, be pre-cleared in accordance with the procedures set out from time by the CAF and have the requisite ASC clearance number.

3. Factual Presentation

(a) No children's advertising may employ any device or technique that attempts to transmit messages below the threshold of normal awareness.

(b) Written, sound, photographic and other visual presentations must not exaggerate service, product or premium characteristics, such as performance, speed, size, colour, durability, etc.

(c) The relative size of the product must be clearly established.

(d) When children's advertising show results from a drawing, construction, craft or modelling toy or kit, the results should be reasonably attainable by an average child.

(e) The words "new", "introducing", "introduces" or similar words may be used in the same context in any children's advertising for a period of up to one year only.

4. Product Prohibitions

(a) Products not intended for use by children advertised either directly or through promotions that are primarily child-oriented.

(b) Drugs, proprietary medicines and vitamins in any pharmaceutical form, with the exception of children's fluoride toothpastes.

5. Avoiding Undue Pressure

(a) Children's advertising must not *directly* urge children to purchase or urge them to ask their parents to make inquiries or purchases.

(b) Direct response techniques that invite the audience to purchase products or services by mail or telephone are prohibited in children's advertising.

(c) In children's advertising which promotes premiums or contests, the product must receive at least equal emphasis. Promotion of the premium or contest must not exceed one-half of the commercial time. In promoting contests which have an age restriction that excludes children, this must be made clear orally or visually.

6. Scheduling

(a) The same commercial message or more than one commercial message promoting the same product cannot be aired more than once in a half-hour children's program. In children's programs of longer duration, the same commercial message or more than one commercial message promoting the same product must not appear more than once in any half-hour period.

(b) No station or network may carry more than four minutes of commercial messages in any one half-hour of children's programming or more than an average of 8 minutes per hour in children's programs of longer duration.

(c) In children's programs, only paid commercial messages are included in the four minutes per half-hour limitation. Promotions and public service announcements may occupy the time difference between the Code limit and the CRTC regulation limit. Broadcasters will, however,

consider the appropriateness of the content of public service announcements before scheduling in children's programs.

(d) For the purposes of this section, the time devoted to the broadcasting of a children's program includes any time devoted to a commercial message that is inserted within the program and/or immediately adjacent to the end of the program and also includes any time devoted to a child-directed commercial message inserted between the end of the program and the beginning of the following program.

7. Promotion by Program Characters, Advertiser-Generated Characters, and Personal Endorsements

(a) Puppets, persons, and characters (including cartoon characters) well-known to children and/or featured on children's programs must not be used to endorse or personally promote products, premiums or services. The mere presence of such well-known puppets, persons or characters in a commercial message does not necessarily constitute endorsation or personal promotion. (For example, film clips or animation are acceptable as a mood or theme-setting short introduction to commercial messages before presenting the subject of the commercial message itself.) These puppets, persons and characters may not handle, consume, mention or endorse in any other way the product being advertised.

(b) This prohibition does not apply to puppets, persons and characters created by an advertiser which may be used by advertisers to sell the products they were designed to sell as well as other products produced by the same advertiser or by other advertisers licensed to use these characters for promotional purposes.

(c) Professional actors, actresses or announcers who are not identified with characters in programs appealing to children may be used as spokespersons in advertising directed to children.

(d) Puppets, persons and characters well-known to children may present factual and relevant generic statements about nutrition, safety, education, etc. in children's advertising.

8. Price and Purchase Terms

(a) Price and purchase terms, when used, must be clear and complete. When parts or accessories that a child might reasonably suppose to be part of the normal purchase are available only at extra cost, this must be made clear in audio and video.

(b) The cost must not be minimized as by the use of "only", "just", "bargain price", "lowest price(s)" etc.

(c) The statement in audio, "it has to be put together" or a similar phrase in language easily understood by children must be included when it might normally be assumed that the article would be delivered assembled.

(d) When more than one toy is featured in a commercial message it must be made clear in audio and video, which toys are sold separately (this includes accessories).

9. Comparison Claims

(a) Commercial messages shall not make comparisons with a competitor's product or service when the effect is to diminish the value of other products or services.

(b) In the case of toys or children's possessions, comparisons should not be made with the previous year's model, even when the statements or claims are valid.

10. Safety

(a) Commercial messages, except specific safety messages, must not portray adults or children in clearly unsafe acts or situations (e.g. the use of flame or fire is not permitted in children's advertising).

(b) Commercial messages must not show products being used in an unsafe or dangerous manner. (e.g. tossing a food item into the air and attempting to catch it in the mouth, etc.)

11. Social Values

(a) Children's advertising must not encourage or portray a range of values that are inconsistent with the moral, ethical or legal standards of contemporary Canadian society.

(b) Children's advertising must not imply that possession or use of a product makes the owner superior or that without it the child will be open to ridicule or contempt. This prohibition does not apply to true statements regarding educational or health benefits.

12. Substantiation Required

Where measurable claims are made regarding specific products - performance, safety, speed, durability, etc., the advertiser must be prepared on request to provide the Children's Advertising Section with evidence supporting such claims, and/or a sample of the product.

13. Assessment

Each commercial message shall be judged on its individual merit.

14. Code Administration

(Procedure in effect across Canada, with the exception of Quebec, whose authority to prohibit broadcast advertising to children has been affirmed. Clearance numbers are not required for commercial messages broadcast in Quebec. Therefore, the following procedure applies to the rest of Canada only.)

(a) Enforcement & Jurisdiction - The enforcement body for this Code will be the Children's Advertising Section of the CAF.

The Section shall have nine members: the chairperson; three public representatives (at least two of whom shall be nominees of the Consumers Association of Canada); and one member each nominated respectively by the CRTC, private broadcasters, the CBC, advertiser and advertising agency associations.
In order to ensure balanced representation, any member who is unable to attend may be represented by an approved alternate. In an emergency, a quorum shall consist of four members, at least one of whom shall be a public representative.

The CAF has jurisdiction only over commercial messages broadcast by Canadian stations or on behalf of Canadian advertisers.

(b) Pre-clearance and Consultation - No broadcaster shall broadcast any children's advertising which has not received the prior approval of the Children's Advertising Section. The prior approval is not mandatory for children's advertising that is carried in one market only but individual broadcasters are responsible for ensuring that such commercial messages do conform to the Code.

Because of the time and expense involved in creating television advertising, it is recommended that where any reasonable doubt exists about possible contravention of the Code, advertisers or their advertising agencies should submit ideas in storyboard or script form.

(c) Enforcement Procedure - If the broadcaster/Children's Advertising Section of the CAF determines that any children's advertising is in breach of the Code, a broadcaster shall not run the offending commercial message and the advertiser and/or its agency and the CAF shall be so notified.

(d) Compliance Time - The Children's Pre-Clearance Committee may, at its discretion, allow time for compliance for commercial messages produced prior to the announcement of this edition of the Code.

[§176-5]

III. GUIDELINES AND PROCEDURES

These Guidelines and Procedures do not form part of the Code. However, they are generally intended to assist broadcasters, advertisers, advertising agencies and media placement services, particularly the creative, media and traffic departments, in adhering to the provisions as well as the spirit and intent of the Code. Every effort should be made to ensure that persons involved in these functions are thoroughly familiar with the Code and these Guidelines and Procedures.

More detailed commercial message pre-clearance procedures have been established by the Children's Advertising Section and are subject to change from time to time. Information concerning these procedures is available from the CAF and the CAB.

Broadcasters, advertisers and agencies often enquire about the interpretation of certain clauses of the Code. In this regard, the CAB and the CAF in cooperation with broadcasters, advertisers and public representatives have instituted an on-going process to establish accepted code clause interpretations that are intended to serve as a guide for the industries. Information concerning these interpretations is available from the CAF and the CAB.

1. Program Classification

Audience analysis and other studies of children's interests and viewing habits show a major, definite shift in viewing patterns at the age of 12. Using this age-level definition has the further advantage that the Code will conform to the audience breakout used by the Bureau of Broadcast Measurement (BBM), and/ or Nielsen Marketing Research.

The program and production departments of the station or network staff know the primary audience they are trying to reach with each show. From a viewer's point of view, of course, the most obvious criteria are the type and nature of the program, its suitability for the child audience, and the time of scheduling. Viewer enquiries about program classification may be directed to the individual station, the network or to the Children's Section of the CAF, which includes representatives from the public and the CRTC.

As with any commercial message, the ultimate responsibility for acceptance or rejection of a child-directed commercial message remains with the individual broadcasting station. A station may for its own reasons decide to reject a commercial message which carries an ASC authorization number. The CBC does not accept commercial messages of any kind in or adjacent to programs designated by the CBC as directed to children under 12 years of age. Advertising directed to children is acceptable on a limited basis (maximum two minutes per clock half hour/four minutes per clock hour) in and adjacent to programs designated by the CBC as having an overall family/adult audience appeal.

Where doubt exists, the station, the advertiser or the advertising agency involved, may refer the commercial message to the Children's Section of the CAF for a decision as to whether it conforms to the Broadcast Code for Advertising to Children.

2. Pre-Schoolers

Children of pre-school age often are unable to distinguish between program content and advertisements. Therefore, any commercial message scheduled for viewing during the school-day morning hours should be directed to the family, parent or an adult, rather than to children and should have the requisite ASC clearance number if appearing in or adjacent to a child-directed program.

3. Program Promotions and Public Service Announcements

Although the Code does not apply to unpaid public service announcements or to program promotions, stations are urged to conform to the spirit of the Code when

scheduling such announcements and promotions. For example, promotion trailers and public service announcements shown during children's programs or family viewing time, should not include sensational scenes unsuitable for child viewing.

4. Local Advertising

Local advertising refers to those commercial messages which appear in one market only. Although pre-clearance is not mandatory for commercial messages that are purely local, stations are responsible for ensuring that local advertising directed to children or which appears in children's programs conforms to the provisions of the Code.

5. Advertisers and Advertising Agencies

(a) The CAF - Advertising Standards will review scripts and storyboards on a consultative basis but a pre-clearance approval number will be assigned only after the Children's advertising Section has reviewed a finished commercial. In either case, three copies of the actual audio and visual text must be submitted along with the commercial message to be cleared on 3/4 inch video cassette.

(b) When tag lines to be used by a local announcer are sent out with a commercial message the tag line should also be submitted.

(c) Sometimes the exigencies of broadcast timing and production call for "on the floor changes" in a script. It is therefore important that all those involved in production be familiar with the Code so that any such changes do not conflict with specific clauses or the spirit of the Code.

(d) The Children's Advertising Section generally meets every other Monday for reviewing commercial messages.

6. Scheduling

The Children's Advertising Section has raised a concern with respect to the scheduling of children's advertising, featuring known characters and their related products in or adjacent to programs in which the same characters appear.

It has been agreed that broadcasters and advertisers should, to the best of their ability, continue to implement the established industry practice and refrain from the scheduling of children's advertising in such a manner. It is understood that there may be occasions where this kind of scheduling cannot be avoided.

The Telecaster Committee of Canada has agreed to make provisions reflecting the established policy part of its guidelines.

7. Pre-Clearance Procedures-Canadian Advertising Foundation

All children's advertising except, that which is purely local, must receive authorization from the Children's Advertising Section of the CAF prior to broadcast.

All authorized commercial messages must carry an ASC number (e.g. ASC-012345) which should appear on the traffic instructions. Private broadcasters will not accept children's advertising which does not carry such a number. Telecaster member stations and networks will identify children's advertising via the Telecaster one number (which embraces all other numbers, except CBC) which gives the expiry date and a K

to signify the commercial message has been cleared by the CAF. A Telecaster one number could look like this sample A20223cd4-1089K.

All pre-cleared commercial messages shall carry the initials ASC, plus a six digit number which will be valid for one year from date of issue. IT MUST BE RENEWED AT THE END OF THE ONE YEAR PERIOD, if it is to air subsequent to the expiry date.

Advertisers (agencies) are to re-apply for a new number at the expiry of each commercial message and stations will not accept commercial messages with an expired number.

Advertisers should re-submit 3 copies of the as-recorded script, and a 3/4 inch cassette of the commercial message to be renewed.

Commercial messages should be sent for pre-clearance to:
Children's Advertising Section
Canadian Advertising Foundation
350 Bloor Street East, Suite 402
Toronto, Ontario
M4W 1H5

[§176-6]

IV. FEES

CAF Pre-clearance fees
Revised - Effective July 1, 1992

The following rates apply to the broadcast pre-clearance of commercial messages specifically directed to children under 12.

The charges shown are per commercial message regardless of length.

	CAF Member	Non-CAF Member
Commercial consultation	$ 50	$ 100
Final pre-clearance	150	300
Conditional clearance	300	600
Renewals	100	200

Charges are for each script or commercial message reviewed. Variations such as shortened versions or minor script changes, when submitted at same time also covered by the single charge.

[§177-1]

[CANADIAN CABLE TELEVISION ASSOCIATION]

Cable Television Customer Service Standards

[§177-2]

[These standards, issued by the Canadian Cable Television Association, and administered by the Cable Television Standards Foundation, were approved by the CRTC in *Cable Television Customer Service Standards*, Public Notice CRTC 1991-60, June 10, 1991. The version set out below also includes amendments filed by the CCTA with the CRTC for approval on February 7, 1994, responding in part to requests made by the Commission in *Structural Public Hearing*, Public Notice CRTC 1993-74, June 3, 1993, set out below at §294. The amendments proposed by the CCTA are shown in italics.]

[§177-3]

Note

The following Customer Service Standards received the Canadian Radio-television and Telecommunications Commission's acceptance June, 1991. These Standards do not replace any existing codes or terms of service or government regulations.

The cable television industry is dedicated to providing its subscribers with a high standard of service. Among other things, this means ensuring that its customers receive a wide variety and choice of quality programming services; clear and reliable signals; and prompt, courteous service. Mindful of their obligations to their subscribers, the members of the Association have voluntarily developed and adopted the *Cable Television Customer Service Standards* contained herein.

The Canadian cable television industry has accepted the responsibility for developing industry standards, codes and guidelines related to specific issues of concern to its customers and the public. In 1988 it established the Cable Television Standards Foundation (CTSF) to oversee the implementation of standards and to monitor the industry's compliance to those standards. The Cable Television Standards Foundation is mandated to appoint a Cable Television Standards Council. The Council is a tripartite body empowered to adjudicate disputes between the public, as well as other interested parties, and cable television licensees which are members of the Foundation. Membership in the Foundation is voluntary and open to all CRTC cable television licensees and is not restricted to members of the Canadian Cable Television Association.

The *Cable Television Customer Service Standards* are quality of service standards which will be administered by the Cable Television Standards Foundation, and will apply to all members of the Foundation.

The Association anticipates as new measurements are identified as reliable indicators of customer service, they will be incorporated into the service standards.

As the members of the cable television industry gain experience with these service standards and the linkage of specific indicators to customer attitudes are established, the service indicator standards will be modified as appropriate.

It is expected that over time the service indicator standards will be refined to realistically reflect the economic realities and the difference in subscriber expectations between large urban systems and small remote systems.

The Cable Television Standards Foundation will collect, analyze and summarize the reports of service indicators supplied by the members annually. The summary information will be reported to members regularly to enable them to compare their performance to other systems.

A mechanism will be developed to facilitate the exchange of information among members to provide information on programs developed by individual members and utilized to improve various components of customer service. This sharing of information will enable members to use the actual experience of others to improve their customer service.

In administering these *Standards*, the Cable Television Standards Foundation will direct its Council to consider that each community and cable television system operates under different and unique local circumstances.

The Council will also take into account that service on any given day can be affected by a number of factors. Therefore, the level of service provided by a cable licensee will be measured and reported on a twelve (12) month moving average.

The *Cable Television Customer Service Standards* become effective immediately. However, to enable the cable television licensees the time to adapt their systems to meet these standards, and develop procedures to measure the relevant components of customer service, full compliance with the *Cable Television Customer Service Standards* will be expected by January 1, 1992.

[§177-4]

I. *Introduction*

The Cable Television Standards Foundation (CTSF) believes that the primary responsibility of the members of the Foundation is to provide, through well-trained professional employees, high quality and reliable cable television services to customers consistent with the objectives and requirements of the Canadian broadcasting system.

The cable TV operators of Canada have therefore developed "Customer Service Standards" to assist the Foundation members to achieve and maintain standards of service to the public as outlined in Section VII.

The members of CTSF commit to provide to every customer:

(i) the most economic and reliable technologies capable of providing high-quality signals to the customer's home.

(ii) access to a comprehensive selection of entertainment and informational video and audio products at reasonable prices.

(iii) convenient access to friendly, courteous and competent employees who can provide assistance,

(iv) clear and comprehensive billing for cable television services.

[§177-5]

II. *Confidentiality and Security*

In order to respond to customers' current and future needs, cable TV operators must record certain information regarding customers' residences, service preferences and credit history. Cable TV operators undertake to keep this information confidential, in a manner consistent with the goal of affording protection from invasion of privacy for all of their customers.

Each member company will:

(i) pursuant to the *Privacy Act*, maintain as confidential all personal data required by the company in order to provide services,

(ii) allow a customer to inspect his/her service record material on file with the cable company upon reasonable notice and during normal office hours,

(iii) upon request by a customer, remove his/her name from listings for mail and telephone solicitation,

(iv) ensure that all cable company employees provide identification, including a photograph, when requesting entrance to customers' premises.

[§177-5a]

[NOTE: On February 7, 1994, the CCTA filed a proposed amendment to paragraph (i) above with the CRTC, so that the wording would be as follows:

"(i) pursuant to the principles of the ***Privacy Act****, maintain as confidential all personal data required by the company in order to provide services,"*

The CCTA noted that the ***Privacy Act*** *applies to government bodies, not to private industry.]*

[§177-6]

III. *Commencement of Service*

Each member company will:

(i) offer a comprehensive array of entertainment and informational video and audio products, from which the customer will be given the maximum opportunity to select those services which he/she wants consistent with prudent consideration of regulatory, financial and marketing requirements.

(ii) provide the basic service upon payment by the customer as follows:

(a) an amount not exceeding the amount of the non-recurring costs to be reasonably incurred by the cable TV operator for the installation or reconnection of the subscriber drop,

(b) the basic service for one month,

(c) any overdue debt for the provision of basic service that the customer owes to the licensee.

[§177-7]

IV. *Continuation of Service*

Each member company will:

(i) continue to provide the basic service to a customer as long as the customer pays in advance the fee for each month of the basic service,

(ii) waive the requirement for a deposit on service equipment for customers who have established satisfactory credit information,

(iii) maintain high-quality signals in accordance with the federal Department of Communications' Broadcast Procedure 23, and complete any necessary repairs in a timely and effective manner,

(iv) give full consideration to the fact that the cable TV operator provides a 24-hour service which is a primary source of entertainment and information for its customers. The cable TV operators' maintenance and repair procedures will ensure maximum accessibility by the customer. Each member company will provide service credits on request to customers who have experienced complete and extended interruption of service,

(v) be conveniently accessible to promptly answer inquiries from customers and the public in a friendly, courteous and knowledgeable manner. When determining what is convenient accessibility, the member company will consider the characteristics of the community served, the accessibility of its office and the adequacy of its telephone system,

(vi) make available convenient methods of payment for services recognizing that the customers are obligated to pay one month in advance for basic service,

(vii) ensure that the customer invoice, at least once annually, clearly sets out separately the charges for basic service, for any extra-cost service(s), for extra-cost equipment, including additional outlets, and taxes. The invoice shall show separately non-recurring charges for installations,

(viii) for subscribers who do not receive an invoice on a regular basis, issue annually a detailed statement showing the services provided and the charge for each service,

(ix) upon request, provide a detailed breakdown of the customer's balance,

(x) indicate clearly on invoices the address, telephone number and hours of operation for both the business office and the service department,

(xi) inform customers 60 days in advance of any monthly rate change to the basic service; except that customers will be informed 90 days in advance of any monthly rate change to basic service related to subsection 18(8) of the CRTC *Cable Television Regulations*,

(xii) inform customers 30 days in advance of any monthly rate change for services other than basic service,

(xiii) inform customers at least 30 days in advance of any channel lineup changes when the timing of such changes is within the cable company's control,

(xiv) inform customers of the person within the system to whom complaints may be addressed if any inquiry or request has not been handled to the satisfaction of the customer in the ordinary course of business.

[§177-7a]

[NOTE: On February 7, 1994, the CCTA filed with the CRTC a proposed amendment to paragraphs (vii), (viii) and (x) and a proposed added paragraph (x.1) so that they would read as follows:

(vii) ensure that, at least once annually, the customer invoice or other appropriate notification, clearly identifies, in plain and easily-understood language, those services that are part of the basic service and those services that are discretionary services, the fee for each service or package of services and for any extra-cost equipment, including additional outlets and taxes, and the actions a subscriber need take to subscribe to or discontinue the services. The invoice, or other notification, as the case may be, shall show separately non-recurring charges for installations,

(viii) for subscribers who do not receive an invoice on a regular basis, issue annually a detailed statement or other appropriate notification which provides, in plain and easily-understood language, all of the same information as required pursuant to paragraph (vii)...

(x) indicate clearly on invoices the date when payment is due and the address, telephone number and hours for operation for both the business office and the service department,

(x.1) where a late payment is charged, ensure that at least five business days have elapsed following the date on which payment is due before charging such a fee,]

[§177-8]

V. *Termination of Service*

Each member company will:

(i) permit termination of service by the customer without penalty upon receiving the required notice (not to exceed one month), and, refund any prepaid funds remaining within not more than 45 days after disconnection of service and after return of all company-owned equipment in satisfactory operating condition excepting normal wear and tear,

(ii) where service is to be terminated for non-payment of amounts owing, provide written notice to the customer at least five business days in advance of the termination, which notice shall provide, at least, the reason for the termination and the amount owed, the final payment date, the reconnection charge and a telephone number to call for further information or comment,

(iii) restore service after suspension or termination upon payment of monies owing on the account, including any applicable administration or connection fees,

(iv) where service termination has been done in error or is found to be unjustified, restore service on the next working day following discovery of the error, or as soon as practicable thereafter, without the payment of a reconnection charge.

[§177-8a]

[NOTE: On February 7, 1994, the CCTA filed a proposed amendment to paragraph (ii) above with the CRTC. As amended, the paragraph would read as follows

"(ii) where monthly services[1] are to be terminated for non-payment of amounts owing, provide written notice to the customer at least five business days in advance of the termination, which notice shall provide, at least, the reason for the termination and the amount owed, the final payment date, the disconnection

date, the reconnection charge and a telephone number to call for further information or comment,"

The following footnote would also be added at the end of the section:

[1For the purpose of this standard, "monthly services" do not include transactional services such as pay per view.]

[§177-9]

VI. *Enhancement of Service*

Each member company will:

(i) participate in an industry customer satisfaction and needs survey,

(ii) use the survey to identify service weaknesses and correct them.

[§177-9a]

[NOTE: On February 7, 1994, responding to the request of the CRTC in ***Structural Public Hearing****, Public Notice CRTC 1993-74, June 3, 1993 (set out below at §294), the CCTA filed proposed amendments with the CRTC to add the following Section VI.1 to the Standards:*

[§177-9b]

VI.1 ***Marketing of Unscrambled Discretionary Tier***

The introduction of an "unscrambled discretionary tier" involves providing a new level of service to all customers on a free trial basis for a period of time, and then inviting those who do not wish to subscribe to the service(s) to return a prepaid card or call the cable company office to decline the service(s). Cable TV operators undertake to ensure customers are aware that those who do not wish to pay for and receive the add-on service are not required to do so.

Each member company will:

(i) provide ample notice to all customers before implementing a new unscrambled discretionary tier, to consist of at least one letter providing advance notice and another letter announcing that an unscrambled discretionary tier is, in fact, in effect,

(ii) indicate clearly to customers that the service being offered is not part of the basic service and that customers have a clear choice of continuing to receive the service and paying for it, or discontinuing the service,

(iii) ensure the customer invoice clearly sets out separately the charges for basic service and for the unscrambled discretionary tier(s),

(iv) provide customers with the option to subscribe to other services, such as premium pay television services, without having to subscribe to the unscrambled discretionary tier(s) as a prerequisite.]

[§177-10]

VII. *Specific Indicators*

These Specific Indicators allow cable TV operators and customers the necessary information in order for them to monitor the standard of service provided by the cable

TV operator. These are minimum standards that cable TV operators are expected to achieve.

1. *Standards of Operation*

The following Specific Indicators are applicable to the operation of the cable TV operator's business office and service department. In some smaller cable TV operations with fewer than 10,000 customers, systematic measurement of compliance with some of these standards, such as telephone answering time, will not be cost effective and should not be expected.

(i) For class 1 cable TV operators (serving 6000 or more customers), cable TV personnel will be available for business for a minimum eight continuous hours between 8:00 a.m. and 6:00 p.m. Monday through Friday (holidays excepted). For class 2 cable TV operators (serving less than 6000 customers), cable TV personnel will be available for business for a minimum of six hours between 8:00 a.m. and 6:00 p.m. Monday through Friday (holidays excepted).
The times of opening and closing of a company's business office and service department (including after-hour telephone numbers) will be specified and made known by such means as the community channel, information on bills and by other means as available and appropriate.

(ii) Repair service calls will be answered 24 hours per day, seven days per week. (This could include use of an answering service or answering machine/service outside normal business hours.)

(iii) 80% of all telephone calls will be answered within 20 seconds.

(iv) The time when all trunks are busy will not exceed 3% of the normal operating hours.

2. *Service*

In those circumstances requiring a premises visit, the cable company will do whatever is reasonably possible to provide flexible service call arrangements. In addition, when service personnel become aware that they will be late for an appointment, they will make every reasonable effort to advise the party waiting for them.

[NOTE: On February 7, 1994, the CCTA filed with the CRTC a proposal to amend the foregoing paragraph by adding the following introductory sentence:

"The cable company will commit reasonable resources to determine quickly when service interruptions, such as outages, occur."]

The following Specific Indicators are applicable to the cable TV operator's service department:

(i) 90% of installations will be completed within seven (7) days of the date on which the system received the request from the customer.

(ii) The system will be 99.9% reliable.
(Note: planned outages for system upgrades or maintenance will not be included in the calculation of reliability, but will be included in the annual performance report to be submitted to the Cable Television Standards Foundation.)

(iii) 90% of outages will be corrected within 4 hours.

(iv) No more than 3% of customers will require a service call each month.

(v) 90% of "no signal" calls received will be corrected within 24 hours.

(vi) 90% of all other types of service calls will be corrected within 48 hours.

[§177-11]

VIII. *Adjudication Process*

The Cable Television Standards Council is authorized to receive and adjudicate complaints from customers, as well as other interested parties, on the Standards it administers. The Council may also act as a conciliator in disputes arising between the cable TV operators who are members of the Cable Television Standards Foundation and other parties.

The Complaints Process means:

(i) Member cable TV operators will inform their customers of the existence of the Council and the Customer Service Standards, provide copies of the Standards on request and advise customers to complain directly to their cable TV company.

(ii) Member cable TV operators will attempt to resolve a complaint to the satisfaction of the complaining customer.

(iii) If a member cable TV operator cannot resolve a complaint to the satisfaction of the customer, the cable TV operator will indicate to the complainant how to put a complaint in writing to the Council.

(iv) Complaints received by the Council's Secretariat directly will be forwarded to the appropriate member cable TV operator.

(v) The Council will acknowledge receipt of the complaint to the customer and indicate to the customer when the complaint will be dealt with. The Council will also inform the member cable TV operator that a complaint has been received, and request the member's response to the complaint.

(vi) The Council's decision is not subject to approval or review by the cable television industry or any of its organizations.

(vii) The Council's decision, with reasons, will be issued in writing, and will be available to the public on request. Copies will be sent to those involved in the matter to which the decision pertains. Any cable TV company involved will be required to publicize the decision of the Council and make copies available upon request.

[§177-12]

Definitions

Outage

An outage is defined as the interruption of service on all channels due to a system problem occurring before the multi-tap.

[NOTE: On February 7, 1994, the CCTA filed a proposed amendment with the CRTC to the foregoing definition, which would add the following sentence thereto:

"An outage will be deemed to have occurred as of the time it is reasonably recognized as such by the operator."]

Reliability

The reliability of the system is calculated based on the following formula.

The reliability percentage of a system is equal to the total time in a year multiplied by the total number of customers in the system, minus the summation of all outage times occurring in that year multiplied by the number of customers affected by each outage.

This total is multiplied by 100 and divided by the total time multiplied by the total system customers to put it in percentage format.

Formula

Reliability (% = [^{N}tot * ^{T}av) - (^{N}csm * ^{T}out)] * 100 / (^{N}tot * ^{T}av)

Where:

^{N}tot = total system customers

^{N}csm = Number of customers affected by an outage

^{T}out = Length of time of the outage

^{T}av = Time available (total time of measurement period in units in which fault time is measured, i.e. the number of minutes in a month)

= summation symbol

* = multiplication symbol

Service Calls

Service calls are defined as "any and all visits made to a customer in response to a service complaint including visits where calls could not be completed".

[§178-1]

[CANADIAN BROADCASTING CORPORATION]

CBC Guidelines on Sex-Role Portrayal

[§178-2]

[These Guidelines, issued by the Canadian Broadcasting Corporation on August 12, 1991, were approved by the CRTC in *Revised CBC Guidelines on Sex-Role Portrayal*, Public Notice CRTC 1991-109, October 11, 1991.]

[§178-3]

Principle

The CBC recognizes that women and men are equal.

Purpose

The purpose of the guidelines is to ensure that all persons, children included, are represented and portrayed equitably in programs and commercials broadcast on the CBC's stations and networks.

Application

The guidelines apply to all programs produced or co-produced by the CBC, as well as to all programs acquired by the Corporation and advertisements to be broadcast on its stations and networks.

Administration

Media heads, regional directors and managers of advertising standards are responsible for implementing these guidelines. Departure from the guidelines and follow-up shall be reported to the Executive Vice-President, responsible for programming, or to the Vice-President of Planning and Corporate Affairs, responsible for advertising standards.

Interpretation

The guidelines must be interpreted in a manner consistent with the *Canadian Charter of Rights and Freedoms and the Broadcasting Act*.

Furthermore, interpretation of the guidelines must not conflict with the CBC's journalistic, creative and programming independence or with its Journalism Policy and Practices.

[§178-4]

Guidelines

In all its programming and advertisements, the CBC must:

Presence	1.	Reflect in a realistic manner the place women and men have in contemporary Canadian society and recognize their intellectual and emotional equality.
Diversity	2.	Present women and men of different ages, of different appearances, of different opinions and interests, in a variety of tasks and roles, including non-traditional ones.
Stereotypes	3.	Ban unjustifiable and uncalled for stereotypes. Stereotypes are generalizations, the attribution to a whole social group of characteristics presumably observed in some individuals of that group. Stereotyping in CBC programs is acceptable only when it is essential to the realization of a program purpose. The use of stereotyped characters in CBC programs may arise only from requirements of the plot, such as in drama and comedies.
Roles	4.	Portray women, as well as men, as persons who have professions, expertise, authority and skills in a range of circumstances, activities and settings.
	5.	Portray women and men as equal partners in sharing tasks and responsibilities and as equal beneficiaries of products and services.
Balance	6.	In journalistic programs, seek women's opinions, as well as men's, on the full range of public issues.
	7.	Strive to reach a balance in the use of women's and men's voices in voice-overs.
Sexuality	8.	Avoid gratuitous exploitation of individuals as sexual lures through dress, overt or suggestive body language, camera movements, innuendo or double entendre. Gratuitous exploitation means unjustifiable or uncalled for exploitation of the human body, or parts of the body, to sell a product or attract an audience. There is, however, nothing reprehensible about on-air representation of tasteful, positive, relevant sexuality, which portrays persons in control of and celebrating their own sexuality.

Language 9. Ensure that language respects the principle of equality between women and men.
To this effect, the Corporation shall enforce the attached guidelines.

[§179-1]

[CANADIAN CABLE TELEVISION ASSOCIATION]

Cable Television Community Channel Standards

[§179-2]

[These standards, issued by the Canadian Cable Television Association, and administered by the Cable Television Standards Council, were approved by the CRTC in *Cable Television Community Channel Standards*, Public Notice CRTC 1992-39, June 1, 1992.]

[§179-3]

I. *Introduction*

Community programming is unique within the Canadian broadcasting system because it provides individuals and groups from all walks of life the opportunity to express their views and interests through the medium of television. Community programming also provides cable television subscribers with a distinctly local television service that enables them to stay in touch with the communities and the issues that affect their daily lives.

The Community Channel is a source of pride for the Canadian cable television industry and its participants. More than ever before people are getting involved in the community channel, both behind and in front of the camera.

Cable television operators are committed, as far as their individual circumstances permit, to encourage a high level of citizen participation and community involvement in community programming.

The cable television industry has seized the challenges local community programming presents and has voluntarily developed and adopted the Cable Television Community Channel Standards attached.

In establishing these Standards, the cable television industry objectives are to:

- ensure the maintenance of the community channel's own particular identity, and continue to provide a television service that is complementary to over-the-air broadcast television services. Community channel programming distinguishes itself from programming offered by conventional radio and television stations because of the importance placed on community access, local content and origination;
- assist community channel volunteers to understand and comply with CRTC regulations and policy guidelines, while fostering an environment that allows them to continue to be innovative in developing community programming;
- produce and obtain community programming which reflects and meets the needs, concerns and interests of individuals and groups within the communities served by the respective cable television licensees;

- maintain fair and equitable access policies, with minimal restrictions for individuals and groups that wish to express their views on the community channel; and
- publicize the objectives of the community channel and its services.

The Association anticipates that as new operational standards are identified as reliable guidelines for the provision of community programming, they will be incorporated into the Community Channel Standards.

The *Cable Television Community Channel Standards* are optional standards that will be administered by the Cable Television Standards Council (CTSC).

The Canadian cable television industry has accepted the responsibility for developing industry standards, codes and guidelines related to specific issues of concern to its customers and the public. In 1988, it established the Cable Television Standards Foundation to oversee the implementation of standards and to monitor the industry's compliance to those standards. The CTSF is mandated to appoint a Cable Television Standards Council. The Council is a tripartite body empowered to adjudicate disputes between the public, as well as other interested parties, and cable television licensees which are members of the Foundation. By-laws stipulate that one Member of the Council shall have the background and experience necessary to ensure that consumer interests and concerns are represented, that one Member shall be the person holding the position of President of the Foundation, and that the Chairperson shall be a person with previous judicial or quasi-judicial experience.

Membership in the Foundation is voluntary and open to all Canadian Radio-television and Telecommunications Commission (CRTC) cable television licensees and is not restricted to members of the Canadian Cable Television Association.

In administering all standards, the CTSC will recognize that each community and cable television system operates under different and unique local circumstances.

[§179-4]

II. *Definitions*

Programs distributed on cable television community channels may be produced or obtained in various ways. The following are definitions of the types (sources) of programming that are most commonly distributed on the community channel.

i) *Licensee Produced Programs*
Using predominantly its own staff and resources, a cable television licensee decides on the content and the format of the production and maintains complete editorial control. However, volunteers often assist the cable television licensee's staff by assuming supporting functions in the production of programs.

ii) *Community Produced Programs, Assisted by the Licensee*
Individuals or groups in the community produce programs of interest to them. These individuals or groups exercise substantial editorial control over content, but may draw upon the licensee's facilities, staff or volunteers for assistance.

iii) *Community Produced Programs, Unassisted by the Licensee*
Using their own resources, individuals and groups produce their own programs for distribution on the community channel. None of the cable television licensee's resources are involved, except in the distribution of the program on the community channel.

iv) *Programs Produced by Other Cable Television Licensees*
Through regional or national cooperation among cable television systems, programs produced by other cable television licensees or groups within another licensee's community may be distributed on the community channel.

v) *Public Service Announcements and Programming*
Programs of a non-commercial public service nature, as well as public service announcements produced and provided by non-profit organizations, governments, or other public bodies or agencies may also be distributed free of charge on the community channel.

[§179-5]

III. *Cable Television Community Channel Standards*

The following *Cable Television Community Channel Standards* have been developed by the Canadian Cable Television Association (CCTA), based upon the objectives set out in the introduction of this document, including other existing programming standards adopted by the Association's Board of Directors.

Cable television programming is guided by regulations[1] and policies[2] established by the Canadian Radio-television and Telecommunications Commission (CRTC).

Section 3(1)(*h*) of the 1991 *Broadcasting Act*[3] states that "all persons licensed to carry out broadcasting undertakings have a responsibility for programs they broadcast". Policies affecting community channel access shall not be unduly restrictive, but shall recognize that the cable television licensee is ultimately responsible under the 1991 *Broadcasting Act* for the programming that it distributes on the community channel.

Because the cable television licensee is ultimately responsible for the programs distributed on the community channel, it must retain the right to make the final decision with regard to such distribution.

Groups and individuals who access community channels are expected to jointly and severally share in the responsibility as to the liability for the content, i.e. potential libel and/or other legal considerations.

[§179-6]

Standards

i) *Overall Objective*

The programming distributed on the community channel shall be of high standard, in good taste and responsive to community needs. Community programming should complement programming aired by local, conventional television broadcasting channels. In other words, community channel programming distinguishes itself from programming offered by conventional radio and television stations because of the importance placed on community access, local content and origination.

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[1]Public Notice CRTC 1986-182; *Cable Television Regulations, 1986*, as amended [see above at §133]

[2]Public Notice CRTC 1991-59, *Community Channel Policy*, June 5, 1991 [set out below at §266]

[3]Bill C-40, in force as of June 4, 1991

[§179-7]

ii) *Compliance with Regulatory Policies and Legal Requirements*

In the operation of its community channel, a licensee shall comply with CRTC regulations relating to the community channel and be guided by CRTC community programming policies. The programming distributed on the community channel shall also conform to applicable provincial and federal laws and any other relevant law established by competent Canadian authority.

[§179-8]

iii) *Community Access*

The key to maintaining the community channel's own particular identity is granting to groups and individuals access to the cable television operator's programming facilities.

Interested individuals or groups within the community shall, to the extent possible, be given the opportunity to access the community channel or use of the facilities. This does not, however, ensure an automatic right to time on the channel or use of the facilities. A cable television licensee shall, at all times, exercise discretion in selecting from among requests for access in order to provide balanced programming and to fulfil regulatory and legal requirements.

The terms and conditions under which individuals or groups access the community channel shall be as flexible as possible, suit the needs of the community in general, and of cable television subscribers in particular.

In an effort to build public awareness of the community channel, cable television licenses shall promote and publicize, on a regular basis, the availability, purpose and objectives of community channels.

[§179-9]

Terms and Conditions for Access

In setting the following terms and conditions guiding access, the cable television industry wants to ensure that a wide spectrum of community interests and concerns is accommodated on the community channel.

Cable television operators shall actively promote citizen access to the community channel. Access shall not depend on the availability of a sponsor or on any other form of outside financial support.

Cable television operators will give consideration to those community groups and individuals who are most in need of expression through community programming. However, the degree of access will be monitored to ensure no monopolization or excess channel time is enjoyed by any particular participating group or individual.

In granting access to community channel facilities, cable television operators shall be guided by the following criteria in combination one with the other. None of the criteria taken separately, constitute sufficient grounds for granting access.

a) There must be compliance with the *Broadcasting Act*, CRTC regulations and other relevant Canadian laws. Cable television operators need not grant access to program proposals that would jeopardize the terms of their licence;

b) Proposed programs should be relevant to the community(ies) served by the cable television operator. The cable operator shall make efforts to ensure that programming reflects the socio-cultural composition of the service area;
c) The particular topic proposed should be such that television is an effective medium for presentation. The cable television operator shall decide on the most effective use of the community channel resources to communicate the particular topic or message;
d) Proposed programs should deal with new information or viewpoints that have not been previously aired or dealt with extensively by other media;
e) Proposals should be such that the programs can be produced and aired in time-frames that are reasonable in the circumstances;
f) Program proposals must be within the capabilities of the human, technical and financial resources available to the cable television operator.

[§179-10]

iv) *Balance in Programming*

When a matter of public concern becomes the topic of a community channel program, cable television operators shall provide a reasonable opportunity for the public to be exposed to the expression of differing views on that matter. Balanced treatment need not be given to all issues, only to those of "public concern".

It is the cable television operator's responsibility to decide whether an issue is a matter of public concern and to determine the manner in which balance is to be achieved.

On issues of public concern, a licensee shall seek out, and encourage the presentation of, as many differing viewpoints as are available. To attain balance, equal time need not be necessarily given for each point of view. Rather it is expected that a variety of points of view will be presented in the programming offered by a cable television operator to a reasonably consistent viewer over a reasonable period of time.

No one individual or group's views shall be allowed to dominate programming.

[§179-11]

v) *Abusive Comments*

A cable television operator shall not knowingly allow the presentation of abusive comments toward identifiable groups and/or individuals.

Should it be established that the presentation of abusive comments has occurred, the cable television operator shall:

a) delete, if possible, the comments from the program; or
b) withhold distribution of that program on the community channel;
c) if discovered only after broadcast, take immediate action to both apologize to the affected person(s) and ensure that no unedited repeat broadcast will occur.

In the case of open line programs a cable television operator shall ensure that hosts and producers are prepared to take immediate, appropriate action should abusive comments be made by callers. Such measures may include a technical device to terminate the call. This device may be used in combination with either a rebuttal of the

caller's remarks and/or warning to future callers that similar comments are not acceptable.

[§179-12]

vi) *Stereotyping*

Community programming shall not present demeaning or derogatory comments about, or representation of, individuals or groups based upon such things as ethnic or racial origin, age, gender, disabilities, sexual orientation, financial circumstances or religious beliefs.

(Note: The Canadian Cable Television Association (CCTA) and the members of the Cable Television Standards Foundation have agreed to observe the Canadian Association of Broadcasters' *Sex Role Portrayal Code for Television and Radio Programming*, as amended from time to time and approved by the CRTC [NOTE: set out above at §174], and the Canadian Association of Broadcasters' *Voluntary Code Regarding Violence in Television Programming*, as amended from time to time and approved by the CRTC [NOTE: set out below at §181]).

[§179-13]

vii) *Training of Volunteers*

A cable television operator shall provide adequate training for volunteers so that they may participate in community programming in a responsible manner, thereby enhancing the quality of the programming.

As far as its individual circumstances permit, the cable television operator shall also promote the availability of such training programs.

[§179-14]

viii) *Sponsorship and Conventional Local Advertising for the Benefit of Community Programming*

Definitions:

Sponsorship Advertising

Sponsorship advertising is defined as an oral or written acknowledgment contained within a community program that has received direct financial assistance.

Contra Advertising

Contra advertising is defined as an oral or written acknowledgment contained within a community program that has received goods or services free of charge for use in connection with the production of that program.

Conventional Local Advertising

Class 2 cable television operators with fewer than 2,000 subscribers that provide service to unserved communities and Part III cable television operators also providing service to unserved communities may air up to 12 minutes of local advertising material per hour.[4]

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[4]Please note that this standard is subject to an appropriate amendment of the CRTC *Cable Television Regulations, 1986*. [NOTE: Proposed below at §285.]

"Unserved community" is defined as a community having no local AM or FM radio stations or local television stations that originate programming overlapping all or any part of a cable television operator's authorized service area. For the purpose of this definition, local television and radio stations exclude rebroadcasting stations.

A Part III cable television operator is defined as a cable television operator regulated by the CRTC pursuant to Part III of the *CRTC Cable Television Regulations, 1986*.

a) *Allocation of Funds*

A cable television operator may dedicate resources to raising money through sponsorship and conventional local advertising as permitted by the CRTC *Cable Television Regulations*. This additional income shall be reinvested in community programming to improve its quality and increase its quantity.

b) *Displaying Acknowledgement Messages*

A cable television operator may display sponsorship/contra acknowledgment messages provided that such messages conform with CRTC regulations and policies, as amended from time to time.

Sponsorship Advertising

When a person provides direct financial assistance for the production of community programming, the cable television operator may distribute on the community channel an oral or written acknowledgment contained in community programming that mentions no more than the name of the person, goods, services or activities being sold or promoted by that person, and their address and telephone number.

Contra Advertising

When a person provides goods or services free of charge to the licensee for use in connection with the production of community programming the cable television operator may distribute on the community channel an oral or a written acknowledgment contained in community programming that mentions no more than the name of the person, goods and services provided by that person, *and their address and telephone number*.[5]

(Note: The Canadian Cable Television Association (CCTA) is signatory to the *Canadian Advertising Foundation's Code on Advertising*.)

[§179-15]

IV. *Adjudication Process*

The Cable Television Standards Council is authorized to receive and adjudicate complaints from the public, as well as other interested parties, on the standards it administers. The Council may also act as a conciliator in disputes arising between the cable television operators who are members of the Cable Television Standards Foundation and other parties.

The Complaints Process means:

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[5]Please note that the italicized portion of this Standard is subject to an appropriate amendment of the *Cable Television Regulations, 1986* [NOTE: proposed below at §285].

i) Member cable television operators will inform the public of the existence of the Council and the *Cable Television Community Channel Standards*, provide copies of the standards on request and advise the public to complain directly to the cable television company.

ii) Member cable television operators will attempt to resolve a complaint to the satisfaction of the complainant.

iii) If a member cable television operator cannot resolve a complaint to the satisfaction of the complainant, the cable television operator will indicate to the complainant how to put a complaint in writing to the Council.

iv) Complaints directly received by the Council's Secretariat will be forwarded to the appropriate member cable television operator.

v) The Council will acknowledge receipt of the complaint to the complainant and indicate when the complaint will be dealt with. The Council will also inform the member cable television operator that a complaint has been received, and request the member's response to the complaint.

vi) The Council's decision is not subject to approval or review by the cable television industry or any of its organizations.

vii) The Council's decision, with reasons, will be issued in writing, and will be available to the public on request. Copies will be sent to those involved in the matter to which the decision pertains. Any cable television company involved will be required to publicize the decision of the Council and make copies available upon request.

[§180-1]

[CANADIAN ASSOCIATION OF BROADCASTERS]

CAB Code of Ethics

[§180-2]

[This Code of Ethics, published by the Canadian Association of Broadcasters (CAB) in the form below in February, 1988, is administered by the Canadian Broadcast Standards Council. Clause 10(c) of the *CAB Code of Ethics* was referred to in *Review of Advertising Levels on AM Radio*, Public Notice CRTC 1989-106, September 19, 1989, set out below at §257. On February 8, 1994, the CRTC wrote to the CAB formally requesting that it submit "a revised industry *Code of Ethics*", in accordance with the CRTC's procedures for self-regulatory codes, no later than December 31, 1995.]

[§180-3]

BACKGROUND

The purpose of this Code of Ethics is to document the realization by proprietors and managers of broadcasting stations, that, as an integral part in the media of communications of this nation, their first responsibility is to the radio listeners and television viewers of Canada for the dissemination of information and news, the supply

of a variety of entertainment programming to meet the various tastes of listeners, and the necessity for ethical business standards in dealing with advertisers and their agencies.

It is recognized that the most valuable asset of a broadcaster is public respect which must be earned and can be maintained only by adherence to the highest possible standards of public service and integrity.

The electronic form of publications known as private commercial broadcasting is a highly competitive business devoted to provision of service to the public in all its interests - business, political, recreational, informational, cultural and educational - for profit.

Revenues from advertising make possible non-government broadcasting and make all types of programmes available to the Canadian people including news, information, education, and entertainment. Each broadcaster is responsible for the programming of the licensed station. This responsibility can only be net by bringing influence to bear upon all who have a hand in the production of programs including networks, sponsors, producers of live and recorded programs, advertising agencies and talent agencies.

[§180-4]

Clause 1: General Programming

Recognizing the varied tastes of the public it shall be the responsibility of the broadcasting industry to so program its various stations that as far as possible, all groups of listeners and viewers shall have from these, some part of the programming devoted to their special likes and desires.

[§180-5]

Clause 2: Human Rights

Recognizing that every person has a right to full and equal recognition and to enjoy certain fundamental rights and freedoms, broadcasters shall endeavour to ensure, to the best of their ability, that their programming contains no abusive or discriminatory material or comment which is based on matters of race, national or ethnic origin, colour, religion, age, sex, marital status or physical or mental handicap.

[§180-6]

Clause 3: Children's Programs

Recognizing that programs designed specifically for children reach impressionable minds and influence social attitudes and aptitudes, it shall be the responsibility of member stations to provide the closest possible supervision in the selection and control of material, characterizations and pilot. Nothing in the foregoing shall mean that the vigour and vitality common to children's imaginations and love of adventure should be removed. It does mean that programs should be based upon sound social concepts and presented with a superior degree of craftsmanship; that these programs should reflect the moral and ethical standards of contemporary Canadian society and encourage pro-social behaviour and attitudes. The member stations should encourage parents to select from the richness of broadcasting fare, the best programs to be brought to the attention of their children.

[§180-7]

Clause 4: Community Activities

It shall be the responsibility of each member station to serve to the utmost of its ability the interests of its particular community and to identify itself actively with worthwhile community activities.

[§180-8]

Clause 5: Education

While recognizing that all programs possess by their very nature, some educational value, member stations will do all in their power to make specific educational efforts as useful and entertaining as possible. To that end, they will continue to use their time and facilities and to cooperate with appropriate educational groups in an attempt to augment the educational and cultural influences of school, institutions of higher learning, the home and other institutions devoted to education and culture. When practical, advantage should be taken of opportunities to consult such institutions on what suitable materials is available and how it may best be presented. Where practical, factual material for public enlightenment should be included by stations, networks, advertisers and their agencies.

[§180-9]

Clause 6: News

It shall be the responsibility of member stations to ensure that news shall be represented with accuracy and without bias. The member station shall satisfy itself that the arrangements made for obtaining news ensure this result. It shall also ensure that news broadcasts are not editorial. News shall not be selected for the purpose of furthering or hindering either side of any controversial public issue, nor shall it be designed by the beliefs or opinions or desires of the station management, the editor or others engaged in its preparation or delivery. The fundamental purpose of news dissemination is a democracy is to enable people to know what is happening, and to understand events so that they may form their own conclusions.

Therefore, nothing in the foregoing shall be understood as preventing news broadcasters from analyzing and elucidating news so long as such analysis or comment is clearly labelled as such and kept distinct from regular news presentations. Member stations will, insofar as practical, endeavour to provide editorial opinion which shall be clearly labelled as such and kept entirely distinct from regular broadcasts of news or analysis and opinion.

It is recognized that the full, fair and proper presentation of news, opinion, comment and editorial is the prime and fundamental responsibility of the broadcast publisher.

[§180-10]

Clause 7: Controversial Public Issues

Recognizing in a democracy the necessity of presenting all sides of a public issue, it shall be the responsibility of member stations to treat fairly, all subjects of a controversial nature. Time shall be allotted with due regard to all the other elements of balanced program schedules, and to the degree of public interest in the questions presented. Recognizing that healthy controversy is essential to the maintenance of democratic institutions, the broadcast publisher will endeavour to encourage presentation of news and opinion on any controversy which contains an element of the public interest.

[§180-11]

Clause 8: Advertising

Recognizing the service that commercial sponsors render to listeners and viewers in making known to them the goods and services available in their communities and realizing that the story of such goods and services goes into the intimacy of the home, it shall be the responsibility of member stations and their sales representatives to work with advertisers and agencies in improving the technique of telling the advertising story so that these shall be in good taste, simple, truthful and believable, and shall not offend what is generally accepted as the prevailing standard of good taste.

Advertising is to be made most effective not only by the use of an appropriate selling message but by earning the most favourable reaction of the public to the sponsor by providing the best possible programming. Nothing in the foregoing shall prevent the dramatization of the use, value or attractiveness of products and services. While appropriate legislation protects the public from false and exaggerated claims for drugs, proprietaries and foods, it shall be the responsibility of member stations and their sales representatives to work with the advertisers of these products and the advertising agencies to ensure that their value and use are told in words that are not offensive. Recognizing also, that advertising appeals or commentaries by any advertiser that cast reflection upon the operation of a competitor or other industry or business, are destructive of public confidence, it shall be the responsibility of member stations, so far as it lies within the power to prevent such advertising appeals or commentaries being broadcast by their stations.

Broadcasters subscribing to the Code of Ethics and Clause 8 approve adherence to the complimentary Canadian Code of Advertising Standards, published by the Advertising Advisory Board; the guidelines on sex-role stereotyping published by the Advertising Advisory Board; the Broadcast Code for Advertising to Children, published by the Canadian Association of Broadcasters; and to the Code of Consumer Advertising Practices for Non-Prescription Medicines, as published by the Advertising Advisory Board. The aforementioned codes and guidelines are all subject to endorsement by the Joint Board of the Canadian Association of Broadcasters from time to time.

[§180-12]

Clause 9: Prohibition of Subliminal Devices

Broadcasters must not knowingly broadcast any advertising material or program that makes use of any subliminal technique or device. "Subliminal device" means a technical device that is used to convey or attempt to convey a message to a person by means of images or sounds of very brief duration, or by any other means, without that person being aware that such a device is being used, or being aware of the substance of the message being conveyed or attempted to be conveyed.

[§180-13]

Clause 10: Advertising on AM and FM Radio Broadcasting Stations

(a) Broadcasters recognize that they are responsible for the acceptability of advertising material which they broadcast. All commercials should be in good taste and should conform with applicable laws and regulations.

(b) Broadcasters should adhere strictly to the provisions of all industry codes or guidelines relating to advertising, such as those pertaining to children's advertising, feminine hygiene products and the advertising of alcoholic beverages.

(c) Broadcasters should ensure that the time allocated to commercial messages is not excessive at any period during the broadcast day, and particularly during high audience periods. The total quantity of commercial messages broadcast on a given station in one week should not, in any event, exceed 1750 minutes.

(d) Broadcasters should ensure in the scheduling of commercial messages that they are appropriate for the likely listening audience at the time the commercials are scheduled, and that they are both scheduled and inserted in a manner that will not detract from the effectiveness of the programming broadcast by the station.

(e) Broadcasters should ensure that advertising material within a newscast is clearly distinguishable from the news information adjacent to it. To this end, any commercial message broadcast within a newscast should not be read by the newsreader.

(f) Broadcasters should ensure that there is no influence by advertisers, or the perception of such influence, on the reporting of news or public affairs, which must be accurate, balances, and objective, with fairness and integrity being the paramount considerations governing its reporting.

[§180-14]

Clause 11: Radio Station Contests and Promotions

(a) Broadcasters recognize that whereas station contests and promotions are legitimate and useful methods of attracting audiences, they should be conducted in such a manner that the cost of any such contest or promotion is not excessive, particularly in relation to the station's programming budget.

(b) All station contests and promotions should be conceived and conducted in good taste, and particular care should be taken to ensure that they are not likely to give rise to a public inconvenience or disturbance.

[§180-15]

Clause 12: Television Station Contests and Promotions

(a) Broadcasters recognize that, whereas station contests and promotions are legitimate and useful methods of attracting audiences, they should be conducted in such a manner that the cost of any such contest or promotion is not excessive, particularly in relation to the station's programming budget.

(b) All station contests and promotions should be conceived and conducted in good taste, and particular care should be taken to ensure that they are not likely to give rise to a public inconvenience or disturbance.

[§180-16]

Clause 13: Advertising in Television News Programs

(a) Broadcasters should ensure that advertising material within a newscast is clearly distinguishable from the news information adjacent to it. To this end, any

commercial message broadcast within a newscast should not be read by the newsreader.

(b) Broadcasters should ensure that there is no influence by advertisers, or the perception of such influence, on the reporting of news or public affairs, which must be accurate, balanced, and objective, with fairness and integrity being the paramount considerations governing its reporting.

[§180-17]

Clause 14: Treatment of Religious Programs

Broadcasters should endeavour to make available to the community, adequate opportunity for presentation of religious messages and should also endeavour to assist in all ways open to them the furtherance of religious activities in the community. Recognizing the purpose of the religious broadcast to be that of promoting the spiritual harmony and understanding of humanity and that of administering broadly to the varied religious needs of the community, it shall be the responsibility of each member station to ensure that its religious broadcasts, which reach persons of all creeds and races simultaneously shall not be used to convey attacks upon another race or religion.

[§180-18]

Clause 15: Sex-Role Stereotyping

Recognizing that stereotyping images can and do cause negative influences, it shall be the responsibility of broadcasters to exhibit, to the best of their ability, a conscious sensitivity to the problems related to sex-role stereotyping, by refraining from exploitation and by the reflection of the intellectual and emotional equality of both sexes in programming.

[§180-19]

Clause 16: Employees

Each member station shall endeavour to secure the highest possible type of employees and people who are qualified for and suitable to the duties for which each is hired. Every attempt shall be made to make service in the broadcasting industry an attractive and permanent career, permitting employees to contribute through their manner of living and personal attainments to the station's prestige in the community. Each employee shall receive in addition to minimum guarantees provided by applicable legislation, fair remuneration and treatment in accordance with the standards prevailing in the particular community at any time. The general intent of this section is realization that any industry is most often judged by the type of employees it attracts, the manner in which they conduct themselves and are able to live and their opinion of the industry for which they work. Recognizing this as a valuable asset, the broadcaster will do everything possible to maintain and further the best type of staff relations.

[§180-20]

Clause 17: Adherence

(a) All future broadcasting codes which have been endorsed by the Board of Directors and ratified by the membership who subscribe to the Code, at a duly

called annual meeting of the Association, shall be incorporated into the Code of Ethics.

(b) Upon adoption of this Code of Ethics by the Association, any member broadcasting station shall be granted appropriate recognition and symbol. It may then make announcement periodically of the fact it is in possession of such certification and be entitled to make appropriate oral and visual use of the Code symbol.

[§180-21]

Clause 18: Composition of the Committee

There shall be a Code of Ethics Committee of five persons, three of whom shall be appointed by the Board of Directors and two elected by the Annual Meeting of the Association for a period not to exceed five years, and appointments may be renewed. Any vacancy in the Committee may be filled for the unexpired term by the Board of Directors. Any vacancy or absence shall not impair the powers of the remaining members of the Code of Ethics Committee to act, provided however, that a quorum of it shall be considered as not less than three persons and such a quorum shall be present before the Code of Ethics Committee is empowered to transact business.

[§181-1]

[CANADIAN ASSOCIATION OF BROADCASTERS]

Voluntary Code Regarding Violence in Television Programming

[§181-2]

[This Code, published by the Canadian Association of Broadcasters in October 1993, was approved by the Commission in Public Notice CRTC 1993-149, October 28, 1993. It replaces a previous Code published by the CAB in January 1987. It is administered by the Canadian Broadcast Standards Council. In Public Notice CRTC 1993-149, the Commission made the following statement:

[§181-3]

The Commission's Response

"The Commission is generally satisfied that the CAB's revised Code achieves the appropriate balance between preserving freedom of expression and protecting the viewing public, especially children, from the harmful effects of television violence.

"...The Commission's acceptance of the Code, however, is conditional upon the inclusion of a satisfactory system of program classification. Once the Action Group has developed a classification system that is acceptable to the Commission, the Commission will expect the CAB to incorporate the system into the Code and to make any revisions that may be necessary. In this regard, the Commission draws the CAB's attention to the possibility that revisions may be required to Section 3 of the Code, where reference is made to a 9:00 p.m. watershed hour before which programming portraying scenes of violence intended for adult audiences must not be aired.

In light of growing societal concerns about destructive adolescent behaviour (including, among other things, drug abuse and street crime), the Commission also expects the classification system developed by the Action Group to address the classification and scheduling of programming aired at times when this group (those 12 to 17 years of age) is likely to be viewing television.

Once a satisfactory classification system has been approved by the Action Group, the Commission will publish it for comment by all interested parties.

...The Commission notes the references in the Code to "realistic scenes of violence", and recognizes that, while most animated fairy tales, fables, and cartoons of slapstick humour do not contain realistic scenes of violence, a number of action cartoons *do* portray such scenes. Studies indicate that such scenes may alter the emotional reactions of some children to violence, and could result in such effects as desensitization and increased tendencies towards aggressive behaviour. Consequently, the Commission expects broadcasters to be guided by Section 2 of the Code, and to bear these concerns in mind when acquiring or producing animated programs for children.

[§181-4]

Implementation of the Code's Requirements

"As proposed by the CAB, the Commission will expect the licensees of all privately-owned conventional television stations and networks to be operating in compliance with the provisions of the Code by no later than 1 January 1994. At the time of licence renewal or upon issuance of new licences, the Commission intends to require such compliance as a condition of licence.

"Upon application, the Commission would be prepared to suspend this condition of licence for broadcasters who are members in good standing of the Canadian Broadcast Standards Council (the Council) which will be overseeing the application of the Code. For the purposes of assessing compliance, the Commission will have regard to Section III only of the Code found in Appendix A of this notice [NOTE: set out further below].

"The Commission wishes to emphasize that, by sanctioning industry self-regulation with respect to the portrayal of violence on television, it is not relinquishing its responsibility or authority in this area. According to its usual practice, the CRTC will monitor closely the resolution of complaints about television violence, and reminds the public that any interested party not satisfied with a Council decision may ask the CRTC to examine its complaint."]

[§181-5]

I - Background

1.1 The issue of violence in our society is one of real concern to the public, and by extension to Canadian private, over-the-air broadcasters who are involved with, and commited to, the communities which they serve.

1.2 Private broadcasters recognized and responded to this concern in 1987, when the Canadian Association of Broadcasters (CAB) developed its first Voluntary Code Regarding Violence in Television Programming, in consultation with a wide range of public interest groups and industry-related associations.

1.3 Appreciating that social change creates evolving pressures on any set of industry guidelines, the CAB undertook a review of its Code in 1992, resulting in this new version published in 1993. This Voluntary Code will be reviewed every five years.

1.4 Following the procedural criteria set by the Canadian Radio-television and Telecommunications Commission in PN 88-13 (Guidelines for Developing Industry-Administered Standards), the CAB again sought input from a wide range of public groups with an interest in the issue of violence. A list of these organizations is appended to the revised Code. The CAB also made extensive use of the CRTC Staff report on Violence in Television, released May 27, 1992.

1.5 The Guidelines set out in this Voluntary Code are provided to CAB members to assist them in the creation, scheduling, purchase, broadcast and distribution of their programs, as they carry out their responsibilities as licensed television programming undertakings under the provisions of the *Broadcasting Act*. The Guidelines are also designed to complement the general principles set out in the CAB ***Code of Ethics***.

1.6 There seems to be little doubt that society's ability to deal with violence in the media, in all its various forms, has lagged behind technological developments.

1.7 For television, it has taken only thirty years for the environment to evolve from the consumers having just a handful of local signals available from over-the-air broadcasters, to today's fifty channel universe, soon to expand to the two and three hundred channel universe, accessible by cable, satellite and over-the-air.

1.8 The home video cassette recorder, which now has a national penetration rate of 73%, has enabled people to become their own schedulers, making somewhat redundant the arbitrary allocation of certain genres of programming in specific dayparts.

The VCR has also allowed unprecedented individual access to feature film product which herefore had only been available within a movie theatre setting.

In both instances, this has created opportunities for children to view programming which was intended for adult audiences.

1.9 The creation of new cable delivered services, the importation of distant foreign signals, and the widespread use of videogames has also changed the home viewing environment.

1.10 Just as it is accepted that the portrayal of violence on television is just one of many factors related to violence in our society as a whole, it is also accepted that Canadian conventional, over-the-air broadcasters represent only one of many sources of the programming which originates from the television monitor.

1.11 This Voluntary Code represents a responsible and pro-active approach to the issue of violence in programming telecast by Canada's private, over-the-air broadcasters.

1.12 It is the responsibility of the CRTC to address the issue of violence in programming delivered to Canadian consumers by other elements of the Canadian broadcasting system; most notably, U.S. signals carried by cable operators.

1.13 It is the responsibility of governments at all levels to address the issue of violence in the video rental system, and in video games.

1.14 It is the responsibility of parents to be actively involved in the viewing choices of their children.

1.15 It is the responsibility of the broadcaster, the regulator, the cable operator and cable delivered programming services, in conjunction with parents, teachers and individual viewers to work cooperatively to inform and educate society on how to best manage this technological revolution which has created an endless video buffet of programming choices.

1.16 Censorship is not an answer. Canadian viewers continue to ask for a wide range of programming options to be made available to them no matter where in the country they live.

1.17 However creative freedom carries with it the responsibility of ensuring that our children are protected, and that viewers have adequate information about program content to make informed viewing choices based on their personal tastes and standards.

1.18 This Voluntary Code represents the commitment of Canada's private, over-the-air broadcasters to address that responsibility, to in essence create a pact between the broadcasters and their viewers.

Through their programming, production and scheduling practices, the development of a program classification system, and the use of viewer advisories, Canada's private broadcasters undertake to play their part to protect our children and to use discretion in addressing the sensitivities of their viewers.

In return, viewers, using the programming information provided to them, accept responsibility for their viewing behaviour and for that of thier children.

[§181-6]

II - Statement of Principle

1.1 Canadian private broadcasters understand and accept they have a responsibility to their viewers, in addressing the issue of violence on television.

1.2 By their adherence to this Voluntary Code of practice, Canadian private broadcasters are publicly endorsing the following principles:

1.2.1 that programming containing gratuitous violence not be telecast,

1.2.2 that young children not to be exposed to programming which is unsuitable for them,

1.2.3 that viewers be informed about the content of programming they choose to watch..

1.3 By the adoption of this Voluntary Code Canadian private broadcasters shall ensure these standards are met in the production, the acquisition, the scheduling, the promotion and the telecast of their programming.

1.4 This Voluntary Code is designed to ensure that violence in programming telecast by private broadcasters is interpreted and assessed within its dramatic and informational context.

1.5 The depiction of violence within children's programming shall not be so realistic as to threaten young children, to invite imitation, or to trivialize the effects of violent acts.

1.6 The portrayal of violence within drama programming shall be relevant to the development of character, or to the advancement of the theme or plot.

1.7 Within news and public affairs programming, the depiction of violence shall be relevant to the nature of the event or story being reported.

1.8 In all genres of programming, the depiction of violence shall be evaluated in relation to the individual program, its intended audience and the time of broadcast.

[§181-7]

III - The Code

1.0 CONTENT

1.1 Canadian broadcasters shall not air programming which:

- contains gratuitous violence in any form*
- sanctions, promotes or glamorizes violence

(*"Gratuitous" means material which does not play an integral role in developing the plot, character or theme of the material as a whole).

[§181-8]

2.0 CHILDREN'S PROGRAMMING

(Children refers to persons under 12 years of age)

2.1 As provided below, programming for children requires particular caution in the depiction of violence; very little violence, either physical, verbal or emotional shall be portrayed in children's programming.

2.2 In children's programming portrayed by real-life characters, violence shall only be portrayed when it is essential to the development of character and plot.

2.3 Animated programming for children, while accepted as a stylized form of storytelling which can contain non-realistic violence, shall not have violence as its central theme, and shall not invite dangerous imitation.

2.4 Programming for children shall deal carefully with themes which could threaten their sense of security, when portraying, for example; domestic conflict, the death of parents or close relatives, or the death or injury of their pets, street crime or the use of drugs.

2.5 Programming for children shall deal carefully with themes which could invite children to imitate acts which they see on screen, such as the use of plastic bags as toys, use of matches, the use of dangerous household products as playthings, or dangerous physical acts such as climbing apartment balconies or rooftops.

2.6 Programming for children shall not contain realistic scenes of violence which create the impression that violence is the preferred way, or the only method to resolve conflict between individuals.

2.7 Programming for children shall not contain realistic scenes of violence which minimize or gloss over the effects of violent acts. Any realistic depictions of violence shall portray, in human terms, the consequences of that violence to its victims and its perpetrators.

2.8 Programming for children shall not contain frightening or otherwise excessive special effects not required by the storyline.

[§181-9]

3.0 SCHEDULING

3.1 Programming

3.1.1 Programming which contains scenes of violence intended for adult audiences shall not be telecast before the late evening viewing period, defined as 9 pm to 6 am.

3.1.2 Accepting that there are older children watching television after 9 pm, broadcasters shall adhere to the provisions of article 5.1 below (viewer advisories), enabling parents to make an informed decision as to the suitability of the programming for their family members.

3.1.3 In order to provide viewers with the benefit of Canadian program classification and viewer advisories not available on foreign distant signals, broadcasters who have CRTC-permitted substitution rights over programming which is imported into their markets before the late evening viewing period, may employ substitution notwithstanding article 3.1.1.

3.1.4 Broadcasters shall exercise discretion in employing substitution in accordance with article 3.1.3 and shall at no time avail themselves of substitution rights over programming which contains gratuitous violence in any form or which sanctions, promotes or glamourizes violence.

3.1.5 Broadcasters shall take special precautions to advise viewers of the content of programming intended for adult audiences which is telecast before 9 pm in accordance with article 3.1.3.

(Note: To accommodate the reality of time zone differences, and Canadian distant signal importation, these guidelines shall be applied to the time zone in which the signal originates.)

3.2 Promotional material which contains scenes of violence intended for adult audiences shall not be telecast before 9 pm.

3.3 Advertisements which contain scenes of violence intended for adult audiences, such as those for theatrically presented feature films, shall not be telecast before 9 pm.

[§181-10]

4.0 CLASSIFICATION SYSTEM

4.1 Canadian broadcasters are in the process of co-operatively developing with other segments of the industry, a viewer-friendly classification system, which will provide guidelines on content and the intended audience for programming.

Once complete, the classification system shall complement this Voluntary Code. As it is recognized that a classification system will have a bearing on program scheduling, the provisions of article 3.0 above shall be reviewed at that time.

[§181-11]

5.0 VIEWER ADVISORIES

5.1 To assist consumers in making their viewing choices, broadcasters shall provide a viewer advisory, at the beginning of, and during the first hour of programming telecast in late evening hours which contains scenes of violence intended for adult audiences.

5.2 Broadcasters shall provide a viewer advisory at the beginning of, and during programming telecast outside of late evening hours, which contains scenes of violence not suitable for children.

5.3 Suggested language for suitable viewer advisories is outlined in Appendix A

[§181-12]

6.0 NEWS & PUBLIC AFFAIRS PROGRAMMING

6.1 Broadcasters shall use appropriate editorial judgement in the reporting of, and the pictorial representation of violence, aggression or destruction within their news and public affairs programming.

6.2 Caution shall be used in the selection of, and repetition of, video which depicts violence.

6.3 Broadcasters shall advise viewers in advance of showing scenes of extra-ordinary violence, or graphic reporting on delicate subject matter such as sexual assault or

court action related to sexual crimes, particularly during afternoon or early evening newscasts and updates when children could be viewing.

6.4 Broadcasters shall employ discretion in the use of explicit or graphic language related to stories of destruction, accidents or sexual violence, which could disturb children and their families.

6.5 Broadcasters shall exercise particular judgement during live coverage of domestic terrorist events or civil disorders, to ensure news coverage does not become a factor in inciting additional violence.

6.6 While broadcasters shall not exaggerate or exploit situations of aggression, conflict or confrontation, equal care shall be taken not to sanitize the reality of the human condition.

6.7 Broadcasters shall refer to The Code of Ethics of the Radio-Television News Directors Association of Canada (RTNDA) for guidance regarding broadcast journalism in general. [NOTE: See below at §182]

[§181-13]

7.0 VIOLENCE AGAINST WOMEN

7.1 Broadcasters shall not telecast programming which sanctions, promotes or glamorizes any aspect of violence against women.

7.2 Broadcasters shall ensure that women are not depicted as victims of violence unless the violence is integral to the story being told. Broadcasters shall be particularly sensitive not to perpetuate the link between women in a sexual context and women as victims of violence.

7.3 Broadcasters shall refer to the Canadian Association of Broadcasters' code on Sex Role Portrayal for guidance regarding the portrayal of women in general.

[§181-14]

8.0 VIOLENCE AGAINST SPECIFIC GROUPS

8.1 Broadcasters shall not telecast programming which sanctions, promotes or glamorizes violence based on race, national or ethnic origin, colour, religion, gender, sexual orientation, age, or mental or physical disability.

[§181-15]

9.0 VIOLENCE AGAINST ANIMALS

9.1 Broadcasters shall not telecast programming which sanctions, promotes or glamorizes violence against animals.

9.2 Broadcasters shall not be restricted in the telecast of legally sanctioned activities associated with animals. In such telecasts, judgement shall be used in the selection of video and associated audio, particularly if the telecast is broadcast outside of late evening hours.

[§181-16]

10.0 VIOLENCE IN SPORTS PROGRAMMING

10.1 Broadcasters shall not promote or exploit violent action which is outside the sanctioned activity of the sport in question.

10.2 In sports programming which involves animals, broadcasters shall refer to Section 9.0 of this Voluntary Code.

[§181-17]

IV - Code Application & Administration

1.1 Application of this Voluntary Code is the responsibility of the individual licensee. Complaints and inquiries should be addressed to the television station involved.

1.2 Complaints not resolved between complainant and licensee may be referred to the Canadian Broadcast Standards Council (CBSC) which is charged with the supervision of adherence to this Voluntary Code by its members, and the process that entails.

1.3 The CBSC can be contacted at
Canadian Broadcast Standards Council
PO BOX 3265, Station D
Ottawa, Ontario
K1P 6H8
Telephone: 613-233-4607
Facsimile: 613-236-9241

1.4 The Canadian Association of Broadcasters (CAB), in association with the CBSC will create public awareness of this Voluntary Code, by distributing copies to members for internal distribution and for distribution to the general public.

1.5 The CAB will contribute to development of public awareness of the Voluntary Code and its provisions by means of public service awareness campaigns.

1.6 The CAB will facilitate ongoing workshops and seminars for its members' employees who have direct responsibility for its application within individuals stations and networks.

1.7 The CAB will advise Canadian program producers and various industry associations of the Code and its provisions. Individual CAB members will apprise independent program producers from whom they purchase programming of the provisions of the Voluntary Code.

1.8 The CAB will work with the CRTC and the Federal government, in acquainting foreign program producers of the provisions of the Voluntary Code.

1.9 The CAB, by means of its Societal Issues and Trends Committee, will monitor the application of the Voluntary Code, and will undertake a review of its provisions every five years.

[§181-18]

Appendix A - Viewer Advisories

Broadcasters may preface their advisories with the following:
"As a member of the Canadian Broadcast Standards Council, CXXX-TV is pleased to provide this viewer advisory."
"As a member of the Canadian Broadcast Standards Council, CXXX-TV is providing this advisory to assist its viewers in making their program choices"

The following are examples of advisories pertaining to the portrayal of violence and other subject matter. They are provided as a guide to assist broadcasters in fulfilling

their obligations to the Voluntary Code on Television Violence, to ensure their viewers are provided with adequate information in making their program selection. Each broadcaster is encouraged to develop and implement advisories which are suitable for its market and which will ensure that its programming is broadcast to a suitable audience.

The following program contains scenes of violence which may not be suitable for younger children. Parental supervision is advised.

The following program contains scenes of violence which are not suitable for younger children. Parental discretion is advised.

The following program contains scenes of violence and coarse language and is not suitable for younger children.

The following program contains scenes of violence intended for adult audiences. Viewer discretion is advised.

The following program contains scenes of violence and coarse language intended for adult audiences. Viewer discretion is advised.

The following program contains scenes of violence and coarse language. Viewer discretion is advised.

The following program contains scenes of violence, coarse language and nudity intended for adult audiences. Viewer discretion is advised.

The following program deals with mature subject matter and is intended for adult audiences. Viewer discretion is advised.

The following program deals with mature subject matter and contains scenes of nudity and coarse language. Viewer discretion is advised.

[§181-19]

Appendix B - Groups consulted in Code creation

During the development of this code, the CAB consulted broadly with its member networks and stations and invited comments from the following groups: [NOTE: the list is omitted]

In addition, a number of meetings took place with senior staff and Commissioners of the Canadian Radio-television and Telecommunications Commission.

[§182-1]

[RADIO TELEVISION NEWS DIRECTORS ASSOCIATION OF CANADA]

RTNDA Code of Ethics

[§182-2]

[This Code of Ethics was originally published by the Radio Television News Directors Association of Canada (RTNDA) in 1970, and updated in 1986. In 1993, the RTNDA agreed with the Canadian Broadcast Standards Council (CBSC) to have the Council administer the Code for a three-year trial period. On February 8, 1994, the CRTC notified the CBSC that it had agreed to its request that the Commission refer to the CBSC for resolution complaints from the public which the Commission considered to fall within the provisions of the RTNDA Code, for a two-year trial period ending December 31,

1995. The CRTC added that "the CRTC will, of course, continue to deal with complaints alleging breaches of the *Broadcasting Act*, any regulation made pursuant to the Act or a condition of licence."]

[§182-3]

Recognizing the importance to a democracy of an informed public, the members of the RTNDA of Canada believe the broadcasting of factual, accurately-reported and timely news and public affairs is vital. To that end, RTNDA members pledge to observe the following Code of Ethics:

[§182-4]

ARTICLE ONE:
The main purpose of broadcast journalism is to inform the public in an accurate, comprehensive and balanced manner about events of importance.

ARTICLE TWO:
News and public affairs broadcasts will put events into perspective by presenting relevant background information. Factors such as race, creed, nationality or religion will be reported only when relevant. Comment and editorial opinion will be identified as such. Errors will be quickly acknowledged and publicly corrected.

ARTICLE THREE:
Broadcast journalists will not sensationalize news items and will resist pressures, whether from inside or outside the broadcasting industry, to do so. They will in no way distort the news. Broadcast journalists will not edit taped interviews to distort the meaning, intent, or actual words of the interviewee.

ARTICLE FOUR:
Broadcast journalists will always display respect for the dignity, privacy and well-being of everyone with whom they deal, and make every effort to ensure that the privacy of public persons is infringed only to the extent necessary to satisfy the public interest and accurately report the news.

ARTICLE FIVE:
Broadcast journalists will govern themselves on the off the job in such a way as to avoid conflict of interest, real or apparent.

ARTICLE SIX:
Broadcast journalists will seek or remove any impediments or bans on the use of electronic news gathering equipment at public proceedings, believing that such access is in the public interest. They acknowledge the importance of protection of confidential information and sources.

ARTICLE SEVEN:
News directors recognize that informed analysis, comment and editorial opinion on public events and issues is both a right and responsibility that should be delegated only to individuals whose experience and judgement qualify them for it.

ARTICLE EIGHT:
Broadcast journalists shall conduct themselves politely, keeping broadcast equipment as unobtrusive as possible. Broadcast journalists will try to prevent their presence from distorting the character or importance of events.

ARTICLE NINE:
In reporting matters that are or may be fore the courts, broadcast journalists will ensure that their reporting does not interfere with the right of an individual to a fair trial.

ARTICLE TEN:
Reporting of criminal activities, such as hostage-takings, will be done in a fashion that does not knowingly endanger lives, hamper attempts by authorities to conclude the event, offer comfort and support or provide vital information to the perpetrator(s) of a criminal activity during the course of the event, with the purpose of conducting an interview for broadcast.

ARTICLE ELEVEN:
The RTNDA will seek to enforce this code through its members and encourage all broadcast journalists, whether RTNDA members or not, to observe its spirit. News directors will try whenever possible and within programming format constraints to publicize the existence of the Code of Ethics, and state that their news department adheres to the code. In any such announcement, it should be mentioned that copies of the code can be obtained by writing the RTNDA or the news director at the station.

[§183-1]

[CANADIAN CABLE TELEVISION ASSOCIATION]

CCTA Access Commitment

[§183-2]

[This Access Commitment, issued by the Canadian Cable Television Association, was sent to the CRTC for its acceptance on March 11, 1994, following the conclusion of the hearings respecting new pay and specialty services. The CCTA Access Commitment was originally proposed in a document issued by the CCTA for comment on November 12, 1993. A revised Access Commitment was issued on February 4, 1994. The document below incorporates further revisions made by the CCTA to take into account matters identified by the CRTC in a letter to the CCTA dated February 11, 1994. Disputes arising concerning the Commitment are to be referred to the Cable Television Standards Council for mediation according to the terms of the Cable Television Standards Foundation bylaws. Changes to the bylaws proposed by the CCTA in this regard are also set out below, although these were only submitted to the Commission for information purposes.]

[§183-3]

COMMITMENT

Cable television licensees will provide access to every licensed Canadian specialty, pay television and pay per view service, except where the cable licensee can demonstrate it has no available channel capacity.

For the purpose of this *ACCESS COMMITMENT*, cable television licensees will consider as "available channel capacity" any channels occupied by non-programming services and, unless otherwise directed by the CRTC, any channels occupied by services which the CRTC, by order, has exempted from the requirement to hold a broadcasting licence.

[§183-4]

APPLICATION

The cable television *ACCESS COMMITMENT* applies to Class 1 cable television systems (i.e. those serving 6,000 or more subscribers) in respect of their carriage and distribution on a discretionary basis of the following services, in the following order of priority, where such services are made available at the cable licensee's local headend:

1. Licensed Canadian English-language specialty, pay television and pay per view services in anglophone markets, and licensed Canadian French-language specialty, pay television and pay per view services in francophone markets;
2. Licensed Canadian ethnic specialty, pay television and pay per view services where at least 10% of the total population of all cities, towns and municipalities encompassed in whole or in part within the licensed area of the cable licensee is of one or any combination of the ethnic origins to which the service is

intended to appeal, according to the most recent Census figures published by Statistics Canada.

Notwithstanding the above order of priority, a cable licensee may, where circumstances warrant its provision of a balanced selection of specialty, pay television or pay per view services in both languages, give priority to the carriage and distribution of one or more such services in their official minority language markets over the carriage and distribution of other such licensed services.

Licensees of large Class 2 systems (i.e. those serving 2,000 or more subscribers) are encouraged to apply this *ACCESS COMMITMENT*, where possible.

Cable licensees are encouraged to apply this *ACCESS COMMITMENT*, where circumstances warrant, to licensed Canadian English-language and French-language specialty, pay television and pay per view services in the services' official minority language markets.

This *ACCESS COMMITMENT* supersedes any previously published access guidelines to which CCTA members adhered in the past.

[§183-5]

DISPUTES

Disputes arising between the licensees of Canadian specialty, pay television or pay per services and cable television licensees concerning access, including disputes relating to the reasonableness of proposed contractual terms, which cannot be resolved by the parties, are to be referred to the Cable Television Standards Council (CTSC) for mediation according to the terms of the Cable Television Standards Foundation bylaws. Either party may refer a matter under dispute to the CTSC at any time during access negotiations. Once a dispute is referred to the CTSC, both parties must participate in the mediation process.

Unless the parties agree otherwise, a matter referred to the CTSC for mediation that is not resolved after 45 days shall immediately be referred to the CRTC for determination.

All of the CTSC's costs associated with the mediation of a dispute are to be shared equally by the parties to the dispute.

[§183-6]

Proposed By-Law Amendment for Cable Television Standards Council

PURPOSE: To give the Standards Council the power to mediate access disputes between licensees of specialty, pay television or pay per view services and cable television licensees.

PROPOSED AMENDMENTS:

A new article, such as that suggested below, would be added to the bylaws, immediately following Article X (which currently establishes the mandate and make-up of the Standards Council):

[§183-7]

Article X.1
Mediation of Access Disputes

1. Subject to sections 3 and 6, the Standards Council may, as contemplated in the CCTA Access Commitment, act as a mediator, or, by unanimous decision and with the agreement of the parties, designate a third party to act as a mediator, in order to attempt to resolve disputes between the licensees of Canadian specialty, pay television or pay per view services and cable television licensees concerning access by such services to a cable television licensee's distribution system, including disputes relating to the reasonableness of proposed contractual terms.
2. When acting pursuant to this article, the Standards Council shall be reimbursed for its costs by the parties to the dispute, including any costs incurred as a result of the appointment of a third party mediator.
3. When acting as a mediator, or designating a mediator, pursuant to section 1 of this Article, the Standards Council shall consist of three Council Members. One such member shall be affiliated with the cable television industry, one shall be affiliated with the specialty, pay television or pay per view industries, and one shall have no related industry affiliation. The three members shall be as follows:
   a) the Chairperson of the Standards Council as appointed pursuant to Article X of these bylaws, subsection 2a); provided, however, that the Chairperson may designate the Member appointed pursuant to Article X, subsection 2b) [i.e. representing consumer interests] to sit as a member of the Standards Council in his or her place;
   b) the Council Member appointed, or designated, as the case may be, pursuant to Article X of these bylaws, subsection 2c) [i.e. representing cable interests]; provided, however, that in the event the Member or designee has a direct interest in the dispute, he or she shall designate an alternative Member who does not have a direct interest in the dispute to sit as a member of the Standards Council in place of the first Member or designee;
   c) one (only) Council Member to be selected on an annual basis by the licensees of the Canadian specialty, pay television and pay per view services; provided, however, that in the event the Member so selected has a direct interest in the dispute, he or she shall designate an alternative Member who does not have a direct interest in the dispute to sit as a member of the Standards Council in his or her place.
4. Other than with respect to the report which it may be required to file with the CRTC pursuant to section 7, the Standards Council, or the mediator designated by the Standards Council, as the case may be (hereafter, "the Council/mediator") shall, unless the parties otherwise agree, keep all matters relating to the mediation confidential.

5. During the mediation of a dispute, the Council/mediator may request additional information from the parties, or require their attendance at a meeting or meetings in order to discuss the matter in dispute.
6. Notwithstanding section 1, the Council/mediator acting pursuant to the terms of this Article may, with the written consent of the parties, adjudicate the merits of an access dispute and render a decision which is binding on the parties.
7. In the mediation or adjudication of disputes pursuant to the terms of this Article, the Council/mediator shall make every effort to resolve or decide the matter, as the case may be, within 45 days. Unless the parties otherwise agree, a matter referred to the CTSC for mediation that is not resolved after 45 days shall immediately be referred to the CRTC together with a report from the Council/mediator concerning the unresolved issues.

[§201-1]

[BOARD OF BROADCAST GOVERNORS]

Political and Controversial Broadcasting Policies

[§201-2]

[BBG Circular No. 51, issued by the Board of Broadcast Governors on December 18, 1961, to be effective January 1, 1962. This circular has been superseded in regard to election policies but continues to have relevance in the area of controversial broadcasting. The circular was based in large part on earlier policies issued by the Canadian Broadcasting Corporation, dating back to July 8, 1939.]

[§201-3]

TO ALL RADIO AND TELEVISION STATIONS

Attached for the guidance of the licensees of all broadcasting stations is a copy of the revised Political and Controversial Broadcasting Policies issued by the Board of Broadcast Governors. This document will supersede any previous issues.

Separate instructions outlining the procedures to be followed in carrying political broadcasts during election campaigns will be sent to all broadcasting stations on the occasion of Provincial or Federal elections.

[§201-4]

PART I - POLITICAL BROADCASTING

[This Part has been superseded by extensive revisions to federal and provincial election legislation. For current CRTC policy, see *Policy with Respect to Election Campaign Broadcasting*, Public Notice CRTC 1988-142, September 2, 1988, below at §246.]

[§201-5]

PART II - CONTROVERSIAL BROADCASTING

I. *POLICY*

The Board does not exercise censorship. It does not restrict the nature of material to be broadcast, except that such material must conform with its printed regulations.

The policy of the Board, with regard to controversial broadcasting, is based on the following principles:

1. The air belongs to the people, who are entitled to hear the principal points of view on all questions of importance.
2. The air must not fall under the control of any individual or groups influenced by reason of their wealth or special position.
3. The right to answer is inherent in the doctrine of free speech.
4. The full interchange of opinion is one of the principal safeguards of free institutions.

In the view of the Board, these principles are not promoted by the sale of network time to individuals or commercial concerns for broadcasts of their opinions or

propaganda. [NOTE: This limitation no longer applies] The principles can be furthered by the provision of free time to competent speakers to present, without let or hindrance, varying points of view on questions of the day. The best safeguard of freedom of discussion is a policy which permits opportunity for the expression of varying points of view.

In accordance with its policy of resisting any attempts to regiment opinion or to abuse freedom of speech, the Board lays down no specific rulings covering controversial broadcasting. The Board itself supports the policy of the fullest use of the air for:

(a) Forthright discussion of all controversial questions;
(b) Equal and fair presentation of all main points of view;
(c) The discussion of current affairs and problems by informed authoritative and competent speakers.

Broadcasting is a changing and evolving art and no fixed and permanent criteria can be set down for the best method of presenting controversial material.

These policies have been adopted in an effort to ensure that the medium of broadcasting may remain at the disposal of the nation, regardless of party, section, class or religion.

[§201-6]

II. *POLICY GOVERNING PURCHASE OF TIME*

[In the original circular, the Board enunciated a policy that there shall be no sale of time on any network to individuals or commercial organizations for the broadcasting of their opinions. This has since been superseded.]

[§201-7]

III. *RULINGS*

The Board is of the opinion that discussion of controversial issues could be prevented where one side will not take the opportunity to present its views. Therefore, any station wishing to broadcast controversial material, whether as a program or as a station editorial, may do so, subject only to the condition that persons desiring to express views contrary to those contained in the controversial program or editorial must be given an opportunity to do so. If, however, no person comes forward to make use of the facilities which are offered, the station is not bound to seek out persons holding contrary views. Nevertheless, the station should ensure that, in the broadcast of the controversial material or editorials, persons having a different view will be given an opportunity to express that view over the station, and that advice of this fact is presented to the public at the time of the original broadcast. Stations may comply with this ruling by reading, without comment, representative letters written by those holding opposite views.

[§201-8]

[NOTE: For instances in which the issue of controversial broadcasting has been addressed with respect to specific stations and issues, see:

Air of Death - CBC, CRTC Public Announcement, July 9, 1970

Miles for Millions - CHNS, CRTC Public Announcement, March 28, 1972

Bill 22 - CFCF, CRTC Public Announcements, January 12, 1976 and February 24, 1977
Committee of Inquiry - CBC, CRTC Public Announcement, March 14, 1977
Media Watch - CKVU-TV, Public Notice CRTC 1983-187, August 17, 1983
National Assembly Shooting - CFCF, Public Notice CRTC 1984-159, June 28, 1984
Nishga Tribal Council - CKNW, Public Notice CRTC 1985-236, November 4, 1985.
Les Entreprises de Radiodiffusion de la Capitale Inc. (CHRC), Decision CRTC 90-772, August 29, 1990
CKDU-FM Society, Decision CRTC 94-106, March 24, 1994

Reference should also be made to the following policy documents set out elsewhere in this handbook:

Balance in Programming on Community Access Media, Public Notice CRTC 1988-161, September 29, 1988, below at §247.

Policy Regarding Open-Line Programming, Public Notice CRTC 1988-213, December 23, 1988, below at §251.]

[§202-1]

[CANADIAN RADIO-TELEVISION COMMISSION]

Licensing Policy in relation to Common Carriers

[§202-2]

[CRTC Public Announcement, December 3, 1969. This policy was referred to in *Clearview Cable TV Limited and Amtelecom Group Inc.*, Decision CRTC 91-840, November 22, 1991.]

[§202-3]

The Canadian Radio-Television Commission has considered the relationship between the common carriers and CATV operations for some time, and has recently had the opportunity to hear further comments by both the broadcasting industry and certain common carriers.

The CRTC has concluded that it would not be in the public interest to encourage common carriers to hold licences for CATV systems; however, the Commission recognizes that the common carriers play an important role in the development of cable television and therefore, the CRTC hopes that the co-operation between the common carriers and the CATV industry will be maintained and expanded in order to ensure that CATV systems would have the ability to provide the necessary service to the public while maintaining control over their systems.

The Commission hopes that agreements between CATV operators and common carriers will reflect the concern of the Commission as expressed above and will assist in the development of the Canadian broadcasting system. The Commission also expects that any such agreements entered into by licensees will not inhibit the ability of licensees to

implement the policy expectations of this Commission with regard to the development of CATV.

The Commission also realizes that under certain circumstances smaller common carrier companies may be the only entities capable of providing a CATV service as operators in certain of Canada's smaller population centres, and the Commission will therefore consider any such applications for licences for CATV systems by common carriers on their individual merits.

[§203-1]

[CANADIAN RADIO-TELEVISION COMMISSION]

Financial Disclosure Relating to Cable Television Undertakings

[§203-2]

[CRTC Public Announcement, October 28, 1975, 1 C.R.T. 443. Now superseded in specific instances, as indicated below, but included as a general guide to CRTC policy on financial disclosure.]

[§203-3]

In its notice of public hearing dated April 4, 1975 the Commission invited comment from all interested parties on the following question:

"In dealing with applications by licensees of cable television undertakings for increases in fees charged to subscribers, should the following documents and information filed with the applications be made available to the public:

1. the annual financial statements
2. projections of revenues and expenses including the assumption used to make these projections." ...

[NOTE: The positions of the parties are not here reproduced.]

[§203-4]

...After studying all these positions, the Commission has concluded that its future practice will be as follows:

1. All applications for increases in fees charged to subscribers of cable television undertakings shall be accompanied by the applicant's most recent annual financial statements which shall be part of the public file. Such statements shall include audited statements for each cable television undertaking for which a fee increase is sought and consolidated financial statements where applicable. The financial statements should be prepared in accordance with the standards of disclosure recommended by the Canadian Institute of Chartered Accountants.
2. The Commission will no longer require that general projections of revenues and expenses be filed with subscriber fee increase applications. Licensees, however, may wish to file general or particular projections in support of their applications. Such

information will be made part of the public file together with any other financial information which the applicant files in support of his application.

3. Although the above procedure will be the standard practice, the Commission will continue to retain its discretion under Rule 20 to treat financial information confidentially upon request of an applicant when it considers the public interest will best be served by so doing...

...In deciding to make financial statements available to the public the Commission recognizes the continuing development of public policy on this question as reflected in federal and provincial legislation governing corporations and securities.

The Commission notes as well, that the majority of cable television subscribers in Canada are served by public companies whose financial statements, on a consolidated basis, are presently available to the public in any event.

With respect to general projections of revenues and expenses, the Commission has decided to discontinue the requirement that such information be filed with applications to increase subscriber fees. Such projections contain inherent uncertainties because of rapidly changing economic and technological conditions to which the cable industry is presently subject and which make accurate predicting of revenues and expenses extremely difficulty. There may be, however, situations in which applicants wish to file projections in support of their applications. In such cases, the Commission has concluded that this information should be made available to the public.

[For more specific requirements respecting financial disclosure by cable television licensees filing applications under subsection 18(8) of the *Cable Television Regulations, 1986*, see Appendix B of Public Notice CRTC 1986-182, August 1, 1986, below at §219-22, as amended by Public Notice CRTC 1990-53, May 15, 1990, below at §261.]

[§203-5]

The Commission has noted the tendency of certain interveners to link the regulation of cable television subscriber fees to traditional procedures and techniques of rate regulation.

The Commission considers that it must assess fee increase applications in the overall context of the objectives for the Canadian broadcasting system contained in the *Broadcasting Act*. In this connection, the Commission reiterates the criteria set out in its public announcement of September 18, 1974, which it considers should be taken into account in judging applications for cable subscriber fee increases. These are:

(a) the quality of service presently provided by the licensee, with particular reference to compliance by the applicant with Commission policy requirements;

(b) proposed additions to or improvements in service, including, without limitations:
   (i) the introduction of additional channels in accordance with CRTC policy requirements;
   (ii) the introduction or improvement of community programming;
   (iii) the introduction of new forms of local origination services;
   (iv) the improvement of the technical quality of the service provided beyond minimum requirements;
   (v) the introduction of converter service; and
   (vi) the role of the licensee in the development and strengthening of the broadcasting system in its area;

(c) the variance of the fees proposed from those generally in effect in the region;
(d) the desirability of reasonable cost sharing to finance the expansion of cable television service within the region in which the licensee's system is located;
(e) economic need taking into account such factors as:
  (i) the efficiency of the management of the system;
  (ii) the financial projections filed with the initial or renewal applications;
  (iii) the factors which have led to the variance from such projections; and
  (iv) any other factors which have led to the alleged economic need; and
(f) other criteria having particular reference or concern to the licensee and to the area and the subscribers served by it.

[NOTE: The above criteria, originally set out in an announcement dated Sept.18, 1974, were later applied in the context of applications for rate increases under subsection 18(8) of the *Cable Television Regulations, 1986*. However, they were later superseded in Public Notice CRTC 1990-53, May 15, 1990, set out below at §261. From 1990 to 1993, subsection 18(8) applications were assessed on economic need, based on the groundrules set out in *Rate of Return Measures and Profitability Benchmarks for the Cable Television Industry*, Public Notice CRTC 1991-29, March 14, 1991. For the current groundrules, see *New Assessment Guidelinbes for Fee Increases Under Subsection 18(8) of the Cable Television Regulations, 1986*, Public Notice CRTC 1993-146, October 21, 1993, set out below at §302.]

[§204-1]

[CANADIAN RADIO-TELEVISION COMMISSION]

Special Programming Channels

[§204-2]

[CRTC Public Announcement, December 16, 1975. This policy statement, relating to "special" or "supplementary" programming channels, was one of a number of *Policies Respecting Broadcasting Receiving Undertakings (Cable Television)* issued by the CRTC following extensive hearings in June of 1975. While the other policy statements, dealing with such matters as the community channel, radio services, augmented channel service and pay television, have been superseded by regulations and policies adopted in the 1980's, the CRTC continues to make reference to the following policy. See, e.g. *Vidéotron Ltée*, Decision CRTC 91-875, December 6, 1991, where the Commission approved the addition of a special programming channel entitled "Le Canal Evénement" but denied the proposal for the distribution of commercia. sponsorship on the channel, noting that "this would be contrary to its 1975 cable television policy, which generally prohibits the distribution of advertising on specialty programming channels." Similarly, in *Vidéotron Ltée* ,Decision CRTC 94-48, February 14, 1994, the Commission noted that the licensee's commitment not to broadcast advertising on its special programming service "Education médicale continue" (EMC), which had been approved for an experimental period, "was consistent with the Commission's 1975 cable television policy."]

[§204-3]

Introduction

At the public hearing the concept of a specific extra programming channel called the supplementary programming channel was discussed. Many concerns were expressed regarding the possible additional audience fragmentation that would be created if such a channel were allowed. There were also major reservations concerning the availability of programming for the channel. While some groups were in favour of the increased opportunities for Canadian programming that might be represented by such channel, others were equally concerned that it would only serve to fragment existing audiences without really achieving very much of financial benefit to Canadian broadcasters and program producers. Some felt that this concept should not be limited to the augmented channel service but made freely available to all cable television licensees who wish to carry it. Still others felt that more than one such channel should be allowed if desired and that a greater flexibility should be given in the choice of programming for such a channel.

The Commission has concluded that specifically identifying a channel to be known as the supplementary programming channel is not a desirable objective at this time and as a consequence it favours the present policy of considering proposals for special programming channels on a case-by-case basis. Such channels will not be limited to carriage on the augmented channel service.

[§204-4]

Nature of the Programming

While recognizing that the nature and extent of the programming for such channels can be as diverse and innovative as licensees propose, the Commission considers it essential to use such channels to assist Canadian program producers. When this is achieved, it could also provide certain non-Canadian programming not presently available from off-air broadcasters. With such principles in mind the Commission is prepared to give consideration to the following kinds of programming which may be run on several channels or combined on a single channel:

a. reruns of Canadian produced off-air broadcast programs, including the original commercial messages broadcast with such programs obtained from local Canadian television stations carried on the cable television system. In each case permission should be obtained from the broadcaster to run such programs
b. films or video-tapes from sources such as the National Film Board, l Office du film du Quebec, the Canadian Film Institute, la Cinematheque quebecoise and other provincial and federal bodies and government agencies
c. films from foreign governmental sources and from non-profit agencies such as the United Nations Organization
d. original feature motion picture films in languages other than English or French. Feature films originally produced in one language and dubbed or sub-titled into a second language would not be acceptable
e. amateur films or video tape productions
f. original foreign and foreign language programs (not dubbed or sub-titled) not included in sub-paragraph (a) provided they are not reruns of programs which have been

distributed on Canadian and U.S. commercial television networks or stations, and do not contain any form of advertising

g. sponsored programs such as documentary films or special cultural programs, excluding national and international sporting events, in which credits appear only at the beginning and end of the program and name only the sponsoring organization and the creative personnel. No specific product or service advertising may be included in any part of the program.

[§204-5]

Priorities

The Commission is of the opinion that first priority should be given to the rerunning of Canadian produced off-air broadcast programs complete with their original commercial messages. In cases where a channel is used for both Canadian rerun programming and other programming of the kind described, a priority must be given to the Canadian produced broadcast program reruns.

[§204-6]

Equal Opportunity of Access

The selecting of timing and programming in the case of Canadian broadcast program reruns will be the responsibility of the cable television licensee, but in discharging such responsibility, the licensee must choose equitably among all local Canadian television broadcasting stations whose signals are carried on that cable television system.

[§204-7]

Advertising

No advertising or sponsored material of any kind will be permitted on special programming channels except that included as part of a program referred to in paragraphs (a) and (g) above.

[§204-8]

Audio Programming

No separate audio programming will be permitted on the special programming channels.

[§204-9]

Audience Fragmentation

The Commission recognizes that further programming channels can increase the danger of audience fragmentation. Applications for special programming channels will therefore be considered on a case-by-case basis after a thorough assessment of the potential impact on the over-the-air broadcasting services in the area to be served.

[§204-10]

Presently Approved Channels

Those cable television licensees presently licensed to provide a channel for either multicultural programming or for broadcast program reruns should henceforth be

governed in the operation of such channels by the provisions herein set forth for special programming channels.

[§205-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Temporary Networks

[§205-2]

[CRTC Circular No. 258, April 23, 1980, 6 C.R.T. (Part 2) 5.]

[§205-3]

The *Broadcasting Act* defines a *temporary* network operation as "a network operation with respect to a particular program or series of programs *extending over a period not exceeding one month*" (emphasis added). [NOTE: The definition of "temporary network operation" has been extended in the 1991 *Broadcasting Act* to a period *not exceeding sixty days*: see above at §104-19.]

During the past few years, the Commission has received an increasing number of applications for licences to carry on temporary network operations to cover the broadcast of seasonal events, especially sports events, on a continuing basis, extending beyond one month. In view of the duration of these events, whether the sport is hockey, baseball, football or other, such operations cannot appropriately be regarded as temporary network operations.

An application to operate a network to broadcast events covering a period beyond one month calls for the issuance of a network licence which must be processed in the context of a public hearing, in accordance with section 19 of the *Broadcasting Act* [now section 18, above at §104-88]. Applicants have frequently argued that vigorous competition often demands that broadcasting rights be secured only at the last minute, and that it is, in such cases, impossible to file an application in time for the Commission to schedule it for a public hearing and approve it before the first event has taken place. Consequently, they have applied for authority to operate temporary networks until such time as the Commission issues a decision on their original network licence application. This approach, convenient though it may be in practice to the applicant, is questionable and may lead to an erosion of the integrity of the licensing process required by the *Broadcasting Act*.

If the Commission is to deal adequately with applications to broadcast continuing events for periods of longer than one month, and if it is to allow time for the processing of such network applications, it must require that they be submitted at least three months before the first event is to be broadcast.

Accordingly, as a general rule, the Commission will not be prepared to approve applications for temporary network licences for the broadcast of events of more than one month's duration for which network applications are required to be scheduled for a public

hearing. Any application for an exception to such a rule will have to be fully documented for the Commission's consideration.

[§205-4]

[NOTE: On April 30, 1993, the Commission issued orders exempting certain temporary networks from the requirement that they obtain a licence. For the text of these orders, see above at §160 and §161.]

[§206-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Complaints and Requests for Tapes or Transcripts of Broadcast Programs

[§206-2]

[CRTC Public Announcement, May 22, 1980, 6 C.R.T.(Part 2) 9.]

[§206-3]

Under section 4(5) of the *AM, FM and TV Regulations* [now subsections 8(5) and (6) of the *Radio Regulations, 1986*, above at §135-57, and subsections 10(5) and (6) of the *Television Broadcasting Regulations, 1987* respectively, above at §137-76], the Commission requires stations to keep a copy of the tape or transcript of their broadcasts for a period of four weeks, and to provide such copy to a representative of the Commission upon request. In the case of AM and FM, the Commission may extend the period to eight weeks.

Requests by the Commission for production under section 4(5) often arise as a result of a complaint or an inquiry by a member of the public. Complaints and inquiries cover a wide variety of subjects, including allegations of unbalanced programming, unfair or misleading news or advertising and defamatory remarks. Often, complainants to not demand a specific remedy but ask the Commission to consider whether the problem warrants any examination. In other cases, the complainants or their lawyers ask that a tape or transcript or a copy thereof be remitted or made available to them so that they can determine whether they should pursue a civil remedy against the broadcaster or the person who uttered the remarks. Requests are also made by law enforcement officials for tapes containing evidence of misleading information by advertisers or requests for tapes containing evidence desired to be used in other civil (e.g. industrial relations) disputes.

The increasing number of such requests has prompted the Commission to review the matter and to advise the public and the industry of its policy and guidelines with respect to complaints and requests tapes.

The Commission's statutory duties include the supervision and regulation of all aspects of the broadcasting system, with a view to implementing the policy set out in the

Broadcasting Act. The tapes or transcripts are merely instruments by which the Commission carries out this duty.

The Commission, in the normal course, depends on members of the public to bring to its attention incidents which may offend the *Broadcasting Act* or *Regulations*. To this end, a member of the public may be allowed to view or hear tapes or read a transcript of a broadcast program, in order to determine whether to make a submission to the Commission, intervene in an application for renewal or amendment of a broadcaster's licence, etc. The Commission has noted that the vast majority of broadcasters have been very cooperative when faced with direct requests by a member of the public to review a program. Such cooperation usually results in a resolution of the complaint or a satisfactory answer to the question of the inquiring party.

The Commission is of the opinion that its mandate does not extend to becoming a party in a private dispute between a member of the public and a broadcaster or a person appearing on a program, where the subject matter of the dispute does not bear directly on the broadcaster's responsibilities under the *Broadcasting Act* or *Regulations*, or where the remedy being sought is clearly extraneous to the proper exercise of the Commission's powers. The proper forum for the resolution of such disputes, including related questions such as the preservation of evidence of the program, is the court or other specialized tribunal.

[§206-4]

In light of the foregoing policy considerations, the Commission intends to apply the following guidelines:

1. In the event of a complaint to the Commission by a member of the public including a request for tapes or transcripts, where the reasons for the request are unspecified or unclear, the Commission will contact the complainant for further details.
2. The Commission will obtain tapes from its licensees where it has received evidence from a complainant which indicates that the licensees may have breached either the *Broadcasting Act* or the *Regulations*.
3. The Commission will not ask for tapes where there is no direct connection between the licensee's responsibilities under the Act or Regulations, and the alleged infraction.

   For example, if a lawyer were to write to the Commission asking for a tape merely for the purpose of gathering evidence for a coming trial, the request would be refused; if someone were to ask for a tape because during a public affairs program a union leader made statements which could be considered to be a breach of the *Canada Labour Code*, this would be refused; if a complaint alleged that a defamation was committed on a public affairs program and it was obvious that the alleged defamation was not committed through any action of the licensee, this would be refused; if a law enforcement officer requests a copy of a tape in order to file charges against an advertiser for breach of a federal or provincial statute, this would be refused.
4. In circumstances where there is any ambiguity about the applicability of guidelines 2 or 3, the Commission will request the tape in order to satisfy itself and resolve the question.

5. In cases where the Commission's decision whether to obtain the tape cannot be made within the period set forth in the regulation (i.e. four weeks), the licensee will be notified to preserve the tape pending the Commission's decision.
6. Where the Commission decides to request the tape, a letter will be written immediately to the complaining person stating that the Commission is requesting the tape for its own purposes and that the complainant should not rely upon the Commission to hold the tape for him/her or to be a guardian or custodian of the tape for the purposes of any private legal actions. The complainant will be advised that he/she should immediately seek whatever remedies he/she has through the appropriate forum.
7. Where a request for a tape has been made pursuant to a complaint, the licensee will be provided with a copy or summary of the complaint and asked for comments, prior to any determination by the Commission of further action.
8. The question whether tapes will be made accessible to persons outside the Commission will be determined by the circumstances of each case. There may be certain instances in which tapes will be played for interested parties for the purpose of allowing the Commission to gather evidence to determine whether or not there has been a *prima facie* breach of the Act or Regulations. In other cases, such as allegations of breaches of regulations where compliance is objectively determinable (e.g. number of commercials, Canadian content), outside assistance is not usually required.

The foregoing guidelines are not meant to be exhaustive or to fully determine the exercise of the Commission's discretion in such matters, but to indicate a general approach. The Commission encourages the continued cooperation of broadcasters in responding to requests by members of the public to view or hear tapes, without having to resort to the Commission's offices. This opportunity usually results in a resolution of the problem. As well, there may be situations where Commission staff, particularly in the regional offices, can serve a useful role as mediator between a licensee and a member of the public who wants to view or listed to a tape, actually engaging the Commission's powers under Regulation 4(5) [since renumbered].

[§207-1]

[CANADIAN RADIO-TELEVISION AND
TELECOMMUNICATIONS COMMISSION]

Sale or Lease of Cable Converters

[§207-2]

[CRTC Circular No. 260, May 28, 1980, 6 C.R.T. (Part 2) 10.]

[§207-3]

Circular Letter to all cable television licensees

It has been brought to the Commission's attention that some cable television licensees announce, on the community or a special programming channel, that converters are available from them on a sale or lease basis.

While the Commission has no objection to the broadcasting of such messages on behalf of a licensee desiring to promote its augmented channel service, it reminds licensees of the *Policy Respecting Broadcasting Receiving Undertakings* dated 16 December 1975, which reads, in part:

"In this case, subscribers who want to receive channels distributed on the augmented service must lease or buy and install their own converter device, either from the cable television licensee or elsewhere."

Accordingly, the Commission considers that when a licensee promotes the use of converters through messages on its cable television undertaking, and also indicates that such converters may be obtained from the licensee, these messages should state that subscribers may also acquire converts elsewhere on the open market.

Cable television licensees are therefore expected to adhere to this policy when promoting the use of converters on their undertakings.

[§208-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Cable Billing Practices

[§208-2]

[Public Notice CRTC 1982-37, May 18, 1982, 8 C.R.T. (Part 2) 7.]

[§208-3]

The Commission continues to receive complaints from cable subscribers in various regions of the country relating to the billing practices of cable television licensees. It appears that some licensees are leading subscribers to believe that only three methods of payment are available; annual prepayment, preauthorized cheque plan and postdated cheques.

In the Commission's view, a licensee has a duty to provide a subscriber with a hook-up and commencement of service upon payment of an installation fee and one month's fee not exceeding those authorized by the Commission. The licensee is not entitled to insist upon anything more, such as annual prepayment, postdated cheques or preauthorized cheques for the payment of subsequent monthly fees. On the other hand, the licensee and the subscriber may, of course, make any mutually acceptable arrangements for payment. The Commission does not require licensees to send monthly billing statements to all subscribers.

The Commission will expect licensees and, in particular, their staff members responsible for billing matters, to inform cable subscribers that payment may be made in advance, monthly, without requiring postdated cheques, a preauthorized cheque plan or annual prepayment.

If these billing practices are not adhered to, the Commission may take such further action as it deems appropriate in the circumstances.

[§208-4]

[NOTE: This policy was later incorporated into the regulations: see *Regulations Respecting Broadcasting Receiving Undertakings*, Public Notice CRTC 1986-182, August 1, 1986, below at §219-12.]

[§209-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Transfers of Ownership of Licensed Broadcasting Undertakings

[§209-2]

[Public Notice CRTC 1983-54, March 22, 1983, 8 C.R.T. (Part 2) 116.]

[§209-3]

Licence Conditions

In exercising its mandate under the *Broadcasting Act*, the Canadian Radio-television and Telecommunications Commission imposes conditions of licence which require prior approval of share transfers which materially affect the ownership or effective control of licensed broadcasting undertakings. [NOTE: These conditions of licence have since been supplanted by provisions in the Regulations.]

From time to time, the Commission has received applications for approval of share transfers representing a controlling interest in a licensee company, or a parent corporation, after steps had already been taken by the parties involved which transferred control of a broadcasting undertaking. In some of these cases, such steps resulted in the transfer of ownership of the licensee or its parent corporation; in others, agreements or arrangements between the vendor and purchaser were such that, while no ownership change occurred, a transfer of effective control of the broadcasting undertaking had taken place.

These infringements of conditions of licence have most often involved licensees whose circumstances were such that the parties to the transaction determined that steps had to be taken to improve the management, operations and financial stability of the licensee immediately upon execution of their agreement of purchase and sale. Such licensees, their shareholders, and prospective purchasers may not have always been sufficiently aware

of the obligations imposed by conditions of licence nor of the implications of their actions in disregarding these conditions.

In view of the number of such cases which continue to be drawn to its attention, the Commission wishes to remind licensees, and other interested parties, of the conditions of licence pertaining to transfers of ownership and effective control of broadcasting undertakings, as announced in the CRTC Public Announcement of 7 January 1980. The Commission wishes to emphasize that the requirement for prior approval pertains not only to transfers of ownership of broadcasting undertakings and to certain transactions involving the purchase and sale of shares, but also to the coming into effect of any arrangement, undertaking, or agreement whereby effective control of a broadcasting undertaking is transferred. Thus, prior Commission approval would be required, for example, when the authority to control a licensee or a broadcasting undertaking is to be assigned, on an interim basis or otherwise, to a prospective purchaser or any person other than the licensee or its *bona fide* employees.

Parties contemplating to enter into such transactions are, therefore, encouraged to consult the Commission for guidance concerning the application of the licence conditions, outlined on each licence, as they pertain to particular circumstances.

[§209-4]

Closing Dates for Transactions

When deciding on a closing date, parties to transactions sometimes fail to take into account the Commission's Rules of Procedure and administrative practices. It therefore reminds interested parties of the following:

(i) an application must contain all pertinent information and documents;

(ii) pursuant to the *Broadcasting Act*, a public hearing must be held in connection with an application involving the transfer of the assets of a broadcasting undertaking and the issuance of a licence to continue the operation of the undertaking. In addition, pursuant to CRTC Rules of Procedure, public notice of the application must be given not less than 50 days before the public hearing;

(iii) applications for approval of the transfer of control in a licensee or parent corporation by means of a transfer of shares or otherwise, are generally scheduled for a public hearing; while applications involving a minority interest, or transfers of shares within a family or corporate group are usually not placed on the agenda of a public hearing;

(iv) following analysis of the application and receipt of any interventions, a determination is made as to whether or not it would be in the public interest to require the applicant to appear at a public hearing; for the convenience of interested parties, the Commission tries to schedule an application for public hearing at a location in or near the region served by the broadcasting undertaking involved; and

(v) upon completion of such analysis as is required following the public hearing, and subsequent to the consultation proceedings, a decision is then taken.

The substantial number of applications to be considered by the Commission and the frequency and duration of public hearings (for both broadcasting and telecommunications matters) are also factors which should be taken into account.

The Commission will continue to exert every effort to process such applications as rapidly as possible. However, the parties to these transactions must take the foregoing considerations into account and be fully aware that any closing date is set by them at their own risk.

[§210-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Ownership of Equipment for the Delivery of Pay Television Services by Licensed Cable Television Undertakings

[§210-2]

[Public Notice CRTC 1983-82, April 22, 1983, 9 C.R.T. (Part 2) 14.]

[§210-3]

Under a general condition of licence imposed on all licensees, a "licensed broadcasting undertaking shall be operated in fact by the licensee in person or by *bona fide* employees of the licensee" and the licence "shall not be transferred or assigned" without the prior approval of the Commission. In addition, most cable television licensees are required to own and operate, at a minimum the local head-end, amplifiers and subscriber service drops. These conditions reflect the Commission's often-repeated view that licensees must be in a position to exercise ultimate control over their undertakings to meet their regulatory obligations and to ensure that they are accountable to the public and to the Commission for the provision of services and for the fees charged.

In light of these conditions of licence, the Commission wishes to clarify its requirements, as they pertain to cable television licensees, on the ownership and control of security systems necessary to provide pay television services to cable television subscribers.

Security systems for pay television are necessary to ensure that these services are received only by authorized subscribers. Most security systems do this by using an encoder or other specialized device to scramble the pay signal before it is distributed throughout the system. Pay television subscribers are able to receive a clear signal using special equipment which may include a decoder or trap or other apparatus installed in their homes. In the case of an addressable security system, a computer facility controls this system and ultimately controls the operation of the subscriber's decoder.

The Commission considers that all elements of the security system play a vital role in the effective delivery of pay television services and are integral components of the broadcasting undertaking which delivers them. The best method of ensuring that control over the broadcasting undertaking remains with the licensee is to have the ownership of the entire security system in its hands.

Cable television licensees are universally required, by condition of licence, to own their local head-end. This local head-end ownership will, at a minimum, include all signal processing equipment. For pay television services, it will also include all encoders or other scrambling devices and, in the case of an addressable system, the computer facility because the "address" which it generates electronically, forms part of the scrambled signals. Thus, the Commission considers that licensees must own the encoder and the computer facility to satisfy the condition of licence requiring ownership of the local head-end.

The Commission further considers that the operation of decoders for the delivery of pay television services to subscribers must remain under the unequivocal control of the licensee.

[§210-4]

[NOTE: In *Structural Public Hearing*, Public Notice CRTC 1993-74, June 3, 1993, set out at §294 below, the CRTC stated that cable subscribers should not be precluded from purchasing or leasing additional addressable digital decoder boxes, either from the cable operator or in the consumer electronics marketplace.]

[§212-1]

[CANADIAN RADIO-TELEVISION AND
TELECOMMUNICATIONS COMMISSION]

Recognition for Canadian Programs

[§212-2]

[Public Notice CRTC 1984-94, April 15, 1984, 10 C.R.T. (Part 2) 6. This policy was later amended in Public Notice CRTC 1988-105, below at §241, which established specific rules for animated productions.]

[§212-3]

In Public Notice CRTC 1984-56 dated 2 March 1984, the Canadian Radio-television and Telecommunications Commission proposed revised criteria related to the Recognition for Canadian Programs. The Commission recognized the desirability of ensuring, to the maximum extent possible, uniformity between the Government departments and agencies concerned on a definition of what constitutes a Canadian program. Accordingly, the Commission proposed to adopt the Capital Cost Allowance (CCA) point system and criteria currently applied by the Canadian Film and Videotape Certification Office of the Department of Communications (CFVCO) for feature film productions, as the basis for its definition of a Canadian program.

In response to Public Notice CRTC 1984-56, the Commission received 33 submissions from the broadcasting and independent production industries and other members of the public covering a variety of issues related to the proposed criteria. These submissions were taken into account by the Commission in adopting the criteria for Canadian program recognition set out in the appendix to this notice. The criteria come into effect today.

[§212-4]

APPENDIX TO PUBLIC NOTICE CRTC 1984-94 DATED 15 APRIL 1984

RECOGNITION FOR CANADIAN PROGRAMS, 15 APRIL 1984

[§212-5]

Basic Application Process

Upon request, the Commission will issue an advance ruling, preliminary or final recognition or special recognition, as the case may be, to any licensee, producer or property rights holder, where the program satisfies the requirements of the definition of a Canadian program. Submission of an application for advance ruling or for preliminary recognition is not mandatory; it is at the discretion of the applicant.

[§212-6]

Criteria: Recognition for Canadian Programs

In defining a Canadian program, the Commission has used as a basis the requirements of the point system and cost criteria currently used by the Canadian Film and Videotape Certification Office of the Department of Communications (CFVCO) for feature productions, and has provided variances in certain matters, only where appropriate.

I. *Basic Definition of a Canadian Program*

The Commission will recognize as a Canadian program, a live, videotape or film production of any length, that meets the following:

1. *PRODUCER(S):* the producer, the individual who controls and is the central decision-maker of the visual production from beginning to end, must be Canadian. Additionally, all individuals fulfilling producer-related functions must be Canadian. Exemptions will be considered for non-Canadians to receive credits for producer-related functions as described in the CFVCO certification process booklet.

2. *THE POINT SYSTEM:* a production must earn a minimum of six units of production or points based on the following key creative functions being performed by Canadians:

Director - 2 points
Writer - 2 points
Leading performer - 1 point
Second leading performer - 1 point
Head of art department - 1 point
Director of photography - 1 point
Music composer - 1 point
Editor - 1 point

3. Notwithstanding the above, at least one of the director or writer and at least one of the two leading performers must be Canadian. The points for writer may be obtained if all screenwriters are Canadian or if both the principal writer and the author of the original work on which the production is based are Canadian. Determination of leading performers may take into account billing, screen-time and payment; this determination

could be changed after further discussions with the Alliance of Canadian Cinema, Television and Radio Artists (ACTRA), Union des artistes and other guilds, producers, CFVCO and the Canadian Film Development Corporation (CFDC).

4. Productions in which non-Canadians are the only leading performers will not be accepted as Canadian, and the addition of Canadians in minor roles will not be sufficient for a production to qualify.

5. Upon application, the Commission may recognize as a Canadian program, a production in which the positions of either:

(a) director and writer, or

(b) both leading performers

are filled by non-Canadians, as long as all other key creative functions are filled by Canadians.

6. Key creative functions could vary for different types of productions. Such variations will be taken into consideration by the Commission for the present purposes. (See attached Schedule)

7. *EXPENDITURES:* at least 75% of total remuneration paid to individuals, other than the producer and key creative personnel as listed above or for post production work, must be paid to, or in respect of services provided by, Canadians; and at least 75% of processing and final preparation costs must also be paid for services provided in Canada.

8. The Commission may require audited statements and/or affidavits in support of an application.

9. The Canadian content certification given by the Minister of Communication.s upon recommendation by CFDC or, subject to section 4 above, CFVCO will also constitute recognition for Canadian programs by the Commission.

10. Established CFVCO forms and procedures are acceptable to the Commission, except where variances are outlined in this document. The descriptions and interpretations detailed in the CFVCO certification process booklet will he used by the Commission, unless or until the Commission develops its own definitions and interpretations, if need be.

11. *Interpretation Notes*

(a) Producer. The producer is expected, inter alia, to be involved in acquiring and developing the story, selecting and engaging the key creative personnel, budget preparation, financing, control of expenditures and distribution of the production.

(b) In productions where not all of the key creative positions are utilized, and there are fewer than six points possible, recognition will be granted if Canadians perform all key creative functions.

(c) Points will only be awarded in respect of a particular position if all persons sharing the duties of that position are Canadian.

(d) Head of Art Department. The Head of the Art Department will generally be the Production Designer. If there is no production designer the Art Director is considered Head of the Art Department.

(e) Director of photography - or Technical Producer/Director. The lighting director is not accepted as a technical director on videotape productions.

(f) Music composer. The point is awarded only if a Canadian has composed the original music and/or lyrics for the production. The rearrangement of existing music does not warrant a point. The position of music director is not accepted as a music composer.

(g) Editor. Means film or videotape editor. The positions of sound or music editor will not be acceptable.

(h) Expenditures. Services exclude goods. Payments for the purchase of goods such as film or videotape stock, supplies and equipment, and for the acquisition of music, story and copyrights, and non production-related fees, such as legal and accounting fees, are excluded from the 75% calculations. [NOTE: The exemption for the acquisition of music, story and copyrights in item 11(h) was later removed in Public Notice CRTC 1988-105, as noted below at §241-20.]

[§212-7]

II. *SPECIAL RECOGNITION FOR CO-VENTURES*

Co-ventures are defined as international co-productions not included under the treaties administered by the CFDC. They include all ventures with co-producers of any foreign country that does not have a film or television production treaty with Canada, and ventures with co-producers of any treaty country, where such ventures are not specifically covered by any treaty. The key function in these co-ventures is that of the producer.

Such co-ventures will qualify for special recognition and will be given 100% Canadian program credit when broadcast or otherwise distributed by an licensee of the CRTC, even though some of the producer functions are performed by non-Canadians, where co-venture agreements and other documentation substantiate that the Canadian production company:

-has no less than an equal measure of decision-making responsibility with other co-venture partners on all creative elements of the production, and

-is responsible for the administration of not less than the Canadian element of the production budget.

A "Canadian production company" is a licensee of the CRTC or is a Canadian company which carries on business in Canada with a Canadian business address, which is owned or controlled by Canadians and whose principal business is the production of film, videotape or live programs for distribution on television or in theatrical, industrial or educational markets.

The application for Canadian recognition must be made by the Canadian production company and must be accompanied or supported by signed agreements between the co-venture partners. Such co-venture agreements will be kept confidential.

The decision-making responsibility for the production will be deemed to he in the hands of a Canadian production company when that company:

(a) has sole or co-signing authority on the production bank account: for co-ventures shot entirely in Canada, the production bank account must be in Canada; for those shot partially in Canada, a Canadian bank account would be required for that portion of the production shot in Canada; in the case of co-ventures shot entirely outside Canada, there must be a Canadian bank account for payment of the Canadian elements of the program;

(b) has an equity position in the production and the entitlement to profit sharing;
(c) is at financial risk and/or has budgetary responsibility;
(d) has no less than an equal measure of approval over all elements of the production with the co-venture partners, regardless of the number of foreign persons fulfilling the functions of executive producer or producer.

With regard to points and expenditures, a co-venture with a co-producer from a Commonwealth or French-language country, or a country with which Canada has a film or television production treaty, will be considered as qualifying for Canadian program special recognition where, in addition to meeting the foregoing requirements, it attains 5 points, and at least 50% of the total remuneration paid to individuals, other than the producer and the key creative personnel listed above, or for post production work, is paid to, or in respect of services provided by, Canadians, and at least 50% of processing and final preparation costs are paid for services provided in Canada. Notwithstanding the above, the director or the writer and at least one of the two leading performers must be Canadian. All other considerations for recognition of a Canadian program apply to such a co-venture.

Any other co-venture will be required to meet the same points and expenditure minimum requirements as a domestic production.

[§212-8]

III. SERIES

Recognizing that the production elements of a series of programs may vary and that some of the episodes, if considered individually, could fall below the minimum requirements of the point system, the Commission will examine a series in its entirety and may grant it recognition if, on an overall average, it meets the minimum requirements.

For the present purposes, a "series" means two or more programs produced by the same production company, having a common theme, situation, or set of characters, and completed within a 12-month period.

A licensee will only be entitled to claim Canadian program recognition for any episodes in a series which might not meet the Canadian program recognition criteria when at least the same number of offsetting episodes which exceed such criteria are broadcast or otherwise distributed, at equitable times.

[§212-9]

IV. *PRODUCTION PACKAGES*

For the present purposes, a "production package" means two or more co-productions or co-ventures, undertaken by a Canadian production company together with one or more non-Canadian production companies, where a production that qualifies as a Canadian production, with minor foreign involvement, is matched with a foreign production, with minor Canadian involvement.

The production packages may be accepted as Canadian, where a Canadian production company is involved and the co-production partners are the same for all the productions. The role of the Canadian production company is as defined for co-ventures. In assessing a production package, the Commission will examine it in its entirety and may qualify it

if, on an overall average, the minimum requirements for co-ventures are met. Furthermore, a licensee will not receive credit for the production with fewer Canadian elements unless it also carries the production with the larger number of Canadian elements, at equitable times.

All other considerations for recognition for Canadian programs apply.

The Commission will follow closely the extent to which licensees make use of co-venture productions or production packages to meet Canadian content requirements. It will review before April 1987 the suitability of continuing to accept production packages for the present purposes.

[NOTE: In Public Notice CRTC 1987-28, January 30, 1987, set out below at §229, the Commission clarified the above section and set out eleven conditions under which it would accept production packages as Canadian.]

[§212-10]

V. *SPORTS ACTUALITY PRODUCTIONS*

Productions of sports events or tournaments will be considered Canadian where a Canadian licensee or Canadian production company has production control and provides the commentators, whether the event takes place inside or outside Canada; in the latter case, the production would qualify only where Canadian teams or athletes participate in these events or tournaments.

In the case of broadcasts of sports events originating outside Canada, involving non-Canadian teams or athletes and for which a French-language commentary is provided by a Canadian producer, one-quarter of the program time attached thereto shall be deemed to be Canadian.

[§212-11]

VI. *DUBBING*

(1) Where a program is not a Canadian program and is produced in an official language of Canada or a native Canadian language, and the audio portion of that program is converted into the other official language of Canada or a native Canadian language by a process of lip synchronization done in Canada, using Canadian resources, one-quarter of the program time attached thereto shall be deemed to be Canadian.

(2) Where a program is not a Canadian program and is produced in a language other than an official language of Canada or a native Canadian language, and the audio portion of that program is converted into an official language of Canada or a native Canadian language by a process of lip synchronization done in Canada, using Canadian resources, one-half of the program time attached thereto, to a maximum of 50 hours during each six-month reporting period, shall be considered as Canadian.

[§212-12]

VII. *STATION AND NETWORK PRODUCTIONS*

To be recognized as Canadian, programs produced by licensees must meet the Canadian program recognition criteria stipulated in this Notice. However, licensees need not apply for recognition or submit production information unless specifically requested

to do so by the Commission. If no such request is made by the Commission, programs produced by licensees shall be recognized as Canadian.

The criteria for the recognition for Canadian programs do not apply to news and public affairs programs produced by licensees. Such programs shall be recognized as Canadian.

[§212-13]

VIII. *MUSIC VIDEOS*

Definition of a Canadian Music Video

Music videos, the short film or videotape productions or concert excerpts (clips) not produced primarily for the particular program in which they are presented, which normally contain one musical selection with visual material, will be recognized as Canadian where:

(1) at least two of the audio requirements a) through d) which follow, and three of the requirements a) through f) are met:

(a) instrumentation or lyrics are principally performed by a Canadian;
(b) music is composed by a Canadian;
(c) lyrics are written by a Canadian;
(d) performance is in Canada;
(e) video director or production company is Canadian;
(f) video production facilities are located in Canada; and

(2) as of 1 January 1986, at least one of the two video requirements e) or f) is met.

Music Video Programs

For programs consisting predominantly of music videos and in some cases including a host and other programming elements, Canadian program recognition will be awarded if all elements other than the music videos are Canadian, and a minimum of 30% of the music videos are Canadian.

This last provision would not apply to music specialty services.

[NOTE: For a further elaboration of this policy, see *Music Video Programs*, Public Notice CRTC 1987-83, March 24, 1987, set out below at §230.]

[§212-14]

IX. *DRAMATIC PROGRAMMING CREDIT*

The Commission will award a 150% time credit for a drama carried by a licensee which meets the following criteria:

(a) is produced by a licensee or an independent production company after 15 April 1984;
(b) is recognized as a Canadian program and achieves 10 points; and
(c) is scheduled to commence
  (i) between the hours of 7:00 p.m. and 10:00 p.m., or
  (ii) in the case of a dramatic program intended for children, at an appropriate children's viewing time.

Each licensee will receive a dramatic programming credit for each showing of a drama occurring within a two year period from the date of first showing.

[§212-15]

INTERIM MEASURES

This new definition of a Canadian program comes into force 15 April 1984. Canadian programs already certified by the Commission, CFDC or CFVCO will continue to be recognized. Other interim arrangements may be considered by the Commission to be acceptable for "work in development." For present purposes, the following definition of "work in development", similar to that used by CFVCO, will apply:

> Generally, when the property has been acquired, the screenplay completed, a preliminary budget has been prepared, financing started to be obtained and some of the key creative personnel have been retained.

As stated in Public Notice CRTC 1984-56, the Commission emphasizes that these criteria constitute minimum requirements and it expects to undertake periodic reviews with all parties concerned to evaluate their effectiveness and practical application.

[§212-16]

SCHEDULE

APPLICATION OF KEY CREATIVE POSITIONS TO VARIOUS TYPES OF PRODUCTIONS

I *Position*	II *Drama*	III *Variety (generally videotape)*	IV *Animation*	V *Documentary (including instruction)*	VI *Video Game Show*
Director	X	X	X	X	X
Screenwriter	X	X	X	X	Some
Leading Performer	Leading actor	Leading performer e.g. dancer, comedian, singer, specialty act	Leading actor who reads the part of a character	Leading host/ commen-tator/ narrator interviewer	Leading host/ MC/Quiz master
Second leading Performer	Second leading actor	Second leading performer	Second leading character voice	Second leading host/commen-tator/	Second leading host/MC/ Quiz master
Director of Photography	X	Technical Producer/ Director	Head of Camera Department	X	Technical Producer Director
Music composer	X	X	X	X	X
Picture Editor	X	X	X	X	X
Head of Art Department	X	X	Head of Design	X	X

X - Use same position title as listed in column I

[§213-1]

[CANADIAN RADIO-TELEVISION AND
TELECOMMUNICATIONS COMMISSION]

CRTC Response to the Report of the Task Force on Access to Television in Underserved Communities

[§213-2]

[Public Notice CRTC 1985-60, March 22, 1985, 10 C.R.T. (Part 2) 179.]

[§213-3]

The extension of public and private Canadian broadcasting services to all parts of Canada is a fundamental objective which the Commission has consistently pursued since its inception. In particular, the Commission has long been concerned with the fact that many of the more remote and isolated communities remain critically underserved. This concern has been emphasized in a number of regulatory initiatives and procedures taken by the Commission to facilitate the provision of broadcasting services to such underserved communities, on a priority basis.

In a Public Announcement dated 8 January 1980, the Commission announced the formation of a committee chaired by Commissioner Réal Therrien, Vice Chairman of the CRTC, to study the problems related to the extension of broadcasting services to northern and remote communities and to submit recommendations as to the most effective means of providing service to these underserved communities.

Subsequently, consistent with the recommendations contained in the Therrien Report dated July 1980, the Commission issued a call for applications for a network for the satellite distribution of a variety of Canadian television services and, on 1 April 1981, licensed Canadian Satellite Communications Inc. (CANCOM) to deliver a basic package of attractive television and radio services to the more remote and underserved communities throughout Canada. Even though this service has now been extended to approximately 335 small and underserved communities, serious economic factors continue to impede the extension of additional broadcasting services to the 1.2 million Canadian households in small and rural communities who continue to receive over the air only two or less Canadian local services.

On 20 December 1984, the Honourable Marcel Masse, Minister of Communications, following consultations with the Commission and with representatives of various segments of the broadcasting industry, asked the Commission to give urgent consideration to ways in which concerted action can be taken to solve the fundamental problems inhibiting the extension of an adequate range of broadcasting services to Canadians living in smaller underserved communities throughout Canada.

[§213-4]

In light of all of the above, on 20 December 1984, the Commission announced the formation of a Task Force to examine and make recommendations on the distribution of satellite-delivered services to the numerous small, underserved Canadian communities

which still do not have access to an adequate range of over-the-air services. The Commission asked the Task Force to explore alternative means by which Commission regulations, policies and licensing procedures for small systems could be further modified to expedite such distribution. The Task Force, composed of three CRTC Commissioners and three outside members, was chaired by CRTC Commissioner Paul Klingle. Its report, entitled "The Costs of Choice", was submitted to the Commission on 25 February 1985.

The primary objective was to find ways by which Canadians in small underserved communities could receive an adequate range of broadcasting services, at an affordable price. The report clearly indicates that the major obstacle in achieving this goal is the cost involved in satellite-to-cable distribution. The Committee identified two principal economic factors:

- many small communities rely on satellite-delivered services, particularly those provided by CANCOM for their basic package of services, and the cost of providing these signals is substantial due primarily to the high transponder charges CANCOM must pay to Telesat for their delivery; and
- the expenditures involved in establishing a cable system in a small community are much higher, on a per subscriber basis, than in urban centre, due to the fact that they must be recovered from a much smaller subscriber base.

The thirty-four recommendations in the report provide various methods whereby costs might be lowered to enable the remaining underserved communities to have access to an adequate range of Canadian broadcasting services and to wider viewing choices at an affordable price. They provide more options for systems currently serving small communities to expand the choice of services provided to their subscribers at minimal cost, and to increase the economic viability of these operations.

The Commission is convinced that the difficulties inherent in providing service to small and underserved communities warrant a new and more flexible approach in terms of its policies, regulations and procedures. Accordingly, the Commission agrees with and endorses each of the Task Force recommendations, set out in the Appendix to this notice, subject to the provisions outlined below.

Further, the Commission draws attention to the fact that a number of the recommendations (9, 10, 12 and 19) relate specifically to signal carriage policies pertaining to licensees of class B cable systems (serving 3,000 or less subscribers) outside of core market areas. [NOTE: The term "class B cable systems" was later superseded in the *Cable Television Regulations, 1986*, with a broader categorization of Class 2 systems as applying to non-Part III systems with 6,000 or less subscribers.]

The Commission agrees with the Task Force assessment that non-core class B systems share many of the financial hardships experienced by undertakings serving core market areas, and notes that licensees of these systems have traditionally been regulated in a different manner from larger urban systems in areas such as simultaneous substitution and rate regulation. However, in accepting the recommendations related to class B systems, it has determined that they will apply only to those licensees who are currently utilizing 12 channels or less to distribute authorized services to subscribers.

[§213-5]

Recommendation 1: Telesat

While this recommendation specifically refers to Telesat in terms of its current excess capacity, it is clear from the report that Telesat's transponder charges are a major factor in high costs associated with providing service to small and remote communities. A solution to this problem, therefore, is fundamental to any new policy approach for such communities.

Accordingly, the Commission recommends to the Minister of Communications that the Government give urgent consideration to a study of the overall problem of Telesat's high transponder charges with a view to finding ways by which the financial burden of present transponder charges might be alleviated, particularly with regard to the provision of Canadian broadcasting services to core market areas and class B systems.

[§213-6]

Recommendations 2 to 6: CANCOM

As noted in the report, CANCOM currently provides service to three distinct market areas described as "core", "extra-cable" and "replacement" which it has defined as follows:

(1) core: areas that receive two or less television signals;

(2) extra-cable: generally small to medium-sized communities already served by cable television, but not currently distributing one or more of the four U.S. network signals; and

(3) replacement: markets or systems which perceive their current level of service to be inadequate due to the poor quality of the U.S. signals received either over the air or by microwave, where satellite delivery is a feasible solution.

Recommendations 2 through 6 are intended to facilitate the development of CANCOM's overall subscriber base in order to permit it to fulfill its original mandate, by subsidizing the cost of providing its services to core market communities from its other activities.

While fully endorsing recommendation 2, the Commission wishes to make it clear that it applies only to situations where a cable system is currently authorized to distribute the over-the-air signal of a station, and wishes to replace that signal with the CANCOM feed of the same station. In such cases, no new authority will be required.

With regard to recommendation 5 for the replacement of U.S. signals received via microwave with the CANCOM 3+1 signals, the Commission wishes to stress that any application which entails a change in signal source will be dealt with through the public process (notice or hearing) and will be considered on a case-by-case basis. Matters such as the impact of the new signals on local broadcasters will be carefully examined in the context of any such application.

[§213-7]

Recommendations 7 to 12: Canadian Specialty and Pay Networks and U.S. Satellite Services

The report indicates that the provision of discretionary services to small communities has been severely inhibited by the cost of the security equipment required to scramble and

tier such services, and by the relatively small subscriber base available to sustain these costs. The Commission, under such circumstances, considers it appropriate to reduce its regulatory requirements with respect to the distribution of discretionary services on systems serving small communities so as to make them available to subscribers at the lowest possible price.

Proposals by licensees in core market communities for the exhibition of discretionary services on an unscrambled basis on the basic tier will be processed expeditiously, on an administrative basis. However, similar applications by licensees of class B systems outside of core market areas will be processed either by public notice or hearing, and the Commission will take into consideration the number of local services available and the possible impact of the new services on them. It will also take into account the size and location of the community involved.

In accepting recommendations 10 and 11, the Commission notes that certain impediments with respect to current contractual arrangements may have to be resolved before such proposals can be implemented. The Commission shares the Task Force's concern that "with the unscrambled exhibition of pay television services... there may be subscribers who object to the 'forced' reception of a service which, in their opinion, may contain objectionable material from time to time." In such instances, and when requested by subscribers, the Commission will require the cable operator to provide a suitable device to delete the service at no cost to subscribers.

[§213-8]

Recommendations 13 to 19: Regulatory Framework for Small Cable Systems

These recommendations address cable television distribution in terms of mandatory carriage requirements and the need for a more flexible regulatory approach for core market and class B systems.

Although the Commission endorses recommendation 14 to exempt cable television undertakings serving core markets from the regulation of subscriber fees, it will wish to monitor the effectiveness of this approach. It will, therefore, implement this recommendation for a two-year trial period in order to assess whether there has been abuse of the process. All licensees of core market cable systems will be required to provide the Commission annually with a list of the fees charged to subscribers. This exemption from the regulation of subscriber fees will also apply to scrambled over-the-air transmission systems serving core markets, under the same conditions as outlined above.

With regard to recommendation 18, the Commission will soon issue a Public Notice containing a list of optional Canadian and U.S. satellite services which core market and class B licensees may distribute in addition to the Canadian signal carriage requirements set out in recommendation 15 of the report. The selection of optional services from this list will allow small systems maximum flexibility in providing an attractive package of services to their subscribers. [NOTE: Later, on April 2, 1984, the CRTC issued a list of eligible satellite services. The most current list, reflecting a number of revisions since 1984, is set forth in *Revised Lists of Eligible Satellite Services*, Public Notice CRTC 1994-22, March 9, 1994, below at §307.]

With respect to recommendation 17, Commissioner Rosalie Gower maintains her dissent as stated in the Report.

[§213-9]

Recommendations 20 to 24: Regulatory Framework for Over-the-Air Systems

The Commission remains convinced that cable television technology represents the preferred method of extending service, due to its ability to deliver a large number of services and to meet future service needs. It recognizes, however, that in certain circumstances, for reasons of very limited population size and/or low density, over-the-air transmitters represent the only viable means of providing service to a particular area. Accordingly, consistent with its current policy, the Commission will continue to license over-the-air systems in core market communities.

With regard to recommendation 24, the Commission will seek an amendment to the *Broadcasting Act* to allow for the use of radio frequencies to distribute foreign signals in an unscrambled mode. Until such time as an appropriate amendment is passed, the Commission must continue to apply its current policy prohibiting such use (Public Notice CRTC 1983-164 dated 5 August 1983). [NOTE: The Commission later reversed this policy in Public Notice CRTC 1987-254, November 26, 1987, below at §234.] With respect to recommendation 21, the Commission will determine, on a case-by-case basis, the mandatory carriage requirements, if any, for over-the-air systems utilizing a number of transmitters.

A number of the Task Force recommendations require amendments to various acts or regulations before they can be implemented. The Commission will take all appropriate measures to facilitate the early implementation of the recommendations and is in the process of reviewing its rules and procedures with a view to reducing the regulatory burden on these small systems. A Public Notice will be issued shortly in this regard.

In the interim, recommendations 2, 3, 4, 5, 6, 7, 9, 10, 12, 15, 16, 17 and 19 may be implemented immediately, subject to the usual CRTC licensing and procedural requirements and as specified in this notice.

The Commission urges its licensees, who qualify under the criteria set out in this notice, to take full advantage of the new options open to them in order to provide their subscribers with a wider range of viewing choices, including an attractive core of Canadian, and non-Canadian services at low costs.

The measures proposed in this notice and the recommendations of the Task Force are designed primarily to solve the specific problems facing the smaller, more remote and rural communities across Canada that do not have access to an adequate range of French and English-language broadcasting services. Implementation of the various measures proposed herein should go a long way in solving the problems of these underserved areas and encouraging unlicensed operators to take advantage of the options now available to them within the Canadian broadcasting system.

While being concerned about the availability of services in these small and underserved areas, the Commission is, at the same time, highly sensitive to the need for enhancing the quality and availability of Canadian services. As noted in Public Notice CRTC 1985-61 of today's date on the Extension of Distant Canadian Television Signals [NOTE: excerpted below at §214], in order to compete effectively in today's broadcasting environment, "concerted efforts must be made by all concerned to take new and imaginative initiatives to increase the availability of attractive, competitive, high quality Canadian programs." The Commission has already initiated consultations on this matter

and intends to further review proposals designed to better reflect the objectives for a distinctive and strong Canadian broadcasting system.

In this regard, the Commission refers to its policy statement released earlier this week (Public Notice CRTC 1985-58 dated 20 March 1985) which introduces more flexibility in the concept of local television programming to stimulate the development of a greater number of local and regional co-productions of higher quality for scheduling at competitive viewing hours. [NOTE: This policy was later supplanted by *Policy for Local Television Programming*, Public Notice CRTC 1991-22, February 15, 1991, below at §266.]

[§213-10]
APPENDIX

Telesat Canada

Recommendation No. 1: Telesat should be regulated in a more flexible way, in order to give it greater opportunity to ensure maximum use of its excess capacity. This may require amendments to the legislation under which Telesat is regulated.

CANCOM

Recommendation No. 2: The CRTC should allow cable systems to receive a specific television station from CANCOM to replace over-the-air reception of that station.

Recommendation No. 3: The CRTC should allow the basic service exhibition of either of the CANCOM independent stations as an interim third service in markets which currently do not have a local third service, and are not likely to have a third service in the near future.

Recommendation No. 4: The CRTC should continue to encourage the carriage of TCTV in major markets as a second French-language service.

Recommendation No. 5: The CRTC should allow CANCOM to compete with common carriers for the delivery of the 3+1 service in all areas of the country, where feasible and cost effective.

Recommendation No. 6: The CRTC should consider licensing CANCOM, as the local service provider in core market communities, where applicable.

Canadian Specialty and Pay Networks

Recommendation No. 7: Licensees of cable systems located in the core market should have the option of distributing Canadian specialty services to subscribers on either a discretionary basis or unscrambled on the basic tier.

Recommendation No. 8: Depending on local circumstances, the CRTC should allow low-power transmitters in the core market to rebroadcast, in unscrambled mode, the Canadian specialty services.

Recommendation No. 9: The CRTC should allow all class B cable systems the option of distributing Canadian specialty services on either a discretionary basis or unscrambled on the basic tier.

Recommendation No. 10: Core market and class B cable operators should have the option of distributing any Canadian pay television service on either a discretionary basis

or unscrambled on the basic tier, if it is possible to reduce significantly the price now paid by subscribers.

Recommendation No. 11: Depending on local circumstances, the CRTC should allow low-power transmitters in core market areas to rebroadcast Canadian pay television service in an unscrambled mode.

U.S. Satellite Services

Recommendation No. 12: Core market and class B cable operators should have the option of distributing U.S. satellite specialty services from the list approved by the CRTC on an unscrambled basis on the basic tier.

Cable

Recommendation No. 13: All cable television undertakings in the core market, existing and future, should continue to be licensed by the CRTC, but subject to minimal regulation.

Recommendation No. 14: Core market cable television undertakings should be exempt from the regulation of subscriber fees.

Recommendation No. 15: Core market cable television systems should be required to carry a mandatory package of Canadian television services consisting of local and regional television signals, excluding duplicate network signals, received over-the-air at their head-ends. If satellite delivered signals are to be distributed, the mandatory services should include a minimum of four CANCOM services, at least one of which must be Canadian.

Recommendation No. 16: The distribution of a community channel should be optional, rather than mandatory, in the core market.

Recommendation No. 17: Once the mandatory carriage requirements are met, a cable licensee in the core market should be allowed, without any additional authorization, to distribute any of the optional services from a list to be established by the CRTC.

Recommendation No. 18: The CRTC should establish a list of optional services for the core market which should include all available Canadian services not distributed as part of the mandatory package, all U.S. satellite services that do not directly compete with Canadian discretionary services and which are compatible with existing CRTC policies, and all available U.S. superstations.

Recommendation No. 19: Subject to CRTC authorization, any class B cable system not located in the core market should be allowed to distribute optional services selected from the list established for core market licensees.

Over-the-Air Systems

Recommendation No. 20: The CRTC should, depending on circumstances affecting local broadcasters, license low-power rebroadcast systems in core-market areas, subject to the restriction that any such system must not compete directly with licensed cable systems.

Recommendation No. 21: The CRTC should determine the appropriate number of transmitters that may be operated by any over-the-air system before a mandatory carriage requirement is imposed.

Recommendation No. 22: Over-the-air systems should be allowed to distribute the same Canadian and U.S. services as authorized for carriage by core-market cable systems.

Recommendation No. 23: Licensees of over-the-air systems should ascertain that there is no objection, from the originators, to the transmission of the signals they use.

Recommendation No. 24: The CRTC should seek amendments to the *Broadcasting Act* to allow the use of low-power transmitters using unprotected frequencies for the rebroadcast of foreign signals, in an unscrambled mode, in the core-market.

Subsidies, Grants and Tax Incentives

Recommendation No. 25: Federal, provincial, and municipal assistance programs now in place should be reviewed to consider the possibility of including the further development of broadcasting in small communities and rural areas.

Taxes

Recommendation No. 26: The 6 percent federal Telecommunications Programming Service Tax should be replaced with a flat tax which would yield equivalent revenues.

Cross-Subsidies

Recommendation No. 27: The CRTC should review its policies on cable television rate setting to allow a greater amount of cross-subsidization between large and small systems licensed to the same operator.

Licensing Procedures

Recommendation No. 28: The CRTC should, in conjunction with the DOC, adopt a simpler and shorter application form for small systems.

Recommendation No. 29: The CRTC should seek an amendment to the *Broadcasting Act* to abolish the current necessity of public hearings for applications for small systems.

Recommendation No. 30: The CRTC should abolish its policy of issuing calls for applications for small distribution systems. Rather, once an application is received for an area, it would be dealt with immediately.

The Regional Licence

Recommendation No. 31: The CRTC should encourage regional applications to provide service to rural areas and groups of small unserved communities.

Recommendation No. 32: The CRTC should allow those licensed under a regional concept to report to the CRTC on a consolidated basis and not a per-community basis.

Enforcement

Recommendation No. 33: The CRTC, with other appropriate government agencies, should ensure that the current legal remedies are used to the maximum extent.

The Program Originator and Private Rights

Recommendation No. 34: The *Radio Act* should be amended to allow the originator of a service, which is intended for reception by members of the public only upon the

payment of a fee, a cause of action in damages and a claim for relief by injunction against anyone who takes the service without authorization.

[NOTE: Following this recommendation, the *Radiocommunication Act* was amended in 1991, as noted above at §106-78, to create a private cause of action as suggested.]

[§214-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Distant Canadian Television Signals

[§214-2]

[Public Notice CRTC 1985-61, March 22, 1985, 10 C.R.T. (Part 2) 187. This Notice should be read in conjunction with *Structural Public Hearing*, Public Notice CRTC 1993-74, June 4, 1993, set out below at §294.]

[§214-3]

1. *Introduction*

At a public hearing in Hull, Quebec beginning on 27 November 1984, the Commission received a variety of submissions relating to the distribution of distant Canadian television signals. The hearing contributed in an important way to the Commission's policy review process, which began in January 1984 (Public Notice CRTC 1984-13) when the Commission invited comments on its proposal to reduce the existing restrictions on the cable carriage of distant Canadian broadcast signals noting that:

> The increasing use of satellites for the delivery of Canadian and foreign programming and the expanding capacity of cable systems to distribute services offers a means to increase the programming choice available to Canadians. In such an environment, the distribution of existing Canadian signals beyond their licensed areas may be one of the means to ensure that the broadcasting system, as a whole, remains predominantly Canadian...

[NOTE: The discussion of procedural matters and the positions of the participants is omitted.]

[§214-4]

5. *Objectives of the Commission's Revised Policy*

The Commission has now had an opportunity to assess the impact of the introduction of distant Canadian signals in a number of markets during the preceding years, and to examine all of the information generated during its comprehensive policy review on the extension of distant Canadian television signals.

While there were wide-ranging and divergent views on a number of related issues, a clear consensus emerged from the discussions that major changes are occurring rapidly in the Canadian broadcasting environment, and that meaningful cooperation is necessary among all parties concerned if the Canadian broadcasting system is to benefit from this challenge.

The most significant effect of the recent advances in satellite, cable and other technologies has been the heavy and rapid influx of new competitive and alternative services from various sources, both regulated and unregulated. This highly competitive environment has offered Canadians a multiplicity of viewing choices, including a large number of U.S. satellite-delivered services and other home video alternatives.

In light of both the inherent dangers and the opportunities arising from this rapid evolution, it is critical that all elements within the Canadian communications environment review their roles, attitudes and strategies, and work closely together towards ensuring the survival and development of a strong and distinctive Canadian broadcasting system. In the Commission's opinion, to achieve this end, it is necessary to foster the development and exposure of a variety of attractive and competitive Canadian programs, as well as allow the orderly introduction of additional Canadian services into new markets, subject to market capacity and consumer demand.

As noted in the recent Klingle report ["The Costs of Choice", February 25, 1985]:

Everyone has a stake in the broadcasting system and effective solutions can only come about through accommodation and cooperation. If we are to build a better system, difficult choices must be made ...

The Commission is convinced that the revised policy set out herein is one means of ensuring that the broadcasting system as a whole remain predominantly Canadian and that overall long-term benefits accrue to the Canadian broadcasting system by extending alternative Canadian viewing choices to all parts of Canada, by enhancing the diversity and variety of Canadian programs distributed by cable systems.

In revising its existing policy, the Commission has borne in mind the following objectives:

[§214-5]

(i) *Increase Access and Availability of Canadian Programs*

A primary objective in proposing increased access to distant Canadian television signals is to provide a wider range of Canadian viewing choices to communities across Canada that currently receive a limited number of Canadian services, often excluding a Canadian independent television service.

The Commission considers it particularly desirable to provide an additional Canadian service in those communities which do not have access to a third Canadian service and are unlikely to in the foreseeable future. Owing to the economics of local television service, a revised distant signal policy may be the only means to ensure a third Canadian service in some areas.

In addition, the Commission wishes to encourage the provision of an alternate French-language television service in major markets across Canada in order to increase the availability of distinctive French-language Canadian programs which are currently inaccessible to many viewers outside of the province of Quebec.

The information provided at the hearing and the Commission's own analysis suggest there is considerable potential for increasing the total volume and availability of Canadian programs by removing some of the existing restrictions with respect to the extension of Canadian television signals into distant markets.

The extension of Canadian television signals into new markets should enhance the variety and diversity of television services available throughout the country and will make Canadian programs more accessible in all parts of Canada. It will also provide more balance between the Canadian and U.S. services available to subscribers and constitutes a further step in the Commission's efforts to equalize Canadian viewing opportunities.

[§214-6]

(ii) *Respond to Consumer Demand*

The surveys filed at the hearing and the Commission's own assessment suggest that the extension of attractive Canadian television signals into new markets will respond to an identified consumer demand for more Canadian services.

In addition to the requests processed by the Commission for the extension of Canadian services into core markets, the Commission has received a large number of applications for the cable carriage of distant Canadian television signals. In the last three years alone (1982-84), in excess of 50 applications from cable systems serving some 80 communities, including many small and medium-sized markets, have applied for distant Canadian television signals in one form or another. These requests reflect consumer interest in and demand for additional Canadian signals.

In addition to the aforementioned surveys, another indication of the demand for additional cable television services is reflected by the volume of cable subscribers purchasing multi-service discretionary packages. According to the 31 December 1984 report on discretionary services by MediaStats Inc., nearly four times as many cable subscribers receive multi-service packages as receive stand-alone services. About 44% of those subscribers that receive packages take more than three services. Of these, the single most popular package is the full package of nine services.

The extension of quality Canadian signals into new markets will enhance the services offered by Canadian cable systems and is an effective means of increasing the overall Canadian share of the viewing market at the expense of non-Canadian services, which are available from unregulated sources, particularly in western Canada.

[§214-7]

(iii) *Enhance Discretionary Cable Tiers*

Many cable systems are already equipped to supply additional cable services and the carriage of additional Canadian signals will permit these systems to utilize their existing capacity more fully in order to satisfy adequately the increasingly sophisticated needs of their markets.

The services will also enhance the value of existing discretionary cable service packages at relatively low incremental cost thus benefiting the Canadian pay and specialty services.

[§214-8]

6. *A Revised Regulatory Approach*

In developing guidelines for the implementation of its revised policy, the Commission has been particularly sensitive to the issues expressed by television broadcasters especially with respect to the important role of the local broadcasters within the Canadian

broadcasting system. Consequently, changes in the Commission's existing policy will be introduced in a gradual, phased-in manner, and will include appropriate safeguards to ensure minimum impact on the local broadcasters' revenues and ability to maintain their local programming commitments, while trying to satisfy the continually growing demand of the Canadian public for more programming choices. Some local broadcasters may wish to consider the possibility of entering into twin or triple sticking arrangements in order to benefit from the Commission's revised policy.

For the purposes of the criteria set out below, a distant Canadian television signal in a particular region is defined as any signal that is not subject to the television service priorities described in Section 6 [NOTE: now section 9] of the *Cable Television Regulations*.

[§214-9]

(i) *Distribution on a Discretionary Cable Tier*

The Commission will be favourable to the approval of applications from broadcasting receiving undertakings for the distribution of distant Canadian television signals on a discretionary tier, subject to the following provisions:

1) there should be no objection on the part of the originating station whose signal is being extended; and
2) the originating station whose signal enters a distant market should not accept local advertising from such a market.

Furthermore, to allow an orderly implementation of this policy, for a transitional period of one year from the date of this notice, the Commission will announce the receipt of applications for the cable distribution of distant Canadian signals on a discretionary tier by means of a public notice. After this time, to minimize unnecessary delays in its decision-making process, the Commission will process all such applications using the simplified administrative procedure set out in Public Notice CRTC 1982-42.

[NOTE: As part of the CRTC's *Structural Public Hearing* decision, set out in Public Notice CRTC 1993-74 (see below at §294), the Commission determined that distribution of distant Canadian signals by Class 1 licensees, and by Class 2 licensees with 2,000 or more subscribers, would require an application by the cable licensee for prior CRTC approval. Smaller Class 2 licensees and Part III licensees would be allowed to distribute distant Canadian signals contained in the list of Part III Eligible Satellite Services without prior CRTC approval.]

[§214-10]

Tiering - Linkage

In Public Notice CRTC 1984-81 of 2 April 1984, entitled "Specialty Programming Services", the Commission outlined revised linkage requirements for the cable carriage of Canadian and non-Canadian discretionary services which it considered appropriate on the basis of the services authorized at that time.

Any services authorized pursuant to the revised policy announced in the present Public Notice will not, however, qualify as pay or specialty services for the purpose of the tiering or linkage requirements set out in Public Notice CRTC 1984-81. [NOTE: This

was later replaced by Public Notice CRTC 1987-261, which was in turn replaced by Public Notice CRTC 1993-75, below at §295.]

[§214-11]

(ii) *Distribution on the Basic Tier*

The Commission will examine, on a case-by-case basis, applications from broadcasting receiving undertakings for the cable distribution of distant Canadian signals on the basic tier. In assessing these applications, the Commission will take into account the following considerations:

(a) there should be no objection on the part of the originating station whose signal is being extended;

(b) the originating station whose signal enters a distant market should not accept local advertising from such a market;

(c) the originating station should continue to adhere to the local programming commitments of its licensing decision;

(d) the distant station should enhance the diversity of Canadian programming in the market.

The Commission will also examine:

(e) the number of local television services in existence or likely to be licensed in the distant market;

(f) the degree of the distant signal's potential impact on the revenue base of the local broadcasters and on their ability to meet their programming commitments.

The Commission's current procedure for the consideration of applications for the distribution of distant Canadian television signals on the basic service, which involves the issuance a public notice will remain unchanged. In this way, interested parties, and in particular the broadcasters concerned, will have an opportunity to demonstrate to the Commission the possible effects that are likely to flow from approval of the application under consideration. In those cases where public comments warrant further examination, the Commission will consider the application at a public hearing before rendering a decision.

[§214-12]

(iii) *Over-the-air Distribution*

The Commission will examine, on a case-by-case basis, applications from broadcasting transmitting undertakings for over-the-air distribution of distant Canadian signals. In assessing these applications, the Commission will take into account the following considerations:

(a) there should be no objection on the part of the originating station whose signal is being extended (in those cases where the originating station is not the applicant);

(b) the originating station whose signal enters a distant market should not accept local advertising from such a market;

(c) the originating station will continue to adhere to the local programming commitments of its licensing decision;

(d) the distant station should enhance the diversity of Canadian programming in the market.

The Commission will also examine:

(e) the number of local television services in existence or likely to be licensed in the distant market;

(f) the degree of the distant signal's potential impact on the revenue base of the local broadcasters and on their ability to meet their programming commitments;

(g) the availability of the required frequency in the proposed new market(s);

(h) whether cooperative arrangements (such as twin-sticking) between the originating station and a local broadcaster(s) in the distant market are involved or are being considered.

The Commission's current procedure for the consideration of applications for the over-the-air distribution of distant Canadian television signals, will remain unchanged. In this way, interested parties, and in particular the broadcasters concerned, will have an opportunity to demonstrate to the Commission the possible effects likely to flow from approval of the application under consideration. In those cases where public comments warrant further examination, the Commission will consider the application further at a public hearing before rendering a decision.

[§214-13]

(iv) *Licensing of Distant Canadian Signals*

When the Commission licences a broadcasting transmitting undertaking, it approves as part of the application the location of the transmitter, the frequency to be used and the power at which the station will operate. At the same time, the decision granting the licence is based in large part on the licensee's commitment to provide a local service to the viewers within its primary coverage area and spells out the licensee's mandate in this regard.

The extension of the signal of a Canadian television station outside of its original coverage area is generally done by means of over-the-air retransmission of the signal, by microwave or by satellite distribution.

Undertakings involved in the extension of a distant signal will be subject to the usual CRTC licensing procedures, at the transmitter, cable and network levels. Depending on the particular circumstances of each case, the following may be required:

(a) Over-the-air retransmission of a distant signal for broadcast by an affiliate may require the issuance of a new licence to that affiliate and the issuance or amendment of the licence of the originator. This procedure may also apply to the retransmission of a signal via a twin stick or triple stick arrangement.
In the case of repeaters, where a licensee proposes to establish a rebroadcaster owned by it, to extend its own signal into a new market, a new or amended licence may be required to add the additional transmitter to the licensee's original authority.

(b) Extension of service via microwave for cable distribution may not require an amendment of the licence the originator of the signal; such extension will, however, be considered within the context of the cable television licensee's application for the carriage of this signal on a market-by-market basis.

(c) A licensee proposing to extend its service via satellite for the cable distribution of its signal to distant markets, may be required to file an application for a

network licence. The licensee will, however, have to satisfy the Commission that it will continue to adhere to the conditions contained in its original licence and, in particular, to its local programming commitments.

(d) In the case of the extension of a distant signal via satellite, where there is an intermediary between the originator of the signal and the broadcasting undertaking proposing to exhibit the signal in a local market, a network licence may be required to be issued to the intermediary for the satellite distribution of the signal.

[§214-14]

7. *Concluding Remarks*

As noted earlier, the new, highly-competitive broadcasting environment provides us with a challenge which requires all of our best efforts if we are to benefit and strengthen the Canadian broadcasting system. The extension of Canadian distant signals into new markets will improve the choice offered to Canadian viewers. This will not, in itself, solve the critical struggle for a distinctive and strong Canadian broadcasting system; it will, however, contribute to that objective.

In order to compete effectively in this new environment, concerted efforts must be made by all concerned to take new and imaginative initiatives to increase the availability of attractive, competitive, high-quality Canadian programs...

[§215-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

A Broadcasting Policy Reflecting Canada's Linguistic and Cultural Diversity

[§215-2]

[Public Notice CRTC 1985-139, July 4, 1985.]

[§215-3]

BACKGROUND

Canadians today represent a diversity of cultures, religions, races and ethnic origins: other than Canada's native peoples and those from France and the British Isles, another 9 million Canadians are part of the unique cultural fabric that is Canada.

Since 1867, Canada has officially recognized its two major communities, the English-speaking and French-speaking Canadians. Within this duality, Canada's post-war immigration experience, the modern era of continuous international migration and the consequent growth of many cultural and racial groups have contributed to the development of a Canadian society that is ethnically and linguistically diverse.

The development of broadcasting services that reflect this cultural and linguistic plurality is an essential part of the Canadian social structure.

The CRTC, and its predecessor, the Board of Broadcast Governors, recognized that the Canadian broadcasting system had the potential to serve the cultural and social needs of new Canadians and to contribute to the development of Canada's multicultural character by promoting social harmony, tolerance, understanding and the exchange of knowledge, culture and beliefs.

In response to the needs of many regions and to the initiatives originated by ethnic groups within the broadcasting community, the Commission authorized various forms of broadcasting services in languages other than English, French or native Canadian. As a result, these services gradually became an integral feature of, and contributed significantly to, the Canadian broadcasting system.

In 1971, the Government of Canada declared multiculturalism within the framework of bilingualism to be its official policy. This policy encouraged cultural retention, the preservation of heritage languages, creative encounters among ethnic groups, and the opportunity for immigrants to learn French and English.

The Canadian broadcasting regulatory authority has licensed seven radio stations since 1962 to provide significant amounts of third-language broadcasting services in Canada. In 1979 the Commission licensed CFMT, a television station in Toronto and, in 1982 World View, a regional pay television network in British Columbia. In April 1984 the Commission licensed the two discretionary satellite-to-cable network services, Chinavision and Telelatino.

In addition, many English- and French-language stations have, in varying degrees, provided third-language programs in their broadcasting schedules. Local programs produced by ethnic communities are also included on many cable community channels. Several cable systems currently distribute single language closed-circuit audio services on the cable FM band, while ethnic special programming services are provided by cable companies in the Vancouver, Calgary and Montreal areas.

The growing demand to increase ethnic broadcasting services, the use of new communications technologies, the scarcity of broadcast frequencies, the limited channel capacity of some cable systems and the evolving nature of the Canadian broadcasting system raise a number of issues which need to be addressed by the Commission...

[NOTE: The next two sections of this public notice, dealing with the review process and the concerns expressed, are not here reproduced.]

[§215-4]

LICENSING APPROACH

The Commission has considered all of the representations made to it, and sets out below, the criteria which will guide it in considering applications where ethnic programming is a factor. Regulations will be proposed to implement the broadcasting policy contained herein.

A basic tenet of the CRTC's approach has been that the scarcity of broadcast frequencies will not permit the licensing of a single language service to each ethnic group in a given market. As a result, the Commission has not licenced over-the-air single language transmitting undertakings in languages other than English, French or native Canadian, and has required each licensee to provide a broadly-based service to the ethnic groups within the coverage area of the undertaking.

Since all licensees should reflect the diverse broadcasting needs of their communities, the Commission intends to continue with this approach and wishes to be reassured that the needs of smaller ethnic communities and those of visible minority groups are also met. In evaluating broadcast proposals to provide ethnic programming, the Commission will carefully examine the demographics of the community to be served (by ethnic origin, mother tongue and language of the home). It will also take into account the degree of support and involvement shown by local community organizations. Conditions of licence setting out the minimum number of linguistic and cultural groups to be served will be established on this basis.

The Commission will continue to be concerned with the financial resources of the applicants and the viability of the proposed services. Applicants will, therefore, be required to provide evidence of continued financial commitment.

[§215-5]

I. *Ethnic Programs*

In examining a licence application, the Commission will look at the applicant's programming proposals to ensure that they meet the needs of the community. Five types of programs will qualify:

TYPE A: A program in a language or languages other than French, English or native Canadian.

TYPE B: A program in French or in English that is directed specifically to racially or culturally distinct groups whose first or common bond language (in the country of their origin) is French or English (such as Africans from Algeria, Mauritania and Morocco; Caribbean Blacks; groups from India).

TYPE C: A program in French or in English that is directed specifically to any culturally or racially distinct group whose heritage language is already included in TYPE A (such as those groups who have not retained the use of a third-language).

TYPE D: A program using a bilingual mix (French or English plus a third-language from TYPE A) that is directed specifically to any culturally or racially distinct group (such as French and Arabic, English and Italian, English and Punjabi).

TYPE E: A program in French or in English that is directed to any ethnic group or to a mainstream audience and that depicts Canada's cultural diversity through services that are multicultural, educational, informational, cross-cultural or intercultural in nature.

(This will allow for programming in English or French that will facilitate the integration of ethnic groups into the mainstream and will reflect culturally or racially distinct groups to the population at large).

The Commission will exclude the musical, advertising, public service and promotional content when determining whether a particular **television** program qualifies as TYPE A, B, C, D or E.

For **television**, where different languages may be used in the audio and video portions of the signal, as with subtitling, the Commission will consider the audio portion to determine the language.

The Commission will exclude music, advertising, station contests and community and emergency messages when determining whether a particular radio program qualifies as TYPE D or E.

The exclusions listed above will, however, continue to be counted when calculating the duration of the program.

During the hearings, the CAEB and the CAB, suggested that the Commission should:

°include instrumental selections in the definition of an ethnic radio program;

°consider the lyrics of a musical arrangement as spoken word content.

Because of their potential impact on existing regulations, the Commission has decided to refer these recommendations to a CRTC Consultative Committee for further study.

[NOTE: See below at §217 for the results of this study; the two suggestions were not adopted.]

[§215-6]

II. *Ethnic Television and Radio Stations*

The Commission will consider an "ethnic station" to be:

a **television** or **radio** station that is required to devote not less than 60% of its weekly programming time between 0600 and 2400 hours to ethnic programs of TYPES A, B, C, D or any combination thereof. The Commission will establish by condition of licence the percentage of the 60% that must be devoted to programs of TYPES A and B.

The remaining 40% of the broadcast week between 0600 and 2400 hours may be devoted to ethnic programs of TYPES A, B, C, D, E or any combination thereof, or to any other type of conventional programming.

The Commission will soon propose amendments to Section 18 and Section 4(1) of the *Radio (A.M.) Regulations*; Section 26 and Section 5(1) of the *Radio (F.M.) Regulations*; and Section 5(1) of the *Television Broadcasting Regulations*, in order to implement this policy. [NOTE: For the current regulations, see section 7 and Schedule C of the *Radio Regulations, 1986*, above at §135-51 and §135-102, and section 9 and Schedule IIB of the *Television Broadcasting Regulations, 1987*, above at §137-68 and §137-99.]

Licensees are reminded, however, that the requirements set out in the existing television and radio regulations regarding Canadian content and advertising continue to apply.

[§215-7]

III. *Conventional Television and Radio Stations*

Currently several conventional television broadcasters, such as CFCF Montreal, CIII-TV (Global) Toronto and CHFD Thunder Bay, broadcast some TYPE A ethnic programs. In addition, 52 conventional AM and FM radio stations broadcast a total of approximately 260 hours of TYPE A ethnic programs on a weekly basis.

Various national organizations such as the Universal African Improvement Association and the National Congress of Italian Canadians, representatives of the Ministry of Transportation and Communications of the Government of Ontario, and the Minister of State for Multiculturalism of the Government of Canada addressed the

responsibility of broadcasters to reflect more accurately the reality of cultural diversity in Canada. Many interveners claimed that the response by the majority of radio and television stations to public demand for multicultural programming has generally been inadequate.

The Commission acknowledges these concerns and expects all broadcasters to increase their efforts to provide adequate levels of multicultural programming within their schedules.

To encourage this effort, the Commission does not intend to place any restrictions on the amount of TYPE E ethnic programming that any conventional television or radio station may broadcast. In addition, the Commission intends to take the following regulatory measures to permit conventional broadcasters to provide ethnic programming without application to the Commission, while ensuring a measure of protection for ethnic broadcasting licensees.

1. Where an **ethnic television** station has been licensed to serve a given area, any conventional television station whose signals reach that area may devote up to 10% of its weekly programming time between 0600 and 2400 hours to ethnic programs of TYPES A, B, C, D or any combination thereof without application to the Commission.
2. Where an **ethnic radio** station has been licensed to serve a given area, any conventional radio station whose signals reach that area may devote up to 15% of its weekly programming time between 0600 and 2400 hours to ethnic programs of TYPES A, B, C, D or any combination thereof without application to the Commission.
3. Where no **ethnic television** or **radio station** has been licensed to serve a given area, any conventional television or radio station whose signals reach that area, may devote up to 15% of its weekly programming time between 0600 and 2400 hours to ethnic programs of TYPES A, B, C, D or any combination thereof without application to the Commission.
4. Any **conventional television or radio station** may apply to the Commission to be authorized to devote up to 40% of its weekly programming time between 0600 and 2400 hours to ethnic programs of TYPES A, B, C, D or any combination thereof. The Commission will establish by condition of licence the percentage of the 40% that must be devoted to programs of TYPES A and B.

As noted earlier, the Commission will soon propose amendments to Section 18 and Section 4(1) of the *Radio (A.M.) Regulations*; Section 26 and Section 5(1) of the *Radio (F.M.) Regulations*; and Section 5(1) of the *Television Broadcasting Regulations*, in order to implement this policy. [NOTE: For the current regulations, see section 7 and Schedule C of the *Radio Regulations, 1986*, above at §135-51 and §135-102, and section 9 and Schedule IIB of the *Television Broadcasting Regulations, 1987*, above at §137-68 and §137-99.]

Licensees are reminded, however, that the requirements set out in the existing television and radio regulations regarding Canadian content and advertising continue to apply.

[§215-8]

IV. *Canadian Content Requirements for Radio and Television Stations*

The matter of Canadian content requirements on ethnic stations emerged as a central issue at the hearings.

While many submissions acknowledged that Section 3(d) of the *Broadcasting Act* calls on all broadcasters to provide programming that is "... of high standard using predominantly Canadian creative and other resources", all of them claimed that the requirements that television stations devote 60% of their broadcast day to Canadian programs and that radio stations devote 30% of all musical material to Canadian selections were untenable for stations who broadcast significant amounts of ethnic programming.

The recommendations to lower the Canadian content requirements for ethnic programs were based on the following constraints:

°the high cost of productions specifically directed to ethnic audiences;

°the lack of access to production installations facilities;

°insufficient Canadian creative and other resources; and

°the scarcity of quality ethnic programming.

While the Commission recognizes that it may be difficult for television stations broadcasting significant amounts of ethnic programming to meet the current regulations for Canadian content levels, the present regulations do not, at this time, allow for an exception to the general requirement.

In Public Notice CRTC 1985-82, the Commission proposed an amendment to Section 8 of the *Television Broadcasting Regulations* which would permit it to vary the Canadian content requirements by condition of licence. The issue of varying the Canadian content requirements for ethnic programs of TYPES A, B, C, D or E will, therefore, be considered when the Commission studies the comments received on the amendment to the existing Canadian content regulation. [NOTE: For the current regulation, which implements the above proposal, see subsections 4(8), (9) and (10) of the *Television Broadcasting Regulations, 1987*, above at §137-48.]

With respect to radio, the CAEB and the CAB identified various difficulties encountered by radio broadcasters in their attempts to meet the Canadian content musical requirements for the ethnic programs that they broadcast. As the Commission does not, at this time, have sufficient information to determine an appropriate level of Canadian content for radio stations that broadcast a significant amount of ethnic programs, it refers this issue to a CRTC Consultative Committee for examination.

[NOTE: For the report of the Committee, see Public Notice CRTC 1985-241, below at §217. The recommendation that at least 7% of the musical selections broadcast during an ethnic programming period be Canadian selections was incorporated into subsection 2.2(4) of the *Radio Regulations, 1986*, above at §135-35.]

[§215-9]

V. *Cable Television*

1) *Cable Carriage of Ethnic Television and Radio Stations*

In its introductory statement dated 7 February 1980 to Decisions CRTC 80-78 to 80-85, regarding the carriage of an ethnic television station in the Metropolitan Toronto area (CFMT-TV Toronto), the Commission stated that it:

> ...acknowledges the distribution of CFMT-TV on an unrestricted channel on the basic service of all cable television undertakings serving Toronto in accordance with the Cable Television Regulations and authorizes those undertakings serving communities outside the boundaries of the Metropolitan Toronto area to distribute CFMT-TV on the augmented channel service.

During these hearings, the Commission invited comment on whether, and under what conditions, cable television licensees, such as those who currently distribute CFMT-TV on augmented channels, should be required to give it priority carriage on an unrestricted channel on the basic tier.

Interveners pointed out that where CFMT-TV is a local or regional broadcaster in accordance with Section 6 of the Cable Regulations, it should be granted priority carriage on all cable systems located within CFMT-TV's Grade A and B coverage contours.

The Commission considers that CFMT-TV should be given the same priority status under the *Cable Television Regulations* as all other Canadian television stations. Accordingly, cable licensees located within the Grade A and B contours of CFMT-TV, are expected to take immediate steps to apply for the carriage of CFMT-TV on a priority basis as required by Section 6 of the *Cable Television Regulations*. Any such applications will be dealt with expeditiously. The licensees concerned are expected to advise the Commission on the measures taken in this regard within three months of this decision.

Current policies and regulations regarding the cable carriage of Canadian radio services apply equally to Canadian ethnic radio stations. The Commission has issued a policy statement regarding the carriage of audio services and proposed new cable television regulations which encompass proposed changes in the priority carriage of audio services (Public Notice CRTC 1984-124 dated 28 May 1984).

This issue is subject to the public process currently underway and will be addressed within the context of the revised Cable Regulations to be further issued for public comment in the near future. [NOTE: See now subsections 16(2) and (3)(d) of the *Cable Television Regulations, 1986*, above at §133-92 and §133-93.]

[§215-10]

2) *The Community Channel*

Just as an over-the-air broadcasting licence carries with it direct social commitments, so the community channel is a primary social commitment of the cable television licensee. How well this commitment is carried out is an important factor in the Commission's determination of the suitability of cable operators to retain a licence.

It was made clear at the public hearings that the community channel has become an accepted and important service for the ethnic groups, and that it is an integral part of the local programming service offered by cable television licensees.

In its *Cable Television Regulations* (Section 6) [NOTE: now section 9], the Commission requires all licensees of cable television systems to reserve a community channel on their basic service on a priority basis.

In its "Policies Respecting Broadcasting Receiving Undertakings (Cable Television)" 16 December 1975, the Commission stated that licensees are expected to seek out communities of common interest within their service areas and to encourage them to give expression to their interests and concerns.

Consistent with the Commission's past policy, no advertising material, including contra advertising, is allowed on the community channel. [NOTE: This policy was later amended in 1986: for the current policy, see *Sponsorship Messages on the Community Channel*, CRTC Circular No. 348, July 27, 1988, below at §243.]

These regulations and policies will continue to provide a framework for the community channel. They constitute the basic minimum standards to which all licensees must adhere. Additionally, the Commission hereby encourages cable operators to make a more effective use of the community channel with respect to scheduling ethnic programs of TYPES A, B, C, D and E, in order to better respond to the various needs and interests of the communities they are licensed to serve.

The Commission received many interventions voicing concerns about the difficulty in obtaining access to community programming time, and the need for licensees to allocate equitable time based on the expressed needs and demography of the community.

A CRTC Consultative Committee will further examine the nature and extent of these concerns. [NOTE: See below at §217 for the report of this committee.]

In view of the strong public demand for access to the community channel, the Commission also encourages cable operators to examine the viability of establishing a Special Programming Service in order to accommodate additional ethnic programming.

[§215-11]

3) *Special Programming Services*

The Commission's policy for special programming services was initially set out in its Announcement of 16 December 1975 and reviewed in March 1979. This policy "encouraged cable television licensees to give priority to the redistribution of special Canadian programming of particular relevance to the local community served by the cable operator. It was intended that such special channels would reflect the political, social and cultural interests of the communities served."

To date only a few cable television systems have requested and were authorized to provide special programming channels devoted exclusively to ethnic communities. These cable companies distribute a wide variety of ethnic programs of special interest in these markets, thus meeting a programming demand that could not otherwise have been accommodated on the community channels of these cable systems.

The Commission will continue to consider on a case-by-case basis, proposals for the production and exhibition by cable operators of special programming services not undertaken by conventional broadcasters because of commercial, scheduling or other constraints.

The Commission wishes to reiterate its policy that special programming channels should contribute significantly to the enrichment of the Canadian broadcasting system by extending and complementing local Canadian programming.

[§215-12]

4) *Advertising on Community and Special Programming Services*

Cable television systems are precluded from distributing advertising material on cable-originated audio and video channels.

When authorizing the distribution of special programming services, the Commission generally prohibits, as a condition of licence, the distribution of advertising material, other than the advertising contained in a Canadian broadcast replay. In the case of sponsored documentary or cultural programs, a licensee may present the name of the sponsoring organization at the beginning and end of the program.

While the Commission believes that cable television systems should not compete with conventional commercial broadcasters for advertising revenues, the Commission has allowed a modification to its policy in exceptional circumstances, as was the case with Vancouver Cablevision Limited (Decision CRTC 82-156).

During the recent public hearings, cable companies, independent producers and various ethnic groups noted that special programming channels are complementary to conventional broadcasting services and should be permitted to sell commercial time.

Some parties argued that advertising could generate funds for the production of quality ethnic programming and that local advertiser support would provide merchants with an opportunity to promote goods and services of particular interest to ethnic communities at a reasonable cost.

The Commission is of the view that such issues should more appropriately be considered in the context of the forthcoming public hearing which will deal with several cable policy issues, including advertising on cable. This hearing is scheduled for the fall of 1985.

[NOTE: The policy on advertising on cable was amended in 1986. For the current policy, see *Sponsorship Messages on the Community Channel*, CRTC Circular No. 348, July 27, 1988, below at §241.]

[§215-13]

5) *Closed-Circuit Cable Audio (Cable FM)*

In its 1979 cable policy review, the Commission indicated that, in order to exercise and maintain a certain level of regulatory control over closed-circuit audio operations which are not licensed by the Commission, it would consider applications for the cable carriage of closed-circuit audio services on the FM service provided they met certain criteria set out in that notice.

Ethnic closed-circuit cable audio services, normally provided to cable television licensees on a contractual basis by persons other than employees of the licensees, have now been in operation for more than a decade in Toronto and Montreal. The Commission recognizes that, owing to spectrum limitations, many of the needs of the larger ethnic groups cannot be adequately met by existing conventional radio broadcasters. Although existing ethnic radio stations in Toronto and Montreal provide some of these programming services, their audiences are diverse and these stations do not provide complete service to any one language group. The present closed circuit cable audio operations provide single-language services that include news, sports information,

public affairs and children's programming throughout the day on a weekly basis. Such stations rely on advertising for the revenues necessary to sustain their operations.

In its Public Notice CRTC 1984-237, "A Proposal for an Ethnic Broadcasting Policy", the Commission proposed to limit audio services in languages other than English, French or native Canadian to sponsorship advertising in areas where either a conventional radio station has been authorized to broadcast ethnic programs or where an ethnic radio station has been licensed.

During the hearings, members of Parliament, closed-circuit operators and representatives of ethnic groups appeared before the Commission to argue that services provided by closed-circuit audio systems were essential to the communities in question, that revenues derived from advertising were their only means of survival, and that the distribution of such services by cable television licensees should be allowed to continue. The operators of ethnic closed-circuit audio services also expressed concern over proposed changes to the carriage priorities for audio services as set out in Public Notice CRTC 1984-305. The concern was that the cable operator would be required to carry a large number of priority signals, leaving little room for carriage of optional services such as theirs.

The Commission was impressed with the overall commitment of the closed-circuit operators and by the useful information provided at the hearings. It has, therefore, decided to continue to permit cable licensees to distribute the presently authorized ethnic closed-circuit audio services that offer advertising in languages other than English, French or native Canadian.

As long as no ethnic radio station has been licensed to serve an area, new ethnic closed-circuit audio services offering advertising in languages other than English, French or native Canadian, will also be authorized for distribution in that area.

However, where an ethnic radio station has already been licensed to serve an area, a cable licensees serving that same area will only be permitted to distribute new ethnic closed-circuit audio services that carry sponsorship advertising. This type of advertising is limited to:

> simple statements of sponsorship which identify the sponsors of a program or of the station. Such statements may incorporate the name of the sponsor, the business address, hours of business, and a brief description of the types of services or products which the sponsor provides, including the price, name and brand name of the product. Such statements must not contain language which attempts to persuade consumers to purchase and thus must not contain references to convenience, durability or desirability or contain other comparative or competitive references. (Public Notice CRTC 1983-43)

The question of the carriage of audio signals by cable licensees is currently under study by the Commission in the context of its proposed changes to the *Cable Television Regulations*. In formulating the next draft of the proposed regulations, the Commission will take into account the concerns raised at the ethnic policy hearings as well as those voiced during the public hearing held to consider the proposed changes to the *Cable Television Regulations*. [NOTE: For the current policy, see *Regulations Respecting Broadcasting Receiving Undertakings*, Public Notice CRTC 1986-182, August 1, 1986, below at §219-5.]

[§215-14]

VI. *Ancillary Services*

In Public Notice CRTC 1984-117, the Commission acknowledged the development of the Vertical Blanking Interval (VBI) and Subsidiary Communications Multiplex Operations (SCMO) and the evolving use of such technologies by broadcasters for the provision of additional special interest services.

The VBI is an integral part of every television signal but does not contain any part of the video picture. With the development of improved technology, part of the VBI can now be used for the distribution of a variety of special services. SCMO is a technique that enables part of the signal transmitted by FM radio stations to be used for a variety of services.

In each case, the regular programming and the additional services share a common transmitter. Subject to certain restraints, the additional services are received via special equipment.

The Commission considers that both VBI and SCMO present options for the future development of ethnic broadcasting in that they have the capacity to be used for the distribution of many types of special services aimed at specific audiences. For instance, the VBI could be used to provide subtitles in a different language, while the SCMO of FM stations could be used to provide full-scale ethnic broadcasting services.

In its Notice CRTC 1984-117 the Commission announced that it was taking a very light regulatory approach to VBI and SCMO until the end of 1986 to "encourage broadcasters to experiment". In keeping with this approach, single-language services may be authorized for distribution on these facilities.

During the ethnic policy hearings certain interveners expressed reservations with respect to these services. They argued that relegating ethnic programming to SCMO delivery would be interpreted as "ghettoizing" and that certain FM stations in major markets were unwilling to lease their SCMO capacity to provide full ethnic radio services.

The Commission reiterates its view that SCMO and VBI can be used as an alternative means of providing single-language programming services and expects both ethnic and conventional broadcasters to examine the potential of SCMO and VBI with regard to possible ethnic services. [NOTE: For the current CRTC policy on SCMO and VBI, see *Services Using the Vertical Blanking Interval (Television) or Subsidiary Communications Multiplex Operation (FM)*, Public Notice CRTC 1989-23, March 23, 1989, below at §253.]

[§215-15]

VII. *Ethnic Specialty Network Services*

In Public Notice CRTC 1983-93, the Commission stated that Canadian specialty programming services should be offered "on a discretionary basis at the option of the subscriber" and should, by definition, "consist of narrowcast television programming that would be complementary to existing services".

The Commission noted that in considering applications for such programming services it would be guided by certain general principles and objectives similar to those established for the introduction of general interest pay television services.

When the Commission licensed Telelatino Network Inc. (Telelatino) and Chinavision Canada Corporation (Chinavision) (Decisions CRTC 84-444 to 84-446), the Commission considered that such ethnic specialty programming services would assist in fostering the cultural values and traditions of Chinese, Italian and Spanish-speaking people who live in communities across Canada, and would assist these groups to participate in, and contribute to, Canadian society.

Taking into account the economic and spectrum considerations and the public demand that quality ethnic broadcasting services be developed and made available across Canada, the Commission notes with concern that representations made at the hearings indicated an unreasonable reluctance on the part of some cable licensees to carry Telelatino and Chinavision in markets where a high concentration of ethnic communities well justify the provision of such broadcasting services.

The Commission intends to examine how the cable industry has met its important obligations to the successful development of Canadian discretionary and pay television services and, as noted in the Public Notice on Specialty Programming Services (CRTC 1984-81), expects cable television licensees to ensure that all Canadian discretionary services, including those of Telelatino and Chinavision, are marketed effectively, priced fairly, packaged attractively and carried without discrimination. The Commission further intends to conduct a general review of specialty services "after the initial two years of operation."

[NOTE: In *Structural Public Hearing*, Public Notice CRTC 1993-74, June 4, 1993 at §294-20, the CRTC stated that "Chinavision, Telelatino and Cathay, as third-language services, will continue to be distributed as discretionary services only, and will not eligible for basic carriage."]

[§215-16]

BROKERAGE

Many independent ethnic program producers purchase blocks of time from radio and television stations. They determine the program content and commercial messages and derive revenues from the advertising contained therein. In accordance with section 3 of the Broadcasting Act, each licensee is fully responsible for any programming provided on its broadcasting undertaking, whatever its source.

While the Commission recognizes that the practice of brokerage may reduce a licensee's control over program content, it acknowledges that brokerage has provided ethnic producers with access to the airwaves, and conventional radio and television broadcasters with viable ethnic programming. It has also stimulated the development of the Canadian production of popular ethnic programs which otherwise might not have been produced.

At the hearings, the Commission invited comment on how best to ensure that licensees who broadcast brokered programs fulfill their responsibility under the Broadcasting Act and regulations.

In response, broadcast representatives engaged in various aspects of program production or brokerage submitted that:

- the Commission should encourage brokers to produce programs of high quality; and
- licensees should be required to enter into contractual agreements with their independent producers and brokers that would clearly define responsibilities and include third-language monitoring provisions.

The Commission has considered the views expressed on this issue and acknowledges that the practice of brokering ethnic programs has gradually evolved within the broadcasting system, such that it now plays an important role in the provision of ethnic programming and is considered a standard feature of independent production.

In the Commission's view, a self-regulatory mechanism should be established with clearly defined criteria for the production of quality brokered or independently-produced programs. Such guidelines should also benefit the licensees who are ultimately responsible for the programs they broadcast. Accordingly, the Commission requests that the CAEB and CAB consult with all interested parties, with a view to developing an *Industry Code for Brokerage*, and expects to receive a report on this issue by December 1985.

[NOTE: For the text of the *Industry Code for Brokerage*, filed by the CAB and CAEB with the CRTC on December 11, 1985, and approved by the Commission, see above at §172. For a recent case in which the use of brokered programs was discussed and a condition of licence limiting such use imposed, see Decision CRTC 93-31, January 26, 1993.]

[§215-17]

CRTC CONSULTATIVE COMMITTEE AND A NATIONAL ADVISORY COMMITTEE

There was considerable discussion at the public hearings on the scarcity of ethnic musical recordings in Canada and the most effective means of stimulating and promoting Canadian ethnic production and talent. The Commission will establish a CRTC Consultative Committee to examine these matters. This Committee will also consider the issue of access to the community channel. A public notice will be issued shortly with regard to the composition and mandate of the Consultative Committee. [NOTE: The remainder of this section of the public notice, as well as a section entitled *Licensing Action*, is not here reproduced. For the report of the Consultative Committee, see below at §217.]

[§216-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Complementary Programming on the Community Channel

[§216-2]

[Public Notice CRTC 1985-151, July 18, 1985. This policy is incorporated by reference into subsection 13(3) of the *Cable Television Regulations, 1986*, above at §133-86.]

[§216-3]

The Commission's current *Cable Television Regulations* require all cable television licensees to reserve a channel for community programming on the basic service, on a priority basis. The principal purpose of the community channel is to provide communities with access to a unique local service, distinct from the programming offered by traditional broadcasting stations. For the most part, only programming produced by a licensee, or by members of the community served by a licensee, is distributed on the community channel. Nevertheless, the Commission has also allowed the distribution of bicycled programs produced by other cable systems, provided that such programs are relevant and of interest to the community. In the case of cable systems with limited channel capacity (12 channels or less), the Commission has also permitted the distribution of the daily Question Period segment of the House of Commons proceedings on the community channel.

The Commission is generally pleased by the manner in which community programming has developed and matured over the years. Its effectiveness is the result of the efforts of those licensees who understood the benefits of providing programming complementary to conventional offerings and of responding to identified local needs and who have successfully built upon the Commission's initial policy framework, to create a vital and important element of the broadcasting system. The Commission also recognizes the valuable contribution made by the many thousands of community volunteers, upon whose efforts the licensees are dependent for the production of relevant community programming services.

A substantial amount of community programming is generally provided on a regular basis by the larger urban systems. In small rural towns and villages, local programming draws heavily upon the close sense of community shared by residents, and is an effective vehicle for local self expression. In most of these smaller communities, however, the community channel is only programmed for brief periods of each day or week.

Some cable licensees have requested that the Commission amend its policies to permit alternative programming to be distributed on the community channel during periods when local programming is not being distributed. In its *Review of Certain Cable Television Programming Issues*, dated 26 March 1979, the Commission noted that such requests arose from the overcrowding of the basic band on some cable systems, and that this particular problem would diminish as channel capacity and converter penetration increased. While this has occurred in the case of most urban areas, where the channel capacity of cable systems has been upgraded to 36 or 54 channels, many of the smaller systems lack the financial resources to rebuild, and will experience increasing pressures for the use of channels 2-13 of the basic band.

On 12 June 1984, the Commission issued Circular No. 297 entitled *Community Channel Policy Review*, which addressed the proposals made by the Canadian Cable Television Association (CCTA) for modifications to the Commission's cable television policies. With regard to the request that, in addition to community programming services, licensees be permitted to distribute other compatible, non-commercial programming on the community channel, the Commission stated: "In addition to raising several major policy issues, an amendment to the regulations may be required to permit the sharing of the community channel. The Commission considers that the pressures to share the community channel are felt most with the smaller (Class B) systems."

Accordingly, in Public Notice CRTC 1984-204 dated 3 August 1984, the Commission invited comments on whether licensees of Class B cable television systems should be permitted to distribute additional, complementary programming on the community channel.

[NOTE: The summary of comments is not here reproduced]

[§216-4]

The Commission recognizes that many of the smaller systems have yet to begin actively programming their community channels, due to their limited channel capacity or financial resources. It also recognizes that these factors may continue to restrict the extent to which these systems are capable of providing local programming.

In order to encourage licensees of smaller systems across Canada to provide at least a minimum level of local service, the Commission has now determined that all cable television systems serving 3,000 subscribers or less will be permitted to distribute other programming, complementary to community programming on the community channel. The Commission expects that, given this flexibility, cable licensees will make every effort to offer a minimum level of local service, enhanced by the addition of other sources of programming.

Accordingly, subject to the provisions set out below, the following types of services may be distributed with local programs or announcements on the channel reserved for community programming on cable systems serving 3,000 subscribers or less:

[§216-5]

community programs produced by other cable television licensees, government or public service information material, NFB productions, children's programs, educational programs not provided by the Provincial Education Authority, alpha-numeric services such as Broadcast News, the Question Period portions of the House of Commons or provincial legislatures, and multicultural programs.

[§216-6]

The Commission recognizes the value of these complementary programming services and considers that Canadians residing in small towns and villages in all regions of the country should have access to them.

Cable television systems serving 3,000 subscribers or less will be permitted to distribute the above-mentioned services on the community channel, subject to the following provisions:

a) local community programs or announcements must be scheduled according to the wishes and needs of the community;
b) an adequate daily minimum time period must be reserved for the distribution of local programs or announcements;
c) all programming distributed on the community channel must be compatible, complementary and non-commercial;
d) the distribution of additional programming services must not impede the future development and growth of local programming;

e) no foreign service or signal may be distributed on the community channel without prior authorization.

Pending enactment of the proposed new *Cable Television Regulations*, licensees wishing to make use of the community channel for the distribution of such complementary programming will be required to apply to the Commission for appropriate amendments to their conditions of licence.

[NOTE: Later in 1986, as noted below at §219-6, the CRTC extended this policy to all Class 2 systems, i.e. systems serving less than 6,000 subscribers, and incorporated it into the Regulations. See subsection 13(3) of the *Cable Television Regulations, 1986*, above at §133-86, which incorporates this policy by reference.]

Community programming represents a unique and important opportunity for cable licensees to foster the exchange of ideas, raise issues of public concern, and cover events of local interest. By including a mix of attractive and compatible programming material from other sources, the Commission is confident that the community channel will continue to provide a meaningful and valuable contribution to community life.

The Commission will follow with interest the implementation of this new policy to assess its impact on local programming activity and on the broadcasting system as a whole.

[§217-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

CRTC Consultative Committee on Ethnic Broadcasting

[§217-2]

[Public Notice CRTC 1985-241, November 13, 1985.]

[§217-3]

BACKGROUND

In Public Notice CRTC 1985-139, entitled "A Broadcasting Policy Reflecting Canada's Linguistic and Cultural Diversity" (4 July 1985) [NOTE: set out above at §215], the Commission announced its intention to establish a Consultative Committee to examine several unresolved issues relating to the policy. Specifically, the following five items were referred to the Consultative Committee for study:

1. the availability in Canada of musical recordings qualifying as Canadian, and consequently, the appropriate Canadian content level of musical recordings for ethnic radio broadcasters;
2. the inclusion of the lyrics of a song as spoken word content for the purposes of defining an ethnic radio program;
3. the inclusion of instrumental selections in the definition of an ethnic radio program;
4. the most effective means of stimulating and promoting Canadian ethnic talent and record production;
5. access by ethnic groups to the community channel. ...

On the basis of the information obtained, the Consultative Committee made a number of recommendations to the Commission which has endorsed the a policy proposals herein set out. This notice deals specifically with the first four issues referred to above which are of concern to radio broadcasters. The matter of community access to cable will be dealt with at a later date. ...

[§217-4]

ISSUES

1. *Canadian Content*

Subsection 12(1) of the *Radio (A.M.) Broadcasting Regulations* provides that at least 30% of the musical compositions broadcast by a station or network operator between the hours of 6:00 a.m. and midnight shall be by a Canadian. During the ethnic broadcast policy hearings, ethnic radio programmers advised the Commission that the supply of ethnic musical recordings qualifying as Canadian is generally insufficient to meet the current regulatory requirement. This opinion was, for most language groups, supported by information presented to the Consultative Committee by members of various ethnic communities, by ethnic artists and by the recording industry.

While noting that some ethnic groups produce a considerable number of musical recordings, the Commission has been convinced that there is an overall lack of Canadian recordings in third languages and, accordingly, that current Canadian content requirements may be difficult to attain, even with the best efforts of all concerned, if the programming directed at ethnic audiences is to rely on ethnic compositions for its musical content.

In light of this, the Commission has accepted the Consultative Committee's recommendation as a policy to be followed by all radio stations broadcasting ethnic programming. Accordingly, section 12 of the *Radio (A.M.) Broadcasting Regulations* will be modified to require a minimum of 7% Canadian content overall during the broadcasting of ethnic programs of Types A, B, C and D. At all other times, the requirements set out in the existing regulations regarding Canadian content will continue to apply. The Commission will soon publish for public comment a proposed amendment to implement this change.

[NOTE: For the current regulation, see subsections 2.2(3) and (4) of the *Radio Regulations, 1986*, above at §135-34.]

The Canadian content level of each FM station is specified as a condition of licence. In light of this new policy, FM broadcasters may wish to ask for an amendment to their licences with respect to the broadcasting of ethnic programs of Types A, B, C and D.

The Commission emphasizes that it considers the 7% level of Canadian content for ethnic programming periods to be a minimum and that it expects radio broadcasters to make every effort to gradually increase the Canadian content levels of ethnic programs. This expectation reflects the Commission's concern that Canadian ethnic artists be afforded maximum access to the airwaves. In the Commission's view, this will be facilitated should some of the proposals put forward later in this notice be acted upon. ...

The Commission is aware of the fact that the number of ethnic musical recordings qualifying as Canadian is greater for some languages than for others. The Commission

further realizes that this situation may have a varying impact on the ability of ethnic broadcasters to meet their Canadian content obligations depending on the languages programmed by a station.

With this in mind, the Commission reminds ethnic broadcasters and programmers that, as stated in Public Notice CRTC 1985-139 "all licensees should reflect the diverse broadcasting needs of their communities and that the Commission wishes to be reassured that the needs of smaller ethnic communities and those of visible minority groups are also met". The Commission recognizes that in so doing, it may be necessary for a station to cross-subsidize the level of ethnic recordings qualifying as Canadian between language groups.

[§217-5]

2. *Song Lyrics As Spoken Word Content*

The Commission defines an ethnic program on the basis of the spoken word content rather than the musical content of the program. During the ethnic broadcast policy hearings, it was suggested that, in competitive market situations involving conventional radio stations and ethnic radio licensees, a broadcaster could schedule musical selections which did not reflect the spoken word content.

During the consultative process, both conventional and ethnic broadcasters argued that the degree of regulatory intervention necessary to guard against this potential problem, by including the lyrics of a musical composition as spoken word content for the purposes of defining an ethnic program, would have the effect of severely limiting programming flexibility. Moreover, broadcasters and ethnic performers alike pointed out the complexity and difficulty of arriving at a proper, reliable and generally acceptable definition of what constitutes ethnic music.

Accordingly, the Commission will maintain its current criteria for defining an ethnic program and will not include the lyrics of a song as part of the definition of an ethnic radio program.

The Commission maintains, however, that the music of an ethnic radio program should reflect the language and character of the program as well as the musical tradition of the intended audience.

[§217-6]

3. *The Definition of an Ethnic Instrumental*

The suggestion to include instrumental selections in the definition of an ethnic radio program was raised at the recent ethnic policy hearings. During the consultative process, however, the complexity of attempting to define the ethnicity of an instrumental selection within the context of an ethnic program was recognized. Those consulted suggested or agreed that this item be dropped from the agenda.

[§217-7]

4. *Potential for Ethnic Recordings and Productions*

The Commission acknowledges the contribution of ethnic artists to the richness of Canada's musical culture. Nevertheless, throughout the consultative process, participants described to the Consultative Committee the considerable difficulties associated with the

production, distribution and promotion of ethnic musical recordings. At the same time, virtually all of the participants were of the view that ethnic musical performers could make a far greater contribution to the Canadian record inventory than they do at present. In addition, it was clearly demonstrated that although a substantial number of ethnic recordings are currently available, radio programmers and the public at large are often unaware of their existence.

Three proposals were put forward as a means of encouraging the potential of ethnic recording and production in Canada:

-a national production fund should be established to support ethnic record production

-a catalogue of ethnic musical recordings qualifying as Canadian should be compiled

-a televised multicultural music festival should be organized.

While participants in the consultative process acknowledge that it may not be within the mandate of the Commission to act upon and implement such recommendations, they nevertheless urged the Commission to forward such proposals to the appropriate government departments and agencies. Accordingly, the Commission will relay the particulars of these suggestions to the Interdepartmental Working Group established by the Minister of State for Multiculturalism Canada to devise a framework and mandate for a National Advisory Committee on Ethnic Broadcasting.

[§218-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Replies to Interventions Received in Opposition to Applications Processed via Public Notice

[§218-2]

[CRTC Circular No. 319, February 17, 1983]

[§218-3]

For the Attention of Licensees of all Broadcasting Undertakings

The Commission draws to the attention of licensees the importance of forwarding to it, as early as possible, copies of their replies to interventions submitted in opposition to any of their applications processed via public notice.

Since it is the Commission's intention to deal expeditiously with applications received, it is in the best interests of licensees to ensure, should they wish to respond to interventions, that their responses are submitted in due time to be considered by the Commission.

Accordingly, and with a view to accelerating the processing of applications, copies of any such responses should be submitted within ten days of receipt of any interventions.

[§219-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Regulations Respecting Broadcasting Receiving Undertakings

[§219-2]

[Public Notice CRTC 1986-182, August 1, 1986. See also *Implementation Procedures related to the New Cable Television Regulations*, below at §220. As annotated herein, the policies set out in these two notices, which accompanied the issuance of the *Cable Television Regulations, 1986*, must now be read in light of changes made in 1988, noted below at §235, §242 and §249, changes made in 1990-91, noted below at §261 and §264, and changes made in 1993-94, noted below at §294, §295 and §302.]

[§219-3]

I. *INTRODUCTION*

Pursuant to subsection 16(1) of the *Broadcasting Act*, the Commission has enacted *Regulations Respecting Broadcasting Receiving Undertakings*. The new regulations have been registered with the Clerk of the Privy Council to come into effect today...

These new cable television regulations are the culmination of an extensive and thorough public process which has elicited wide-ranging commentary and participation from individuals, consumer associations, industry associations, cable and broadcasting licensees and governments.

The process was initiated in December 1984 with a call for comments on the proposed regulations set out in Public Notice CRTC 1984-305. The volume and variety of the responses resulted in a hearing on 30 April 1985 (Notice of Public Hearing 1985-27).

Since non-programming services and advertising on cable were not discussed at that hearing, they were the topics of a subsequent hearing that began on 29 October 1985, during which the Commission reviewed a series of issues related to these two areas, particularly the extent to which non-programming services should be regulated and the most effective means to approach a possible policy change with reference to advertising on cable television.

Presentations made at these hearings resulted in several significant changes to the proposed regulations. Subsequently, in Public Notice CRTC 1986-27, the Commission published a comprehensive revised draft which also took into account the Commission's response to the report of the Task Force on Access to Television in Underserved Communities (the Klingle Report) [NOTE: set out above at §213]. Further comments were solicited and another hearing took place on 29 April 1986.

The 1976 regulations have been in force for approximately a decade with relatively few amendments. Consequently, they required updating to account for the rapid growth and technological change experienced during that period, including the introduction of discretionary and specialty services, the widespread use of satellites to deliver new

programming options, the unparalleled spread of VCRs in Canadian homes, as well as the vast array of non-programming services which can now be developed and offered. As a result, the cable industry in many areas of the country faces increasing competition in the home entertainment field.

The Commission's response to this altered communications environment has been to develop a new regulatory approach for the cable industry.

As stated in Public Notice CRTC 1986-27, the Commission has adopted:

> a more supervisory course of action. The Commission is confident that such an approach is now required in view of the increasingly competitive environment confronting the cable television industry, the perceived need for a more comprehensive menu of both programming and non-programming services to be offered to each community and the urgent need for reinvestment in cable systems in order to ensure continued quality of service to all subscribers.

The structure of the new regulations not only eliminates obsolete items but is designed to reduce regulatory lag by minimizing areas in which licensees currently must apply for authorization. Formerly, licensees were required to apply to the Commission for any use of the undertaking other than for the distribution of priority services. Under the new regulations, authorization for the carriage of most programming services is contained directly in the regulations and no longer requires an application and Commission approval. If a service, other than a programming service, is to be distributed, no authorization from the Commission is necessary.

Similarly, major changes have been made to accelerate the current process of amending installation and monthly subscriber fees. Installation fees will no longer be authorized for each licensee. Instead, a "cap" has been instituted and will be more fully described later in this notice. Concerning monthly fees, subscribers will be better informed than in the past by the inclusion of a new requirement that licensees notify all subscribers of any pending or proposed change in fee.

While fully maintaining the objectives of the *Broadcasting Act*, the Commission hopes that these regulations will help reduce the regulatory burden, the cost of which are eventually borne by the subscribers, and permit the Commission to develop a more supervisory role with respect to the general operation of systems across the country.

The sections which follow are intended only as a guide to highlight major changes between the former and new regulations and changes made as a result of the 29 April 1986 hearing. In a separate Public Notice, CRTC 1986-184 issued today [NOTE: set out below at §220], implementation procedures have been published to assist licensees in making the transition to the new regulatory regime. It includes forms which may be used to achieve speedy amendment of certain conditions of licence and to inform subscribers of rate changes, plus a list of Part III licensees as of 30 June 1986 (see Section IV) [NOTE: the list is omitted].

[§219-4]

II. *CARRIAGE REGULATION*

1. *Television Service Priorities* (section 9)

The structure of carriage priorities remains essentially unchanged from that set out in the original 1976 regulations. Changes have been made to take into account satellite

delivered programming services, particularly in the areas of educational services, the CBC and future national public interest services.

The provision of television services, which is still the primary function of a cable system, remains the focus of cable regulation. These regulations will require a predominance of channels (more than 50%) providing Canadian programming services over non-Canadian services for each undertaking. To comply with this requirement, the Commission will exclude alphanumeric services but, in a change from previous policy, will include the community channel in its count of Canadian programming services. A predominance of Canadian services is also required for audio channels.

At the 29 April 1986 hearing, representations were made on two issues relating to the provision of educational services. First, concerns were expressed that a new second educational programming service originating in the same province would not be accorded the same priority as an existing one under the regulatory scheme proposed in CRTC Public Notice 1986-27. This was of particular concern to the Ontario Ministry of Transportation and Communications, TVOntario and to many Francophone groups who intervened on this issue.

In discussion at the public hearing, it became evident that in the months to come, various new services would likely be licensed by the Commission which could result in changes to traditional channel lineups. This expectation, along with the widespread use of converters by subscribers, including those in Ontario where a new educational service may soon be in place, argues strongly for the changes made in section 9 (1)(b) to require the same priority carriage for all educational services provided by a provincial authority in which the undertaking is located, no matter how the service is delivered. Should particular circumstances present a problem, a licensee may apply to the Commission for a condition of licence that would relieve it from meeting that requirement.

The Commission is encouraged that representatives of the cable industry indicated at the hearing their commitment to the continued carriage of all priority services designated by the Commission. Changes in the line-up of services available on the basic band (2-13) can be disruptive. However, when provided with complete information and sufficient advance warning, subscribers will generally adjust to the new and expanded channel distribution quickly and easily.

The second issue concerns the out-of-province carriage of an educational programming service. Both TVOntario and Access Alberta stated that out-of-province carriage of their services would result in substantially higher fees for programming rights. The Commission maintains its commitment to the widest possible access to Canadian programming for all Canadians, but recognizes that because educational programming is not supported by advertising, and until more effective copyright legislation is in place, its out-of-province carriage may constitute a major difficulty.

Carriage of an out-of-province educational service received other than over-the-air for distribution on basic service will require Commission approval as currently set out in the public notice concerning Distant Canadian Television Signals (Public Notice CRTC 1985-61). The effect will be that the concerned educational authority will continue to have an opportunity to make its views known to the Commission.

Distribution of an educational television station signal received over-the-air by an out-of-province undertaking will be authorized directly in the regulations (section 9(3)).

Also discussed at the hearing was the regulatory treatment to be accorded to new television stations broadcasting from the border areas of the United States where it is apparent that their target audience includes nearby Canadian cities.

Broadcasters cited the potential financial harm such unregulated competition might cause them, as well as the inherent unfairness in the authorization, directly in the regulations, of the basic service carriage of these new stations. In response to these concerns, the Commission has amended section 10. Accordingly, carriage of non-Canadian television stations, which began operation later than 1 January 1985, will not be authorized through the regulations. Instead, licensees wishing to carry these stations must apply to the Commission for authorization on a case-by-case basis.

[NOTE: This policy was revised in *Structural Public Hearing*, Public Notice CRTC 1993-74, June 3, 1993, set out below at §294-26.]

Sections 10 and 24 authorize the carriage of any programming services found on the Commission's list of approved eligible satellite services. In a separate public notice issued today, Public Notice CRTC 1986-183, the Commission has listed these eligible services which may be changed from time to time. [NOTE: For the most recent list, see below at §307.]

[§219-5]

2. *Audio Programming Services* (section 16)

The regulations governing audio carriage remain as stated in Public Notice CRTC 1986-27, as follows:

> In placing the authority for carriage of priority and optional audio signals directly in the regulations, the scheme differs slightly from that used for video. Unlike video programming services where the regulations give explicit guidance as to the services which are authorized for optional carriage, any audio service may be carried unless it is explicitly excluded.

The mandatory carriage of local AM stations was identified as an issue for consideration at the hearing, particularly the practical effect of this requirement on many systems. At the hearing, the CCTA supplied the results of a survey it had conducted, which documented the extremely low subscriber penetration of cable FM connections.

The Commission recognizes that the mandatory carriage of all local stations will create problems of spectrum availability in some major urban areas. It deems it appropriate however, to accord all local services the same guaranteed access to cable distribution as is given to video services. Given the current economic problems facing AM stations, and considering their transition to stereo service, this required carriage should be beneficial. In the same way as for video programming services, in those instances where major problems relating to spectrum availability do arise, licensees may apply for a condition of licence to modify the priority carriage requirements.

It should be noted that the definition of "local AM station" has been modified to refer only to those stations whose principal studio is within 30 km of the local head end of the cable undertaking. In most cases where channel availability is not a problem, a broad selection of optional audio services may be carried without authorization, provided that the licensee maintains an overall preponderance of Canadian over non-Canadian services. Certain non-Canadian FM or AM audio services will not be directly authorized in the

regulations: those not received directly over-the-air at the local head end, those soliciting advertising and, to reflect current policy concerns, those with predominantly religious themes.

Many interventions were filed which assumed or feared that certain non-Canadian stations currently available through cable systems would, based on their religious character, be removed. The Commission notes that while the authorization to carry these stations is not granted directly in the regulations, services of a religious nature currently authorized pursuant to a condition of licence will not be affected by the changes to the regulations.

[§219-6]

3. *Community Programming* (sections 13, 14, 15)

The Commission has observed with interest the evolution of the community channel during the past decade and is pleased to note that cable licensees are currently contributing over $40 million dollars annually to this unique and valuable community service.

The new regulations will permit contra, credit and sponsorship messages on the community channel to enable licensees to continue to improve the quality and quantity of community programming. This revenue should not accrue to the general revenues of the cable system, but instead should be used to help initiate or improve community programs.

As stated in Public Notice CRTC 1986-27, no evidence has been brought forward to indicate that this type of advertising activity would have any serious effect on the revenues of local broadcasters or that the nature of the community channel would be altered. The Commission will monitor the results of such advertising and will assess its impact at licence renewal time. Commercial type "spot" advertising, however, will continue to be prohibited.

The Commission notes that in accordance with its policy of sharing the community channel, Public Notice CRTC 1985-151 [NOTE: set out above at §216], Class B systems may provide a wide range of complementary programming on the community channel when community programming is not being distributed. This policy has been incorporated into the regulations and extended to systems serving up to 6,000 subscribers rather than the previous limit of 3,000.

[§219-7]

4. *Substitution of Identical Programming Services* (section 20)

Included in Public Notice CRTC 1986-27 was a proposal put forward by the Canadian Association of Broadcasters (CAB) that the regulations be amended to allow substitution of non-identical episodes of strip programs. At the 29 April hearing, the Commission heard differing points of view on this matter. In the Commission's view, the CAB and those individual broadcasters who favoured the proposal failed to demonstrate either the efficacy of such a measure or its likely positive impact on the broadcasting industry. Similarly, there was a failure to substantiate any need for such a provision on the part of the broadcasters or any measurable benefits that it would bring to the system.

Moreover, the Commission notes that even within its current permissible limits certain problems related to the simultaneous substitution process have been an irritant to subscribers. In light of the above, the proposed "strip programming" provisions are not included in these regulations. At the same time certain minor changes to improve the regular substitution process are retained, as suggested in Public Notice CRTC 1986-27. As in the former regulations, substitution may only be requested by a local or regional television station. No changes have been made affecting the current rules regarding captioned programming.

[§219-8]

5. *Alteration or Curtailment of Programming Services* (section 19)

Only minor changes to this provision of the regulations were proposed in Public Notice CRTC 1986-27, notably to permit alteration or curtailment of any programming service in order to comply with subsection 105(1) of the *Canada Elections Act*. No changes resulted from the 29 April 1986 hearing.

[NOTE: see now paragraph 19(c) of the *Cable Television Regulations, 1986*, above at §133-121. Subsection 105(1) is now subsection 328(1) of the *Canada Elections Act*, R.S.C. 1985, c.E-2.].

[§219-9]

6. *Tiering* (section 10(2))

As proposed in Public Notice CRTC 1986-27, the carriage of Canadian and non-Canadian services on a discretionary basis will be authorized through the regulations. At the hearing, pay and specialty licensees expressed concern that the regulations would authorize the carriage of Canadian and non-Canadian specialty services but cable licensees would be under no legal obligation to adhere to the tiering and linkage rules set out in Public Notice CRTC 1984-81. Such a legal obligation had been contemplated in the draft regulations published in Public Notice CRTC 1984-305. The Commission has been persuaded that these requirements should be reintroduced and therefore has made the discretionary carriage of specialty and pay services subject to the rules set out in Public Notice CRTC 1984-81. The main elements are that a Canadian pay service may be packaged with up to five channels of eligible non-Canadian services and a Canadian specialty service may be packaged with up to two eligible non-Canadian services. No single discretionary tier can contain more than five channels of non-Canadian services. The rules apply to all Class 1 and Class 2 licensees.

It should be noted that the Commission has already announced that it will hold a hearing to review these rules in 1987.

[NOTE: In Public Notice CRTC 1987-261, November 30, 1987, the Commission issued revised distribution and linkage rules. These were later superseded by *Distribution and Linkage Requirements*, Public Notice CRTC 1993-75, June 3, 1993, set out below at §295, which became effective on January 25, 1994.]

[§219-10]

7. *Use of Equipment and Facilities* (section 3)

Under the new regulatory approach to cable as described in Public Notice CRTC 1986-27, the terms of section 3 of the new regulations only address programming services. These are defined in the regulations as services designed generally to inform

or entertain the public at large. Alphanumeric services, also defined, are specifically excluded from the programming services definition and will thus encourage the provision of more of these services to cable subscribers. Services not falling within the definition of programming services may therefore be created, developed and offered by a licensee without the need to seek authorization from the Commission.

An examination of the best ways to help develop such services took place at a hearing on 29 October 1985, and the Commission's findings and proposals were first published in the public notice and proposed regulations issued on 13 February 1986. No changes have been made in the final version issued today.

The Commission reiterates that spectrum priority must be given to programming services and that there should be no cross-subsidization of non-programming services from basic service revenues. These general conditions were specified in the Introductory Statement to Decisions CRTC 81-919 to 922.

Licensees are reminded that conditions of licence currently in place for these services do not lapse with the coming into force of these new regulations (see Public Notice CRTC 1986-184 "Implementation Procedures Related to the New Cable Television Regulations"). [NOTE: set out below at §220].

Public Notice CRTC 1986-27 elaborated on the cross-subsidy issue and on the process currently underway to ensure cost separation:

> As a result, new incremental operating and capital costs associated with the provision of discretionary and non-programming services may not be included in the rate base relating to basic services. The Commission will continue to consult with the industry to develop a financial reporting form which will facilitate supervision of this cost separation requirement for all systems required to file annual returns.

This process will be accelerated in order to protect the interests of direct subscribers and so that licensees may know as quickly as possible the reporting requirements which will be acceptable to the Commission. The Commission expects the Canadian Cable Television Association (CCTA), as representative of the cable industry, to take further appropriate action on this matter.

> [NOTE: For a later elaboration of the cost separation rules for non-programming services, see Public Notice CRTC 1990-53, May 15, 1990, set out below at §261.]

In the context of the development of non-programming services, such as opinion polling or home banking, the use of computers involving home use and interactive services raises issues concerning user privacy and security.

In response to concerns previously raised (in the Introductory Statement to Decisions CRTC 81-919 to 922) the CCTA has developed an industry code to deal with issues such as user privacy. In the Commission's view, this voluntary code is an important and responsible initiative which should prevent the improper use of individual subscriber data. As part of the licence renewal process, the Commission will assess the effectiveness of this code in light of any complaints or comments filed with the Commission during the licence term.

> [NOTE: See now section II of the *Cable Television Customer Service Standards*, above at §177-5, for the relevant industry standards on confidentiality and security.]

In response to comments submitted at the 29 April 1986 Public Hearing, the Commission has made a minor change to the definition of alphanumeric services by

including background music. Background music is provided with most alphanumeric services and this change will eliminate the need for application.

With respect to requests that the term "simply and briefly" in the alphanumeric definition be changed, the Commission is convinced that as adopted, the definition will adequately allow for the non-traditional commercial message format which will be expected to develop in support of new non-programming services.

[§219-11]

III. *REVENUE REGULATION*

In response to Public Notice CRTC 1986-27, the Commission received some 4,500 submissions commenting on the proposed changes to the regulations, the vast majority of which dealt with the rate-setting provisions.

Much of the opposition appeared to reflect incomplete information as to exactly what was being proposed and how the rate-setting process would operate. The predominant theme, however, was that the Commission should continue to regulate the monthly subscriber fees.

The 29 April 1986 hearing afforded an opportunity for discussion and clarification of some of these matters with the Consumers Association of Canada (CAC) whose members sent a majority of the letters filed in opposition to the rate-setting proposals at the suggestion of the CAC. In the Commission's view, the hearing produced no new information on the general issue of the regulation of fees for basic service that had not been fully reviewed in the earlier submissions and hearing and had not been addressed in Public Notice CRTC 1986-27. On a specific proposal, concerning capital expenditures (section 18(6)), which was new to this hearing, no specific objection or argument was filed by the CAC.

While the CAC remains opposed to any reduction in the Commission's scrutiny of rate change applications, the Commission considers that the built-in limitation on indexing and pass-through increases, the passive disallowance control and the direct subscriber notification process will achieve the desired objectives for both the industry and the public. It is the Commission's opinion that these features will provide the adequate protection expected by subscribers, will reduce the costs of rate regulation borne by subscribers, and at the same time meet the needs of licensees in planning system changes and improvements. Moreover, the Commission notes that emerging new technologies which supply competitive entertainment services to the consumer will also serve to mitigate excessive fee increases.

The new regulations respecting installation and monthly fees are contained in sections 17 and 18.

[§219-12]

1. *Installation* (section 17)

Installation fees will no longer be established by the Commission pursuant to an application. Operators will be able to charge an installation fee up to a maximum equivalent to the actual expenses incurred in making the installation or reconnection of the subscriber drop. The subscriber drop is defined as that part of the system used for

a subscriber's exclusive benefit, and does not include a converter. This "cap" of the actual non-recurring expenses will include both capital and related administrative costs.

It is expected that licensees will, upon request by a subscriber or Commission, provide details to show how the total installation charge was derived. Because the actual expenses incurred to provide the subscriber drop may be directly recovered, these amounts, for purposes of financial reporting to the Commission, will be "expensed", not "capitalized", as is currently required.

[NOTE: For a further elaboration of this policy, see CRTC Circular No.354, below at §249, clarified later in Public Notice CRTC 1990-53, below at §261.]

Consistent with the current policy on billing practices (Public Notice 1982-37 dated 18 May 1982) [NOTE: set out above at §208], a licensee may demand prepayment for one month in advance only. While a licensee may withhold service to a subscriber who has personally failed to pay for the provision of basic service in the face of a request by the licensee for payment, there is a clear obligation to provide service as long as a subscriber has paid the installation charge, one month's fee in advance and has not failed to pay an overdue debt for the basic service.

In addition, the regulations require the wiring of all residential areas within the service area which are provided with municipal water or sewer services. Whenever a potential subscriber requests service, the licensee must install the equipment needed to receive the basic service. Exceptions for unusual situations where service cannot reasonably be provided may be authorized by condition of licence.

[§219-13]

2. *Monthly Fees* (section 18)

The Commission has adopted the proposals contained in Public Notice CRTC 1986-27.

The regulations now provide four separate processes for increasing the basic monthly fee which apply to all Class 1 and Class 2 licensees.

The first two processes (subsections 18(2) and 18(3)) allow a licensee to increase its monthly fee without application, after advance notification of at least 40 days to subscribers and to the Commission.

All Class 1 and Class 2 licensees will be allowed annual rate adjustments after 1 September of up to 80 percent of the annual percentage increase in the Consumer Price Index (CPI) during the twelve month period ending the previous 30 April. The Commission expects that the indexing scheme will allow for more timely implementation of rate increases and will allow licensees, in part, to recover expenses without the regulatory costs and time required using the former rate approval process.

Licensees are hereby notified that for the twelve months ending 30 April 1986, the CPI increased by 3.9% and therefore for purposes of the calculations in section 18, the base portion of a licensee's monthly fee may be increased after 1 September 1986 by 3.1% (*The Consumer Price Index*, catalogue 62-001, Table 2).

[NOTE: The 80% rule was later amended in 1991 to add a rule that s.18(2) increases must also be 2 percentage points below the CPI increase: see Public Notice CRTC 1990-53, below at §261. Then, effective January 25, 1994, as outlined in *Structural Public Hearing*, Public Notice CRTC 1993-74, June 3, 1993, the 80% rule was rescinded.]

Additionally, a licensee will be permitted to increase its monthly subscriber fee to recover any new or increased costs associated with a direct per subscriber or lump sum payment to a third party, related to the transmission of programming services, separately approved by the Commission or a provincial regulatory authority. Specifically, pass-through charges will include charges for microwave, pole and conduit use, and fees paid to a telephone company or Commission licensee for rate-regulated programming services.

[NOTE: This provision was amended in 1991 to include only CRTC-authorized wholesale fees for programming services and to exclude pole attachment fees and microwave charges. See Public Notice CRTC 1990-53, below at §261.]

This procedure will enable licensees to pass through cost increases over which they have no control and which are normally approved under the existing rate approval process. It will thus allow for the immediate addition of service for which a fee will be paid by the cable licensee once the service is distributed.

As a result of this addition to the charges which may be passed through, the licensee must indicate to the Commission the number of direct and indirect subscribers to whom the notice was sent, as well as evidence attesting to the third party change in fee or rate.

With respect to both indexing and pass-through increases, advance notice of at least 40 days will be given to all subscribers and to the Commission, setting out the existing authorized rate and the amount of the proposed increase in the basic monthly fee.

Provided the calculations and notification process as detailed in the appropriate sections of the regulations have been done correctly, there will be no other regulatory requirements to satisfy.

Licensees may also increase their monthly rate in two other ways as indicated in subsections 18(6) and (8).

A majority of Commissioners approved a capital expenditure plan (subsection 18(6)). In effect this will permit licensees to increase the basic monthly fee by an amount which reflects 10% of the amount of the eligible investment distributed over the subscriber base. These increases are subject however to a disallowance mechanism.

A licensee will be permitted to increase its rate, following the notification period, unless the Commission disallows or suspends the implementation of that increase prior to the date on which the proposed increase is to take effect. Such suspensions would be invoked in cases where the Commission believes it desirable to have access to additional information, further public process, or both.

Forty days following notification of all subscribers, and providing the Commission does not disallow or suspend the implementation of all or part of the proposed increase pending further consideration, it may be put into effect. [NOTE: In 1991, the disallowance period was extended to 60 days: see below at §261 and §264.] If the Commission intervenes, the licensee will not be allowed to change the monthly fee until the Commission issues a written decision. In making the determination whether to intervene, the Commission will take into account, among other matters, any previous fee increase awarded to a licensee on the basis of already committed future capital expenditures and the eligibility of such capital expenditures according to subsection 18(5) of the *Cable Television Regulations*.

[NOTE: A five-year sunset provision was added to this provision in 1991, as noted below at §261 and §264. In 1993, however, the Commission decided to suspend implementation of the reductions required

by the sunset provision for those licensees who contribute 50% of the amount by which the basic monthly fee would otherwise be reduced to a new fund for Canadian programming. See *Structural Public Hearing*, Public Notice CRTC 1993-74, June 3, 1993, below at §294.]

The Commission's objective with respect to this proposal is to encourage licensees to rebuild and improve old plant and equipment, to increase channel capacity and to improve the technical capabilities of their systems so that the delivery of services to subscribers will be facilitated and their quality improved.

Eligible capital expenditure projects, either purchase or lease, are defined as capital expenditures for new construction and replacement or improvement of existing physical plant which will enhance basic service. This includes head ends, amplifiers and distribution plant. Capitalized leases are eligible under this option. However, the interest component associated with the lease will not be eligible. The Commission will monitor systems making capital expenditures using this process to ensure that the projects have been carried out in the twelve month period stipulated.

For rate changes based on capital expenditure, the licensee will be required to provide documentation which will describe the proposal so as to allow the Commission to determine that the purpose of the expenditure does in fact conform to the regulation requirements and is not intended for the provision of discretionary or non-programming services. This will reduce or eliminate the deficiency process.

[NOTE: Later in 1987, the CRTC amended the definition of eligible capital expenditures to include subscriber drop replacements and community programming equipment, as noted in Public Notice CRTC 1987-27, below at §228. In 1991, the CRTC further amended the definition and excluded overhead and new plant construction, as noted below at §261 and §264. In 1994, the Commission further amended the definition to include the cost of an addressable digital decoder, as noted below at §294.]

[§219-14]

For those cases where a licensee requests a rate in excess of that which would be allowed using the other previous options, a fourth procedure is provided under which the Commission would analyse a filing as it does at present (section 18(8)).

A licensee will be permitted to implement such an increase 90 days after notification to all subscribers and to the Commission, providing the Commission does not disallow or suspend the implementation of all or part of the increase as described above within the 90 day period.

Using either of the disallowance options, the 40 or 90 day advance notification period required in the regulations will begin only after the Commission is in receipt of all the information indicated in the regulations and only if the required calculations have been accurately performed.

The notification given to subscribers at least 40 or 90 days in advance of any rate increase proposed under these procedures will be made in accordance with the simplified form, set out in the schedule to the regulations. [NOTE: For the form, see §133-138. The 40 day period was extended to 60 days in 1991, as noted below in §261 and §264.] An outline of the changes in rate structure will be provided in the schedule. In the case of increases related to capital investment, this requirement will provide subscribers with immediate and pertinent information about improvements and additions to the service they may expect in the next year. This significantly improves the Commission's present public notification procedures through advertisements placed in local or regional media.

The schedule also includes the address where the complete filing, and any other information which may be requested by the Commission, is available for public inspection. The Commission's address will be included in the individual notification for the convenience of any subscriber wishing to intervene and all interventions will be assessed by the Commission in determining whether or not to suspend or disallow the proposed increase.

The Commission wishes to emphasize that the provisions for partial indexing and pass-through increases and the capital investment credit should not be used as a means of obtaining interim partial rate increases. A filing for an increase under section 18(8) in the same year where a licensee has implemented a rate change using any or all of the other options would not ordinarily be granted unless there is a clear demonstration of exceptional economic need, substantially higher operating costs or qualification under any of the other criteria set out in the Commission's public announcement dated 18 September 1974.

[NOTE: For a list of these criteria, repeated in a 1975 public announcement, see above at §203-5. In 1990, the CRTC decided to rescind this policy and to utilize economic need as the sole criterion for subsection 18(8) increases: see below at §261. In 1993, however, the CRTC replaced its 1990 guidelines with new guidelines, as noted below at §302.]

Because of the nature of these changes, the effect of this new approach to rate regulation will be reviewed by the Commission two years following the date upon which the new proposed regulations go into effect.

Licensees are advised not to file a proposal under any of these four procedures (18(2)(3)(6) and (8)) until they have applied and have received a decision from the Commission changing the conditions of licence which currently apply to the licensee regarding the maximum monthly authorized fee.

Licensees are advised that the maximum monthly subscriber fee authorized on the date of coming into force of these regulations may be used to file for the first rate change made under subsection 18(2). Changes in subsequent years will be made according to the definition of "base portion" contained in the regulations (see Public Notice CRTC 1986-184 issued today, "Implementation Procedures Related to the New Cable Television Regulations" for details) [NOTE: reproduced below at §220].

[§219-15]

IV. *REGULATION OF CABLE SYSTEMS IN CORE MARKETS*

With the coming into force of these regulations and after meeting any new requirements, licensees referred to as Part III licensees will be able to benefit from the recommendations made in the Klingle report. Each of its recommendations was endorsed by the Commission in Public Notice CRTC 1985-60 [NOTE: set out above at §213] subject to the limitations contained in the four recommendations for Class B systems. The minimum regulatory control now applicable to these kinds of systems is evidence not only of the Commission's commitment to the supervisory approach but also its continuing objective of providing Canadians, no matter where they live, with the potential for a viable and attractive television service which can operate with a minimum involvement from the Commission. A Part III licensee known to date as a licensee of a "core" system, is defined as any licensee who had never been authorized prior to the licensing of CANCOM (14 April 1981) to distribute non-Canadian services received over-the-air

or by microwave, and whose local head end is located within the Grade B official contour of two or fewer licensed television stations, on or after the date of the coming into force of these regulations. The method used to determine whether two or more countable services are available is described in the definition of a Part III licensee.

Effectively, if a system at the time of licensing was not within the Grade B contour of a Canadian independent commercial station, it likely met the "two or fewer" requirement. The problem of defining these "remote and underserved" communities, a term first used in the recommendations of the Therrien Committee in 1980, was recognized by the Klingle report when it accepted the term "core", as the Commission had done, to describe those areas which would be authorized to receive CANCOM's package of Canadian services. The "core" concept was first suggested by CANCOM itself.

While the Commission is confident that the definition of a Part III licensee will encompass most of the intended systems, anomalies may occur. In such cases the Commission may, upon application by a licensee for licence amendment, designate a system as a Part III licensee by condition of licence. Conversely, there may be a limited number of cases where a Part III licensee finds it difficult to comply with the signal carriage requirements of section 23. For example, some Part III licensees receive U.S. and other signals via the Intervision network. If they also distribute Canadian or U.S. eligible satellite services and do not want to meet the section 23 carriage requirements, they must apply for an exemption through a condition of licence.

Mandatory television carriage for Part III licensees is limited in section 22 to local and regional television stations (excluding network duplicates). Monthly fees, provision of service and installation fees will not be regulated; optional programming services approved directly in the regulations or including those in the lists used by Part III licensees (Public Notice CRTC 1986-183) may be distributed as part of the basic service; and the proportion of Canadian to non-Canadian channels applicable to Class 1 and Class 2 licensees will not apply. Although a community channel is not mandatory, should a licensee elect to distribute community programming it must adhere to the requirements of sections 13 and 15, which include the new rules allowing sponsorship, contra and credit messages, applicable to all Class 1 and Class 2 licensees.

Some changes have been made to the proposal in Public Notice 1986-27 regarding optional signal distribution. The new regulations follow the approach used for optional services for Class 1 and Class 2 licensees. Should a Part III licensee wish to distribute a non-Canadian television station with predominantly religious themes or a non-Canadian television station that began operation after 1 January 1985, an application for authority will be required.

In Public Notice CRTC 1985-60, those recommendations pertaining to "Class B" systems were restricted to apply to systems utilizing 12 channels (channels 2 - 13) or less to distribute authorized services. These policy provisions will now apply to Class 2 systems utilizing 12 channels or less. The effect will be that systems serving up to 6,000 subscribers and meeting the 12 channel criterion as described, may apply to the Commission for permission to distribute services in accordance with recommendations 9, 10, 12 and 19 of the Klingle Report. These applications will be assessed on their merits, taking into account the policy statements made by the Commission in Public

Notice CRTC 1985-60, regarding signal availability, impact on local service and the size and location of the community involved.

[§219-16]

V. *OTHER RATE AND FINANCIAL ISSUES*

In Public Notice CRTC 1986-27, the Commission described several outstanding financial issues which had been raised in Public Notices CRTC 1984-143 and 1983-156 and indicated a course of action for each.

[§219-17]

1. *Cost Separation*

The Commission confirms its position on the need for cost separation, so that basic service subscribers neither directly nor indirectly subsidize the provision of discretionary programming services or non-programming services. The Commission will immediately request that, on behalf of the cable television industry, the CCTA provide a standard financial reporting methodology which will be acceptable to the industry. The Commission will then decide if the system will enable it to supervise the cost separation requirement. This does not apply to Part III licensees for which the rate setting process has been eliminated. It should be noted that the provisions for rate changes based on capital expenditure expressly state that the expenditure must relate to the basic service (subsection 18(5)).

[NOTE: For a later elaboration of cost separation principles, see Public Notice CRTC 1990-53, set out below at §261.]

[§219-18]

2. *Research and Development*

As indicated in Public Notice CRTC 1986-27, the Commission is eliminating the costs associated with research and development from those expenses allowable for inclusion in calculating the fee for basic monthly service when a licensee proposes a rate increase under subsection 18(8).

[§219-19]

3. *Financial Disclosure*

Several comments were filed concerning Appendix B to Public Notice CRTC 1986-27 outlining requirements relating to financial disclosure. Various changes have been made to the language used in the document in order to remedy passages where there was apparent ambiguity or where there was confusion with respect to accounting terminology. The requirements for disclosure for fee increase proposals filed under subsection 18(8) now in place are provided in Appendix B to this notice.

[§219-20]

VI. *TWO-YEAR REVIEW*

Following an extensive public process the Commission has now completed a massive revision of the regulations which affect not only the cable industry and cable subscribers

but all sectors of the broadcasting system. By way of ensuring that the Commission's obligations, particularly as it concerns cable subscribers, are being met, the impact of the new rate setting provisions for Class 1 and Class 2 systems will be reviewed in two years.

The Commission hopes that the cable industry which has argued for a lighter regulatory hand will now demonstrate that a flexible, supervisory approach to regulation will benefit the broadcasting system as a whole, the subscriber, as well as the cable industry itself. If there is now a capacity to react quickly to market conditions and changing technologies, there must also be a capacity and the will to respond quickly to subscriber needs and demands by making available to them the widest possible choice of programming and non-programming services.

The Commission wishes to express its appreciation to everyone who participated in this process over the past two years. These include not only the associations, cable operators and broadcasters who prepared extensive briefs and travelled to hearings, but also the individuals who took the time to write expressing their views and concerns: this involvement and co-operation is the cornerstone of the public process.

[NOTE: The minority opinion of Commissioner Mongeau, dissenting in part on section 3, is not here reproduced.]

[§219-21]

APPENDIX A

REGULATIONS RESPECTING BROADCASTING RECEIVING UNDERTAKINGS

[NOTE: This appendix is not here reproduced. For the current text of the *Cable Television Regulations, 1986*, as amended, see above at §133.]

[§219-22]

APPENDIX B

REQUIREMENTS FOR FINANCIAL DISCLOSURE FOR FEE INCREASE FILED UNDER SECTION 18(8) OF THE CABLE TELEVISION REGULATIONS

[NOTE: The following requirements should be read in light of the updated policy requirements for subsection 18(8) applications set forth in Public Notice CRTC 1990-53, May 15, 1990, below at §261, and Public Notice CRTC 1991-29, March 14, 1991, below at §267.]

All Class 1 and Class 2 shall upon request by the Commission provide, as an integral part of each filing for a fee increase under section 18(8) of the *Cable Television Regulations*, the following information:

[§219-23]

a) audited financial statements for *each* cable television undertaking for which a fee increase is sought, and where applicable, consolidated financial statements prepared on the basis of the reporting period specified in the "Annual Return Cable Television" (ie: August 31) and in accordance with the standards of disclosure recommended by the Canadian Institute of Chartered Accountants, or

[§219-24]

b) *as an alternative to a)*, those licensees which hold more than one licence (multi-system operators) may elect to provide audited financial statements for the licensee company as a whole and where applicable, consolidated financial statements, prepared on the basis of the reporting period specified in the "Annual Return Cable Television" (ie: August 31) and in accordance with the standards of disclosure recommended by the Canadian Institute of Chartered Accountants accompanied by the following:
although not forming part of the audited financial statements, licensees who elect to provide such audited financial statements under this section shall also provide, where applicable, two schedules, each prepared and certified by the licensee and subject to an engagement performed by the licensee's auditors in accordance with section 5810 of the CICA Handbook, which detail "common" (e.g. head-office) costs which have been allocated to each of the licensed undertakings, one for operational costs and the other for capital costs, whereby:
   i) the schedule for operational costs shall contain a clear breakdown, for each licensed system, of the amounts allocated to *each* of the basic service expense categories of programming, technical, sales and promotion, administration and general and interest as well as the lump-sum total allocated to non-basic services;
   ii) the schedule for capital costs shall contain a clear breakdown, for *each* licensed system, of the amount allocated to the basic service and the amount allocated to the non-basic services;
   iii) the totals of the amounts allocated, in (i) and (ii) above, to *each* licensed system, shall reconcile to the total "common" (e.g., head-office) costs allocated and where necessary any adjustments fully explained;
   iv) an explanation shall be provided as to the method used in arriving at the amounts allocated to each of the specific licensed cable undertakings (system).

[§219-25]

c) licensees whose fiscal year end does not coincide with the 31 August year end specified in the "Annual Return Cable Television" may, in the alternative to the audited financial statement requirements in (a) and (b) above, provide unaudited financial statements for the licensee company on the basis of the twelve month period ending 31 August on which the licensee's auditor has performed a review in accordance with the provisions of section 8200 of the Canadian Institute of Chartered Accountants (CICA) handbook. Although not forming part of the unaudited financial statements, the schedules otherwise required, where applicable, in section (b) above are also to be provided on the basis of the twelve month period ending 31 August. Licensees who elect to provide unaudited financial statements under this section shall also provide copies of their audited financial statements and, where applicable, consolidated financial statements on the basis of their normal fiscal year-end;

[§219-26]

d) although not forming part of the financial statements, all licensees in (a) or (b) above or those providing unaudited financial statements as in (c) above shall also provide for

the twelve month period ending 31 August, the following schedules prepared and certified by the licensee:

1. a schedule detailing the operational results of the basic service for *each* of the licensed cable television undertakings (systems) identifying, as a minimum:
   i) *revenues*
      - monthly subscriber revenues - direct and indirect
      - installation revenues
      - other revenues
   ii) *operational expenses* (other than those specified in (iii) below) by major classification and within these classifications a detailed breakdown that is not less than provided for in the "Annual Return Cable Television":
      - programming
      - technical
      - sales and promotion
      - administration
      - CRTC standardized depreciation
      - interest
   iii) *operational expenses* charged to the cable television undertaking (system) per b) above, where applicable.
2. a schedule detailing the total fixed assets dedicated to the provision of the basic service, for *each* of the licensed cable television undertakings (systems) identifying as a minimum:
   i) the historical cost, accumulated standardized depreciation, current year's fiscal asset additions and disposals, and
   ii) where applicable, the current year's fixed asset additions allocated to the cable television undertaking (system) per b) above:
3. a schedule detailing the operational results of the discretionary and other non-basic tier services, for *each* of the licensed cable television undertakings (systems), identifying as a minimum:
   i) *total revenues* for all discretionary and other non-basic tier services combined;
   ii) *operational expenses* (other than those specified in (iii) below) by the major classifications and within these classifications a detailed breakdown that is not less than that provided for in the "Annual Return Cable Television":
      - affiliation payments
      - technical
      - sales and promotion
      - administration
      - cost of converters sold
      - depreciation
      - interest
   iii) *operational expenses* charged to the cable television undertaking (system) per b) above, where applicable.
4. a schedule detailing the total fixed assets dedicated to the provision of discretionary and other non-basic tier services, for *each* of the licensed cable television undertakings (systems), identifying as a minimum:

i) the historical cost and current year's fixed asset additions and disposals, and;
ii) where applicable, the current year's fixed asset additions allocated to the cable television undertaking (system) per b) above.

5. the totals for *all* licensed systems contained in the schedules in (1) and (3) above combined and the totals contained in the schedules (2) and (4) above combined must clearly reconcile to the financial statements of the licensee company as at August 31 and where necessary the licensee shall provide a separate schedule clearly detailing the reconciliation and fully explaining any adjustments.

[§219-27]

e) where applicable, although not forming part of the financial statements, the following, prepared and certified by the licensee, shall be provided by all licensees (in (a), (b) or (c) above):
   i) one schedule for operational costs and another for capital costs detailing the total costs charged or allocated to *each* of the licensed cable television undertakings (systems) through the licensee(s) by a related entity(s) (incorporated or not) where the licensee(s) and related entity(s) are dealing at "non-arm's length" as defined by section 251 of the *Income Tax Act* with both schedules having been subject to a review by the licensee's auditors, in accordance with the provisions of section 3840 of the Canadian Institute of Chartered Accountants (C.I.C.A.) Handbook, and;
   ii) management's estimate addressing the extent and level of profit (if any) incorporated in the amounts, shown on the schedules required by i) above.

[§220-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Implementation Procedures Related to the New Cable Television Regulations

[§220-2]

[Public Notice CRTC 1986-184, August 1, 1986.]

[§220-3]

Introduction

In Public Notice CRTC 1986-182, issued today, the Commission has published new *Cable Television Regulations* which will go into effect immediately. [NOTE: For Public Notice CRTC 1986-182, see above at §219. For the *Cable Television Regulations, 1986*, in their current form, see above at §133.]

Among other things, the new regulations will streamline the Commission's regulation of cable television undertakings in several areas, including ownership requirements, distribution of authorized services, and the setting of maximum installation and monthly fees. The new regulations also require the preponderance of Canadian signals over foreign signals on any system and formally define a new type of cable licensee, the "Part III licensee" known as a "core market" licensee.

The regulations are structured into three parts.

Part I contains those basic requirements which pertain to all cable television licensees. These include matters related to transfers of ownership and the use of equipment and facilities.

Part II, which pertains to all licensees who are not Part III licensees, contains the bulk of the new regulations. It covers such areas as carriage of television and audio services, the community channel, maximum fees, and simultaneous substitution. Within Part II, two classes of licence are established. Class 1 licences apply to undertakings having 6,000 or more subscribers, while Class 2 licences apply to undertakings having fewer than 6,000 subscribers. Some of the provisions contained in Part II, in particular those dealing with the distribution of complementary programming on the community channel, the carriage of audio services, and simultaneous substitution, differ in their application to Class 1 or Class 2 licensees.

Part III of the regulations, which pertains only to Part III licensees, sets up a very simplified regulatory approach for these licensees, in accordance with recommendations contained in the Report of the Task Force on Access to Television in Underserved Communities (Klingle Report). With one exception, as specifically identified in Part III, the provisions of Part II do not apply to Part III licensees. In addition, all Part III licensees are treated in the same manner, regardless of size.

In order for cable television licensees to take advantage of some of the provisions contained in the new regulations, it will be necessary to submit applications for

Commission approval to add, delete, or amend certain conditions of their existing licences, as required under section 19 of the *Broadcasting Act*. This notice is intended to provide guidance to licensees as to the specific actions they should take in order to bring their undertakings fully under the new regulatory regime.

[§220-4]

Ownership Requirements

All cable television licences currently have certain conditions of licence specifying Commission requirements with respect to changes in ownership or in the effective control of the licensed undertaking. These requirements, now somewhat modified and less onerous, have been incorporated into the new regulations (section 5).

All cable television licensees wishing to fall under the new scheme are therefore invited to apply to the Commission to delete their existing conditions of licence regarding ownership. Such applications may be submitted using the form attached to this notice as Appendix A. [NOTE: This Appendix is not here reproduced].

[§220-5]

Use of Equipment and Facilities

Section 4 of the new regulations specifies the Commission's general requirements concerning licensee ownership of its local head end, amplifiers and subscriber drops. This duplicates a corresponding condition of licence which applies to most cable television licensees outside of the provinces Manitoba and Saskatchewan, and also to certain licensees within those two provinces.

Therefore, licensees with an existing condition of licence requiring ownership of the local head end, amplifiers and subscriber drops are invited to apply to delete this condition of licence, using the application form in Appendix A. [NOTE: This Appendix is not here reproduced].

Those licensees which currently have a different condition of licence need take no action at this time.

[§220-6]

Distribution and Service Area

Most cable television licences currently have a condition of licence which states:

> The approval of the Commission is required prior to any changes to the authorized service area or carriage of signals or services.

Many optional programming services which previously were authorized only upon application, pursuant to this condition of licence, will now be authorized directly by sections 10 and 16 (Class 1 and Class 2 licensees) and 24 (Part III licensees) of the new regulations, making further applications for these services unnecessary. By the same token, applications to delete these optional services will no longer be required, once a licensee comes under the new regulatory scheme. Furthermore, alphanumeric services such as Broadcast News are not considered to be programming services and their distribution no longer requires Commission authorization.

In order to become eligible for the automatic authorizations granted by the regulations, all licensees are invited to apply for an appropriate licence amendment and

change in authorized distribution using the form attached in Appendix A. [NOTE: This Appendix is not here reproduced]. Licensees should note that any service currently authorized pursuant to a condition of licence cannot be deleted without Commission approval. However, Commission approval will no longer be required where the authorization is based on the new regulations.

The Commission's current approach to regulation of the service area, i.e., obtaining prior approval before making any changes, will not be affected by the amendment to the condition of licence regarding distribution and service area. Accordingly, applications to increase or decrease service areas will continue to be required by the Commission.

[§220-7]

Maximum Fees

The Commission's regulatory procedures with respect to rate regulation will undergo significant changes with the introduction of the new Cable Television Regulations.

For Part III licensees, monthly fees and installation fees will no longer be regulated. In order to implement rate deregulation, and prior to putting into place any rate increases without having to obtain Commission authorization, a Part III licensee must first apply to the Commission, and receive approval, to amend its licence by deleting the existing specific condition of licence which sets the maximum fees and also the general condition of licence relating to maximum fees. All Part III licensees are invited to submit such applications, using the form provided in Appendix A. [NOTE: This Appendix is not here reproduced].

For all other licensees, the Commission will no longer approve specific installation fees. Cable licensees will be allowed to charge an installation fee that does not exceed the actual expenses incurred in making the installation of the subscriber drop. With regard to monthly fees for basic cable service, these will continue to be regulated, but under streamlined procedures. Four types of rate increase procedures are identified in the new Regulations. These procedures are discussed in more detail in Public Notice CRTC 1986-182 [NOTE: set out above at §219.].

Before Class 1 and Class 2 cable licensees can take advantage of the streamlined rate increase procedures in the new regulations, they must first obtain approval from the Commission to amend their licences by deleting the existing conditions of licence pertaining to maximum fees and substituting a new general condition of licence. All Class 1 and Class 2 licensees should submit such applications, using the form provided in Appendix A. [NOTE: This Appendix is not here reproduced.] The Commission will not expect to receive filings for rate increases pursuant to the new regulations prior to the Commission's decision to amend the conditions of licence.

[§220-8]

Guidelines for Rate Increase Filings

After obtaining Commission approval to change their condition of licence respecting maximum fees, Class 1 and Class 2 licensees will be able to file for a rate increase in accordance with section 18 of the new *Cable Television Regulations*. The following general guidelines are intended to assist licensees in these filings.

For all four types of rate increase outlined in section 18, the actual increase in the basic monthly fee may not take place before a specified period of time has elapsed following receipt by the Commission of the notice sent to subscribers, a declaration as to the date this notice was sent, and any other documentation required in subsections 18(4), 18(7) and 18(8). The Commission does not intend to acknowledge or confirm the date of receipt of submissions; it will be the licensees' responsibility to confirm Commission receipt of submissions and to verify the date of such receipt. In this regard, licensees are encouraged to make use of postal double registering, courier service with return proof of delivery, or some similar method, in order to achieve this verification.

For those increases based on changes in pass-through amounts payable to third parties, licensees should note that subsection 18(4)(b) requires that the documentation sent to the Commission include "the number of subscribers to whom a notice is sent pursuant to paragraph 4(a) and evidence of the increase in the amount payable by the licensee to a third party". The number of subscribers must include the total number of direct and indirect subscribers. Evidence of the increase will normally consist of a letter or invoice from the third party to the licensee, confirming the actual amount of the increased payment and the date on which it is to take effect.

In the case of proposed rate increases based on the capital investment credit plan (subsection 18(6)) or on other criteria (subsection 18(8)), the applicable section of the regulations requires that the applicant send to the Commission "appropriate documentation to justify the proposed increase". For capital expenditure charges, such documentation must describe the proposal so as to allow the Commission to determine that the purpose of the expenditure does in fact conform to regulatory requirements relating to the reception, processing or distribution of the basic service. For other types of increases, filed under section 18(8), the Commission intends to produce a form specifically for this purpose, which, when properly filled out, would constitute the "appropriate documentation". Use of this form should reduce or eliminate the deficiency process.

The Commission also wishes to emphasize the importance of ensuring that each subscriber receives timely notice of any proposed increase, and that the subscribers' notice contains the proper, relevant information as specified in section 18 of the regulations. Failure to provide the correct information could mean, for example, that an otherwise permissible increase would not be in accordance with section 18. For those increases which relate to partial indexing and pass-throughs, licensees are encouraged to use a form of notice to subscribers similar to that shown in Appendix B to ensure that all regulatory requirements are met in this regard. For those increases related to the capital investment credit plan and other types of increases, a form of notice and minimum information which must be given to subscribers are included as a schedule to the *Cable Television Regulations*, as published in Public Notice CRTC 1986-182. [NOTE: For the schedule, see above at §133-137.]

With regard to rate increase applications already filed with the Commission or filed after the new regulations come into force, they will be dealt with under the former regulatory procedure unless the licensees withdraw their applications. For those who do withdraw their rate applications, the Commission will deal expeditiously for changes to their conditions of licence so as to allow them to take advantage of the new simplified rate-setting procedures without undue delay. In the case of licensees who do not

withdraw their rate applications, the Commission will not be in a position to consider their applications to amend their conditions of licence until it has disposed of their request for an increase in rates.

[§220-9]

Part III Licensees

In general, a Part III licensee is a "core market" cable licensee and is defined in the new regulations as follows [NOTE: see above at §133-45]:

"(a) the holder of a licence for an undertaking that, on April 14, 1981, had never been authorized to distribute the programming service of any non-Canadian television station received over the air or by microwave relay and the local head end of which is, on or after the date of coming into force of these Regulations, located within the Grade B official contour of two or fewer licensed television stations that are counted in the following manner:

(i) affiliates or members of the same network are counted as one station,

(ii) the CTV and TVA networks are considered as the same network,

(iii) the Corporation is counted as if it held a single network licence, and

(iv) an educational television programming service is not counted, or

(b) a licensee authorized by the Commission pursuant to a condition of its licence to act as a Part III licensee;"

A list of those cable television licensees which the Commission has determined are Part III licensees in accordance with part (a) of the above definition is attached to this notice as Appendix C. [NOTE: This Appendix is not here reproduced.] Cable licensees not on the list in Appendix C may become Part III licensees, but only if a licence amendment application to add a specific condition of licence in accordance with part (b) of the definition is submitted to, and approved by, the Commission.

[§220-10]

APPENDIX A

APPLICATION FORM FOR ALL LICENSEES

[This appendix is not reproduced]

[§220-11]

APPENDIX B

NOTICE TO SUBSCRIBERS

(Name of licensee) will be increasing its basic monthly fee, in accordance with subsection 18(2) and/or subsection 18(3) of the *Cable Television Regulations*. This (these) subsection(s) of the Regulations permit(s) a licensee to increase its basic monthly fee as follows:

(a) the base portion may be increased by an amount not exceeding 80% of the change in the Consumer Price Index (CPI) for the 12 month period ending April 30 (subsection 18(2));

(b) the pass-through portion may be increased by an amount not exceeding an increased payment to a third party, which amount was already authorized by a federal or provincial regulatory authority (subsection 18(3)).

The amount and effective date of the increase are given below, in items 1 and 2.

[§220-12]

Item 1

Amount of increase per subscriber per month

(a) in the base portion of the monthly fee	$_____
(b) in the pass-through portion of the monthly fee	$_____
Total amount of increase per subscriber per month	$_____
Your current basic monthly fee is	$_____
Your new basic monthly fee is	$_____

Item 2

Effective date of increase _____

As of April 30, the CPI had increased in the previous twelve months by ___%.

[NOTE: The form of this suggested notice must now be amended in light of the changes made in 1988, 1990-91 and 1993-94 noted above at §219-2.]

[§220-12]

APPENDIX C
LIST OF PART III LICENSEES
AS OF 30 JUNE 1986

[This appendix is not reproduced]

[§221-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Broadcast Advertising of Alcoholic Beverages and Food and Drugs

[§221-2]

[Public Notice CRTC 1986-247, September 19, 1986]

[§221-3]

On 19 March 1986, at the same time that it published proposed new regulations for radio, the Commission issued Public Notice CRTC 1986-68 entitled "Revised Regulatory Approach Regarding the Broadcast Advertising of Alcoholic Beverages and Food and

Drugs". The Commission indicated that it would propose similar amendments to the television advertising of such products.

[§221-4]

BROADCAST ADVERTISING OF ALCOHOLIC BEVERAGES

[NOTE: Discussion of the efforts to develop a self-regulation code are not here reproduced].

In light of this, the Commission is of the view that, at this time and in this matter, the elements required to ensure successful self-regulation are not sufficiently apparent. Therefore, the alcoholic beverage broadcast advertising provisions contained in the new Radio Regulations, announced by the Commission today in Public Notice CRTC 1986-248, maintain the requirement for Commission pre-clearance of the scripts of commercials for these products.

Moreover, some parties suggested that the Commission's regulations should include additional restrictions.

For example, there were suggestions related to:

-limiting the amount of time to be devoted to alcoholic beverage advertising,

-restricting the times at which these products may be advertised,

-requiring that there be educational, moderation and/or anti-drinking and driving messages.

The new regulations do not incorporate provisions on these matters. The Commission notes that in several provinces there already exist regulations or policies that deal with time and scheduling limits. The Commission is also aware that many of its licensees present public service announcements on a regular basis to promote moderation and to campaign against drinking and driving. The Commission commends those broadcasters who have established strong records of public service in this field, and encourages all licensees to take similar initiatives.

[§221-5]

The principal differences between the Commission's existing regulation and the regulation announced today are as follows:

(i) While the new regulation continues to impose the existing prohibition against broadcast advertising of spirituous liquor, broadcasting licensees will now be permitted to broadcast, under certain conditions, commercials for other alcoholic beverages, so long as they contain no more than 7% alcohol by volume. This will permit the broadcast advertising of such products as spirit-based "coolers" which contain levels of alcohol by volume comparable to those of wine-based "coolers" and similar beer-based products with which they compete directly and for which broadcast advertising is already permitted.

(ii) The Commission has modified the guidelines which it has used in preclearing scripts by using a new code entitled "Code For Broadcast Advertising of Alcoholic Beverages". The new regulation announced today incorporates this Code by reference. This will ensure that broadcasters, advertisers, interested parties will have a clear understanding of the criteria used by the Commission.

Also, in view of its inclusion in the regulations, the Code will now have the force of law.

This Code, which is attached as an appendix to this notice [NOTE: The Code is reproduced above at §173], is based on the guidelines which the Commission has used in the past and the proposals submitted by interveners, including the CAB. For example, consistent with widespread societal concern about the consequences of drinking and driving, the Code incorporates the prohibition, suggested by the CAB, against the association of motor vehicles and alcoholic beverages in broadcast commercials.

The Commission has also adopted the proposal of the CAB that the prohibition against alcoholic beverage endorsements by celebrities in radio and television commercials be modified by including a prohibition against such endorsements by celebrities who are likely to be role models for minors. This is consistent with the concern of many interested parties about the effects of broadcast advertising of alcoholic beverages on young people. ...

The Code retains the existing prohibition against the depiction of the consumption of alcoholic beverages.

[§221-6]

Alcoholic Beverage Broadcast Advertising Advisory Committee

Since 1964 an advertising advisory committee has assisted the Commission and its predecessor agency, the Board of Broadcast Governors, in reviewing commercial scripts and storyboards. From the outset, that committee has included representatives of the liquor regulation agencies of Ontario and Quebec and, since 1977, a representative of the Department of National Health and Welfare.

The present advisory committee includes, in addition to CRTC representatives, one representative of la Régie des Permis d'Alcool du Québec, one from the Liquor Licence Board of Ontario and one from the Department of National Health and Welfare. The Commission is grateful for the on-going co-operation of these agencies, and counts on their continued participation in the committee.

In order to involve more closely the broadcasting industry in the process, the Commission invites the CAB and the CBC to each nominate a representative to participate in this committee.

In view of the distance and cost, it has not been feasible for provinces other than Ontario and Quebec to attend regularly the bi-monthly meetings and over the years, representatives of other provincial liquor control agencies have attended only on an occasional basis. However, the Commission renews its invitation to those agencies to attend whenever possible.

[§221-7]

BROADCAST ADVERTISING OF FOOD, DRUGS, COSMETICS AND MEDICAL DEVICES

In Public Notice CRTC 1986-68, the Commission proposed to discontinue the regulatory requirement that the CRTC approve scripts for products, other than alcoholic beverages, to which the *Food and Drugs Act* applies.

Over the years, the Commission's role in this process had diminished to the point where it served largely as an agent for the Departments of Consumer and Corporate Affairs (Food) and National Health and Welfare (Drugs, Cosmetics and Medical Devices), which also approve scripts for these products. During the public process, some parties supported this proposal; no one opposed it.

In light of the above, the Commission's new radio regulations, announced today, do not require Commission clearance of scripts for products to which the *Food and Drugs Act* applies, other than alcoholic beverages.

[NOTE: See now subsection 5(1) of the *Radio Regulations, 1986*, above at §135-43. The regulation continues to require pre-clearance of scripts for commercials for drugs and medical devices by the Minister of National Health and Welfare. However, cosmetics were excluded from the pre-clearance requirements in amendments to the regulations made in 1992 and food advertising was excluded in amendments made in 1993.]

To give broadcasters, the government departments, advertisers and other interested parties sufficient time to adjust their administrative procedures, this aspect of the new regulation will come into effect 1 April 1987.

The new regulation provides that the Commission will continue to approve scripts for these products until 31 March 1987.

[§222-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

The Use of Hit Material

[§222-2]

[Excerpt from *Regulations Respecting Radio Broadcasting*, Public Notice CRTC 1986-248, September 19, 1986, at pp.19-22. While most of this policy statement has been superseded by *An FM Policy for the Nineties*, Public Notice CRTC 1990-111, December 17, 1990, below at §263, the excerpt below relating to the use of hit material, as amended by Public Notice CRTC 1990-111, is incorporated by reference into subsection 9(1) of the *Radio Regulations, 1986*, as amended. Reference should also be made to *Changes to Hit Factor Analysis Procedures*, CRTC Circular No. 353, November 4, 1988, set out below at §248.]

[§222-3]

l) The Use of Hit Material

The Commission currently requires FM licensees to limit the use of hit material to less than 50% of the popular music selections broadcast during a broadcast week. A "hit" has been defined as any musical composition that has reached one of the Top 40 positions on a chart in a nationally or internationally recognized trade publication.

In Public Notice CRTC 1986-66, the Commission proposed to exclude from the calculation of a station's use of hits any selection broadcast more than two years after it originally entered one of the Top 40 positions on the charts.

This proposal brought a mixed reaction at the hearing. FM broadcasters were generally in favour of the proposal. They believed that such a change would allow them to respond more fully to the tastes and interests of their audiences the same time, however, many licensees of AM stations, including some who held both AM and FM licences, expressed concern about the proposal.

In general, AM licensees felt that one of an AM station's few advantages in facing the challenge of FM stations is the ability of AM radio to broadcast a hit-oriented format. However, they noted that the change proposed by the Commission would allow FM stations to rely more heavily on hits. AM licensees felt that this change, coupled with FM's technical advantage and the fact that many FM stations have lower Canadian content requirements than the 30% generally required of AM stations, would have a devastating effect on the viability of AM stations that program music-oriented formats. As well, it was pointed out that the proposed change would decrease the diversity of music available on radio.

In light of the serious misgivings expressed by many AM broadcasters and joint FM licensees about the proposal, the Commission has decided to retain its current policy with respect to hits for a two-year period. It will enter into a consultative process with broadcasters and other concerned parties to discuss what changes, if any, would be desirable. The Commission considers that the two-year period will allow time for further research on the impact that a change in the policy on hits would have on the competitive balance that exists between AM and FM radio and provide an opportunity for broadcasters to search out a consensus on the issue. Hopefully, it will also provide an opportunity to assess the impact that AM stereo technology and other new developments may have on the popularity of AM radio.

[§222-4]

The Commission frequently receives inquiries concerning its interpretation of the definition of a hit for administrative purposes, and would like to use this notice as an opportunity to provide clarification. The Commission has prepared, and constantly updates, a list of selections that have reached Top 40 positions on a number of charts in major trade publications. Charts included in the file are "RPM - 100 Singles", "RPM - Country Chart", "The Record - Top Singles", "The Record - Top 50 Country Chart", "Radioactivité Radio", "Billboard - Hot 100 Singles", and "Billboard - Hot Country singles". Selections that reach one of the Top 40 positions on any of these charts are recorded using the title of the selection and the name of the artist who performed it. When the Commission wishes to calculate a station's use of hits, it compares a list of musical selections played by the station with the file it has assembled from the above-mentioned charts. Selections on the music list that match a selection in the Commission's file both by title and by artist are counted as a hit. It is important to note that only music recorded for retail sale and broadcast by the station is counted as a hit. Selections heard during a live broadcast or a live performance recorded primarily for broadcast use are not counted as hits in the Commission's calculations.

Recently, the Commission has received correspondence in which it was suggested that hits should be identified, not just by the title of the selection and the name of the artist, but also by the actual numeric code that appears on the single version of a record that

enters the Top 40. In this way, stations playing different studio-produced versions of records that have made the hit charts as singles, such as "12-inch-singles" or different mixes of the selections, would not be counted as hits in the Commission's calculations. The Commission believes that adopting this system, which would allow FM stations to play a high percentage of music that is largely similar to that on the hit charts (same selection, same artist), raises the same concerns that were raised with respect to the Commission's proposal in Public Notice CRTC 1986-66. Therefore, for the reasons noted above, the Commission is making no changes with respect to the use of hit material at this time.

[§224-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Football Broadcast Blackouts on Cable Television

[§224-2]

[Public Notice CRTC 1986-278, October 6, 1986.]

[§224-3]

In Public Notice CRTC 1986-159 *Call for Comments - Football Broadcast Blackouts on Cable Television*, the Commission invited comments on the issue of whether or not it should continue to impose conditions of licence prohibiting certain cable licensees from distributing the broadcast of network-carried Canadian Football League (CFL) games when transmission of these games is blacked out by television stations in the local market.

As noted in Public Notice CRTC 1986-159, this issue was first addressed by the Commission in 1969. Although the Commission considered that the blackout of games was a matter best resolved by direct negotiations between the parties concerned, in light of the lack of agreement among these parties, namely the CFL, broadcasters and cable companies, it decided in 1970, "to impose a restriction on the importation by cable television of the Canadian Football League games in areas where local television stations are specifically blacked out".

At the Public Hearing in Toronto on 6 May 1986, the Commission considered the renewal applications of nine cable licensees serving the Toronto area. The licensees were called to the hearing to respond to an intervention by the CFL requesting imposition of the condition of licence restricting the broadcast of network CFL games carried by these cable systems when the transmission of those games is blacked out by CFTO-TV or CBLT Toronto.

In order to provide an opportunity for all interested parties to comment and to allow sufficient time for the Commission to examine the blackout issue in light of the comments received, the licences of these undertakings were renewed for 6 months until 31 March 1987 on the same terms and conditions. At the same time the Commission issued Public Notice CRTC 1986-159 in which it invited public comment on the issue.

Fifteen interventions were received including submissions from the CFL, the CBC, CTV, CHEX Television, other broadcasters, cable licensees and the general public.

[NOTE: A summary of submissions is omitted.]

[§224-4]

The Commission has considered all of the submissions received, and has examined its policy on blackouts in the light of its continuing efforts to lighten its regulatory approach so as to regulate only what is essential.

While the Commission continues to be of the view that the issue of football blackouts is one that involves programming rights and is best resolved by the parties concerned, it has taken into account the concerns expressed by the CFL and by off-air broadcasters.

In order to give the CFL and other parties involved sufficient time to negotiate the question of program rights and other related issues, the Commission has decided that as a general policy, at the time of renewing cable television licences, it intends to continue to impose the condition of licence on those licensees to whom it currently applies, but only with respect to games to be broadcast until the end of the 1988 CFL season. At the end of that season such a condition would lapse.

[§225-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Regulations Respecting Television Broadcasting

[§225-2]

[Public Notice CRTC 1987-8, January 9, 1987.]

[§225-3]

I. *INTRODUCTION*

Pursuant to subsection 16(1) of the *Broadcasting Act*, the Commission has enacted Regulations Respecting Television Broadcasting... [NOTE: See *Television Broadcasting Regulations, 1987*, above at §137.]

The new regulations are the culmination of an extensive public consultation involving consumer groups, independent program producers, television broadcasters, industry associations, governments, provincial securities commissions, private individuals and other interested parties. The new regulations include provisions concerning the advertising of alcoholic beverages and other products to which the *Food and Drugs Act* applies, which were the subject of a separate public hearing as described in Public Notice CRTC 1986-247 of 19 September 1986.

[NOTE: Comments on process are omitted.]

[§225-4]

II. *HIGHLIGHTS OF THE NEW REGULATIONS*

The new television regulations apply to both station and network operators, but not in respect of programming that is broadcast by a licensee using a signal contained in a second audio program (SAP) channel or a multiplex channel. The general approach taken by the Commission is to apply all provisions of the television regulations only where the material on the channel under consideration is identical to the audio portion carried on the main channel as, for example, with stereo sound. Further discussion of the policy issues related to Multichannel Television Sound (MTS) is contained in Section III of this document.

[§225-5]

(i) *Proposed Condition of Licence Approach to Canadian Content*

In Public Notice CRTC 1986-176 the Commission proposed:

> to introduce some flexibility into the Canadian content time requirements contained in the regulations by allowing a licensee, by condition of licence, to reduce the time allocated to Canadian content over the entire broadcast day from 60 to 50 percent, provided the licensee meets certain requirements.

In particular, the Commission proposed:

> to allow a participating licensee to reduce the number of hours devoted to Canadian programs provided it maintains the proportion of its gross revenues allocated to expenditures on Canadian programs equal to the licensee's best single-year performance over the previous three years.

[§225-6]

The Commission's proposed condition of licence approach attracted considerable comment before and during the 30 September public hearing. While a number of submissions endorsed the idea in principle, many participants, such as Global, CANWEST and the CBC, recommended significant modifications to various aspects of the Commission's proposal. Others, such as the Union des Artistes and ACTRA, opposed the Commission's proposal outright. Considering the general lack of enthusiasm for the condition of licence approach put forward in Public Notice CRTC 1986-176, even among many television broadcasters and broadcast industry associations, such as the CAB and the ACRTF, the Commission has decided to withdraw its proposed condition of licence approach and retain the existing Canadian content requirements, except as described below.

Consequently, section 4 of the new regulations generally requires that the total amount of time devoted to the broadcasting of Canadian programs by stations or networks be not less than 60 per cent of the broadcast year, and not less than 60 per cent of the total time between 6:00 p.m. and midnight in the case of a public station or network (i.e. the CBC) or 50 per cent in the case of a private station or network.

However, where authorized by a condition of licence designed to enhance the quality or diversity of Canadian programs, an ethnic station or a remote station (as described in Section IV below) may reduce its level of Canadian content below the general requirements outlined above. A conventional station broadcasting ethnic programming may also apply for such a reduction in respect of its ethnic programming.

It should be noted that the attached regulations retain a 12-month reporting period, as announced in Public Notice CRTC 1986-270 of 29 September 1986. The new regulations also amend the reporting period to commence 1 September rather than 1 October, in order to ensure greater conformity with the fiscal year-end of the vast majority of licensees, as well as with the financial reporting procedures of the Commission. This provision will come into effect on 1 September 1987. In order to ensure that licensees meet their requirements for Canadian content with respect to the 1986-87 reporting year, sections 1, 2, 3, 4 and 8 of the existing *Television Broadcasting Regulations* will remain in force until 1 October 1987.

[§225-7]

(ii) *Programming Content*

In Public Notice CRTC 1986-176, the Commission proposed to omit several provisions of the existing regulations which it considered to be outdated, covered by other legislation or regulations, or unnecessary to achieve the objectives of the Act. These included provisions setting out conditions for the television broadcast of advertising concerning bonds, shares, securities and commodities.

While maintaining a concern for the public interest in the broadcast promotion of stocks, bonds and other assets, the Commission considers that its concerns on this issue overlap with those of provincial securities commissions. Since there are alternative means of safeguarding potential investors, the Commission is confident its regulations in this area can soon be deleted.

However, in their written comments, the Manitoba and Quebec Securities Commissions proposed that the Commission delay the elimination of the prohibition against the advertising of bonds, shares and other securities. The securities commissions were concerned that adequate time be allowed to pass regulations or secure the passage of new legislation which would ensure that the advertising of bonds, shares and other securities was appropriately supervised. Accordingly, the Commission has decided to retain the regulation in respect of this matter until 1 September 1988.

With regard to the prohibition against broadcasting obscene or profane material, the prohibition in section 5(1)(c) has been continued in light of the uncertainty as to the nature and timing of planned amendments to the *Criminal Code* with respect to pornographic material. The Commission will examine any changes to the Criminal Code which are enacted in the future and determine at that time whether this provision remains necessary.

The new television regulations also contain changes to the provisions concerning the advertising of foods, drugs and alcoholic beverages as announced in Public Notice CRTC 1986-247. In keeping with that notice, the provisions relating to the broadcast advertising of alcoholic beverages in the new regulations retain the existing requirements for pre-clearance by the Commission of scripts for the advertising of alcoholic beverages. However, as of 1 April 1987, the new regulations do not require pre-clearance by the Commission of scripts for the advertising of products to which the *Food and Drugs Act* applies.

The new regulations with respect to the television advertising of food, drugs and alcoholic beverages are identical to those for radio, contained in Public Notice CRTC 1986-248 of 19 September 1986.

[§225-8]

(iii) *Political Broadcasts*

The Commission has adopted section 8 of the television regulations (Political Broadcasts) as proposed in Public Notice CRTC 1986-176.

In a written submission, the Radio-Television News Directors Association of Canada (RTNDA) requested that the Commission define more specifically the term "partisan political broadcast" in order to limit the applicability of the blackout provisions of the Broadcasting Act. However, the Commission cannot amend the Act through an amendment to its own regulations. The Commission therefore recommends that broadcasters who have concerns about this issue raise them with the Government of Canada with a view to amending section 28 of the Act. [NOTE: Section 28, later section 19 of R.S.C. 1985, c.B-11, was omitted in the 1991 *Broadcasting Act*.]

Other aspects of the issue of political broadcasts will be the subject of a separate public notice in the near future. [NOTE: See below at §231 and §246.]

[§225-9]

(iv) *Logs and Records*

The regulations with regard to logs and records are substantially the same as those proposed in Public Notice CRTC 1986-176. These regulations are also in conformity with those described for radio in Public Notice CRTC 1986-248.

By subsection 10(5), a television licensee will be required to retain a clear and intelligible audio-visual recording of its programming. During the public hearing process, several broadcasters raised concerns that this provision would be financially onerous, particularly for smaller stations. At the public hearing, the Commission requested the CAB to conduct an informal survey to determine the potential costs of implementing such a provision. The Commission received the results of a survey from the CAB in a letter dated 16 October 1986. In the Commission's view, the costs of retaining audio-visual recordings of programming, as described in subsection 10(5), are not excessive and the value of these recordings to the public, the Commission and licensees outweighs possible concerns. Such recordings are essential to the enforcement of regulations and conditions and to dealing with the concerns and complaints of viewers. Accordingly, this provision remains in the new television regulations. However, it will not take effect before 1 September 1987 in order to provide licensees with sufficient time to acquire the appropriate equipment.

Until that time, licensees are required to retain a clear and intelligible audio recording of their programming.

The attached regulations also contain the Commission's new television program subclasses and key figures relating to the classification of individual programs. The program sub-classes, including new program categories, are identical to those proposed in Public Notice CRTC 1986-76 with two exceptions. In Schedule I, the Commission has added two sub-items under the item "producer": 4(2) a Local Program produced by an

Affiliated Production Company; and 4(3) Other Canadian Program produced by an Affiliated Production Company. In response to a comment by TVOntario, schedule I also contains a program category entitled "Education" rather than the more limited category, "Instruction".

The Commission is willing to accept that educational broadcasting services normally provide educational programs. However, the logging provisions will permit educational broadcasters to identify each program with a 6(5)(A) or 6(5)(B) qualifier, and then to provide another appropriate program category designation which describes the content of each program more precisely.

For all services, the Commission will allow a television licensee to identify the content of its programs using a single program category or, if the licensee so chooses, as many program categories as required. However, in the latter event, the licensee must also indicate the amount of time dedicated to each sub-item inscribed on the programming log.

The Commission has adopted an updated classification scheme for program categories in keeping with contemporary television standards and practices that represents a substantial improvement over the previous categories which dated back to the 1960s. A short description of each of the new program categories contained in Schedule I is presented in Appendix A.

[§225-10]

(v) *Advertising Material*

The regulations relating to advertising remain substantially the same as those proposed in Public Notice CRTC 1986-176.

At the public hearing, both the CBC and the Comité de promotion pour la défense de la télévision régionale expressed some concern over the elimination of the prohibition against advertising material that makes use of any subliminal device. The Commission is confident that any concerns regarding the possible use of subliminal techniques can be adequately addressed within the terms of an industry code. Proposed guidelines for the development of industry codes or standards are being published for public comment in a separate document, Public Notice CRTC 1987-9, issued today. [For the final guidelines on this matter, see below at §237.]

With regard to the elimination of the requirement to register commercial messages with the Commission, both the CBC and ACTRA argued that retaining the registration requirement would provide an incentive for advertisers to maintain appropriate levels of Canadian production. Considering the current level of Canadian production of commercial messages, the Commission has no plans to regulate the Canadian content of commercial messages and consequently believes it is unnecessary to retain the registration requirement. However, should the Commission determine that the production of Canadian commercial messages is declining significantly, it will review its decision in this matter.

Paragraph 11(3)(b) of the new television regulations provides additional flexibility for the promotion of Canadian programs. The Commission concurs with the position advanced by the CTV Network that allowing additional time for the promotion of Canadian programs in the evening hours will assist in attracting a larger number of

viewers to such programs. Accordingly, the new regulations allow a total of two minutes of additional advertising material consisting of promotions for Canadian programs to be broadcast at any time during the period between 6:00 p.m. and midnight.

[NOTE: Later, in Public Notice CRTC 1992-52, August 10, 1992, the Commission announced that it had amended the *Television Broadcasting Regulations, 1987*, to exclude messages promoting Canadian television programs entirely from the definition of advertising material. The change was implemented in SOR/92-429, as shown at §137-8 above.]

[§225-11]

III. *POLICY ON MULTICHANNEL TELEVISION SOUND (MTS)*

(i) *Introduction*

Section 3 of the Regulations Respecting Television Broadcasting provides that the regulations do not apply in respect of programming in a signal contained in a second audio program (SAP) channel or multiplex channel. As indicated in the guidelines below, the Commission may impose additional requirements on the use of these channels in certain circumstances.

[NOTE: Later in 1989, the Commission amended section 3 further to exclude programming broadcast during the vertical blanking interval. See below at §255-6.]

The regulatory approach described herein is characterized by minimum constraint on the development of new Canadian services and maximum opportunity to innovate. In particular, the Commission is of the view that a person who holds a licence to operate a television station is authorized by that licence to make use of its SAP channel, its multiplex channel and its stereo channel.

Approval to distribute services using these channels therefore will not be required. Licensees are, however, expected to adhere to the guidelines which follow and, of course, are required to meet all requirements of the Broadcasting Act.

While the Commission's approach is designed to minimize the regulatory burden on broadcasters, the Commission will monitor the development of these services with interest.

[§225-12]

(ii) *MTS and Cable Television*

In view of the significant number of television viewers served by cable television systems, MTS services should be carried on cable television systems. Section 19 of the *Cable Television Regulations, 1986* (Public Notice CRTC 1986-182) should ensure that a cable licensee distributes any MTS service associated with a television programming service, since the licensee is prohibited from altering or curtailing any programming source or radiocommunication in the course of its distribution, except as required or authorized by its licence or the *Cable Television Regulations*.

Although some cable television licensees are not presently capable of distributing MTS signals, their main distribution system should not pose technical problems if they chose to do so. However, certain equipment at the head-end of some systems would require adjustment, modification or replacement. At the subscriber's end of a system, a more significant technical problem may exist. Certain types of descramblers are incompatible with MTS signals and these descramblers would have to be modified or

replaced to ensure compatibility. The Commission also notes that some types of converters available to the public are not compatible with MTS signals.

While solutions to the above problems are available, they require time to implement. The expense, in some instances, could be significant. The Commission expects television licensees to recognize that some cable television systems will require time to make the necessary adjustments.

[§225-13]

(iii) *Guidelines for MTS Services*

1. Television broadcasters have a primary responsibility to fulfill the commitments made with respect to the main service they are licensed to provide. Any use of the MTS channels must not detract from the licensee's ability to meet all of its responsibilities, and to fulfill its Promise of Performance.
2. Licensees adding or modifying SAP or multiplex services must inform the Commission of the types of services to be provided.
3. While it is not the Commission's intention at this time to specify preferred uses for the SAP channel, the Commission would be concerned if long term commitments for the provision of services that are unrelated to the licensee's television programming service were to place constraints on broadcasters' ability to respond to future programming needs.
4. Revenues may be derived through advertising or subscription fees for SAP or multiplex services as appropriate.
5. Separate financial records should be kept for each SAP and multiplex service and should be made available to the Commission on request.
6. The revenue from the licensee's main television programming services or other services associated with such may not be used to subsidize SAP or multiplex services that are unrelated to the main service.
7. Although no regulatory requirements are being specified for SAP or multiplex services at this time, the Commission will be monitoring the development of such services and will make appropriate adjustments, if required.
8. Where appropriate, when capacity is available, licensees are encouraged to provide access to third parties on a mutually agreeable basis.
9. Technical quality on the main television channel should not be impaired by the use of MTS.
10. The presence or absence of MTS signals does not affect the determination of identical signals for the purpose of curtailment and substitution under the *Cable Television Regulations, 1986*.
11. Television licensees are expected to recognize that some cable television operators will require time to make the necessary modifications to carry MTS signals.
12. In the case of the stereophonic channel, licensees must meet the requirements of the Department of Communications but do not require authority from the Commission to distribute programming on this service.

[§225-14]

IV. *POLICY ON LOW POWER TELEVISION IN REMOTE COMMUNITIES*

(i) *Introduction*

In Public Notice CRTC 1986-176 the Commission proposed a new policy designed to encourage off-air community television operations in remote or underserved communities which are not large enough to support a full range of Canadian over-the-air or cable services (i.e. operations that would exist in areas normally served by Part III licensees as defined in the *Cable Television Regulations, 1986*).

In the course of the public process leading to the hearing of 30 September 1986, the Commission received detailed written comments from the Ministry of Communications of the Province of Quebec, the Ministry of Transportation and Communications of the Government of Ontario, the Regroupment des Organismes Communautaires de Communications du Québec (ROCCQ) and the Association Canadienne de la Radio Television de Langue Française (ACRTF). Brief, generally supportive comments were made by the CTV Network and CFCN-TV Calgary.

The Commission has considered all of the comments received and herein is announcing a new policy in respect of low power television in remote communities (remote stations).

Although television viewers in many parts of the country are able to secure a considerable array of television services by means of off-air, cable and satellite signals, there are a significant number of Canadian households still unable to receive a full range of services.

For some time the Commission has been seeking means of promoting the extension of television services to remote and underserved communities. The objectives outlined in such documents as the Report of the Committee on Extension of Service to Northern and Remote Communities (1980) and The Costs of Choice (1985), with respect to the distribution of satellite broadcasting services in underserved communities, reflect the Commission's continuing efforts to ensure access to a wide range of television services by communities in all regions of Canada.

The Commission intends to adopt a flexible approach to the provision of additional, off-air, community-based television services in remote and underserved regions.

In assessing any applications for such low power, community-based operations, the Commission will take into account an applicant's ability and intention to adhere to the guidelines specified below.

[§225-15]

(ii) *Application*

The policy outlined herein is applicable to low power television operations in remote or underserved communities, rather than "community television" as per Public Notice CRTC 1986-176. The policy is not therefore intended to apply to an off-air community television service adjacent to a major urban area, such as that of CHOY-TV (Télévision Communautaire de Saint-Jérome Inc.) operating in Saint-Jérome, Québec.

For the purpose of considering applications for low power television undertakings, such an undertaking should meet the criteria which follow:

a) The undertaking should serve a community which has no competing local or regional television service. A competing local or regional off-air television service shall be considered to be a service which is currently providing television programming to the community in question, and is selling television advertisements in the community in question on a regular basis.
b) The community should have no local community cable channel operating on a regular basis at the time of application.
c) The undertaking should be a service which is delivered through a low power transmitter (i.e. less than 50 watts on VHF or less than 500 watts on UHF). In exceptional circumstances, however, the Commission may consider applications for delivery by a higher power transmitter that uses a frequency allotted to the region.
d) The undertaking should be characterized by the local nature of its ownership, its programming and the market it is designed to serve.

In order to implement the Commission's policy on remote stations, it will be necessary to amend subsection 22(1) of the *Cable Television Regulations, 1986*. According to Subsection 22(1), a Part III licensee must distribute on the basic band of its undertaking the programming services of (a) all local television stations and (b) all regional television stations other than affiliates or members of a network of which a local television station is an affiliate. The Commission is of the view that a Part III licensee should not be required to distribute the programming service of a remote station, if that licensee provides community programming. The Commission therefore proposes to amend subsection 22(1) to allow a licensee providing such programming to be relieved, by condition of licence, of the requirements set out in paragraphs (a) and (b), where this is necessary. A separate public notice to this effect will be published shortly. [NOTE: see SOR/87-424, reflected above in §133-131.]

[§225-16]

(iii) *Role and Mandate*

The Commission expects low power television services to develop community-oriented programming that contributes to the diversity of television services within the community. The Commission also expects operators of such services to serve all members of the community by offering some programs which appeal to everyone, as well as programs which deal with matters of interest to specific groups within the community. The Commission does not expect low power television services to operate over the full broadcast day in all cases.

A low power television service might include non-Canadian programs in its schedule provided it fulfills the requirements of the new television regulations or any conditions of licence regarding Canadian content requirements that the Commission may impose, as well as all responsibilities in respect of community programming as outlined above.

[§225-17]

(iv) *Financing and Ownership*

With respect to ownership, the Commission expects a low power television service to be owned by an organization whose membership is primarily made up of

representatives of the community at large. However, the Commission does not wish to preclude profit-oriented ownership arrangements.

The Commission expects that on-going financing for low power television services will derive from some form of support and local advertising. Advertising will be permitted on such stations as stipulated by the new television regulations or such conditions of licence as the Commission may determine.

[§225-18]

(v) *Conditions of Licence*

The Commission recognizes that, in many cases, it may be difficult for operators of low power television services in remote and underserved areas to meet all the requirements of the television regulations. To encourage the development of such services, the Commission will, upon application, consider approving specific conditions of licence which would replace certain portions of the following sections of the new regulations:

(a) Canadian programs (Section 4)
(b) Logs and Records (Section 10)
(c) Advertising Material (Section 11)

[§225-19]

(vi) *Conclusion*

By means of this policy, the Commission wishes to encourage the development of services designed and operated by local communities in remote or underserved areas to meet their own needs. However, the Commission encourages prospective applicants to be guided by the principles set out in this document.

[§225-20]

APPENDIX A
TELEVISION PROGRAM CATEGORIES

INFORMATION - programming primarily designed to inform or educate.

1. *NEWS:* Newscasts, newsbreaks, headlines
   Programs reporting on local, regional, national and international events. Such programs would include weather reports, sportscasts, community news and other related features or segments contained within "News Programs".
2. *ANALYSIS & INTERPRETATION:*
   Serious or light programs that are about politics, economics, agriculture, business, social issues, personalities, nature, science and technology, society, arts and culture, history and biography, etc...
3. *REPORTING & ACTUALITIES:*
   Programs which concentrate on the coverage or political conventions, conference opening/closing of events, political debates and election-related partisan political telecasts, and also includes fund raising of a non-entertainment nature (telethons).

4. *RELIGION:*

Programs dealing with religion and religious teachings, discussions of the human spiritual condition.

5. *EDUCATION:*

a) Formal education programs presenting detailed information on a wide variety of topics and aimed at the acquisition of knowledge essential to all human beings on a wide variety of subjects. The programs can be related t established curricula in each of the provinces of Canada and can also be targeted at pre-schoolers.

b) Informal education programs presenting information on recreational and skill development; leisure and outdoor activities in their different forms and job opportunities; instructional quizzes where the predominating element is the participants knowledge; and, talk-shows of an informative nature.

6. *SPORTS:*

Programs including live or live-on-tape sports event coverage scripted sports and programs reviewing and analysing sport.

MUSIC & ENTERTAINMENT - programming primarily designed to entertain.

7. *DRAMA:*

- A) ongoing dramatic series;
- B) ongoing comedy series;
- C) specials, mini-series and made-for-TV feature films;
- D) feature films, primarily for theatre release;
- E) animated television programs and films;
- F) programs of comedy sketches;
- G) other (narratives, improvisation, etc.)

8. *MUSIC & DANCE:*

Programs primarily concerned with live or pre-recorded performances of traditional and popular music including video clips and also including opera, operetta, ballet and musicals.

9. *VARIETY:*

Programs containing entertainment of mixed character consisting of a number of individual acts or performances as of singing, dancing, acrobatic exhibitions, comedy sketches, monologues, etc. talk-shows; magic.

10. *GAME SHOWS:*

Programs where the public can participate in tests of all kinds in the hope of winning prizes. In the games the element of chance is predominant, rather than knowledge and skill, and is used to determine the outcome of the tests.

11. *HUMAN INTEREST:*

Programs presenting information primarily for its entertainment value about entertainment and its people such as awards, magazine programs, interviews, profiles, fund-raising programs; coverage of community events such as carnivals, festivals, parades, etc.

[§226-1]

[CANADIAN RADIO-TELEVISION AND
TELECOMMUNICATIONS COMMISSION]

Requirements Regarding the Review of Broadcast Advertising of Alcoholic Beverages

[§226-2]

[CRTC Circular No. 329, January 23, 1987]

[§226-3]

FOR THE ATTENTION OF ALL RADIO, TELEVISION AND SPECIALTY PROGRAMMING SERVICE LICENSEES, ADVERTISERS AND ADVERTISING AGENCIES

This circular relates to the requirements regarding the review of scripts, storyboards and, where applicable, produced commercial messages for alcoholic beverages. All previous BBG and CRTC Circulars pertaining to broadcast advertising of alcoholic beverages are revoked.

The *Radio Regulations, 1986* (the "Radio Regulations") (issued 19 September 1986) and the *Television Broadcasting Regulations, 1987* (the "TV Regulations") (issued 9 January 1987) require the preclearance of commercial messages for alcoholic beverages that are to be broadcast, and incorporate a "Code for Broadcast Advertising of Alcoholic Beverages". The Code, which has the force of law, clarifies and expands the criteria used by the Commission in its preclearance process.

A copy of the Code and of the regulations pertaining to broadcast advertising of alcoholic beverages is attached for ease of reference. [NOTE: For the text of the Code, see above at §173.] Section 2 of the Radio Regulations and of the TV Regulations define the terms "commercial message" and "alcoholic beverages".

[§226-4]

1. *Prior Approval - Script Number*

Section 4 of the Radio Regulations and Section 6 of the TV Regulations stipulate that no commercial message for an alcoholic beverage may be broadcast unless it meets all conditions set out in subsection (3) of those sections. One of these conditions stipulates that the script of such a commercial message must have been approved by a representative of the Commission. Subsection (2) specifies the types of alcoholic beverages for which such approval may not be granted.

It should also be noted that alcoholic beverages are considered foods under the *Food and Drugs Act*, and that Section 5 of the Radio Regulations and Section 7 of the TV Regulations stipulate that no commercial message or endorsement for a food to which that Act applies shall be broadcast unless its script has been approved by the Minister of Consumer and Corporate Affairs and, in the case of an alcoholic beverage, bears the script number assigned to it by the Commission.

[NOTE: These sections of the regulations were amended in 1993 to delete any reference to foods, See §135-43 and §137-66 respectively.]

[§226-5]

2. *The Responsible Agencies*

Scripts (and storyboards in the case of television commercials) for alcoholic beverages must be approved by a representative of the Commission and by the Department of Consumer and Corporate Affairs, prior to broadcast.

[§226-6]

3. *Criteria for Approval*

The Radio Regulations and the TV Regulations outline the Commission's criteria for reviewing scripts and storyboards for alcoholic beverages.

[§226-7]

4. *Scope of Approval*

It should be noted that approval of such scripts constitutes approval pursuant to the above-noted sections of the Radio Regulations and the TV Regulations only, and does not imply that a commercial message or endorsement will necessarily comply with other applicable legislative provisions.

[§226-8]

5. *Broadcast as Approved*

The script number assigned is valid only for the script as approved. Any change constitutes a new commercial message and a new submission must therefore be made.

[§226-9]

6. *Duration of Approval*

Approval of alcoholic beverage scripts and storyboards is generally valid for a period of one year from the stamped date of approval, unless otherwise indicated on them. However, if circumstances warrant, they may be required for review within the period for which they were approved and the approval may be withdrawn.

[§226-10]

7. *CRTC Review Procedure*

Eight (8) copies of scripts and comprehensive storyboards are to be submitted to the Script Clearance Division of the CRTC at least two weeks in advance of each meeting of the Alcoholic Beverage Advertising Advisory Committee. In the case of television commercials, a 3/4" video cassette, when available, is also to be submitted. A list of the dates of the Committee meetings is sent every year to all radio, television and specialty programming service licensees, advertisers and advertising agencies.

The province(s) where the commercial message is to be broadcast must be noted and any modification to a previously approved script and storyboard must be clearly identified.

All scripts submitted for renewal should be clearly marked "Renewal" and a 3/4" video cassette of the produced commercial message must be submitted for television commercial messages. The former script number and approval date must also be indicated. If any change has been made, the submission should be marked "Revised" and the revisions clearly identified.

[§226-11]

8. *Form and Presentation*

The most convenient method of presenting television commercial messages is by describing the visual material opposite the spoken word message. Both audio and video description along with a storyboard must be submitted in eight (8) copies. In exceptional circumstances, the finished commercial message may be required for review prior to final approval or broadcast.

[§226-12]

9. *Identification of Well-Known Personalities*

Where it is proposed that a commercial message include an endorsement of an alcoholic beverage by a well-known personality (or someone likely to be taken as such), the personality should be identified when submitting the script/storyboard.

[§226-13]

10. *Language*

Scripts (and storyboards) of commercial messages to be broadcast in a language other than French or English must be submitted in that language together with a translation in English or French, in eight (8) copies.

[§226-14]

11. *Labels*

The Department of Consumer and Corporate Affairs requires, for examination, the product label for each alcoholic beverage to be advertised on radio or television for the first time in Canada.

The *Consumer Packaging and Labelling Act* prohibits the advertising of a prepackaged alcoholic beverage that has applied to it a label that contains any false or misleading representation which may relate to that product.

[§226-15]

12. *Inspection*

Inspectors of the Department of Consumer and Corporate Affairs are authorized to act as representatives of the CRTC for the purpose of monitoring compliance with the Commission's regulations. These inspectors visit radio and television stations from time to time and may ask to see the following:

(a) station logs for any period within the preceding four (4) weeks;

(b) copies of any alcoholic beverage commercial message broadcast during that period; and

(c) the record required to be maintained in accordance with Section 5(3) of the Radio Regulations and Section 7(3) of the TV Regulations.

[§226-16]

13. *Broadcasters' Responsibilities*

Broadcast licensees are, under the *Broadcasting Act*, responsible for all matter broadcast, and should take into consideration the sensitivities of their audience when accepting and scheduling commercial messages. Obviously, this same consideration should be given to all commercial messages, but especially those referred to in this circular.

Even though a script/storyboard may have been approved, broadcast of the related commercial message may contravene other applicable legislative provisions. Each licensee has the final discretion on acceptance and scheduling.

[§226-17]

14. *Right of Appeal*

Broadcasters, advertisers and advertising agencies may appeal modifications, deletions or rejections of alcoholic beverage scripts/storyboards. Appeals should be addressed to the Secretary General of the Commission.

[§226-18]

15. *Miscellaneous*

For information and clarification, please contact the Script Clearance Officer.

Mailing address:
CRTC
Ottawa, Ontario
K1A ON2

Messenger address:
CRTC
Les Terrasses de la Chaudière
Central Building
6th Floor
1 Promenade du Portage
Hull, Quebec
Telephone: (819) 997-4716
Telex: 053-4253
Telecopier: (819) 994-0218

[§227-1]

[CANADIAN RADIO-TELEVISION AND
TELECOMMUNICATIONS COMMISSION]

Political Programs, Advertisements and Announcements

[§227-2]

[Public Notice CRTC 1987-26, January 29, 1987.]

[§227-3]

On 22 October 1986, the Commission issued Public Notice CRTC 1986-294 asking for comments on whether it should continue to consider as advertising content, any political program, advertisement or announcement of two minutes or less in duration. At the present time, this policy applies to "free time" partisan political broadcasts as well as to "paid" partisan political broadcasts. The Commission had received representations questioning whether the policy should continue to apply to "free time" broadcasts.

The Commission has now completed its examination of the responses to this Public Notice and has concluded that it should continue to consider as advertising content any paid broadcast of a partisan political character which is two minutes or less in duration.

With respect to the "free time" broadcasts, some respondents expressed concern that free-time provided by broadcast licensees should be of sufficient duration to ensure some depth discussion of current issues. Others were concerned that free-time broadcasts of two minutes or less would not be distinguishable from paid commercial messages. The Commission notes in this regard that other types of programming may be used for the discussion and debate of political issues. In addition, there was concern that adding free-time broadcasts of up to two minutes each to the advertising time allotment, instead of replacing advertising time by these free time broadcasts, would increase the interruption of programs.

Given that network licensees are required by the *Canada Elections Act* to provide free-time to registered parties, and that the voluntary allocation of free-time to parties and candidates in election periods is a valuable service in informing the public, the Commission has concluded that political parties, political candidates, and broadcast licensees should be allowed this additional flexibility to facilitate free-time broadcasts of any duration. The Commission is confident that all will co-operate to ensure scheduling that will not disrupt regular programming.

[§227-4]

Accordingly, the Commission's guidelines for election broadcasting, for elections at federal, provincial and municipal levels, will be amended to read as follows:

> Radio and television station licensees shall log as advertising material any paid broadcast of a partisan political character which, including the identification of the sponsor and the party, if any, is two minutes or less in duration.

[§227-5]

[NOTE: In CRTC Circulars Nos. 387 and 388, September 21 and 22, 1992, which dealt with the national and Quebec referenda of October 26, 1992, the CRTC stated that for the period from September 17, 1992 to October 26, 1992, any advertising material of a partisan political character with regard to the referendum, regardless of length, whether paid or free, could be logged as program material by licensees not prohibited from carrying advertising by regulation or condition of licence. In CRTC Circular No.398, September 14, 1993, the Commission applied the same principle to partisan political advertising, whether paid or free, placed on broadcast stations or networks for the federal general election of October 25, 1993. The result was that paid or free political advertising time for the election was not subject to the limits on commercial time otherwise applicable in the Regulations.]

[§228-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Capital Expenditure Filings, Cable Television Regulations, 1986

[§228-2]

[Public Notice CRTC 1987-27, January 30, 1987. This notice must be read in light of the changes noted in Public Notice CRTC 1990-53, below at §261, Public Notice CRTC 1991-12, below at §264, and Public Notice CRTC 1993-74, June 3, 1993, below at §294.]

[§228-3]

In response to many requests, the Commission wishes to clarify for holders of Class 1 and Class 2 licences for broadcasting receiving undertakings those items which the Commission considers fall within the definition of capital expenditure set out in subsection 18(5) of the *Cable Television Regulations, 1986* (the regulations), and the form of the appropriate documentation referred to in subparagraph 18(7)(b)(iii) of the regulations.

[§228-4]

Capital Expenditures

Subsection 18(5) of the regulations defines "capital expenditure", for the purpose of subsection 18(6), as those capital costs that a licensee estimates will be incurred for the purchase or capital lease of its head end or distribution system to the extent that these capital costs relate to the reception, processing or distribution of the basic service. Accordingly, capital expenditures for head end components and distribution system plant, including private and leased microwave facilities, will be considered as falling within the definition.

Examples of items which the Commission does not consider to fall within the definition for the purpose of subsection 18(6) of the regulations are: land, buildings (including land improvements), furniture and fixtures, automobiles, trucks, computers, new subscriber drops and devices, test equipment, tools, cable casting/local program

production equipment and leasehold improvements (except those relating to head end and distribution). Licensees wishing to include these and other types of expenditures in their rate filings are reminded that subsection 18(8) of the regulations is the subsection under which to proceed.

It should be noted that the Commission is planning to propose, as soon as possible, amendments to the definition of "capital expenditure" contained in subsection 18(5) of the regulations so as to include the replacement of existing subscriber drops to upgrade the quality of service provided and also the purchase of equipment used exclusively for community programming to enhance the quality or quantity of community programming. Licensees are reminded that these items should not be included in any increases, notices or filings under subsections 18(6) and 18(7) of the regulations unless and until the amendment comes into effect, at which time the Commission will issue a Public Notice.

[NOTE: The amendment to subsection 18(5) referred to, registered as SOR/87-424, came into force on July 15, 1987. Later in 1991, as noted below at §261 and §264, the CRTC further amended the definition in SOR/91-96. The definition was further amended in 1994, pursuant to *Structural Public Hearing*, Public Notice CRTC 1993-74, June 3, 1993, set out below at §294. For the present definition of "capital expenditures" in subsection 18(5) of the Regulations, see above at §133-111.]

[§228-5]

The Commission affirms that, generally, there is a need for cost separation where costs are associated with the reception, processing or distribution of both basic and discretionary services in order to ensure that basic service subscribers do not subsidize discretionary services. These cost separation procedures should be as simple and economical as possible. In the specific case of filings for capital expenditure based increases pursuant to the provisions of subsections 18(5) and 18(6) of the regulations, and continuing current practice, the Commission expects such filings to exclude new incremental capital costs which relate specifically and solely to the provision of discretionary services. It should be noted that discretionary services used in this context may include both programming and non-programming services. [NOTE: This was later elaborated in Public Notice CRTC 199-53, below at §261.]

[§228-6]

Appropriate Documentation

Subparagraph 18(7)(b)(iii) of the regulations prohibits a licensee from implementing an increase to its basic monthly fee by an amount permitted pursuant to subsection 18(6) unless it sends to the Commission appropriate documentation to justify the proposed increase. [NOTE: For the text of this subparagraph, see above at §133-116.] The Commission considers appropriate documentation to comprise, at a minimum, the following:

(1) To permit the Commission to verify the calculations employed in the notice, as described in subparagraph 18(7)(b)(ii) of the regulations, which has been or will be sent to all subscribers in the system, a statement indicating the number of subscribers in the system.

(2) To ensure that the proposed capital expenditures are eligible,

  (a) budgets specifying the amounts to be spent on each proposed capital expenditure project, and

(b) sufficient detailed information which will describe each project so as to allow the Commission to determine that the purpose of the expenditure does in fact conform to the regulation requirement;

and

(3) To ensure that licensees do not obtain double credit for any proposed capital expenditure, a declaration substantially as follows:

I, (*Name, title, address*), on behalf of (*Name of licensee*), declare that none of the costs which are being claimed herein as capital expenditures as defined in subsection 18(5) of the *Cable Television Regulations, 1986* have been included in any previous application or filing under conditions of licence or regulations in effect prior to August 1, 1986, or under subsections 18(6) to 18(9) of the *Cable Television Regulations, 1986*.

Where costs being included under a proposed capital expenditure plan have been used in whole or in part to justify a previous application or filing for an increase in monthly subscriber rates, the licensee should, instead of filing the above-mentioned declaration, indicate which specific projects and related costs were previously included in which previous application or filing, and the year in which the projects and related costs were to be incurred.

[§228-7]

Subsequent Documentation

To ensure that authorized capital expenditure proposals have been carried out, when the licensee has undertaken to make certain capital expenditures in connection with an increase in monthly subscriber rates granted under conditions of licence or regulations in effect prior to August 1, 1986, or taken under subsection 18(6) or 18(8) of the regulations, the Commission intends to require completion of a declaration which will be incorporated in the Annual Return - Cable Television. In that declaration, the licensee will be required to indicate, by capital expenditure project, the actual amounts spent in relation to the fiscal year reported in the annual return which will enable the Commission to review actual results and to assess any future filings under this subsection of the regulations.

[§229-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Recognition for Canadian Programs- Production Packages

[§229-2]

[Public Notice CRTC 1987-28, January 30, 1987.]

[§229-3]

In a Public Notice dated 23 July 1986 (CRTC 1986-179), the Commission sought comments on the "Production Packages" section of its definition of a Canadian program

dated 15 April 1984. The section reads as follows [NOTE: The following extract is also reproduced above at §212-9]:

[§229-4]

PRODUCTION PACKAGES

For the present purposes, a "production package" means two or more co-productions or coventures, undertaken by a Canadian production company together with one or more non-Canadian production companies, where a production that qualifies as a *Canadian production, with minor foreign involvement, is matched with a foreign production, with minor Canadian involvement*. (Emphasis added)

The production packages may be accepted as Canadian, where a Canadian production company is involved and the co-production partners are the same for all the productions. The role of the Canadian production company is as defined for co-ventures. In assessing a production package, the Commission will examine it in its entirety and may qualify it if, on an overall average, the minimum requirements for coventures are met. Furthermore, a licensee will not receive credit for the production with fewer Canadian elements unless it also carries the production with the larger number of Canadian at equitable times.

All other considerations for recognition for Canadian programs apply.

The Commission will follow closely the extent to which licensees make use of co-venture productions or production packages to meet Canadian content requirements. It will review before April 1987 the suitability of continuing to accept production packages for the present purposes.

[§229-5]

The Commission stated in its Public Notice of 23 July:

Although there has not been extensive use made of this provision to date, the Commission is aware of a number of co-ventures that are currently being developed by Canadian producers. Several of these involve the participation of Telefilm Canada which has actively encouraged the concept of production packages. Recently, Telefilm Canada has also developed a new type of production arrangement, referred to as "twinning". It is the Commission's understanding that the concept of "twinning" as suggested by Telefilm Canada, would involve matching a fully Canadian production with a foreign production, with virtually no Canadian involvement other than a financial one.

The purpose of the present Public Notice is to seek comment from broadcast licensees, program producers and other interested parties on the overall question of production packages, and in particular the interpretation of the phrase "minor involvement".

[§229-6]

In Public Notice CRTC 1986-179, the Commission posed specific questions, including whether the current provision for production packages should continue, whether production packages should include "twinning" arrangements as funded by Telefilm

Canada, and whether there should be minimum requirements with respect to "minor Canadian" involvement.

Respondents were generally in favour of continuing the provision for recognizing "production packages" as Canadian productions, and for including the "twinning" arrangement in that category.

The Commission notes the objection by l'Union des Artistes that such arrangements could cause a dilution of Canadian content by counting as Canadian certain productions produced outside of Canada with minor Canadian involvement.

On the other hand, broadcasters, producers and others argued that this provision will not be used to such a degree as to affect substantially the quantity of Canadian production. At the same time it makes possible the development of some high quality Canadian productions which would not be possible without the production package concept.

[§229-7]

The Commission has concluded that it should retain the "Program Packages" provision, and that the "twinning" concept falls within the definition of a production package.

For the purpose of clarification of section IV "Production Packages" of Public Notice CRTC 1984-94 [NOTE: set out above at §212-9], the Commission will be prepared to accept as Canadian, production packages on the following conditions:

1) The Canadian production company must, as described in the Public Notice dated 15 April 1984 under co-venture requirements, be owned or controlled by Canadians;
2) The Canadian copyright for both productions must be held by Canadians;
3) The budgets of both Canadian and foreign productions must be approximately equal;
4) Co-production agreements between the Canadian and foreign producers must be submitted to the Commission with the applications;
5) The Canadian producer must have equity interest and profit sharing in the Canadian and foreign productions;
6) The Canadian and foreign productions must be licensed to the same Canadian licensee. Canadian program credit may not be claimed by any Canadian licensee for the production with the minor Canadian involvement, unless and until the Canadian production has been broadcast;
7) All productions in a production package must fall within the same program category;
8) Production package programs are acceptable only in the categories of drama, variety, documentary and children's. Animated productions are excluded;
9) Matched (or twinned) productions must be approximately equal in duration;
10) Matched (or twinned) productions must receive equitable scheduling on the same Canadian station or network; and
11) Ten-point productions in production packages will *not* also qualify for the dramatic programming credit of 150%.

[§229-8]

While these conditions do not contain a requirement that the production with major Canadian involvement receive exposure in the other country involved, the Commission would expect that the Canadian co-producer would include such an arrangement in his agreement with the non-Canadian coproducer.

[§230-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Music Video Programs

[§230-2]

[Public Notice CRTC 1987-83, March 24, 1987.]

[§230-3]

The purpose of this public notice is to advise licensees and others as to how the Commission intends to assess Canadian content in programs consisting principally of music videos, and to clarify licensees' responsibility in this regard.

In the Appendix to Public Notice CRTC 1984-94 dated 15 April 1984, the Commission set out its definition of a Canadian program. Included in that notice were definitions for a "Canadian Music Video" and for "Music Video Programs". [NOTE: For the full text of the notice, see above at §212.]

[§230-4]

Definition of a Canadian Music Video

Music videos, the short film or videotape productions or concert excerpts (clips) not produced primarily for the particular program in which they are presented, which normally contain one musical selection with visual material, will be recognized as Canadian where at least two of the audio requirements a) through d) which follow, and three of the requirements a) through f) are met:

a) instrumentation or lyrics are principally performed by a Canadian;
b) music is composed by a Canadian;
c) lyrics are written by a Canadian;
d) performance is in Canada;
e) video director or production company is Canadian; and
f) video production facilities are located in Canada.

The public notice also specified that, for videos produced on or after 1 January 1986, at least one of the two video factors e) or f) above must be met.

[§230-5]

Music Video Programs

For programs consisting predominantly of music videos and in some cases including a host and other programming elements, Canadian program recognition will

be awarded if all elements other than the music videos are Canadian, and a minimum of 30% of the music videos are Canadian.

This last provision would not apply to music specialty services.

[§230-6]

At a recent licence renewal hearing, when questioned about the Canadian content of certain music video programs, a licensee acknowledged that some programs which were being logged as Canadian did not contain a sufficient number of Canadian music videos to meet the Commission's definition.

The Commission is concerned that other licensees, through misunderstanding, improper control or for other reasons, may be claiming Canadian content credit for programs of this type that do not in fact satisfy the definition set out above.

The Commission advises television licensees that it intends to monitor music video programs to ensure that those programs claimed as Canadian do indeed qualify. Moreover, it is the licensee's responsibility to obtain from the supplier of the music videos details with respect to the various elements so as to determine whether the production qualifies as Canadian.

The Commission also draws to licensees' attention that in order to qualify a Canadian music video must be played in its entirety. It will not be credited if played in part as an opening, a bridge or a closing, or as a backdrop for program credits. All television licensees should review their practices in this regard.

[§231-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Political Broadcasting - Complaints Re Free Time and Editorial Time Allocations

[§231-2]

[CRTC Circular No. 334, June 4, 1987. For the CRTC's general policies in this regard, see *Policy with Respect to Election Campaign Broadcasting*, Public Notice CRTC 1988-142, September 2, 1988, below at §246.]

[§231-3]

TO THE ATTENTION OF ALL RADIO AND TELEVISION LICENSEES

BACKGROUND

The Commission received two complaints concerning the election coverage of political candidates and parties, one regarding the last Ontario provincial election and the other regarding the last British Columbia provincial election.

The first is from Mr. Gregory Vezina on behalf of himself as a candidate and on behalf of the Green Party. During the Ontario election, Mr. Vezina was a registered candidate and the Green Party was a registered party. Mr. Vezina alleges that throughout the campaign period both he and the Green Party were not afforded an equitable amount

of time by the Canadian Broadcasting Corporation's owned and operated television station in Ottawa, CBOT.

The Commission finds that Mr. Vezina has not proved his allegations to the satisfaction of the Commission but, because of the importance of the issues raised and because there is a probability that similar situations will occur in the future, the Commission, for the purpose of dealing with these issues, will accept as fact the allegations made by Mr. Vezina... [NOTE: These are not included here]

[§231-4]

The second complaint received was also from the Green Party, in this case with regard to a provincial general election in the province of British Columbia. The Party alleges that a meeting was held between the CBC, i.e. the local owned and operated station in Vancouver, CBUT, and four of the registered political parties in that province, namely the Liberal Party, the New Democratic Party, the Progressive Conservative Party and the Social Credit Party, and that free time was divided up equally amongst these parties, each party receiving 27 minutes. The Green Party, a duly registered party in the British Columbia election, states that it was not invited to the meeting and was not given any free time. Further, on the night of the election, the CBC reported only the results of the four parties mentioned above and did not include any vote total for the other parties. At no time did the CBC announce that the Green Party was "even in the race".

The Commission accepts these allegations of the second complaint as fact, with the exception of the final time allocations.

The CBC has replied in writing to this second complaint. Except with regard to the final distribution of time, it does not deny the allegations as set out above... [NOTE: The summary of the CBC submission is not included here.]

[§231-5]

FINDINGS

The central purpose of this circular is to provide guidance to all licensees who face the duty to allocate time to rival political parties and candidates during provincial elections.

The Commission recognizes that during both elections the Green party was at all material times a registered party under the terms of the relevant provincial statutes and in the Ontario election, Mr. Vezina was a registered candidate under the terms of the Ontario statute.

[§231-6]

1. *Free Time*

As the Commission has stated many times before in its Broadcasting Guide for Provincial Elections, free time (i.e. time that is given to a party without charge and is under the editorial control of the party to the fullest extent possible) does not have to be made available by licensees to political parties. This is not to say, however, that if a licensee chooses to give free time, a licensee may give free time only to some parties and exclude others. The duty on a television licensee is found in what is now section 8 of the *Television Broadcasting Regulations, 1987*. It states:

> During an election period, a licensee shall allocate time for the broadcasting of programs, advertisements or announcements of a partisan political character on an equitable basis to all accredited political parties and rival candidates represented in the election or referendum.

Although there are small wording changes between this and section 9 of the previous Television Regulations, the thrust of both regulations is the same: that time shall be allocated to rival candidates and parties on an equitable basis. It is difficult to conceive of an allocation being equitable where a party, duly registered under a provincial statute, is denied access to the airwaves when its rival parties are given such access. The Commission has long accepted that "equitable" does not necessarily mean "equal" and that it may be proper in certain circumstances to allocate more time to certain parties than to other parties (and the Commission notes that this proposition has been accepted by the courts and by the Parliament of Canada in the *Canada Elections Act*). While the Commission accepts that the CBC may, and probably should, have internal guidelines for the allocation of free time, it cannot accept that those guidelines are reasonable or equitable when they lead to a determination that a duly registered party in a province is to be denied any time when rival parties do receive some time. Free time gives a party an opportunity to put forward its ideas in the form it wants, without the editorial influence of the broadcaster. To deny one party free time and to give it to other parties is unfair not only to that party but also to the public which is thereby denied access to the ideas the party wishes to express.

Accordingly, the Commission considers that once a licensee chooses to give free time, it must allocate some time to all political parties which are duly registered under the applicable legislation, except where doing so would result in the contravention of other general legislation.

The CBC, in its reply, makes reference to the fact that as the Green Party grows it will eventually meet the CBC criteria for the allocation of free time political programming. Yet in order to grow, a party requires exposure and it is this very exposure which the CBC's guidelines deny. This amounts to a vicious circle. A registered party which is not big enough to receive coverage may never become big enough because it does not receive coverage.

The Commission therefore finds CBC's exclusion of the Green Party in the allocation of free time to be unacceptable and expects it to amend its internal procedures so as to allow all parties an equitable amount of free time in future elections.

The Commission considers this statement to be sufficient to dispose of the complaint by the Green Party regarding its free time allocation in the British Columbia election. This rationale would, on the facts as assumed, apply equally to the denial of free time to the Green party in the Ontario election. It, too, would be unacceptable.

[§231-7]

2. *Time Under the Editorial Control of the Licensee*

With regard to Mr. Vezina's complaint about the overall coverage of his campaign and his not being afforded an opportunity to be present at the debate, this involves time under the editorial control of the licensee. The Commission reiterates that the duty on the licensee is found in section 8 of the *Television Broadcasting Regulations, 1987*. Again,

the duty of the licensee is to be equitable. If a licensee chooses to broadcast coverage of an election (and, bearing in mind the licensee's duty found in section 3(d) of the Broadcasting Act to provide "high standard" programming [NOTE: See now section 3(1)(g) of the 1991 *Broadcasting Act*, above at §104-29, which includes a commentary on the wording of the new section], it is difficult to envisage a situation where a licensee would not afford such coverage), it must do so in equitable manner. It is the broadcaster's duty to ensure that the public has adequate knowledge of the issues surrounding an election and the position of the parties and candidates. The broadcaster does not enjoy the position of a benevolent censor who is able to give the public only what it "should" know. Nor is it the broadcaster's role to decide in advance which candidates are "worthy" of broadcast time.

Mr. Vezina states that during its coverage of the election, CBOT did not afford him any coverage and specifically that the station excluded him from a debate which featured three rival candidates discussing an issue Mr. Vezina had adopted as part of his platform. In fact, he states that he was the only candidate in the riding who opposed full funding of separate schools. Under these circumstances, the Commission would conclude that CBOT did not meet its duty to either Mr. Vezina or the public. By not giving Mr. Vezina any coverage, the station did not meet the requirement of the regulation. By any definition, the statements made by rival candidates during a campaign debate must be considered partisan. Thus, there was then a duty on the station to afford Mr. Vezina some coverage in some fashion. As is pointed out later, this does not mean that he necessarily should have participated in the debate. Other types of coverage could have been afforded.

The Commission therefore concludes that, on the facts as assumed, Mr. Vezina should have been afforded some form of coverage.

It should be remembered that the licensee is allowed the widest latitude to choose the means by which it will fulfill its duty. It need not cover all candidates together; it need not have them all debate together; it need not provide equitable coverage in the same program or even the same series of programs; but the result of its overall coverage during the campaign period must be such that rival candidates and political parties have been afforded an equitable amount of time.

The determination of what is equitable coverage is left, the first instance, to the licensee. In reaching this determination, various factors may be taken into account, including the party's or the candidate's history, the number of votes received in previous elections, the number of party members sitting in the legislature, the campaign record, the number of candidates fielded, the number of candidates in the riding, etc. As stated above, equitable does not necessarily mean equal; some parties or candidates may well receive more coverage than others. But, generally, all candidates and parties are entitled to some coverage which will give them the opportunity to expose their ideas to the public. Given that each licensee's situation is unique, the Commission, at this time, has no hard and fast rules to determine whether coverage is equitable and will continue to base its decisions on the circumstances of each case.

With regard to the complaint by Mr. Vezina that he was refused the ability to buy commercial time, the Commission does not believe that there is a duty on a licensee to sell commercial time to political parties. However, if the licensee chooses to sell

commercial time to one party or candidate, it must be prepared to sell time to all rival candidates or parties in an equitable manner. Because station CBOT did not sell time to any party or candidate, it was under no obligation to sell time to Mr. Vezina.

Mr. Vezina also alleged that the leader of the Green Party was not afforded equitable coverage. Assuming that there was no coverage of the leader of the Green Party and there was coverage of the leaders of the three parties mentioned above the Commission also concludes that, for the reasons stated above, the leader of the Green Party should have received some form of coverage.

[§232-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Deletion of the 50 Microvolt Per Metre FM Service Contour

[§232-2]

[Public Notice CRTC 1987-156, June 22, 1987.]

[§232-3]

In response to a petition submitted by the Canadian Association of Broadcasters (CAB), the Commission announces that effective today FM applicants will no longer be required to provide the population information related to the 50 microvolt per metre (uV/m) contour on the application form or to show this contour on coverage maps. Appropriate amendments to Sections 5.2(b), 5.3(a) and 5.3(b) of Part I of the FM application form will be published shortly. Until the revised forms become available, FM applicants may leave blank those portions of the form dealing with the 50 uV/m contour.

The CAB has also made a similar recommendation to the Department of Communications.

Our present FM application procedures require that applicants provide a map showing three service contours, namely the 3 millivolt per metre contour (mV/m), the 500 uV/m contour, and the 50 uV/m contour. In addition, the applicant must indicate certain population information contained within each of these service contours.

The 50 uV/m signal contour has been considered to represent the outer limits of reception in locations where there are no terrain obstructions to the signal and where there is no interference caused by nearby FM stations operating on co-channel and/or adjacent channel frequencies. Under such conditions, reception would be possible but would most likely require the use of an outdoor receiving antenna.

In its brief, the CAB argued that because the FM allotment plan is a saturated plan where as many channels as possible have been allotted, very few stations can realistically expect that satisfactory reception is achievable beyond the 500 uV/m protected contour out to the 50 uV/m service contour. It is the CAB's opinion that, in many cases, interference would be caused by the presence of operational stations which are not obligated to protect other FM radio stations beyond their 500 uV/m contour.

Accordingly, the CAB concludes that the 50 uV/m contour no longer represents the outer limit of coverage for an FM station and that it maybe misleading to continue showing this service contour on coverage maps.

It should be noted that deleting the 50 uV/m contour from coverage maps will not have any practical effect on whether the signal of an FM station can be received outside of its protected 500 uV/m service contour. In those locations where the conditions are right, a useable signal will still be available to listeners accustomed to receiving it, until such time as new stations are licensed in the nearby vicinity on co-channel and adjacent channel frequencies. Thus, the proposal by the CAB would simply reduce somewhat the workload to prepare an FM application.

[§233-1]

[CANADIAN RADIO-TELEVISION AND
TELECOMMUNICATIONS COMMISSION]

Distribution of Television Previews

[§233-2]

[Public Notice CRTC 1987-203, September 11, 1987.]

[§233-3]

Cable television licensees are currently authorized to distribute unscrambled previews of pay television and specialty programming network services subject to the following provisions:

- the previews may not be exhibited during major national broadcasting rating periods such as those conducted by BBM and Nielsen;
- programming distributed during these preview periods may only consist of programs that are part of the pay television or specialty programming services actually offered to subscribers;
- the scheduling and content of such programming must meet the same standards that currently apply to conventional broadcasters;
- the distribution of such previews may not cause the removal of any Canadian service that is currently being offered;
- the previews may be distributed on the channels normally used to distribute the Canadian pay television or specialty programming services or on any other special programming or currently unused channel, other than the community channel or the special programming channel used for the distribution of promotional material (more commonly known as the Barker channel).

[§233-4]

The Commission has recently received a request to review its current restriction with respect to the distribution of previews on the Barker channel in those cases where no other special programming channels are available for such distribution.

In considering this request, the Commission has been sensitive to the specific concerns expressed about the disruptive effect that such previews and related promotional material have had on existing pay television subscribers when the existing pay television channels have been used for the distribution of previews.

The Commission, therefore, authorizes the distribution of previews on the Barker channel, only where no other special programming channels are available. The Commission wishes to emphasize, however, that all of the other guidelines noted above for the distribution of pay television or specialty programming network service previews remain unchanged. In addition, access to the promotional channel must be made available on a non-discriminatory basis for the promotion of all pay television and specialty programming network services which a licensee is authorized to exhibit.

As noted in Public Notice CRTC 1985-6, adherence to these requirements will be reviewed with the licensees concerned at licence renewal time.

[§234-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Regulatory Policy for Direct-to-Home (DTH) Satellite Broadcasting Systems, Multipoint Distribution Systems (MDS), and Subscription Television (STV) Systems

[§234-2]

[Public Notice CRTC 1987-254, November 26, 1987. CRTC policy on direct-to-home satellite systems should now be assessed in light of its comments in *Structural Public Hearing*, Public Notice CRTC 1993-74, June 3, 1993, below at §294, and in *Proposed Exemption Order Respecting Direct-to-Home Satellite Distribution Undertakings*, Public Notice CRTC 1994-19, March 2, 1994, above at §166. CRTC policy on multipoint distribution systems was later replaced in *Regulatory Policy for Multipoint Distribution Systems (MDS)*, Public Notice CRTC 1993-76, June 3, 1993, below at §296.]

[§234-3]

Introduction

The purpose of this Public Notice is to announce the Commission's policy on the regulation of television broadcasting services distributed nationally or regionally by communications satellite on a Direct-To-Home (DTH) basis, or locally by means of Multipoint Distribution Systems (MDS) or by Subscription Television (STV) Systems.

A major and longstanding objective of the Commission has been the extension of broadcasting services to all regions of Canada in order to serve all Canadians. Most of the successes in this regard have made use of what are now conventional technologies and include broadcasting stations, cable systems and networks of terrestrial microwave and satellite distribution systems. The technologies discussed in this document represent alternatives in signal distribution which would be used most often where it may not be

economically feasible to provide service using the more common methods, to achieve a further extension of broadcasting services to Canadians.

At the present time the Commission regulates the three types of undertakings included in the definition of a broadcasting undertaking in the *Broadcasting Act*, that is, broadcasting transmitting undertaking, broadcasting receiving undertaking, and a network operation. With the evolution of communications technology, these regulatory definitions have been applied to the licensing of a wide range of signal delivery systems mentioned above.

Broadcasting transmitting undertakings include television stations which originate Canadian programming or rebroadcast the signals of Canadian stations in an unscrambled mode.

Broadcasting receiving undertakings are principally receivers and local distributors of programming that make use of cable television (CATV) technology or alternately employ over-the-air distribution systems operating in an encoded, or scrambled mode to reach the viewers. Such over-the-air operations are known as subscription television, or STV, systems.

Network operations may originate programming as in the case of the national networks of the CBC, the CTV, TVA, and the pay television services, or distribute programming from other sources, as in the case of the network operated by Canadian Satellite Communications Inc. (CANCOM).

While broadcasting transmitting and receiving undertakings make their signals directly available to the public, network operations as a rule provide their signals to affiliated transmitting or receiving undertakings for local distribution.

The Commission has considered the applicability of the foregoing types of undertakings to the regulation of emerging technologies such as Direct-to-Home (DTH) satellite systems and Multipoint Distribution Systems (MDS). It has concluded that in order to accommodate the licensing of such a variety of distribution systems, it is necessary to introduce a new type of broadcasting undertaking.

Consequently, the Commission announces that it will in the future issue licences for a new type of undertaking -- the *broadcasting distributing undertaking* (BDU) -- which will include those types of systems which do not as their principal activity originate programming, but rather receive the programming of others and distribute it over-the-air. This type of undertaking could include systems based upon conventional VHF and UHF, MDS or satellite communications technology. The systems would in most cases provide their signals directly to the public rather than to other undertakings and would broadcast signals in either the non-scrambled or scrambled modes.

[NOTE: The foregoing discussion should now be read in light of the nomenclature in the 1991 *Broadcasting Act*: see *New Broadcasting Act - Amendments to Classes of Licence*, Public Notice CRTC 1991-63, June 19, 1991, below at §271.]

[§234-4]

I. *DIRECT-TO-HOME (DTH) SATELLITE SYSTEMS*

[NOTE: This section should be read in conjunction with Part IX of *Structural Public Hearing*, Public Notice CRTC 1993-74, June 3, 1993. See §294 below.]

Canadian broadcasters and network operators have increasingly used satellites for the distribution of their services to broadcasting undertakings for retransmission via cable, or for over-the-air broadcasting, to individual homes and other recipients...

In parallel with this use of satellites for network delivery, there has been a gradual growth in demand for Direct-To-Home (DTH) delivery of broadcasting programming being provided via satellite, particularly to the rural and remote areas of Canada where other technologies are not economically viable...

[§234-5]

The Commission now wishes to announce its regulatory policy for DTH satellite systems. It has retained the existing policy which applies to those DTH services which are an incidental add-on to an existing network licence operation, or an existing broadcasting transmitting undertaking.

The policy also addresses new stand-alone DTH services where the operator provides service only and directly to the general public and not to any broadcasting undertakings.

Taking into consideration the comments received, the Commission has decided that the appropriate licensing approach for DTH only systems would be to determine the type of licensing action required on the basis of the manner in which the undertaking is operated, rather than on whether the service is scrambled or not.

Under this new approach there will be two types of broadcasting undertakings for DTH only systems.

The first type is one in which the operator acts in a manner whereby it serves as a conduit to deliver existing programming signals. Such an operator would not produce, or assemble any programming, nor alter the programming content of any signals which it distributes. This type of DTH undertaking will be treated as a new type, to be called a broadcasting distributing undertaking (BDU), and if authorized will be issued a BDU licence. The programming of a BDU service could be delivered either in a non-scrambled, or a scrambled mode.

The second type of DTH undertaking is one which is operated in a manner similar to a terrestrial broadcasting transmitting undertaking (BTU), where the operator produces, assembles, or originates at least some of the programming. Such an undertaking will be treated as a BTU, which if authorized, will be issued a BTU licence.

The DTH delivery of authorized services by existing broadcasting undertakings, however, will be treated in accordance with the existing policy which is re-stated below.

[§234-6]

Detailed Licensing Policy

1. *Distribution of Authorized Services by Existing Broadcasting Undertakings*

a) Licensees delivering authorized services by satellite under a network licence can deliver those services Direct-to-Home without any additional licensing action where the DTH service does not extend beyond the territory covered by the network licence.

b) The licensee of an existing over-the-air television service (a BTU) can deliver that service on a Direct-to-Home basis without any additional licensing action where the DTH service is not distributed outside of the original BTU licensed service area.

c) If the DTH service contemplated under a) or b) would extend beyond the licensed service area, then an application will have to be made for an amendment to the licence to extend the service area.
d) The programming services delivered by the above DTH undertakings could be offered either in a non-scrambled or scrambled mode.

[§234-7]

2. *Distribution of Broadcasting Services Solely for DTH Reception*

a) All parties wishing to provide such DTH services must apply for a licence prior to the implementation of the service.
b) If the undertaking is to be operated in a manner similar to a terrestrial BTU, where the operator produces, or assembles, at least some of the programming, this DTH service will be treated as a BTU, and if authorized it will be issued a BTU licence. Such undertakings will be required to comply with the *Television Broadcasting Regulations, 1987* and will be expected to follow applicable policies or guidelines.
c) If the undertaking is to be operated as a conduit to deliver existing programming signals, and its operator does not produce or assemble any programming, nor alter the programming content of any signals which it distributes, it will be treated as a broadcasting distributing undertaking (BDU) and, if authorized, it will be issued a BDU licence. The method of regulation will be by condition of licence.

[§234-8]

3. The programming signals of either a BTU or a BDU providing a DTH service could be delivered either in a non-scrambled or a scrambled mode. For the purpose of this policy, the scrambling of the signal will not be considered an alteration of the program content.

[§234-9]

4. The Commission will not, at this time, regulate the subscriber rates for any DTH service.

[§234-10]

II. *MULTIPOINT DISTRIBUTION SYSTEMS (MDS)*

[NOTE: This portion of the Public Notice is omitted, as the current MDS policy is set out in *Regulatory Policy for Multipoint Distribution Systems (MDS)*, Public Notice CRTC 1993-76, June 3, 1993, below at §296.]

[§234-11]

III. *SUBSCRIPTION TELEVISION SYSTEMS (STV)*

The Commission has since 1981 licensed Subscription Television (STV) undertakings to provide television service to small communities in underserved areas. These undertakings broadcast their signals in an encoded, or scrambled, mode by means of low-power transmitters and have been licensed as broadcasting receiving undertakings.

These undertakings were first licensed to distribute Canadian services. However, following Public Notice CRTC 1983-164 of 5 August 1983, "Guidelines - Exhibition of

3+1 CANCOM Service by Off-Air Broadcasting Undertakings", the Commission has licensed STV undertakings to carry U.S. services distributed nationally by Canadian Satellite Communications Inc. (CANCOM) as well as some delivered via U.S. communications satellites.

The Commission has obtained considerable experience in the licensing and regulation of STV undertakings since 1981, and has had the benefit of the recommendations of the 1985 task force headed by Commissioner Paul Klingle. The task force's report, "The Costs of Choice", was addressed in Public Notice CRTC 1985-60, "CRTC Response to the Report of the Task Force on Access to Television in Underserved Communities."

The task force considered the local distribution of television services by a number of methods including cable television systems and over-the-air systems operating in both the non-scrambled and scrambled modes. The task force's recommendations with reference to cable systems have since been incorporated into the *Cable Television Regulations, 1986*. In particular, the creation of the "Part III cable licensee" allows a less stringent approach to the regulation of cable undertakings in underserved areas.

The same less stringent approach has been adopted in formulating the STV licensing policy. The Commission does not intend to establish regulations for STV undertakings but will continue to regulate them through conditions of licence.

In recent years the Commission has received many applications and representations proposing the over-the-air distribution of U.S. television services in the non-scrambled mode. The Commission has determined that it will, in exceptional circumstances, issue licences for such undertakings generally in accordance with its STV licensing policy. They will be licensed as broadcasting distributing undertakings (BDU).

In announcing its licensing policy, however, the Commission notes the success of its cable licensees in extending service to communities of ever decreasing size and reaffirms its position regarding the role of cable television stated in Public Notice CRTC 1985-60.

The Commission remains convinced that cable television technology represents the preferred method of extending service, due to its ability to deliver a large number of services and to meet future needs. It recognizes, however, that in certain circumstances, for reasons of limited population size and/or low density, over-the-air transmitters represent the only visible means of providing service to the particular area.

[§234-12]

Detailed Licensing Policy

1. *Areas Where STV Undertakings Will Be Licensed*

STV systems will normally be confined to those parts of Canada where the Commission regulates cable television operators under Part III of the *Cable Television Regulations, 1986*. These areas generally have two or less television services available off-air. The number of services available will be counted using the method specified for Part III licensees in the *Cable Television Regulations, 1986*.

[§234-13]

2. *Cable Television Technology*

An applicant for a licence for an STV undertaking must demonstrate that because of a small population base, low population density or other reasons, it is not economically feasible to serve the area using cable television technology.

An applicant proposing the distribution of non-Canadian services in the non-scrambled mode must demonstrate that it is not economically feasible to serve the area by means of either cable television or an STV system.

[§234-14]

3. *Impact on Neighbouring Subscription-Based Systems*

STV systems should not jeopardize the financial viability of neighbouring subscription-based systems, be they cable, STV or MDS systems.

Licensees of STV undertakings should not solicit or accept subscribers within the authorized service area of any neighbouring subscription-based undertaking without the concurrence of its licensee.

Applicants proposing the non-scrambled, over-the-air distribution of U.S. services will be required to demonstrate to the Commission's satisfaction that their signals will not be receivable within the service area of neighbouring subscription-based systems.

[§234-15]

4. *Use of Unprotected Frequencies*

STV undertakings should employ low-power transmitters using unprotected frequencies.

[§234-16]

5. *Permissible Television Services*

STV undertakings shall have access to the same range of television services as Part III cable television systems. The Commission publishes a list of Part III eligible Canadian and non-Canadian satellite services pursuant to the *Cable Television Regulations, 1986*.

[§234-17]

6. *Television Service Priorities*

Cable undertakings are required to carry television services according to a priority structure set out in the *Cable Television Regulations, 1986*. A general mandatory signal carriage requirement for STV undertakings is not desirable, however, as the number of channels available is much more limited. Further, such a requirement could impose an additional burden upon licensees and could result in an unwarranted duplication of services available off-air.

Therefore:

a) STV undertakings will not be subject to general television service priority requirements.
b) Television service priorities will be determined on a case-by-case basis and will be regulated by condition of licence.

c) In considering the application of television service priorities to particular undertakings, the Commission will take into account:
- the number of Canadian television services available off-air in the community and their technical quality;
- the number of Canadian services proposed, and;
- the financial resources currently or potentially available to the applicant.

[§234-18]

7. *Technical and Financial Feasibility*

An applicant for a new licence must demonstrate the financial feasibility of the proposed operation and must meet the technical requirements of the Department of Communications.

For STV undertakings, the Commission will also wish to be assured that the applicant has access to a reliable supply of scrambling and descrambling equipment.

[§234-19]

8. *Regulation of Subscriber Fees*

Subscriber fees for STV undertakings will not be regulated.

For existing undertakings, the Commission intends to remove the condition of licence pertaining to installation and monthly fees upon renewal of the licence. Licensees may, however, apply to the Commission to remove this condition of licence during the current licence term.

[§235-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

More Canadian Programming Choices: Canadian Specialty and Pay Television Services

[§235-2]

[*Introductory Statement to Decisions CRTC 87-895 to 87-906*, Public Notice CRTC 1987-260, November 30, 1987.]

[§235-3]

I. *BACKGROUND*

... [NOTE: Portions of this public notice dealing with historical and procedural matters, and summarizing comments of participants, are not included.]

e) *Demand for New Specialty Services*

Canadians have demonstrated considerable interest in specialized services from the United States since the services were introduced in the late 1970s. The familiarization of Canadian audiences with a growing number of U.S. satellite services in a variety of formats has contributed to increasing demands for their carriage on cable. The popularity

of these specialty services has also become evident in the U.S. where, in addition to receiving the pay movie channels, many U.S. cable subscribers receive a large number of satellite-delivered superstations as well as satellite-to-cable networks which operate in such diverse formats as news, family and youth-oriented programming, rock or country music, health, sports, religion, weather, travel and educational programming.

In answer to demands from Canadian audiences for the type of programming offered by these U.S. specialty services, the Commission in 1984 allowed Canadian cable licensees to choose among a list of eligible, non-competitive available U.S. services for distribution to their subscribers. In urban areas, U.S. specialty services are distributed as discretionary services and, in order to support Canadian discretionary services, are subject to CRTC requirements for linkage and tiering with Canadian pay television and specialty services. In remote and underserved areas, cable systems are permitted distribution of some U.S. services as part of the basic service.

As it has done earlier when it licensed pay or specialty services, and when it authorized the distribution of distant Canadian signals, before even considering the importation of additional U.S. services or superstations, the Commission offered Canadian entrepreneurs the opportunity to provide new Canadian alternatives to the public.

Consistent with its mandate under the *Broadcasting Act*, in particular its responsibility to ensure that programming on the Canadian broadcasting system uses "predominantly Canadian creative and other resources", the Commission has chosen to encourage the development of specialty services owned and operated by Canadians in order to provide Canadian content to the greatest extent possible and a much desired opportunity and appropriate window for Canadian talent.

[§235-4]

f) *The Commission's Objectives*

In arriving at its decision to call for applications for licences to provide new Canadian specialty services, the Commission had as its major objective the timely improvement of the choice and quality of services available to Canadians.

At this point in the development of the Canadian broadcasting system, the Commission considered that there was a demand for new specialty services that would appeal to the many specialized interests of discerning Canadian audiences and provide a range of attractive new programming choices. There was also a great deal of public discussion of how best to go about meeting this demand.

The Commission took into consideration recent developments in the licensing of new conventional television services in both the francophone and anglophone markets and the extension of distant Canadian signals into new markets, all of which have significantly improved the availability of conventional television services across Canada. Another concern important to the Commission was that any new specialty service not have an unduly negative impact on the viability of conventional broadcasters or other general interest licensees. However, it considered that the very nature of specialty services, which are targeted to specialized audiences, would minimize any negative effects on existing broadcasters. It also noted that Canadian pay television and other discretionary services are enjoying much greater financial stability than in the past.

There has continued to be a lack of specialty services designed for francophone audiences, however, and the Commission has been particularly concerned about the need to equalize the availability of such services to the extent possible and avoid a gradual shift in francophone viewership to English-language services.

Moreover, the Commission has been aware of the continuing interest shown by Canadian entrepreneurs in developing new services for launch at the earliest possible date.

The Commission has been encouraged by the expertise, enthusiasm and careful planning shown by many of the applicants, and is convinced that all of the above circumstances combined have presented it with an excellent opportunity to explore proposals for new Canadian program choices...

[§235-5]

II. *SPECIALTY SERVICES ON BASIC: DISCUSSION OF POLICY ISSUES*

a) *Introduction*

The CRTC's first call for new Canadian specialty programming services in 1983 (Public Notice CRTC 1983-93 dated 4 May 1983) specified that these new satellite-to-cable narrow-cast services would be distributed on a discretionary, user-pay basis at the option of the subscriber and informed prospective applicants that, although some degree of foreign programming would be allowed, the Commission would expect the new programming services to:

a) contribute to the realization of the objectives set out in the *Broadcasting Act* and strengthen the Canadian broadcasting system;
b) increase the diversity of programming available to Canadians; and
c) make available high quality Canadian programming from new programming sources by providing new opportunities and revenue sources for Canadian producers currently unable to gain access to the broadcasting system...

[§235-6]

b) *Access...*

Commission Remarks

Since they provide in fact the primary vehicle for the exhibition of television programming in Canada, cable licensees have a responsibility to ensure that Canadian services are provided fair and equitable access to their cable systems. This responsibility is as significant in respect of cable television's ability to contribute to meeting the objectives of the *Broadcasting Act* as the Canadian content requirements are in respect of radio and television licensees.

As part of its decision-making process with respect to each application in which the applicants were affiliated with cable television licensees, the Commission considered whether the benefits flowing to the Canadian broadcasting system from the application, as a whole, outweighed the potential disadvantages of vertical integration. The individual licensing decisions, where applicable, and the Commission's regulatory framework include safeguards designed to address these potential disadvantages, especially in relation to the questions of fair and equitable access, pricing and positioning.

Furthermore, with respect to channel positioning, the Commission reaffirms that spectrum priority must be given to the distribution of programming services over non-programming services.

[§235-7]

c) *Distribution of Specialty Services as Part of the Basic Service*

(i) *Mandatory to Basic...*

(ii) *Optional-to-Basic...*

Commission Remarks

In its licensing approach and in the decisions which are issued today, the Commission has fully considered the views of the applicants and of the cable industry on the overall matter of access to cable systems. In devising a regulatory framework, the Commission also carefully weighed the arguments for and against allowing specialty licensees and cable operators a significant degree of flexibility with respect to the introduction of specialty services on the basic service.

In general, the Commission finds that the applicants seeking mandatory distribution of their services failed to propose adequate mechanisms by which they would, if licensed, ensure that they remained accountable to their audiences and to the Canadian broadcasting system.

The Commission was also not convinced, based on the applications as filed and presented at the hearing that the services contemplating mandatory distribution could be characterized as being "of national public interest" for the purpose of subsection 9(4) of the Regulations.

In light of the foregoing reasons, the Commission has not licensed any of the applications as mandatory services.

[§235-8]

d) *Impact...*

(i) *Impact on Subscribers...*

(ii) *Impact on Conventional Broadcasters and Independent Producers...*

(iii) *Impact On Existing Specialty and Pay Television Licensees and on the Distribution and Linkage Rules...*

Commission Remarks

In arriving at today's licensing decisions, the Commission was particularly concerned with the ability and willingness of subscribers to pay for additional programming choices. It has therefore devised a regulatory framework that is designed to ensure that the potential rate increases associated with the introduction of new services on the basic service will fall below what studies have indicated subscribers are willing to pay for new, attractive viewing choices. The Commission's decisions reflect subscriber demand for new, high-quality, narrowcast services which will add significantly to the perceived value of cable subscriptions.

While the Commission recognizes that the introduction of specialty services on the basic service could have some impact on the audience share and revenues of conventional broadcasters, it is satisfied that the overall impact would be minimal. According to the Nordicity Group Ltd. study, "even assuming the full range of proposed specialty services

derive *all* of their advertising revenue from television, the full impact of specialty is still *less* than the impact of a plus or minus 1% real growth in television advertising" (original emphasis). A specific analysis of the impact of each service proposed has been addressed in individual decisions.

With respect to the concerns of pay television licensees, it became apparent at the hearing that, even if no specialty services were permitted basic distribution, the growing movement by cable operators to market specialty services on low-price discretionary tiers, which exclude the pay services, could diminish pay television's subscriber base and thereby affect the ability of pay television services to contribute to Canadian program production. In order to minimize this possible impact on pay television, and after taking into consideration the suggestions of applicants and interveners, the Commission has decided to revise its linkage rules for discretionary services and to include an exclusive linkage provision for pay television services. These revisions are subject of Public Notice CRTC 1987-261 issued today, entitled *Distribution and Linkage Requirements*. [This Notice was later replaced in 1993, as set out below at §295.]

[§235-9]

e) *Rate Regulation...*

Commission Remarks

In today's decisions and regulatory framework, the Commission has responded to the concerns of applicants and interveners with respect to the regulation of wholesale rates for specialty services distributed on the basic service. The Commission shares the opinion that such regulation is necessary to promote the provision of fair and equitable access.

The Commission has proposed regulatory amendments which recognize subscriber concerns about rate increases while taking into consideration the expressed need for a reasonable mark-up to cover additional operating costs arising from the inclusion of new services as part of a cable operator's basic package, and for an expeditious method of implementing such a mark-up. The Commission maintains its policy, which was not questioned at the hearing, not to regulate either the wholesale or retail rates charged for discretionary services.

[§235-10]

III. *LICENSING APPROACH AND REGULATORY FRAMEWORK*

Following a thorough review of the issues discussed at the 20 July hearing and an examination of the evidence and arguments submitted by each applicant and intervener, the Commission has designed a licensing approach and regulatory framework for specialty programming services which takes into account the distinct characteristics, programming needs and marketing realities of the francophone and anglophone markets.

The Commission's licensing approach and regulatory framework reflect its desire that Canadians in both francophone and anglophone markets be given the chance to view more and better programs tailored to appeal to their different tastes and interests, and to ensure that those licensed to provide these programs are given an optimum opportunity to succeed and to contribute to fulfilling the objectives of the *Broadcasting Act*.

To succeed, specialty services will require access to cable systems on fair and equitable terms, and across to a sufficient subscriber base to attract the necessary revenues to meet and exceed programming commitments.

The Commission recognizes that the narrowcast nature of specialty programming services and the costs associated with providing attractive and high quality services in a limited market require that innovative and alternative methods of generating revenues be adopted if the services are to be available at a modest cost to subscribers and if they are to have only a negligible impact on the advertising revenues of existing broadcasters.

The Commission also recognizes that the size and characteristics of the francophone and anglophone markets differ and that a licensing approach and regulatory framework which addresses these differences is necessary if the distinct programming needs of viewers in each market are to be met. In this respect, the Commission has been particularly concerned with the need to expand viewing choices in francophone markets by licensing a carefully balanced selection of new French-language specialty services.

Canadians, especially those in anglophone markets, have access to various sources of general interest television programming. Despite this fact, there is still a demand for more and better television programming. Canadians want to be better informed. They want more programming of a higher quality for their children. They want more services that speak to them in their own language and reflect their own values, morals, interests, concerns, hopes and aspirations. They wish to see more of their country on television and more of Canada's artists, musicians, athletes and news-makers. Some Canadians want more sports, others want more news, or more music videos or more religious programs.

Conventional broadcasters have sought to keep pace with these increasingly specialized demands from their viewers, and in many cases have succeeded. But the role which conventional broadcasters play in responding to the varied needs of their local markets and the technical limitations under which they operate preclude them from responding to demands for dedicated services on a national scale.

It is clear that Canadians possess the initiative, the entrepreneurial spirit and the creative drive to develop these new services. Unless these energies are tapped now, however, the increasing accessibility of foreign specialty services will mean that the opportunity for Canadians to receive these new services from Canadian sources will be lost. In arriving at its decisions and in designing a regulatory framework, the Commission has taken into consideration the resiliency, interests and existing commitments of conventional broadcasters. In this regard, the fact that these new services will derive only a portion of their revenues from advertising will minimize their impact on the revenues of existing services. The Commission has also taken into account the concerns expressed by independent producers with respect to availability of funding for Canadian program production.

Given the strong demands of the Canadian public for more programming choices, and in light of recent technological advancements, the Commission is convinced that this is an opportune time to introduce new television viewing alternatives targeted to specific audiences, that will foster and develop Canadian creative and entrepreneurial resources and hence meet the objectives of the *Broadcasting Act*.

[§235-11]

A. *Licensing Approach*

As a result of today's decisions, Canadians who subscribe to cable will have a degree of programming choice never before available to them. The broad range of newly licensed specialty services should offer high-quality, attractive, entertaining and informative programming of a specialized nature designed to appeal to different audiences and meet the distinct needs and interests of Canadians in both francophone and anglophone markets. These new specialty services will complement and diversify existing broadcasting services and will provide new outlets for Canadian creative expression, new stages for Canadian talent and new exhibition windows and sources of funding for Canadian program production...

[§235-12]

Before the Commission was prepared to approve any of the applications presented to it as the 20 July hearing it had to be satisfied that the applicant was financially sound, that its programming proposals were fully developed and that related programming and financial commitments were firm and realistic. The Commission also had to be assured that the applicant would be fully accountable for its service, that its financial projections were reasonable, and that control of the undertaking was clear. in particular, the Commission had to be convinced that subscribers would be willing to pay for the service proposed. For the applicants who applied to have their service distributed on the basic cable service, the Commission had to be persuaded that such distribution was both desirable and justified. In this respect, the Commission was particularly concerned with the extent to which each of these applicants was committed to meeting or exceeding the Canadian content obligations of conventional Canadian television broadcasters. In approving the eleven applications referred to above, the Commission was also concerned with the potential impact each package of services would have on the Canadian broadcasting system.

The Commission is satisfied that the total potential cost to subscribers of either the French- or English-language package falls below what studies have indicated subscribers are willing to pay to have access to new and attractive services. In this regard, the Commission notes that the potential cable rate increases associated with the addition of these new services on the basic service will also generally fall below increases which were allowed over the past few years without a corresponding rise in the number of new programming services offered to subscribers.

The Commission is also satisfied that, because of the narrowcast nature of their programming, these specialty services will not have an undue adverse impact on the revenues and programming costs of conventional broadcasters and will not cause a significant degree of audience fragmentation. In fact, in the Commission's opinion, the impact of the specialty services licensed today in terms of audience fragmentation and advertising revenue diversion will amount to the equivalent of adding one new service in the anglophone market and one new service in the francophone market.

In order to ensure that the programming of each specialty service distributed on the basic service will remain narrowcast in nature, the Commission has included in every decision the applicant's description of the proposed service, and imposed a condition of licence designed to define and limit the nature of each new programming service.

[§235-13]

The Commission will issue shortly a circular letter to the new and existing specialty licensees which will provide clarification and set out procedural guidelines regarding the maintenance and filing of program logs and records for the purpose of section 10 of the *Television Broadcasting Regulations, 1987.*

[NOTE: See *Specialty Television Networks - Program Log Procedures*, CRTC Circular No. 369, January 31, 1990, for the applicable guidance.]

The Commission is also satisfied that, rather than impact adversely on existing sources of funding for independent productions, the new services in most instances will create new sources of funding and will provide new exhibition windows. In this regard, the Commission notes that the Canadian program expenditure commitments of each licensee which have been translated into conditions of licence are based on funding to be derived from internal sources and are not predicated on the availability of funding from Telefilm Canada's Broadcast Program Development Fund.

[NOTE: Comments on the interventions are omitted.]

[§235-14]

During the hearing and in the course of the Commission's deliberations, it became apparent that, despite the fact that they were complete for the purpose of being placed on the agenda and further explored at the 20 July hearing, certain of the applications contained such serious weaknesses that they could not fulfill the Commission's fundamental objectives for specialty services. These weaknesses are outlined in Decision CRTC 87-906. They existed in such important areas as programming, demand for the particular service proposed, financial and market viability, ownership structure and accountability mechanisms. In certain cases, the Commission also found a lack of evidence or firm commitments to support the applicant's conceptual proposals.

Because they contained some or a number of these weaknesses, the applications which are listed in Decision CRTC 87-906 are denied.

The Commission wishes to point out, however, that the denials of these applications are based solely on the merits of the individual applications and do not necessarily indicate that the Commission does not recognize the value or desirability of some of the concepts proposed. Indeed, the Commission is of the opinion that certain of the proposed services, notably those that would offer alternative Canadian programming that is clearly complementary in nature to existing programming services, could contribute significantly to the Canadian broadcasting system, if it were not for the particular weaknesses that led to the denial of the present applications.

Accordingly, as stated by the Commission in Public Notice CRTC 1985-139, entitled *A Broadcasting Policy Reflecting Canada's Linguistic and Cultural Diversity* [NOTE: above, at §215], the Commission considers the development of broadcasting services that reflect the cultural and linguistic diversity of Canada to be an essential part of the Canadian social structure. The Commission therefore reaffirms its support for the concept of a viable and responsive national ethnic television network service.

The Commission also renews its strong support for the continuing development and expansion of television services which are designed to meet the distinct cultural and linguistic programming needs of Canada's native peoples.

Accordingly, the Commission does not foreclose the possibility of accepting applications for complementary services in the future, provided that the present weaknesses are adequately addressed.

[§235-15]

B. *Regulatory Framework*

The Commission has devised a regulatory framework for the distribution of specialty services as part of the basic service which is designed to stimulate the development of these services so that, as viable components of the Canadian broadcasting system, they may contribute to fulfilling the objectives of the *Broadcasting Act*. In order to ensure that as many Canadians as possible have access to these services, the Commission has adopted a regulatory framework which takes into account the particular circumstances of the cable industry in francophone and anglophone markets.

[§235-16]

a) *Francophone Market*

Given the limited size of the available market for French-language specialty services, and the fact that, in Quebec, a few large cable systems serve most of the French-speaking population, the issue of access is especially significant for French-language services. Unless such specialty services are assured of access to these large systems, their viability would be jeopardized. For this reason, the Commission has designed specific rules, set out in Public Notice CRTC 1987-261 which will apply to class 1 and 2 cable licensees distributing specialty services in francophone markets, as defined in the public notice.

In a francophone market, distribution of the French-language specialty services licensed in today's decisions, including MeteoMedia/Météo Instant, will be on an *optional-to-basic* basis. This means that a cable licensee operating in a francophone market will have the option whether or not to distribute the new French-language services; however, the services which the cable licensee elects to distribute must be distributed as part of the licensee's basic service. Moreover, for a limited period of 3 years, ending 31 August 1991, each licensee of a class 1 system operating in a francophone market choosing to distribute any one of the French-language specialty services licensed today must distribute the complete package of French-language services. This *"take one, take all"* rule is designed to help the French-language services gain an initial foothold in francophone markets and develop as wide an audience following as possible. At the end of the three-year period, these cable licensees will have the option of selecting any individual French-language specialty service or any package of these services for distribution as part of their basic service.

On the basis that class 1 systems serve a significant proportion of the cable subscribers in francophone markets, and for reasons of channel capacity, the "take one, take all" rule will only apply to class 1 cable systems. If, because of channel capacity or for other compelling reasons, a class 1 cable licensee considers that it cannot comply with the "take one, take all" rule, it may apply to the Commission to be relieved of this requirement pursuant to a condition of its licence.

The distribution of newly-licensed English-language specialty services in a francophone market will also be at the option of the cable licensee. A cable licensee may distribute

these services as part of its basic service or a discretionary services. However, a cable licensee proposing to distribute a newly-licensed English-language specialty service as a discretionary service may only do so with the consent of the particular specialty licensee. The English-language services are not subject to the "take one, take all" rule.

A cable licensee serving a francophone market will continue to have the option to elect whether or not to distribute the existing English-language specialty services, TSN and MuchMusic. However, in light of today's licensing of the French-language sports and music specialty services, RDS and MusiquePlus, the cable licensee may only distribute TSN and MuchMusic as discretionary services.

[§235-17]

b) *Anglophone Market*

The Commission recognizes that the size of the available market for English-language specialty services does not give rise to the same concerns as does the size of the market for French-language specialty services in Canada, and that the English-speaking population is served by a number of different cable systems, both large and small.

Moreover, the applicants for licences to provide English-language specialty services whose applications have been approved in today's licensing decisions indicated at the hearing that, following initial discussions with cable licensees, they were confident of obtaining access to a sufficient number of systems to ensure their viability. The Commission intends to monitor closely the introduction and on-going operation of these services to ensure that fair and equitable access arrangements are provided and maintained. In the meantime, the Commission has designed specific rules, set out in Public Notice CRTC 1987-261 [NOTE: set out below at §236], which will apply to class 1 and 2 cable licensees distributing specialty services in anglophone markets.

In an anglophone market, distribution of newly-licensed English-language specialty services, including MeteoMedia/Weather Now will be on an *optional-to-basic* basis. This means that a cable licensee operating in an anglophone market will have the option whether or not to distribute the new English-language specialty services; however, the services which the cable licensee elects to distribute must be distributed as part of the licensee's basic service.

A cable licensee serving an anglophone market will continue to have the option to distribute TSN and/or MuchMusic, but may now distribute these services either as part of its basic service or as discretionary services. However, a licensee wishing to distribute either of these services as a discretionary service must obtain the prior consent of the particular specialty licensee.

The distribution of French-language specialty services in an anglophone market will also be at the option of the cable licensee. A cable licensee may distribute these services as part of its basic service or as discretionary services. However, a cable licensee proposing to distribute a French-language specialty service as a discretionary service may only do so with the consent of the particular specialty licensee.

[§235-18]

c) *Complaints re Access for Existing Discretionary Specialty Services*

During the course of the specialty hearing, the Commission was made aware of the significant problems two existing Canadian specialty licensees were continuing to experience in gaining access to cable systems. The two licensees, Telelatino and Chinavision, both appeared at the hearing the former as an applicant, the latter as an intervener. Each licensee offered evidence, which was supported by certain other participants at the hearing, of the difficulties it was having in obtaining access to cable systems in those areas with large populations for which its service was designed. Chinavision made particular reference to the difficulties it was having with CF Cable and Vidéotron Ltée in Montreal. Both specialty licensees asked the Commission to intervene on their behalf.

The Commission's concerns with respect to the matter of access for specialty services have been highlighted throughout this document. As noted earlier, the Commission previously raised its particular concern respecting the difficulties Telelatino and Chinavision have been encountering in arriving at affiliation agreements with cable systems in Public Notice CRTC 1985-174.

With this in mind, the Commission calls upon Telelatino and Chinavision each to file with the Commission, within one month, a report listing the cable licensees with which each has been experiencing difficulties negotiating access arrangements and describing the particular difficulties in each case, and to copy the report to the cable licensees named therein. Furthermore, the Commission requires each of the cable licensees named in the reports to file with the Commission, within two months of receipt of the report from Telelatino and/or Chinavision, a response outlining the steps it has taken to address the access requests of Telelatino and/or Chinavision, and the results of such steps.

The Commission reiterates that the issue of cable access for Canadian specialty services is of fundamental importance for the development of the Canadian broadcasting system, and expects cable licensees to take a leadership role in ensuring that Canadians have an opportunity to view these services. Should the Commission not be satisfied with the outcome of the access negotiations which will follow today's licensing decisions, including negotiations involving Telelatino and Chinavision, it may be force to address the matter by way of regulation.

[NOTE: In 1993, the Commission addressed further comments on the issue of access in *Structural Public Hearing*, Public Notice CRTC 1993-74, June 3, 1993, below at §294.]

[§235-19]

d) *Rate Regulation*

The Commission maintains its policy of not regulating the wholesale or retail rates for specialty and pay television services offered as discretionary services.

With respect to wholesale rates for specialty services distributed as part of the basic cable service, the Commission has been convinced that regulation is necessary to promote the provision of fair and equitable access arrangements. Each of the applicants at the hearing based its subscriber revenue projections on the expectation that it would receive the wholesale rate specified in its application. The regulation of wholesale rates will help the specialty licensees to achieve their subscriber revenues, thus providing them both

greater stability and some assurance that they will obtain the necessary revenues to meet the higher Canadian programming commitments associated with distribution on basic service. Accordingly, the Commission has in each decision authorized a specified wholesale rate either for each year of the licence term or, where applicable, according to the subscriber level achieved.

Cable licensees distributing the licensed specialty services on their basic cable service may treat the wholesale rate associated with each service as a pass-through charge pursuant to subsection 18(3) of the *Cable Television Regulations, 1986*. However, cable licensees in Quebec who, as a result of today's decisions, delete from their basic service existing special programming services that are of the same program type or theme as newly licensed specialty services, such as sports and children's services and TVFQ-99, will be expected to reduce their basic rates accordingly.

With respect to an amount to cover additional operating costs associated with the introduction of the new services on basic, the Commission intends to allow cable licensees to include a mark-up in their basic monthly fees amounting to one cent for every two Canadian specialty services distributed as part of the basic service. Furthermore, licensees in anglophone markets who distribute the complete package of 6 English-language specialty services on the basic service, and licensees in francophone markets who similarly distribute the complete package of 5 French-language services will be permitted a mark-up totalling five cents. In no case, however, may the total mark-up for all specialty services distributed on the basic service exceed five cents. This mark-up, which has been set to take into account subscribers' concerns about rate increases, should provide some incentive to cable operators to distribute the new specialty services and help cover additional costs for administration.

As noted in Public Notice CRTC 1987-262, issued today, the Commission proposes to amend section 18 of the *Cable Television Regulations, 1986* in order to introduce this new mark-up structure. Any cable licensee wishing to add a further amount to its basic monthly fee beyond that proposed in the draft amendment will be required to follow the procedure and meet the requirements of subsection 18(8) of the Regulations. Filings for rate increases to cover capital expenditures will continue to be processed under subsection 18(6) of the Regulations. [NOTE: See *Increases in the Basic Monthly Fee to Reflect the Addition of New Specialty Services*, CRTC Circular No. 347, July 22, 1988, below at §242.]

[§235-20]

e) *Positioning*

The cable dial positions used by cable licensees to distribute the new Canadian specialty services will have an effect on the potential audiences for these services and, correspondingly, on the ability of the services to achieve their revenue projections and meet their programming commitments. At present, many cable subscribers have converters that are incapable of providing access to services placed higher up on the cable channel spectrum, namely above cable dial position 30. Therefore, to ensure that as many Canadians as possible have access to the Canadian specialty services which they will be paying for as part of their basic service, the Commission, as part of its regulatory framework, expects cable licensees to group these services together and place them on

cable dial positions below channel 31. Any cable licensee who, for reasons of technical feasibility, considers that it is unable to meet this expectation will be required to notify the Commission, in writing, why an exception would be justified.

[§235-21]

f) *Revised Linkage Rules*

The Commission's linkage rules were first established in 1984 to ensure that Canadian services are successful in the discretionary marketplace and that the orderly introduction of non-Canadian specialty programming services would contribute to their success. These rules have been in effect for over two years. With the introduction of specialty services on basic, and because of changes currently taking place within the industry with respect to the marketing of discretionary services, the Commission now considers that amendments to the linkage rules are required if they are to continue to serve the purpose for which they were originally established.

Accordingly, in Public Notice CRTC 1987-261, the Commission announces a revised set of linkage rules for discretionary pay television and specialty programming services. These linkage rules will apply only to services distributed as discretionary services. Furthermore, a non-Canadian discretionary service may not be linked with any Canadian specialty service distributed as part of the basic service.

In designing the revised rules, the Commission was particularly conscious of the concerns raised by pay television licensees at the specialty services hearing. One aspect of the new rules is that four U.S. superstations and the USA Network may be linked exclusively with Canadian pay television services. Cable licensees will be permitted to carry any of these 5 non-Canadian satellite services or any eligible satellite services as soon as they have signed affiliation agreements with the newly licensed pay television service, the Family Channel or with the already existing Canadian pay television services. The Commission suggests that, pending amendments to Canadian copyright legislation, cable licensees choosing to offer any of these 5 services should negotiate with the foreign carriers of these services with a view to including in the fee to be paid to the carrier an appropriate amount of compensation for copyright liability.

Another aspect of the new linkage rules is that the total number of channels which a cable licensee may allocate for the distribution of discretionary non-Canadian satellite services has increased from five to eight.

The Commission has also revised the lists of eligible satellite services for class 1 and 2 and Part III cable licensees. These revised lists are attached as appendices to the public notice. No service on the list of "Part II Eligible Satellite Services" may be distributed on the basic service unless authorized by condition of licence. Other additional revisions to the linkage rules are described in the public notice.

[NOTE: For the current lists, see *Revised Lists of Eligible Satellite Services*, Public Notice CRTC 1994-22, March 9, 1994, below at §307.]

[§237-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Guidelines for Developing Industry-Administered Standards

[§237-2]

[Public Notice CRTC 1988-13, January 29, 1988. For the text of the industry standards, most of which have been sanctioned by the Commission, see above at §171 to §183.]

[§237-3]

As part of its overall regulatory reform process, the Commission recently undertook a fundamental review of its broadcasting regulations with a view to eliminating all but the essential regulations necessary to achieve the objectives of the *Broadcasting Act*.

As a result, industry and related groups are now encouraged to assume greater responsibility in such areas as subliminal advertising, advertising in newscasts, promotions, quizzes and lotteries. In addition, the Commission expects the parties concerned to assume greater responsibility for improvements in the broadcasting system, particularly with respect to social issues of public concern. In the current context, this could relate to such matters as violence and the content of programming directed to children.

In the Commission's view these objectives can best be achieved by means of a combination of activities, including the development of industry standards to deal with these issues...

[§237-4]

Having considered the comments received in response to Public Notices CRTC 1987-9 and CRTC 1987-205, and following its own deliberations on the matter, the Commission has established a revised set of guidelines to assist in the development of industry standards which would apply only in the following circumstances, namely where:

1. the Commission requests a particular broadcasting sector to develop an industry standard and indicates that Commission acceptance should received; or
2. a licensee or related industry group submits a standard and requests the Commission's acceptance.

[§237-5]

Accordingly, having concluded its process of consultation with respect to the Guidelines for Developing Industry Standards, the Commission hereby issues the following revised guidelines:

1. in developing the proposed standard, the industry should address the concerns which the Commission would indicate had led it to request that a standard be developed, and state the purpose or purposes of the standard. Such purpose might be to sensitize or

educate members of the industry and the public, to serve as a guide in any pre-clearance process, to improve programming content, to deal with social issues or respond to complaints;

2. the industry should define the type of standard to be developed, specify to whom the standard will apply, and establish the means and criteria for achieving the standard;
3. the industry should describe in some detail the extent of the public participation in establishing the standard and making significant amendments, how the standard will be administered, what sanctions will apply and what corrective action will be taken in the event of non-compliance, and any appeal process associated with it;
4. the Commission will wish to be satisfied that the industry standard and any amendments to it have been developed pursuant to a fair consultative process. Moreover, where the Commission has so indicated, it will wish to be satisfied that members of the public are involved in deciding whether the standard has been met;
5. the industry standard and any subsequent amendments to it should be submitted to the Commission for acceptance;
6. a report dealing with the progress of the licensees in applying the industry standard, including the disposition of any complaints, should be submitted to the Commission on an annual basis.

[§237-6]

[NOTE: For the later approval by the CRTC of particular industry standards councils, see *Canadian Broadcast Standards Council*, Public Notice CRTC 1991-90, August 30, 1991, and *Cable Television Standards Council*, Public Notice CRTC 1992-22, March 16, 1992.]

[§238-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Analysis by the Commission of Medleys and Montages

[§238-2]

[CRTC Circular No. 343, May 11, 1988]

[§238-3]

To the Attention of Licensees of all Radio Stations

When the Commission assesses the music programming of radio stations, it examines such aspects as Canadian content, the use of hits, music categories and subcategories, the vocal-to-instrumental ratio, the number of times musical selections are repeated in the course of a week (i.e. the repeat factor), the number of distinct musical selections, and, for French-language stations, the level of French-language popular vocal music.

[NOTE: Of the above, the maximum repeat factor and the number of distinct musical selections are no longer relevant for Commission requirements: see below at §287-13.]

For most of these analyses, the Commission has always relied on the number of musical selections played by the stations, regardless of their duration. This has been accepted practice because it is an easier way for both the Commission and licensees to monitor music programming for the purpose of determining compliance with the Radio Regulations and the licensees' commitments.

The Commission, however, does calculate the duration of music programming when it analyses the music categories and subcategories in order to determine compliance with the music group authorized.

The practice of counting selections is simple when a single musical selection or song is involved. However, some licensees primarily those that are authorized for a Group IV dance music service, broadcast **montages** containing expertly mixed excerpts from several musical selections which combine, for example, Canadian and foreign songs, hits and non-hits or French and English songs. Sometimes they broadcast **medleys**, which are musical selections in which artists or musicians combine excerpts from several songs, within a single performance. Some broadcasters have asked the commission's guidance for such cases.

The Commission recognizes that there is a major difference between the tightly woven montages of the style most often associated with the dance club and dance music environment and the multi-record music sweep formula used daily as a radio programming tool by many North American radio stations.

[§238-4]

Therefore, the Commission advises radio licensees that it regards a montage or medley as having all the characteristics of a single musical selection, regardless of whether there is a verbal material between the excerpts, and accordingly evaluates a medley or montage as a single selection. In determining the main content of such a selection, the Commission uses the duration of the predominant type of material.

The mere fact that a musical selection or an excerpt from a selection in a montage is less than one minute in duration does not necessarily mean that it comes under Subcategory 71 - Musical Themes, Bridges, Stingers. [NOTE: This is now subcategory 41 by virtue of Public Notice CRTC 1990-111, as amended by Public Notice CRTC 1991-19, below at §265.] To be included in this subcategory, such a selection should be used to identify particular program segments, extend programming segments to the end of their allotted time or provide brief musical or sound effects intended to punctuate the presentation of other broadcast matter.

[§239-1]

[CANADIAN RADIO-TELEVISION AND
TELECOMMUNICATIONS COMMISSION]

Computer Media Program Logs

[§239-2]

[CRTC Circular No. 344, May 13, 1988.]

[§239-3]

To Licensees of all Television Broadcasting Undertakings

In Circular No. 335 dated 5 August 1987, the Commission suggested "that broadcasters seriously consider submitting their log information digitally, via computer media". However, several television licensees have expressed concerns in this regard, both during seminars organized by the Canadian Association of Broadcasters (CAB) in January 1988 and outside of that specific forum. The comments made by licensees of television stations have been directed primarily to the inclusion of exact "time on" - "time off" entries for commercial content, promotions and public service announcements, etc. on the television program log, rather than to programming itself.

The most important concern relates to the administrative and financial burden that would be imposed on the existing resources of licensees in order to meet the Commission's regulatory requirements. In many cases, the reconciliation of information contained in a station's operational paper log to a computer-media log acceptable to the Commission requires additional human resources. As a result, many licensees have indicated a reluctance to provide computer-media logs to the Commission, preferring instead to submit paper logs, as has been the practice up to now.

Television licensees point out that, for many years, they have been allowed a latitude of "plus or minus 5 minutes" when reporting their commercial placements back to the advertising industry. To meet their obligations towards advertisers, these licensees are required to reconcile the "scheduled" time with "actual on-air" time of commercial content included in the program log solely in instances where a commercial is broadcast outside of that 5-minute range. Licensees suggest that it would be reasonable for the Commission to accept this same kind of flexibility with respect to "time on" - "time off" entries on the program logs of television stations.

[§239-4]

The Commission concurs and hereby advises it is ready to accept the reporting standards employed for the advertising industry for the purposes of the requirements set out in section 10 of the *Television Broadcasting Regulations, 1987* (the regulations). Licensees may therefore adopt those same standards for the submission of "computer-media" program logs to the Commission.

The Commission reiterates, however, that these new logging procedures do not relieve licensees of their responsibility under Section 11 of the regulations.

The Commission expects that the flexibility allowed in this Circular will ease the log reporting tasks for individual licensees and further that it will make it more practicable for licensees to provide their log information using "computer-media". The Commission notes that, at the present time, a growing number of television licensees have already started to file their logs using computerized data.

[§239-5]

[NOTE: The CRTC has also issued detailed circulars respecting logging procedures to its television licensees. See *Television Logging Procedures*, CRTC Circular No.335, August 5, 1987; *Pay Television Networks - Program Log Procedures*, CRTC Circular No.368, January 31, 1990; and *Specialty Television Networks - Program Log Procedures*, CRTC Circular No.369, January 31, 1990. Because of their length and technical nature, they are not reproduced in this handbook.]

[§240-1]

[CANADIAN RADIO-TELEVISION AND
TELECOMMUNICATIONS COMMISSION]

Educational and Institutional Radio - Adoption of the Proposed Policy

[§240-2]

[Public Notice CRTC 1988-78, May 17, 1988.]

[§240-3]

[NOTE: The portions of this document dealing with procedural and historical matters, and summarizing the submissions of the parties, are not reproduced.]

[§240-4]

3. *ADOPTION OF THE POLICY*

Public Notice CRTC 1987-255, November 26, 1987, in which the proposed policy was enunciated, indicated that the Commission would decide if a public hearing would be held based on the comments received. The Commission notes that none of those commenting requested a public hearing and that most expressed support for the proposed policy. The Commission considers that the issues raised by those who submitted comments have been adequately addressed in the present notice. It therefore announces that, effective today, it adopts the policy for Educational and Institutional Radio proposed in Public Notice CRTC 1987-255, subject to the comments set out in this notice. [NOTE: The earlier public notice is not reproduced, since its salient points are repeated below.]

[§240-5]

a) *Definitions*

There are five types of stations contained in the Commission's Special FM Class of licence -- Community, Provincial Educational, Institutional, Student and Other Special FM. The definition of Special FM, as set out in the *Radio Regulations, 1986* is as follows:

> A Special FM licence is an FM licence, other than a CBC FM licence, where the number, duration or kind of commercial messages that may be broadcast is restricted by a condition of licence.

The definitions of the five types of Special FM stations are as follows:

Community: This station is characterized by its ownership, programming and the market it is called to serve. It is owned or controlled by a non-profit organization whose structure provides for membership, management, operation and programming primarily by members of the community at large. (This definition was set out in Public Notice CRTC 1985-194 "A Review of Community Radio" and is repeated here for convenience.)

Provincial Educational: This is a station controlled by an "independent corporation", as defined in the Direction to the CRTC (*Ineligibility to Hold Broadcasting Licences*) issued

as Order-in-Council P.C. 1985-2105, and which broadcasts primarily educational programming as described in the Direction.

Student: This is a station which is owned or controlled by a non-profit organization and has a structure providing for membership, direction, management, operation and programming primarily by students of the institution of post-secondary education with which it is associated.

Institutional: This is a station, other than a provincial educational station or student station, which is owned or controlled by a non-profit organization associated with an institution of post-secondary education.

Other Special: This is a station owned or controlled by a non-profit organization that is not a Community, Provincial Educational, Student, or Institutional station.

[§240-6]

b) *Programming and Advertising*

The Commission adopts the following standards for programming and advertising on Provincial Educational, Institutional, and Other Special FM stations which are the three types of special FM stations covered by this view. (The policy for Community Radio is set out in Public Notice CRTC 1985-194 "A Review of Community Radio". Student Radio policy will be the subject of a separate review.)

[NOTE: See *Policies for Community and Campus Radio*, Public Notice CRTC 1992-38, May 29, 1992, below at §281, and *Policies for Local Programming on Commercial Radio Stations and Advertising on Campus Stations*, Public Notice CRTC 1993-38, April 19, 1993, below at §292.]

These standards are designed to reinforce the Commission's past policy to ensure that private non-profit radio provides a service that is distinct from that provided by other types of stations. The Commission has also striven to make the guidelines as flexible as possible in the recognition that very few stations are currently involved and that the special nature of each station makes it necessary for the Commission to be able to respond to individual circumstances. Although the definitions make primary reference to FM radio, the Commission will apply the same policy guidelines to Provincial Educational, Institutional, and Other Special stations which operate on AM frequencies.

[§240-7]

i) *Provincial Educational Stations*

The Commission will assess programming proposals for such stations on a case-by-case basis, as it does for television stations operated by provincial educational authorities, using as a guide the Direction to the CRTC (*Ineligibility to Hold Broadcasting Licences*), Order-in-Council P.C. 1985-2108 [NOTE: set out above at §112]. The Direction generally states that the programming on such stations, taken as a whole, should be designed to furnish educational opportunities and be distinct from that available from CBC and private stations.

While it does not favour advertising as a primary funding mechanism for Provincial Educational stations, the Commission is willing to consider proposals for limited advertising on a case-by-case basis where the revenues would be used to supplement rather than replace the money received from provincial governments and other sources.

Limitations could be in terms of the amount of advertising, the frequency of advertising interruptions, and the scheduling or nature of the advertising.

[§240-8]

ii) *Institutional Stations*

A broad policy that encourages such stations to perform roles not filled by existing broadcasters is considered appropriate. The following guidelines will be used, in addition to those rules generally applicable to all FM stations.

a) Such stations should exceed the minimum requirements for Foreground and combined Foreground/Mosaic programming which Joint FM stations must meet. [NOTE: These minimum requirements for these categories were eliminated in 1990: see below at §263-33.]
b) The Commission considers it appropriate for these stations to include in their schedules some educational programming and programming developed in association with the institutions of higher learning to which they are affiliated.
c) Such stations should provide a range of music, including music that is not generally broadcast by commercial stations operating in the market. Traditional and Special Interest music should be included.

The Commission will be willing to consider limited advertising on such stations where the funds are used to supplement funding from other sources such as allocations from the associated institution. Limitations could be in terms of the amount of advertising, the frequency of advertising interruptions, and the scheduling or nature of the advertising.

[§240-9]

iii) *Other Special FM*

The Commission sets out the following guidelines for programming on such stations:

a) The programming provided should be clearly complementary to, rather than imitative of, that provided by commercial broadcasters. Programming broadcast might include (but would not be limited to) Traditional and Special Interest music, formal and informal educational material, and presentations of live music.
b) Levels of Foreground, combined Foreground/Mosaic programming and Canadian content in music should exceed those expected of Joint FM stations. [NOTE: These minimum requirements for Foreground and Foreground/Mosaic were eliminated in 1990: see below at §263-33.] French-language stations should broadcast a higher level of French-language popular vocal music than commercial stations must meet. Conversely, levels of hit music should be below the limits that conventional stations must respect.

Limited advertising will be considered on a case-by-case basis where it is a part of a plan that includes funding from a diversity of sources such as grants, fund-raising programs, memberships, etc. Limitations could be in terms of the amount of advertising, the frequency of advertising interruptions, and the scheduling or nature of advertising.

The Commission will generally not be willing to allow new stations in the other Special FM category in markets already served by community stations or existing community stations wishing to convert to the Other Special FM category to meet lower levels of Spoken Word programming or to air higher levels of advertising than specified

in "A Review of Community Radio" unless the applicant can clearly demonstrate why such a proposal would be of benefit to the public.

[§240-10]

c) *Use of Frequencies*

The Commission strongly encourages Special FM stations to make use of non-commercial, educational FM channels. However, since these channels are not available in all locations, and because of the potential impact in many markets on the reception of television stations utilizing channel 6 and the limited number of stations involved, the Commission proposes to follow the same policy that it has for other types of Special FM licences and not restrict these stations to operate on particular FM frequencies...

[§241-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Amendments to the Definition of a Canadian Program as it Relates to Certain Types of Animated Productions and as it Relates to Expenditures on All Productions

[§241-2]

[Public Notice CRTC 1988-105, June 27, 1988.]

[§241-3]

In Public Notice CRTC 1987-106, the Commission indicated that it had been exploring the possible adaptation of its point system for Canadian program recognition (Public Notice CRTC 1984-94) [NOTE: set out above at §212] which until now has applied to all types of production, to establish a point system especially for animated productions. The Commission also asked for public comment.

Following consultation with representatives of Communications Canada, the animation production industry and others, and as a result of the comments received, the Commission in Public Notice CRTC 1988-15 proposed to amend its Definition of a Canadian Program as it relates to animated productions, and as it relates to expenditures on all productions. Again the Commission sought public comment...

[§241-4]

In reviewing its proposals with respect to animated productions and in consideration of the comments received, the Commission has modified its proposals in a number of areas.

It should be noted that the new scheme relating to animation applies only to frame-by-frame traditional animation and those computer-assisted or computer-generated

productions or those productions that mix animation and live action that in the Commission's view can best be considered under frame-by-frame traditional animation; continuous action animation (for example, where marionettes are manipulated by a puppeteer by means of strings) will be treated as live action using the definition of a Canadian program contained in Public Notice CRTC 1984-94.

In Public Notice CRTC 1988-15 the Commission also proposed changes relating to expenditures for all productions. Those proposals have been adopted unchanged for all productions other than animated ones, for which they have been modified somewhat.

The Commission's aim has been to provide the animated production industry with clear and simple criteria for Canadian content recognition. It further has sought to ensure that the work of Canadian animators will appear on screen in all Canadian animated productions. At the same time the Commission has provided Canadian producers with some flexibility to engage the services of non-Canadian facilities and personnel to compete on world markets. The new system also maintains an advantage for those animation production companies that wish to produce in Canada using Canadian talent.

The appendix to the present Public Notice together with Schedules 1 and 2 will be incorporated by reference in the *Television Broadcasting Regulations, 1987* by virtue of a new definition of "Canadian program" in section 2 of the said regulations. [NOTE: See now the definition of "Canadian program" at §137-15 above.]

[§241-5]

APPENDIX TO PUBLIC NOTICE CRTC 1988-105
RECOGNITION FOR CANADIAN PROGRAMS, 27 June 1988

[§241-6]

I. *TYPES OF ANIMATION*

ANIMATION refers to the process of creating the appearance of motion through the use of inanimate or still elements in the many forms of traditional animation, and through the use of digital synthesis in computer-assisted or computer-generated animation.

[§241-7]

1. **TRADITIONAL ANIMATION**

For these purposes, traditional animation is of two kinds: frame-by-frame or continuous.

Frame-by-frame Animation

This is the process of filming or otherwise recording a series of poses of figures, objects or shapes, or drawings each slightly displaced from the preceding poses, or of drawing them in sequence on successive frames of recording material, one or more frames at a time, so that when the film is projected or the recording played, the figures, objects, shapes or other elements give the illusion of movement.

Continuous Animation

The process involves moving figures, objects or shapes by means of mechanical or other devices to give the illusion that they are moving on their own.

The Commission will treat continuous action animation as live action and continue to use the definition of Canadian program contained in Public Notice CRTC 1984-94.

Among the many types of traditional animation are the following:

a) Cell Animation

Cell is the name given to the transparent celluloid material on which drawings are made in the film technique of cell animation. This kind of animation is usually done by exposing one or more frames of film or other recording material for each cell.

b) Puppet Animation

This type of animation can be of two kinds. In the first, two or three-dimensional figures rather than drawings or paintings are recorded frame-by-frame.

In the second, the animation is continuous, controlled by a puppeteer with the movement of the figures occurring in "real time".

c) Pixillation Animation

This is a technique of animation using live-action shots of real people in real locations to achieve the effect of having actors jump, jerk or twitch as if they were being animated. There are three ways of obtaining this effect:

i) by editing single frames from live-action shots and omitting intervening film material;

ii) by posing actors as if they were puppets and taking single-frame photographs of each pose; and

iii) by taking one frame at a time during normal action (speed-up), or slowed-down action (normal).

d) Camera-less Animation

This technique involves drawing or painting directly on film frames.

e) Other Forms of Traditional Animation

Other types of traditional animation, less commonly used, include the pin-screen, silhouette, anaform and sand (drawing and form) techniques. The Commission will treat these types generally as frame-by-frame animation according to the most appropriate form of those listed in Schedule 2.

[§241-8]

2. **COMPUTER ANIMATION**

In recent years, computer technology has begun to make its presence felt in the area of animation. At present, computers are being used in two ways: to assist in traditional animation (primarily cell animation), and to serve as a new tool for artistic creation.

a) Computer-assisted Animation

Through this technique, pre-existing animated material is revised with the assistance of computer technology.

b) Computer-generated Animation

Through this technique, animated movement is generated principally or wholly through digital image synthesis by means of computers and computer programs.

[§241-9]

II. *THE COMMISSION'S APPROACH TO THE VARIOUS FORMS OF ANIMATION, MIXES OF LIVE ACTION AND/OR VARIOUS TYPES OF TRADITIONAL ANIMATION AND TO AS YET UNDEFINED FORMS OF ANIMATION*

1. The Commission restricts its definition of traditional animation to the various forms of animation not assisted or generated by computers. Within traditional animation, two kinds of animation are included: frame-by-frame animation and continuous action animation.

The various types of continuous animation (such as live-action puppetry, or the use of live action figures or symbols) exhibit more of the characteristics of ordinary live action than of frame-by-frame animation. Hence, frame-by-frame animation will be dealt with according to the new scheme set out in Schedule 2 and discussed in Sections IV and V below; continuous action animation will be dealt with according to the existing scheme for live action with the exception that the point currently allocated to the leading or second-leading performer will be allocated to the first or second voice.

The provision of this definition will deal with all animation except continuous action animation.

2. *Computer-assisted animation* will be dealt with in the same way as traditional animation. This can, depending on the nature of the production, involve either the criteria for frame-by-frame animation or those for continuous animation (i.e., live action in which case it will be dealt with under the provisions of Public Notice CRTC 1984-94).

3. *Computer-generated animation* will be dealt with on a case-by-case basis, generally in accordance with the rules for frame-by-frame animation set out in Schedule 2.

4. Sometimes productions include mixes of animation and live action. The Commission will approach such productions on the basis of the following considerations:

A documentary on or including animation will be dealt with as a documentary under Public Notice CRTC 1984-94; a documentary exclusively in animation form will be dealt with as an animated production.

Non-documentary productions with scenes combining live action and animation in each of those scenes will generally be considered as live action for purposes of applying the point system. Productions combining different forms of traditional animation or less commonly used forms of traditional animation, will be dealt with on a case-by-case basis according to the most applicable scheme for traditional animation (e.g. cell, puppet, pixillation or camera-less).

Non-documentary productions with both scenes of live action and scenes of animation will be considered on the basis of live action and animation separately; time credits would be allocated accordingly. For instance, if in a 30-minute production the live action segments total 20 minutes and qualify as Canadian, and the animated segments total 10 minutes and do not qualify as Canadian, the 30-minute production will qualify for 20 minutes Canadian content only.

Music videos that include animation will be considered as music videos rather than as animated productions.

[§241-10]

III. *USE OF STOCK FOOTAGE*

Productions that are made up predominantly of foreign stock footage will not qualify as Canadian. They may, however, qualify for the "dubbing" credit if sound is added by a process of lip-synchronization in Canada, using Canadian resources.

[§241-11]

IV. *KEY CREATIVE FUNCTIONS*

Under the *new* scheme for frame-by-frame traditional animation (see Schedule 2), the allocation of points for the persons performing various key creative functions -- or for the locations (i.e., countries) in which these functions are performed, where applicable -- will be as indicated below:

Director (person)	1 pt
Scriptwriter *and* storyboard supervisor (persons)	1 pt
First *or* second voice (person) (or first *or* second leading performer)	1 pt
Design supervisor (person)	1 pt
Layout *and* background (location)	1 pt
Key animation (location)	1 pt
Assistant animation/In-betweening (location)	1 pt
Camera operator *and* operation (person and location)	1 pt
Music composer (person)	1 pt
Editor (person)	1 pt

Determination of first and second voice (or first or second leading performer) may take into account billing, screen time, number of lines and payment.

Where the point is assigned to a *person or persons*, the point will be awarded only if all of those sharing the duties of that position are Canadian; where the point is assigned to a *location*, it will be awarded only if all of that function is performed in Canada.

In productions that employ a script-writer but no storyboard supervisor (or vice versa), the point will be awarded if the person or persons performing that function is or are Canadian.

A minimum of 6 points is needed to qualify a production as Canadian (see Public Notice CRTC 1984-94, Section I, paragraph 11b for productions with fewer than 6 possible points).

[§241-12]

V. *MANDATORY POINTS FOR FRAME-BY-FRAME ANIMATION*

Because cell animation is the predominant form of traditional frame-by-frame animation, the Commission has been guided in its development of this system principally by its analysis of this process. The definitions of the various functions may not apply to all animation production organizations; however, for the Commission's purposes and to be fair to the industry it is necessary that the terms used be clearly defined so that confusion and misapplication can be avoided. The Commission is therefore providing in the attached schedule to this appendix definitions for the various functions involved.

The Commission will, for most types of animation, as set out in Schedule 2, consider the following persons or locations mandatory:

- Director *or* the combination of scriptwriter and storyboard supervisor (persons),
- Key animation (location), and
- First or second voice (OR first or second leading performer) (persons).

Schedule 2 to this appendix sets out the appropriate allocation of points and mandatory positions for the various types of animation.

[§241-13]

VI. *EXPENDITURES*

For all animated productions other than continuous action animated productions, the following expenditures requirement will apply:

At least 65% of total remuneration paid to individuals other than the producer and key creative persons (i.e., those persons for whom a point is assigned) or for post-production work must be paid to, or in respect of, services provided by Canadians, and *at least 65%* of processing and final preparation costs must be paid for services provided in Canada.

For all other productions, *at least 75%* of total remuneration paid to individuals other than the producer and key creative personnel or for post-production work must be paid to, or in respect of, services provided by Canadians; and *at least 75%* of processing and final preparation costs must also be paid for services provided in Canada.

[§241-14]

Interpretation relating only to animated productions other than continuous action animated productions:

For those functions where the points are awarded on the basis of the location (i.e., layout and background, key animation, and assistant animation/in betweening) remuneration paid to those persons performing the function will be included in the calculation.

[§241-15]

Interpretation relating to all productions:

In the interpretation of the clause on expenditures in all productions, the following will apply:

"Services" exclude goods. Payments for the purchase of goods, such as film or video tape stock, supplies and equipment, and non-production-related fees, such as legal and accounting fees, are excluded from the calculations. Payment for the acquisition of music, story and copyrights are to be *included* in the calculations.

[§241-16]

VII. *THE 150% CANADIAN DRAMATIC PROGRAMMING CREDIT FOR TEN-POINT ANIMATED DRAMATIC PRODUCTIONS*

Under the definition of a Canadian program (Public Notice CRTC 1984-94), a dramatic production may qualify for the 150% Canadian dramatic programming credit if, among other things, it utilizes, and qualifies on, all ten points.

Taking into account that in animated productions the number of qualifying functions may vary, depending on the type of animation, as well as on the particular production, the Commission will allow a 150% Canadian dramatic programming credit not only for animated dramatic productions other than continuous action productions that meet all ten criteria, but also for those to which not all ten functions apply, as long as the functions that do apply, all qualify as Canadian.

Accordingly, *for animated productions other than continuous action productions*, Section IX of the Recognition for Canadian Programs 1984 is amended to read as follows:

[§241-17]

DRAMATIC PROGRAMMING CREDIT

The Commission will award a 150% time credit for an animated dramatic production other than a continuous action production carried by a licensee which meets all of the following criteria:

a) that it is produced by a licensee or an independent Canadian production company after 15 July 1988;

b) that it is recognized as a Canadian program and achieves the "point" for each key creative function utilized in the production

(the principal use of stock music -- even if Canadian -- means the function applies, but the point will not qualify as Canadian.); and

c) that it is scheduled to commence

(i) between the hours of 7:00 p.m. and 10:00 p.m., or

(ii) in the case of an animated dramatic production intended for children, at an appropriate children's viewing time.

Each licensee will receive a dramatic programming credit for each showing of an animated dramatic production occurring within a two-year period from the date of first showing.

(Co-productions and co-ventures do not qualify for the dramatic programming credit as the producer functions by definition are shared between Canadians and non-Canadians)

[§241-18]

VIII. *EFFECT ON THE "RECOGNITION FOR CANADIAN PROGRAMS, 15 APRIL 1984" (Public Notice CRTC 1984-94)*

The Commission hereby amends the above-noted definition [NOTE: set out above at §212] and applies the provisions contained in this appendix.

[§241-19]

1. The following provisions of the Recognition for Canadian Programs, 15 April 1984 will no longer apply to animated productions other than continuous action animated productions.

Section I (Basic Definition of a Canadian program)

- subsections 2, 3, 4, 5

Subsection 11 (Interpretation Notes)

- paragraphs d), e), f) and h).

Section IV (Production Packages)

Animated productions are excluded from the production package (twinning) provisions as per Public Notice CRTC 1987-28.

Section IX (Dramatic programming credit).

[§241-20]

2. For all types of production

- Section I paragraph 11 h) (Expenditures) is amended for all types of production to remove the exemption for the acquisition of music, story and copyrights.

[§241-21]

IX. *INTERIM MEASURES*

This definition of a Canadian program as it relates to animated productions and to all productions, comes into force at the same time as the attached amendment to the *Television Broadcasting Regulations, 1987.* [NOTE: See SOR/88-415, in effect August 10, 1988.] Programs already certified as Canadian by Communications Canada or recognized as Canadian by the CRTC will continue to be recognized.

All productions recognized as Canadian by Communications Canada under co-production treaties between Canada and other countries, will also be considered Canadian for purposes of the Commission's Canadian content regulations.

Except for productions described in Section III involving stock footage, work in development at 15 July 1988 will be judged under either the 15 April 1984 definition or under the definition for animated productions set out here, at the request of the producer (applicant), both for purposes of Canadian program recognition and for the dramatic programming credit (150%).

[§241-22]

SCHEDULE 1

DESCRIPTIONS OF THE VARIOUS FUNCTIONS IN ANIMATED PRODUCTION

For the purpose of these proposals, the following are descriptions of the various functions involved in the process of animation. These descriptions broadly describe the tasks allocated to each function.

1. The functions below are those to which "points" are assigned. The points are awarded on the basis of the person, the location or both (see Section IV of this appendix).

DIRECTOR (PERSON)

The director has overall control of the artistic and creative aspects of the production; establishes the instructional workbook for the production from script and storyboard; times the action and supervises the creative and technical aspects of the work in the various stages of production; provides shot-by-shot and frame-by-frame, details of the camera movement and shot punctuation (done by preparing the timing of each individual scene at the storyboard stage); prepares the bar-sheets, or exposure sheet instructions for the animator.

The above may also be done in collaboration with or by the key animator or animation director.

SCRIPTWRITER (PERSON)

The scriptwriter provides the written treatment; outlines the continuity of the story, dialogue or action and the parts the various characters will play in it; elaborates upon the script during the process of visual development at the storyboard stage.

STORYBOARD SUPERVISOR (PERSON)

The storyboard supervisor, co-operating with the writer, or instead of the writer (depending on the type of production and studio organization) creates visual development running parallel to the written text in pictures; determines the flow of action from one

scene to another; creates a series of drawings with the associated continuity showing the major action and scene changes.

FIRST OR SECOND VOICE (PERSON)

Leading or second-leading actor reading a character voice.

DESIGN SUPERVISOR (PERSON)

The design supervisor is responsible for the style, the visual character, the colour theme and colour continuity; develops the tones of the backgrounds, figures and textures; can sometimes create the actual characters jointly with the director; prepares visual proportion charts of the characters to safeguard uniformity during the production. (This position is also referred to sometimes as the art director or the character designer).

LAYOUT (LOCATION)

The layout artist, working from the storyboard, outlines the graphic organization in the form of line drawings of background environment and staging of action for the animators' and background artists' reference. The layout artist also draws up camera field references. In feature work the layout artist will also provide a detailed tonal rendering for the background department. (A related position is that of the POSER. However, the poser is an animator whose work is preliminary and ephemeral and is not part of the final print.)

BACKGROUND (LOCATION)

Provides finished backgrounds for individual scenes of a film.

KEY ANIMATION (LOCATION)

The animator is primarily responsible for the creative vitality of the production, draws the key phases of movement that determine the life and expression of the characters; creates the movement of figures or objects; roughs out the timing path or sequence of the animation; and provides on dope sheets technical information to the camera operator about the order in which individual animation phases should be photographed. The animator depicts extremes of movement to provide key drawings and sets the style and character of the sequence. The key animator's work is part of the final print. (This position is sometimes also referred to as the animator.)

ASSISTANT ANIMATION/IN-BETWEENING (LOCATION)

The assistant animator(s) and inbetweener(s) complete the breakdown drawings and in-between work, once the key characters or figures have been determined by the animator and the animation has been done. Breakdown drawings are the main drawings between the key animation drawings that help to define the path of action. In-between drawings are done after the main path of action breakdown drawings are completed.

CAMERA OPERATOR AND OPERATION (PERSON AND LOCATION)

The camera operator operates the camera for the purpose of recording the sequences of cells and backgrounds according to instructions from the director.

MUSIC COMPOSER (PERSON)

The music composer writes the music or lyrics, or both, specifically for the production. (The point is awarded only if the music and lyrics, if any, used in the production were principally or entirely composed for the production. The principal use of already existing music, even though Canadian or rearranged by a Canadian, utilizes the point, but does not qualify it as Canadian. The position of music director is not accepted as a music composer.)

EDITOR (PERSON)

The editor assembles individual shots and sequences in continuity and fits them to the various soundtracks; provides the sound effects track; analyses the characteristics of the music or dialogue track; provides information to animators in terms of timed film frames; supervises the dubbing, the separate sound tracks; and liaises with laboratories to obtain prints.

[§241-23]

2. While the following functions play a significant role in animation, no points are attached to them:

TRACER/PHOTOCOPIER

This function involves copying the animated line drawings onto acetate sheets, or doing the equivalent via electronic means.

OPAQUER

This function involves the application of paint to the inked-in outlines of acetate drawings or cells, or doing the equivalent via electronic means.

ANIMATION DIRECTOR

For large feature productions the function of animation director is sometimes created to supervise the animation of an entire sequence. For television specials and series, the animation director will sometimes be responsible for supervising the whole production (see director).

[§241-24]

SCHEDULE 2

KEY CREATIVE AND MANDATORY FUNCTIONS FOR VARIOUS FORMS OF FRAME-BY-FRAME TRADITIONAL ANIMATION

FUNCTION	CELL	PUPPET	PIXILLATION	CAMERA-LESS
Director (person)	*M) OR)	*M) OR)	*M) OR)	*M) OR)
Scriptwriter and storyboard supervisor (persons)	*M)	*M)	*M)	*M)
First or second voice (person)	*M	*M	*M	*M
Design supervisor (person)	*	*	*	*
Layout and background (location)	*	*	*	-
Key animation (location)	*M	*M	-	*M
Assistant animation/in-betweening (location)	*	*	-	-
Camera operator and operation (person and location)	*	*	*M	-
Music composer (person)	*	*	*	*
Editor (person)	*	*	*	*
Leading or second leading performer#			*	

NOTE:

*indicates function to which one point is allocated

M indicates function that is mandatory

if different from First or Second Voice

[§242-1]

[CANADIAN RADIO-TELEVISION AND
TELECOMMUNICATIONS COMMISSION]

Increases to the Basic Monthly Fee to Reflect the Addition of New Specialty Services

[§242-2]

[CRTC Circular No. 347, July 22, 1988]

[§242-3]

Cable licensees are now notifying their subscribers about the introduction this fall of new specialty services as part of the basic service.

Public Notice CRTC 1987-261 entitled *Distribution and Linkage Requirements*, dated 30 November 1987 [NOTE: set out above at §236], sets out for francophone and non-francophone markets those specialty services which must be distributed as part of the basic service if they are to be distributed, and those which may be distributed as discretionary services where the originator of the specialty service has consented in writing to such distribution. On 13 April 1988 the Commission amended section 18 of the *Cable Television Regulations, 1986* (the regulations) to permit a cable licensee whose basic monthly fee is regulated by the Commission to include a mark-up in its fee when specialty services are distributed as part of the basic service. The allowable mark-up amounts are set out in sections 18(2.2) and (2.3) of the regulations. [NOTE: See above at §133-101 and §133-102.]

[§242-4]

The Commission has received a number of requests for clarification with respect to section 18(2.4) of the regulations which provides that a licensee may increase its base portion by $0.05 per subscriber per month in addition to the mark-up amount specified per subscriber per service in section 18(2.2) and (2.3). Specifically, licensees have sought clarification as to whether they qualify for the $0.05 increase pursuant to section 18(2.4) where they distribute all services that the Commission has authorized for distribution as part of the basic service in the specific market of the undertaking and which are available, other than those services (TSN or MuchMusic) which have consented in writing to distribution as a discretionary service. Further, the Commission has been asked about what amounts to "consent in writing".

With regard to the first point, the Commission is of the view that where the specialty service licensee has given written consent that its service may be distributed as a discretionary service, this specialty service need not be distributed as part of the basic service in order for the cable licensee to increase its basic monthly fee by the additional $0.05.

Further, the Commission will consider that written consent has been given where the specialty service licensee specifically agrees, subsequent to the Commission's decisions

on specialty services dated 30 November 1987, that the service may be distributed by the particular cable licensee as a discretionary service. The Commission will not consider affiliation agreement assigned prior to 30 November 1987 to constitute this written consent.

Cable licensees intending to distribute MuchMusic and/or TSN as discretionary services and to claim the $0.05 increase, should file with their notice to the Commission a copy of the written consent obtained from the specialty service licensee.

[§243-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Sponsorship Messages on the Community Channel

[§243-2]

[CRTC Circular No. 348, July 27, 1988.]

[§243-3]

For the Attention of all Licensees of Broadcasting Receiving Undertakings

BACKGROUND

The Commission has received letters from the Canadian Cable Television Association (CCTA) and from a cable television company in the province of Quebec requesting clarification of the provisions in the *Cable Television Regulations, 1986* (the regulations) respecting the conditions under which credit, sponsorship and contra messages may be distributed by cable television systems on their community channels.

Both the CCTA and the cable licensee referred to above have supplied tapes of examples of commercial messages that have been shown on various cable undertakings, and both have asked for the Commission's views on whether messages shown on these tapes are in compliance with the regulations.

In addition to these requests for clarification, the Commission has received a number of complaints about messages shown on the community channel, and it is concerned that a pattern of misunderstanding or disregard of the regulations on the part of some cable licensees may develop in the absence of a clarification regarding the existing applicable regulations. Consequently, to assist licensees to comply with the regulations, the Commission is issuing the following guidelines.

[§243-4]

Subsection 13(1) of the regulations [NOTE: above at §133-84] concerning messages on the community channels reads as follows:

> **13.** (1) Except as provided in subsections (2) and (3) or pursuant to a condition of its licence, a licensee shall not distribute on its community channel any service other than...

[*Credit*]

(*e*) a commercial message that mentions or displays the name of the person who sponsored a community event or goods, services or activities sold or promoted by that person, where the mention or display of the name, goods, services or activities is in the course of and incidental to the production of community programming dealing with the event;

[*Sponsorship*]

(*f*) an oral or written acknowledgement contained in community programming that mentions no more than the name of a person, the goods, services or activities that are being sold or promoted by that person and the address or telephone number of that person, where the person provided direct financial assistance for the community programming in which the acknowledgment is contained;

[*Contra*]

(*g*) an oral or a written acknowledgment contained in community programming that mentions no more than the name of a person and goods or services provided by that person, where the person provided the goods or services free of charge to the licensee for use in connection with the production of the community programming in which the acknowledgement is contained;

[§243-5]

COMMISSION GUIDELINES

Having viewed the tapes supplied by the CCTA and the cable licensee, the Commission issues the guidelines listed below for the assistance of cable television licensees.

[§243-6]

Situations Generally Not Permitted

1. In the case of a "credit" message, a moving visual presentation or a still display of goods offered for sale cannot be included because such a presentation mentions or displays the name, goods, services or activities of the sponsor of the event in a manner that is other than within "the course of and incidental to the production of the community programming" itself (for example, the name of a sponsor of a hockey tournament on the boards of a skating rink; the name of a sponsor on a float during a parade). As such, any such presentation filmed off-location would not be permitted.
2. Messages that purport to be contra messages cannot include mention of the address and telephone number of the sponsor.
3. In the case of "sponsorship" and "contra" messages, a moving visual presentation cannot be included because it consists of more than "an oral or written acknowledgement". Similarly, the still visual or pictorial display of goods sold by a sponsor cannot be included because a pictorial display of goods does is clearly in excess of "an oral or written acknowledgement".
4. Company slogans (or jingles) are not permitted in credit, sponsorship or contra messages, as they usually relate to reasons for buying the product, rather than to the types of goods, services or activities offered by the sponsor of the program. However, if a slogan can be shown to have been trademarked, it would be part of the name of the sponsor, and consequently acceptable under the regulations.

5. Words equivalent to "financial assistance for this program was provided by . . ." (under the sponsorship provision) or "goods or services were provided by . . ." (under the contra provision) are permitted in messages. Words that promote goods or services are not acceptable. Words that promote a favourable image for the company will be examined on a case-by-case basis, in order to determine if the words depart from what is permitted in the regulations.

[§243-7]

Situations Generally Permitted

5. Company logos are allows in credit, sponsorship and contra messages as they consist of the name of the sponsor. Where the logo is different from the company name, or consists of a symbol that has been intimately identified with the name of the company, the logo would still be acceptable under the regulations.

7. Although moving or still graphic enhancements are not specifically contemplated by these regulations, where they are integral parts of the name or the means of identifying a sponsor, they will not disqualify credit, sponsorship and contra messages.

8. The superimposition of the moving or still image of the sponsor's name upon a moving visual presentation that is part of the community program will generally be acceptable under the credit, sponsorship and contra provisions of the regulations. For example, the showing of a company name as a part of the opening or closing credits that is superimposed upon a camera shot of the set for the community program will not disqualify a message.

9. The still depiction of the sponsor's building, upon which the name of the sponsor has been superimposed, will not disqualify a message from meeting the terms of all three provisions in the regulations dealing with advertising on the community channel. The Commission would have to examine the particular situation, however, if the still depiction of the background scene includes the display of material that actively promotes the goods and services offered by a sponsor.

[§243-8]

CONCLUSION

The Commission intends shortly to embark upon a review of its community channel policies, and this review may result in proposals to amend the applicable provisions of the regulations. Representations from members of the public and from cable licensees may be sought on the issue of sponsorship and contra messages on the community channel in the course of this policy review. [NOTE: See *Community Channel Policy*, Public Notice CRTC 1991-59, June 5, 1991, below at §269.]

In the meantime, the Commission expects all cable licensees to adhere to the existing regulations in light of the guidelines herein set out.

[§244-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Policy Concerning Local Television Advertising

[§244-2]

[Public Notice CRTC 1988-131, August 5, 1988]

[§244-3]

In Public Notice CRTC 1988-59 dated 13 April 1988, entitled "Comments on the Commission's Policy Concerning Local Advertising", the Commission requested comments from members of the public with respect to a proposal from the Canadian Broadcasting Corporation. The Corporation asked to be exempted from the Commission's policy prohibiting access to a local television advertising market except where a local programming service is provided to that market by the broadcaster.

The Commission's current policy was clearly expressed in Decision CRTC 75-522 concerning the licensing of a new television service to provide the programs of Sherbrooke's CHLT-TV in Trois-Rivières and has subsequently been reaffirmed in a number of decisions including Decisions CRTC 77-83, 82-866, 86-216, 87-332, 88-436 and 88-437. In addition, the Commission's policy with respect to distant Canadian television signals (Public Notice CRTC 1985-61) discourages stations whose signals enter a distant market from accepting local advertising from such a market.

[NOTE: The summary of submissions by the parties is not reproduced.]

[§244-4]

The Commission's Response

The Commission has carefully reviewed both the comments submitted in response to Public Notice CRTC 1988-59 and the CBC's reply to these comments, and acknowledges the contribution of all.

The Commission remains convinced that the existing policy linking the ability to solicit local advertising with the provision of local programming is of significant benefit to the Canadian broadcasting system as a whole. The policy encourages all broadcasters to provide a local program service and protects those broadcasters who provide such a service from some of the competition resulting from the importation of distant signals. Further, the Commission is of the view that its policy should apply to both the public and private sectors of the broadcasting system.

At the same time, the Commission recognizes that the CBC is mandated by Parliament to provide certain services which may be, in and of themselves, uneconomic. Such activities are an important aspect of the Corporation's role and Parliament must ensure they are adequately funded. However, private broadcasters also engage, on occasion, in uneconomic activities that are subsidized by the more profitable aspects of their operations. The Commission allows for the cross-subsidization of activities, where appropriate, in order that all Canadians may be provided with a full range of Canadian

television services. Considering the information and analysis presented by the Corporation regarding cross-subsidization, the Commission does not consider it necessary or appropriate to treat the CBC differently in this respect.

The Commission therefore reaffirms its policy prohibiting access to a local television advertising market unless the broadcaster provides a local program service to that market. As is the case with any such policy, a licensee may request an exemption on a case-by-case basis.

[§245-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Infomercials

[§245-2]

[CRTC Circular No. 350, August 8, 1988. In 1994, the CRTC issued a proposal to exempt so-called "infomercials" from the limits on commercial messages applicable to television stations. For the text of this proposal, see Public Notice CRTC 1994-37, March 29, 1994, below at §308.]

[§245-3]

To Licensees of All Television Broadcasting Undertakings.

It has come to the Commission's attention that there is programming broadcast by television licensees which appears to be in violation of the limitations on advertising set out in the *Television Broadcasting Regulations, 1987*. These regulations generally restrict advertising content to 12 minutes in each clock hour of the broadcast day. Section 2 of the regulations defines a "commercial message" as follows:

> "commercial message" means an advertisement intended to sell or promote goods, services, natural resources or activities and includes an advertisement that mentions or displays in a list of prizes the name of the person selling or promoting these goods, services, natural resources or activities.

As commonly understood, an "infomercial" is the combining of entertainment and information together with the selling and promoting of goods or services into a virtually indistinguishable whole. An "infomercial" may also involve the promotion of products mentioned in distinct commercial breaks in the programming. An "infomercial" therefore resembles a program but, in reality, constitutes a long commercial message for a given product or service In some cases, programming is provided to television stations complete with advertising breaks. While "infomercials" may address any topic, the programming noted by the Commission is frequently related to the subjects of real estate, financial advice, travel, and health.

There are two types of apparent infringement of the regulations which have come to the attention of the Commission with respect to "infomercials". In the first, the number of minutes of direct selling or promoting exceeds the 12 minutes per hour permitted by the regulations. One example is real estate programming in which the description of the

properties for sale clearly exceeds the advertising limits permitted by the regulations. Another example is real estate programming in which, during the "program" itself -- typically a discussion about a related topic such as the availability of mortgages -- there are elements which directly serve to sell or promote goods or services.

In the second type of infringement, the commercial breaks are clearly within the required limit of 12 minutes per hour and the balance of the programming contains no explicit messages concerning the sale or promotion of goods or services, but the subject matter, by the manner of its presentation and its relationship to the goods or service advertised during the commercial breaks, constitutes a form of advertising. An example of this type of infringement is programming presenting a particular approach to achieving personal wealth, presented in the format of an information program and containing commercial breaks that indicate where the viewer can obtain further information. In such programming, the impact of the commercial breaks is significantly enhanced by the "program". The Commission would therefore consider such programming, either in whole or in large part, a "commercial message" as defined in the regulations.

At the same time, the Commission is aware of certain restrictions in small markets where creative and other resources are limited. For example, programming relating to travel and involving representatives of a travel agency is quite acceptable as long as it does not promote the interests of a particular commercial enterprise or focus on the products or services described in the commercial breaks.

The Commission is particularly concerned by syndicated programming in which the commercial breaks are related, directly or indirectly, to the body of the program.

[§245-4]

Defining a Commercial Message

The Commission intends to continue to rely on its television licensees to classify "commercial messages" as defined in Section 2 of the *Television Broadcasting Regulations, 1987*. In order to provide further guidance to licensees and avoid complaints, the Commission has identified two criteria for use in determining the commercial content of a television program.

[§245-5]

1. An intention to sell or promote

As set out in the definition of the regulations, an intention to sell or promote is an integral part of a "commercial message". In programming where there is an explicit advertising message, for example, a company logo or an image of a product for sale, this intention is self-evident. An intention to sell or promote, however, is also present in programming with no explicit messages but with indirect or implicit advertising outside of the recognizable commercial breaks.

[§245-6]

2. *The Mix of Functions (selling or promoting, informing, entertaining)*

The mix among the information, entertainment, and sales or promotion element of programming can be a factor in deciding whether, in whole or in part, that programming should be considered a commercial message. Only if the mix of functions is heavily

weighted towards information and entertainment, with very incidental sales or promotion, would the programming not be considered, in whole or in large part, a commercial message.

[§245-7]

CRTC Procedures

In analysing apparent "infomercials", the Commission will generally adhere to the following approach:

1. Identification of any commercial breaks in programming of this nature, and their total duration.
2. Analysis of the programming to determine if there is an intention to sell or promote a product or service, whether there exists a direct relation between the program nature and the commercial message or not...

[NOTE: References to impending 1988 licence renewal applications have been omitted.]

[§246-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

A Policy with Respect to Election Campaign Broadcasting

[§246-2]

[Public Notice CRTC 1988-142, September 2, 1988]

[§246-3]

I. *BACKGROUND*

[NOTE: Portions of this notice relating to procedural matters are omitted.]

...In its approach, the Commission considers that it is desirable to vest in its individual licensees the widest possible responsibility for determining and achieving fair treatment of issues, candidates and parties during elections in their respective service areas. The purpose of this policy paper is to provide guidance to licensees in respect of this duty.

At this stage the Commission intends to apply this policy only to conventional, over-the-air AM and FM radio and television stations and network licensees, and to cable licensees who operate a cable community channel or a special programming channel.

[§246-4]

II. *THE REGULATORY AND HISTORICAL FRAMEWORK*

[NOTE: Extracts from the *Broadcasting Act*, the Regulations, and the *Canada Elections Act* have been omitted.]

[§246-5]

5. *Other material*

In addition to the framework provided by the two relevant Acts and the regulations with respect to political broadcasting, there are various policy statements that the Commission has issued from time to time on the more general subject of balance in controversial programming.

These documents set out the following principles:

(a) CRTC regulation, as a general rule, should not constrain or inhibit the ways and means of presenting controversial issues.

(b) Broadcasters have a responsibility to become involved in controversial issues of public concern.

(c) Broadcasters should devote a reasonable amount of air time to the coverage of controversial public issues and should provide an opportunity for the presentation of differing points of view.

(d) The public, through the presentation by broadcasters of the various points of view in a fair and objective way, should be placed in a position to make its own informed judgement on controversial issues.

(e) It is for the broadcaster in the first instance to determine what a reasonable balanced opportunity for the expression of differing views, subject to review by the Commission.

More recently, the Commission, in circular letter No. 334 dated 4 June 1987, and titled "Political Broadcasting -- Complaints re: free time and editorial time allocations", dealt with complaints about broadcasting stations and their allocation of time. [NOTE: For the text of this Circular, see above at §231.] It stated that:

Once a licensee chooses to give free time, it must allocate some time to all political parties which are duly registered under the applicable legislation....

The Commission in this present notice continues to endorse these principles.

[§246-6]

III. *THE ADOPTED POLICY*

A) *The Underlying Rationale*

Throughout the history of broadcasting in Canada, licensees, as part of their service to the public, have been required to cover elections. Moreover, where licensees have allocated paid or free campaign time, they have been required to do so in a manner that is equitable to all political parties and rival candidates.

The purpose of these requirements is to ensure the public's right to be informed of the issues involved so that it has sufficient knowledge to make an informed choice from among the various parties and candidates. This right is a quintessential one for the effective functioning of a democracy, particularly at election time. The broadcaster's obligation as a trustee of the public airwaves is seldom greater than it is in respect to this exercise of the most fundamental democratic freedom.

As the Commission noted in Circular No. 334:

It is the broadcaster's duty to ensure that the public has adequate knowledge of the issues surrounding an election and the position of the parties and candidates. The broadcaster does not enjoy the position of a benevolent censor who is able to give the

public only what it "should" know. Nor is it the broadcaster's role to decide in advance which candidates are "worthy" of broadcast time.

From this right on the part of the public to have adequate knowledge to fulfill its obligations as an informed electorate, flows the obligation on the part of the broadcaster to provide equitable -- fair and just -- treatment of issues, candidates and parties. It should be noted that "equitable" does not necessarily mean "equal". But, generally, all candidates and parties are entitled to some coverage that will give them the opportunity to expose their ideas to the public.

The question of equitable treatment applies to parties and to candidates; to programs, advertisements and announcements; to federal, provincial and municipal elections, as well as to referenda. Equity also applies to the duration of broadcasts, to scheduling, to potential audience, to the choice of which electoral districts and offices to cover, to language of broadcast, to issue coverage and approach, to conditions under which an appearance may be made, and -- in the case of paid-time programming -- to price. It is to these aspects of equity that the following section addresses itself.

The Commission acknowledges that each licensee's situation is unique. The Commission has no firm rules to cover all aspects of election campaign broadcasting; to some extent it will have to deal with situations on a case-by-case basis.

[§246-7]

B) *The Specific Applications*

In its Public Notice of 23 September 1987, the Commission proceeded by way of a number of questions. One means of clarifying its adopted approach to Election Campaign Broadcasting is to review each of these questions.

[§246-8]

In the *first* question, the Commission asked whether it should require, by regulation, that licensees allocate a previously determined specified minimum amount of time to all parties and candidates; and, if so, if there should be separate minima for free and paid time or other types of programming? Or, it asked, should the present practice continue whereby licensees apply their own interpretation of "equitable". The question also asked, if an allocation of time is requested, how should such allocation be determined.

The Commission has concluded that, in light of the differences between the various types of elections and the differences in the communities served by Canadian broadcasters, it should not establish specific minimum time allocations either by regulation or policy. Rather, it will continue to require each licensee to make its own equitable allocation of time devoted to election campaign broadcasting, except in the case of federal elections where specific requirements for the allocation of time to registered parties are contained in the *Canada Elections Act*.

Licensees should develop a suitable rationale for their allocations of political time based on their knowledge of their communities. Circumstances, of course, vary from licensee to licensee and election to election, depending on the number of ridings served by the station, the number of candidates and parties, their records in previous elections, and other factors. It is up to the individual licensees to choose the ridings and offices they

intend to cover. However all parties and all candidates should be allocated a reasonable, although not necessarily equal, amount of time to expose their ideas to the public.

The *Canada Elections Act* sets out the factors to be applied in allocating paid and free time to registered parties in federal elections. These are: the percentage of seats held by each of the parties at the previous general election, the percentage of the popular vote received at the previous general election and the number of candidates endorsed by each of the registered parties at the previous general election expressed as a percentage of all candidates endorsed by all the registered parties.

These factors are mentioned here as possible criteria for establishing equitable time. There may be other factors that might also be taken into consideration in the allocation of time so as to ensure that all concerned receive equitable treatment.

Licensees might establish different criteria for federal, provincial and municipal elections given the differences in the characteristics of those elections. However, the objective of equity must apply in all cases.

[§246-9]

In the *second* question, the Commission asked whether any requirement concerning equitable treatment should apply to free-time and to paid-time programs; to profiles and debates specifically, or news and public affairs programs generally, or to any combination of the above; or whether there should only be a "trigger" requirement for some of these categories: that is to say, if one or some candidates or parties are represented in any of the above program categories, should all parties and candidates be given the same opportunity?

Political campaign broadcasts generally fall into four categories:

i) *Paid time* - time bought and paid for by or on behalf of parties or candidates or advocacy groups, and largely under the editorial control of the advertiser.

ii) *Free time* - time given free of charge by the licensee to the party or candidate, and largely under the editorial control of the party or candidate.

iii) *News* - Coverage of the campaign by the licensee's news department, and under the editorial control of the licensee.

iv) *Public Affairs* - In-depth examinations of candidates and issues, profiles of candidates, debates, and under the editorial control of the licensee.

There may be some "blurring" of the latter two categories given that, for example, they may be part of a station's "news package" and may involve the same station personnel.

If one party or candidate receives free time, all rival parties and candidates must be offered equitable free time.

Similarly, if paid advertising time is sold to any party or candidate, advertising time must be made available on an equitable basis to rival parties and candidates.

In the case of conflicts between requirements for equity with respect to paid advertising time and sold-out commercial schedules, it is the Commission's view that such conflicts should be resolved in favour of the electoral process and in accordance with the principle of equity.

[§246-10]

Equity In News Coverage

The Commission agrees with the arguments put forward that news coverage should generally be left to the editorial judgement of the broadcast licensee.

However, Section 3 of the *Broadcasting Act* requires that the Canadian broadcasting system provide "... reasonable, balanced opportunity for the expression of differing views on matters of public concern, and the programming provided by each broadcaster should be of high standard ...". Licensees have an obligation under this section to ensure that their audiences are informed of the main issues and of the positions of all candidates and registered parties on those issues. [NOTE: Under the 1991 *Broadcasting Act*, these concepts are reiterated in part in paragraphs 3(1)(*g*) and (*i*): see above at §104-29 and §104-31.]

[§246-11]

Equity In Public Affairs Programming

Section 3 of the *Broadcasting Act* must also be applied when presenting public affair programs, such as party or candidate profiles, features on certain issues or pane discussions.

In the case of so-called "debates", it may be impractical to include all rival parties o candidates in one program. However, if this type of broadcast takes place, all parties an candidates should be accommodated, even if doing so requires that more than on program be broadcast.

The second question also asked whether equitable time requirements should apply t each program broadcast, to each series of programs, to each type of programming (i.e. free time, paid time, etc.) or to the overall election campaign programming of the statio The Commission's policy until now has been to consider all of the programmin broadcast by a station when determining if its election coverage programming has m the equitable treatment requirement. Thus, for example, a public affairs program migl be balanced by a free-time program. Some have argued that this is unfair becaus viewers may tune only to a specific public affairs program and not to the remainder the station's schedule. Similarly, a licensee could favour one party or candidate b making free time available to one, and only public affairs time to other(s).

The Commission has concluded that equity requirements will apply within each of th categories of paid-time, free time, and (to the extent that they cover debates and profile news and public affairs programs.

Licensees who program in more than one language should take into consideration th a political broadcast in one language cannot be construed as balancing a politic broadcast in another language.

[§246-12]

In the *third* question, the Commission asked whether equitable treatment in electi coverage should be based on the overall time period from the start of the electo campaign to election day, or whether it should be assessed on the basis of the number parties or candidates running at any given time during the campaign period.

The equitable time requirement is triggered at the later of (a) the date a candidate is nominated or (b) the date on which an election is called (for municipal elections the Commission deems the election campaign period to commence two months prior to the known election date).

Not all candidates are nominated at the same time; some, for strategic or other reasons, may not be nominated until well into a campaign. In the Commission's view, there is no obligation on the part of licensees to compensate late entrants for time previously afforded other candidates following the election's call. (This was also the unanimous position of those who submitted comments.) Late-entry candidates should receive equitable coverage from the time they enter the campaign.

[§246-13]

In the *fourth* question, the Commission asked whether federal, provincial and municipal elections should be treated differently, and if so, how.

In considering the application of the broadcasting regulations dealing with political advertising during election campaigns to the three levels of government, it should be noted that there are different circumstances applicable to each level. For instance, political party advertising in federal elections is regulated by the *Canada Elections Act*; for most municipal elections, there are often no political parties involved. Because of these differences in the nature of the elections at the different levels, it is necessary to treat them in a different manner. However, the same basic requirement, to treat all parties and candidates equitably, applies.

[§246-14]

In the *fifth* question, the Commission asked if there should be limits to the number of electoral districts for which any broadcaster is expected to provide coverage, and what those limits should be: for example, in terms of electoral ridings, municipalities, or the station's coverage contours.

For some licensees the provision of equitable coverage to all the candidates running for office in all of the electoral districts reached by the station could amount to an unwieldy proposition. In the Commission's view the decision should be made by the licensee, in consideration of three principal factors: the station's service area (i.e., the area it is licensed or committed to serve), its signal coverage area, and the practical aspect based on the number of electoral districts and candidates.

The fifth question also asked whether, in the case of municipal elections, the offices to which the requirements apply would be limited to those of the members of the council of a municipal corporation.

Municipal elections can involve a large number of offices and candidates, making it difficult for some stations covering many electoral districts to deal with all of the candidates for the many offices involved.

The Commission considers that licensees are in the best position to judge how they would respond to the needs of the public in the communities they have been licensed to serve.

[§246-15]

In the *sixth* question, the Commission asked whether on-air personalities (even those appearing solely as commercial announcers, whether on radio or television) who are also candidates should be allowed to continue broadcasting, on condition that they not refer to the campaign on air during their work period and that opposing candidates agree.

In the past, the Commission has stated that an on-air personality who was a candidate for elected office was considered to be receiving an inequitable advantage unless the broadcast licensee agreed to provide similar opportunity to the candidate's opponents. If similar opportunity was not thus provided, the candidate who was an on-air personality was required to discontinue broadcasting activities until after the election. In most instances, the person in question was removed from an on-air position.

The Commission remains persuaded that on-air personalities, whether they are employed on radio or television or community programming channels of cable systems even if their exposure is solely in the role of commercial announcer, have an unfair advantage over their opponents.

Accordingly, henceforth the licensee has the responsibility to ensure that such candidates are removed from their on-air duties during the election campaign period as defined in the regulations (the *Radio Regulations, 1986*, the *Television Broadcasting Regulations, 1987* and the *Cable Television Regulations, 1986*) or from the date the candidacies are announced, whichever is later. Offering similar on-air opportunity to an on-air candidate's opponents will no longer be an option.

[§246-16]

In its *seventh* question, the Commission asked how it should treat rebroadcasting undertakings: that is to say, those which rebroadcast all or substantially all of the programming of a "mother" station.

In this regard the Commission considers that where a station rebroadcasts programming from a mother station, election campaign information needs of the public in the extended coverage area should be accommodated in the programming of the mother station to the extent possible.

Some stations that rebroadcast a substantial portion of the programming of a "mother" station, nonetheless broadcast some hours of programming originated in the community the station has been licensed to serve. In these situations, the rebroadcasting undertaking would be expected to take the required initiatives to deliver election campaign information specifically relevant to its public.

The Commission considers that the rules that apply to conventional stations should also apply to local programming originated by rebroadcasting stations.

[§246-17]

IV. *BLACK-OUT*

[NOTE: This portion has been omitted, in light of the fact that section 19 of the *Broadcasting Act*, R.S. 1985, c.B-9, was not carried forward into the 1991 *Broadcasting Act*.]

[§247-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Balance in Programming on Community Access Media

[§247-2]

[Public Notice CRTC 1988-161, September 29, 1988.]

[§247-3]

The Commission's Overall Policy on Balance

The Commission's policy on balance within the Canadian broadcasting system is based on subsection 3(d) of the *Broadcasting Act* (the Act) which states that:

> the programming provided by the Canadian broadcasting system ... should provide reasonable, balanced opportunity for the expression of differing views on matters of public concern.

[NOTE: This formulation has been supplanted by paragraph 3(1)(i) of the 1991 *Broadcasting Act*, above at §104-31, which states that "the programming provided by the Canadian broadcasting system should... (iv) provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern."]

The Commission has interpreted this requirement on several occasions. In the "Air of Death" Public Announcement dated 9 July 1970, the Commission indicated that it was not necessary that every program describe all sides of an issue provided that controversial issues are dealt with fairly and honestly within the total programming offered by a licensee.

In the Public Announcement "Miles For Millions" dated 28 March 1972, the Commission stated that the determination as to whether a breach of a broadcaster's duty to provide balance in its programming has occurred would depend on the circumstances of each case.

The Commission again addressed the balance issue in 1976 and 1977 in response to complaints concerning a campaign conducted by Montreal radio station CFCF opposing Quebec's proposed *Official Languages Act*, known as Bill 22. In a public announcement dated 24 February 1977, the Commission indicated that each licensee must in its own programming provide balanced treatment of matters of public concern. The announcement also stated that the right to freedom of expression must not supersede the public's right to hear differing views, that providing balance is the broadcaster's responsibility subject to possible public evaluation by the Commission, and that the need by broadcasters to provide balance is greatest when very controversial issues are addressed.

In its 1983 notice on religious broadcasting (Public Notice CRTC 1983-112 dated 2 June 1983) [NOTE: set out above at §211], the Commission reiterated its position that the most effective way of ensuring balance in programming that is controversial in nature is to require that balance be attained by each individual station in the programming it broadcasts.

Finally, the Commission has affirmed that the requirement to provide balanced opportunity for the expression of differing views on matters of public concern is not applicable to the case of abusive comments toward racial and other identifiable groups. Such remarks are contrary to the Commission's regulations and should not be broadcast at all (Public Notices CRTC 1983-187 dated 17 August 1983, 1985-236 dated 4 November 1985, 1987-196 dated 1 September 1987 and 1988-121 dated 29 July 1988).

[§247-4]

In summary, the Commission considers that each licensee has a duty to discuss a wide variety of issues in its programming, including matters of public concern, since it considers that members of the public should be placed in a position to form their own opinions on controversial issues through the presentation of various points of view on such issues.

In the Commission's view, the balance requirement is satisfied in the following manner

a) Each undertaking must comply with the requirement of the Act regarding balance in its own programming.
b) Not all programming need be balanced, only that relating to matters of public concern.
c) In general, balance need not be attained in each program or series of programs but rather in the overall programming offered by each undertaking over a reasonable period of time.
d) To attain balance, equal time need not necessarily be given for each point of view. Rather, it is expected that a variety of points of view will be made available in the programming offered by the undertaking to a reasonably consistent viewer or listener over a reasonable period of time.

The Commission considers that it is the licensee's responsibility to decide whether an issue is a matter of public concern and to determine the manner in which balance is to be achieved. However, the Commission may subsequently review a licensee's handling of controversial matters, whether in response to a complaint or otherwise.

[§247-5]

Community Access Licensees and Balance

In the past, in applying its policy on balance, the Commission has made no distinction between conventional broadcasters and those who base their programming on community access. Questions about balance and access programming have, however, recently been raised, particularly in the context of two licensees.

[NOTE: The summary of certain complaints and the CRTC response thereto is omitted.]

[§247-6]

The Role of Community Access Media

The Commission has specific policy expectations for community and student radio stations and community programming channels on cable systems. In the case of community radio, the Commission enunciated its policy in Public Notice CRTC 1985-1 "The Review of Community Radio" dated 26 August 1985. The definition of a community radio station in that document states, in part:

Its programming should be based on community access and should reflect the interests and special needs of the listeners it is licensed to serve.

In discussing the role and mandate of these stations, the Commission went on to say that it expected them to develop innovative and alternative programming which adds to the diversity and variety of radio services available in their communities.

Many community stations make a special effort to seek out community groups and invite them to address issues that affect them. Because of this policy, community stations tend to address a greater number of controversial issues than most conventional broadcasters and thus must seek out differing views more frequently even though they often operate with limited resources. Student radio stations are also expected to devote significant amounts of time to programs produced by members of the community they serve.

With respect to the community channel on cable systems, in its 1975 document entitled "Policies Respecting Broadcasting Receiving Undertakings (Cable Television)" dated 16 December 1975, the Commission stated:

> While licensees are responsible for programs carried on the community channel, and must provide reasonable, balanced opportunity for the expression of differing views on matters of public concern, licensees should encourage the use of the channel for unusual ideas and opinions on the broadest range of subjects and give the community the widest opportunity for self-expression.

[§247-7]

Conclusion

The Commission will continue to interpret subsection 3(d) of the Act as placing an equal and identical responsibility on all broadcasting licensees, including licensees of cable television undertakings offering community programming and those of community and student radio stations. In the Commission's view, to do otherwise would be inequitable in that this responsibility is clearly imposed on all licensees by the Act; and is therefore accepted by them in the course of the licensing process. As stated previously, balanced treatment need not be given to all issues, only to those of "public concern".

The Commission acknowledges that, in their programming, community and student radio stations and cable community channels often include discussions of controversial issues that are not addressed in the programming of other licensees. It also recognizes that the special mandate of community and student radio and of cable television licensees to provide access to groups and individuals from the community can make the provision of balance on matters of public concern more difficult to achieve. Nonetheless, while not wishing in any way to discourage access to the broadcasting system by a wide variety of community groups and individuals, the Commission wishes to stress that it expects these licensees to continue to play an important role in providing a forum for the expression of differing views on matters of public concern.

[§247-8]

Possible Mechanisms for Satisfying the Balance Requirement

Licensees, especially those who provide significant access opportunities to members of the communities they serve, have sometimes found it difficult to satisfy the requirement

for balance. The Commission has, therefore, decided to suggest a number of mechanisms to assist licensees in satisfying the Act's requirement concerning the provision of reasonable, balanced opportunity for the expression of differing views on matters of public concern. Although they are designed primarily for licensees who base their programming on community access, they may be of use to other broadcasters dealing with controversial matters in their programming.

In the first instance, it is the licensee's responsibility, where possible, to identify issues of public concern within its programming and to develop appropriate programming to ensure, in advance, a balanced treatment of the issue. The Commission recognizes, however, that it is possible for a licensee to be unaware that one of its programs deals with a matter of public concern in an unbalanced manner until so informed by the Commission, by a complaint from a member of the public or by some other means after the program has been aired.

The following procedures or mechanisms are possible means of ensuring that balance is maintained. However, none of these mechanisms, taken separately, is totally sufficient to discharge a licensee's responsibility in this regard. They should be viewed as examples or suggestions and, depending on the particular circumstances of each licensee, further action or measures might be required to ensure that the balance requirement is met.

[§247-8]

Announcements

A licensee may choose to provide regular reminders to the public regarding the access role played by the station or channel through announcements indicating its responsibility to provide access to members of the community, and the procedures and terms under which listeners can be participants in programming. Such announcements should be scheduled for broadcast during times when audiences are likely to be present in significant numbers.

"Soap Box" Program

The licensee could schedule on a regular basis a "soap box" or "listener reaction" program that would offer listeners or viewers an opportunity to express differing opinions on controversial issues dealt with in the context of the licensee's other programming. In this way, groups or individuals would be provided with a forum for debate on matters of public concern without the licensee having to commit the resources to prepare or acquire programming to address a specific issue. At the same time, licensees are reminded that they would be responsible for the content of the programming and should, therefore, develop appropriate access criteria. If listeners or viewers do not take advantage of this forum to express their opinions, however, the licensee's obligation to provide balance is not discharged and the licensee must find another means of providing balance.

Access for a complainant

Although not obliged to provide time to complainants, a licensee may choose to satisfy the balance requirement by offering a complainant the opportunity to present a differing viewpoint within the broadcast schedule. In such cases, the complainant should be offered a reasonable opportunity to outline his or her opinion in a time period that would allow the audience a reasonable opportunity to hear this point of view. If

complainant refuses the offer, however, the licensee's obligation to provide balance is not discharged and the licensee must find another means of providing balance.

Searching out alternative points of view

If an issue is of public concern, it will usually not be difficult to identify groups or individuals who hold views different from those expressed by the program in question. One method of attempting to provide balance would be to offer one or more of them an opportunity to express their viewpoint.

Production of a program

In the very few cases where the provision of access under the preceding mechanisms does not result in balance on a particular issue, it may be necessary for the licensee to use its own resources to produce or acquire programming in order to satisfy the balance requirement.

The Commission notes that its expectations as to the quality of programs in such circumstances would, of necessity, take into consideration the resources available to the particular licensee.

[§247-9]

In conclusion, the Commission reminds licensees, including those of community and student radio stations and cable television operators who offer community programming, of the importance of providing reasonable, balanced opportunity for the expression of differing views on matters of public concern. In the Commission's view, it remains the duty of each licensee to provide a lively forum for the discussion of such issues in a manner that will provide their audiences with an opportunity to hear a wide range of views.

[§248-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Changes to Hit Factor Analysis Procedures

[§248-2]

[CRTC Circular No. 353, November 4, 1988.]

[§248-3]

For the Attention of All Radio Licensees

Background

As one method of ensuring that FM radio contributes to the diversity of radio programming available in the Canadian broadcasting system, the Commission limits the use of hit material by each FM station to less than fifty per cent of popular musical selections broadcast each week. A "hit" is defined in Public Notice CRTC 1986-248, *Regulations Respecting Radio Broadcasting* [NOTE: see above at §222-3] as:

> Any musical composition that has reached one of the Top 40 positions on a chart in a nationally or internationally recognized trade publication.

In the same notice, the Commission also indicated which major trade publications would be used for the purpose of identifying hits:

> The Commission has prepared, and constantly updates, a list of selections that have reached Top 40 positions on a number of charts in major trade publications. Charts included in the files are "RPM-100 Singles", "RPM-Country", "The Record-Top Singles", "The Record-Country", "Radio Activité-Radio", Billboard-Hot 100 Singles" and "Billboard-Hot Country Singles".

In Circular Letter No. 332, dated 15 May 1987, the Commission announced that as of that date, it would suspend the use of the Radio Activité French-language chart in determining compliance with respect to the use of hits. This practice will continue.

The Commission continues to believe that the limit on hits on FM significantly increases the diversity of music available to Canadians, as well as ensuring that FM radio provides programming that is different than that provided by AM radio.

After examining a number of its administrative practices related to hits with two Canadian trade magazines, RPM and The Record, and with a committee of the Canadian Association of Broadcasters, the Commission has determined that two specific administrative changes can be made to its hits policy, without decreasing the overall effectiveness of this policy. These are modifications to the dates of charts used and the use of the new RPM Retail Singles chart.

[§248-4]

Dates of Charts

In determining hit content, the Commission counts as a hit any selection that enters the Top 40 on any of the selected charts bearing a date up to and including the Saturday following the date of broadcast.

For example, in analysing selections broadcast on 3 November [NOTE: This was a Thursday], the latest charts used to determine hit status would be dated 5 November [NOTE: This was the subsequent Saturday]. Any selections entering the Top 40 after that date would be considered non-hits.

Broadcasters have expressed concern with this practice since they often receive the trade magazines a week or more after the effective date. As a result Commission findings often differed from those of broadcasters.

Since it is felt that a two-week delay would ensure that broadcasters receive the necessary publications, the Commission has decided that, effective from the date of this document, there will be a two-week delay in the application of hit charts to any given analysis. The latest charts used to determine hit factors will be those contained in publications dated two Saturdays before the date of broadcast. Under the new practice (using the 3 November example) any material entering the Top 40 in publications dated 22 October or earlier will be counted as a hit. Selections entering the Top 40 in publications dated later will be treated as non-hit material.

[§248-5]

RPM Retail Singles Chart

The second change is the replacement of the RPM 100 Singles chart with the new RPM Retail Singles chart to determine hits.

RPM Magazine recently changed the manner in which it compiles the 100 Singes chart from a combination of airplay and record sales to airplay only. It also introduced a new Retail Singles chart, which is based solely on sales.

Since The Record's Top Singles chart that is also used by the Commission is a sales-based chart, the Commission feels that the use of RPM's retail chart is more appropriate than RPM's airplay-only chart.

The charts now used by the Commission for purposes of calculating hit factors on all FM stations are therefore: "RPM-Retail Singles" (beginning with information in the issue dated 10 September 1988), "RPM-100 Singles" (until 3 September 1988), "RPM-Country", "The Record-Top Singles", "The Record-Country", "Billboard-Hot 100 Singles" and "Billboard-Hot Country Singles".

[§248-6]

Implementation

The changes detailed above are effective from the date of this circular letter. Analyses now in progress by the Commission will be assessed in the former manner except that the RPM Retail charts, from their inception on 10 September 1988, will be used in place of the RPM 100 Singles chart to determine hits, as of the date of this document.

It should also be noted that the two-week delay will apply only to hits as mentioned above. There will be no change in the dates of charts used for the classification of music.

Selections appearing on the Adult Contemporary, Album-Oriented Rock and Country charts are placed in corresponding music subcategories during the course of a music analysis, in determining station formats. (Uncharted selections are dealt with on a case-by-case basis.)

The practice of using all charts other than hit charts up to and including those dated the Saturday after the date of broadcast, will continue, since it is felt that introducing a delay in this procedure could restrict the flexibility of some broadcasters.

The Commission emphasizes that the earlier introduction of these changes would have had no appreciable effect on the results of recent hit factor analyses which it has conducted.

[§248-7]

The use of hits and the effects of these changes on radio programming and the availability of popular Canadian recordings will be re-evaluated when a fuller review of radio policies is undertaken.

[NOTE: For later developments, see *An FM Policy for the Nineties*, Public Notice CRTC 1990-111, December 17, 1990, below at §263; and *A Review of the CRTC's Regulations and Policies for Radio*, Public Notice CRTC 1992-72, November 2, 1992, below at §287.]

[§249-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Fees for Provision of Basic Cable Service - Section 17(b)(i) of the Cable Television Regulations

[§249-2]

[CRTC Circular No. 354, November 29, 1988. This circular is incorporated by reference into section 17(1)(b) of the *Cable Television Regulations, 1986*, above at §133-95.]

[§249-3]

To All Class 1 & 2 Cable Licensees

Section 17(b)(i) of the *Cable Television Regulations, 1986* requires a cable licensee to install the subscriber drop and provide the basic service to a household unless there has not been compliance with the licensee's request for payment of (among other matters):

(i) an amount not exceeding *the amount of the non-recurring costs* to be reasonably incurred by the licensee *for the installation or reconnection of the subscriber drop*. (emphasis added)

[NOTE: This provision was later amended in 1991, to add the words "determined in accordance with *Circular No.354 to All Class 1 & 2 Cable Licensees*, published by the Commission on November 29, 1988." For the current text of the provision, see above at §133-95.]

When the Commission enacted this provision in August of 1986, it explained this requirement in CRTC Public Notice 1986-182 [NOTE: above at §219-12] as follows:

... Operators will be able to charge an installation fee up to a maximum equivalent to the actual expenses incurred in making the installation or reconnection of the subscriber.

The subscriber drop is defined as that part of the system used for a subscriber's exclusive benefit, and does not include a converter. This "cap" of the actual non recurring expenses will include both capital and related administrative costs. It is expected that licensees will, upon request by a subscriber or Commission, provide details to show how the total installation charge was derived...

[§249-4]

This regulation provides a framework for a cost-related approach to charges for the provision of basic cable service.

The Commission has received a number of complaints from subscribers concerning the amount of the fees charged by some cable operators for installation and reconnection of cable service. Based on the details provided to the Commission by licensees in response to these complaints, the Commission has concluded that a number of cable operators are not setting the amount of the charge for installation or reconnection so as to recover *only*

"the non-recurring costs to be reasonable incurred by the licensee for the installation or reconnection of the subscriber drop".

Instead, a number of cable licensees have indicated to subscribers and the Commission that their charges for the provision of cable service are arrived at by averaging the aggregate costs of providing all installations and reconnections.

[§249-5]

Cable licensees essentially provide three different types of connections when responding to a subscriber's request for cable service. They are:

1 - a new installation where no subscriber drop exists at the time of the request and which involves capital costs for the drop materials;

2 - a reconnection where the subscriber drop is already in place. This category is sub-divided into

a) a "cold reconnect" where the cable service must be reconnected and

b) a "hot reconnect" where the cable service is already being provided.

Despite the difference in the non-recurring costs for each of these three categories, some cable operators have established a single charge applicable to all three types of connections by averaging the aggregate costs of all connections. However, because cost averaging across all connection categories draws no distinction between installation and reconnection charges, despite the difference in their underlying non-recurring costs, the Commission considers this practice to be inconsistent with its regulation. On the other hand, the Commission recognizes that interpreting its regulation in a manner that requires a separate calculation for each installation or reconnection would be impractical and onerous resulting in administrative costs to the cable licensee that would ultimately be borne by subscribers.

[§249-6]

Therefore, the Commission has decided that neither of these two approaches to the establishment of connection charges by cable licensees for the provision of cable service is appropriate. Instead, the Commission is of the view that the cost-related framework in the regulation requires that all licensees establish a *separate charge for new installations.*

Moreover, since the complaints from subscribers received by the Commission relate primarily to the fees charged by some cable operators for the provision of a "hot reconnect", and since the non-recurring costs incurred by the licensee for "hot reconnects" and "cold reconnects" clearly differ, licensees are further required to establish *separate charges for each of these types of reconnections*.

Finally licensees are reminded that only non-recurring costs reasonably incurred in the provision of a particular type of connection are to be included in the establishment of the charge for that type of connection.

[§249-7]

The Commission views this action as an interim measure only and will be publishing for comment an amendment to its regulation to require, within the cost-related framework of section 17 separate charges for the three different categories of connections. The

proposed amendment would seek to take into account both the need for cost-related charges and the need for administrative simplicity and practicality. Given the time-frame involved, it is considered appropriate that a revision of section 17 be incorporated into the review of cable rate regulations, tentatively scheduled for the fall of 1989. [See note above.]

The Commission is sending a copy of this circular to each subscriber who has complained to the Commission about the amount charged for the provision of service. Copies of the subscriber complaints are also being forwarded to the particular licensee concerned. The Commission expects each licensee to follow up with complainants on an individual basis, taking into account the requirements of this circular letter and to provide the Commission with a copy of all correspondence relating to these complaints. The Commission expects to receive confirmation that all complainants have been dealt with by the end of the year.

[§250-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

"First Run" Television Programming

[§250-2]

[Public Notice CRTC 1988-197, November 30, 1988.]

[§250-3]

Over the past few years, where appropriate, the Commission has imposed conditions of licence pertaining to "first run" Canadian television programs. For example, in Decision CRTC 86-1086 renewing the broadcasting licence issued to Global Communications Ltd. (Global), the Commission imposed the following condition of licence requiring that Global broadcast each year:

> a minimum of 200 hours of new, first run, Canadian drama, music and dance variety, children's and Category 2 documentary programs.

However, the term "first run" was not explicitly defined in the decision.

[§250-4]

In Decisions CRTC 87-896 licensing Canal Famille and CRTC 87-903 licensing YTV, the Commission also imposed by condition of licence a requirement relating to first run programs. In these instances, the term "first run" was defined as follows:

> For the purpose of this condition, an original, first-run program means a program which has never before been distributed by any licensee of a broadcasting undertaking and which will be distributed for the first time by the licensee.

[§250-5]

On 9 August 1988, the Commission issued Public Notice CRTC 1988-134 inviting public comment on how the term "first run" might be defined in more detail. The public notice identified seven issues, four of which related to conventional television broadcasters and three of which related to the pay television and specialty services licensees.

In response to Public Notice CRTC 1988-134, the Commission received twenty-two comments. Fifteen comments originated from conventional television broadcasters while five came from pay and specialty service licensees. The CAB and the Canadian Film and Television Associations also submitted comments.

There was a broad consensus in the comments that to maximize the potential value of Canadian television programs, "first run" status should be accorded whenever a program is shown for the first time within a station's authorized coverage area. This would allow a program to be sold in all markets outside the station's authorized coverage area as a "first run" program.

There was also general agreement that, in principle, a program which has been aired by a station in a given market for the first time should receive "first run" status even if

it has been shown by another station in the same area, provided there is not total overlap of the coverage area of the stations. The comments recommended that pro-rated formulas should be rejected owing to the potential administrative burden which they may entail. With respect to the question as to whether Canadian programs already aired as part of a discretionary service should be considered eligible for consideration as "first run" programs on conventional television or on specialty services carried as part of a basic cable service, the comments were generally in the affirmative since this practice is believed to foster the orderly marketing or release of Canadian programs.

Finally, all of the responses to the idea of counting as "first run", dubbed versions of French-language programs shown as part of an English-language service and vice-versa, were affirmative.

[§250-6]

"First Run" Television Programming

The Commission will continue to address the question of "first run" programming on a case-by-case basis.

However, the Commission wishes to provide those conventional broadcasters currently operating under a condition of licence regarding "first run" programming with the following broad guidelines which will generally apply; except in those cases where a specific condition of licence requires otherwise.

i) A Canadian program that has been aired entirely outside a given licensee's authorized coverage area will be eligible for consideration as "first run" programming in respect of that licensee.
Where a Canadian program has been aired in a portion of a given licensee's coverage area by another licensee, the former should seek to obtain first-run credit for that program from the Commission. However, the Commission will not apply any preset formula or mechanism to make this determination. Furthermore, it is anticipated that there will be a small number of such cases.

ii) Canadian programs that have already been aired by a discretionary service are eligible for consideration as "first run" programs on conventional television.

iii) Dubbed versions of French-language Canadian programs are eligible for consideration as "first run" programming on English-language services, or vice-versa, even though such programs may have been aired in their original language by another television station in the same authorized coverage area.

[§250-7]

Pay Television and Specialty Services

With respect to pay television, the Commission, in Decisions CRTC 86-812 to 86-814, established that pay licensees would be awarded a 150% time credit for each new Canadian first run dramatic production scheduled to commence in prime viewing hours or, in the case of a production intended for children, scheduled to commence at an appropriate viewing time. While the Commission continued to allow for the 150% credit in Decisions CRTC 88-772 to 88-774, it stipulated that the credit would apply only in the case of Canadian programs not yet broadcast in the licensed territory in the language of service of the licensee.

Those specialty services that have a first-run requirement in their conditions of licence will continue to be bound by the definition of first run that appears in their licence decisions.

[§251-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Policy Regarding Open-Line Programming

[§251-2]

[Public Notice CRTC 1988-213, December 23, 1988.]

[§251-3]

I. *INTRODUCTION*

Since October 1986, the Commission has received 134 written complaints concerning open-line programs. These complaints involve 35 radio licensees, eight television licensees and four cable television licensees.

Since 1985, there have been three incidents involving racially offensive remarks on open-line programs that have been serious enough for the Commission to censure the licensees concerned or to institute a prosecution in the courts:

1. In Public Notice CRTC 1985-236, CKNW New Westminster, was censured by the Commission for racially offensive remarks concerning Native people broadcast in April 1985.
2. In Public Notice CRTC 1987-196, CJRN Niagara Falls, was censured by the Commission for racially offensive remarks concerning Native people broadcast in March and April 1987.

In the spring of 1988, the Commission heard an application to renew the licence of CJRN Niagara Falls. Several interventions were filed with the Commission with respect to the renewal of CJRN's licence, objecting to the licensee's behaviour in connection with the incidents referred to above.

Subsequently, the Niagara Regional Native Centre launched a private prosecution under the Broadcasting Act for breach of paragraph 3(b) of the Radio Regulations, 1986. In October 1988, CJRN pleaded guilty and was fined $5,000. In Decision CRTC 88-887, of today's date, the Commission renewed the licence of CJRN for 18 months, to 30 June 1990.

3. In a prosecution initiated by the Attorney General of Canada at the request of the Commission, Fundy Broadcasting Co. Ltd. (Fundy), licensee of CFBC Saint John, pleaded guilty and was fined $5,000 for abusive comments against Blacks and Jews broadcast in November 1987.

In the case of a fourth radio station, CHRC Quebec City, a number of complaints had been received with respect to open-line programs aired by the station during its previous licence term. These were mostly in relation to programming hosted by André Arthur. A licence renewal application for CHRC was heard in the spring of 1988 and, in Decision

:RTC 88-888, of today's date, the Commission renewed the station's licence for 20 nonths, to 31 August 1990.

In light of the situations described above, the Commission decided to review the issue of open-line programming. On 29 July 1988, as part of this review, the Commission ssued Public Notice CRTC 1988-121 which called for comments on a set of proposed guidelines for open-line programs. This document presents the background to the proposed guidelines, a summary of the comments received in response to the Public Notice and the Commission's findings in respect thereof.

[§251-4]

1. *REQUIREMENTS REGARDING OPEN-LINE PROGRAMMING*

The proposed guidelines for open-line programs were developed to help broadcasters, ncluding cable operators, to understand the requirements with respect to open-line programs as set out in regulations and the Broadcasting Act, and to encourage the development of mechanisms to ensure that those requirements are met. The guidelines were based on some of the written and unwritten rules and procedures already followed in the responsible conduct of the vast majority of open-line programs.

Paragraph 3(c) of the Act states: "all persons licensed to carry on broadcasting undertakings have a responsibility for programs they broadcast, but the right to freedom of expression and the right of persons to receive programs, subject only to generally applicable statutes and regulations, is unquestioned". [NOTE: See, now, section 3(1)(h) of the 1991 *Broadcasting Act*, above at §104-30.]

A licensee is responsible for the actions of its employees, including open-line hosts, producers and programmers. A licensee is also responsible for comments made by guests or callers during open-line programs.

Outlined below are the requirements that currently exist for licensees with respect to the conduct of open-line programs. These pertain to abusive comments, balance and high standards in programming.

[§251-5]

(i) *Abusive Comment*

Paragraph 3(b) of the *Radio Regulations, 1986* states that a licensee shall not broadcast "any abusive comment that, when taken in context, tends or is likely to expose an individual or a group or class of individuals to hatred or contempt on the basis of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability". Likewise, paragraph 5(1)(b) of the *Television Broadcasting Regulations, 1987* prohibits abusive comment or "abusive pictorial representation".

[§251-6]

(ii) *Balance*

Paragraph 3(d) of the Act states, in part, that "the programming provided by the Canadian broadcasting system ... should provide reasonable, balanced opportunity for the expression of differing views on matters of public concern...." [NOTE: For the new formulation, see subparagraph 3(1)(*i*)(iv) of the 1991 *Broadcasting Act*, above at §104-31.]

The Commission, in a number of pronouncements, has encouraged licensees to discuss a wide variety of issues in their programming, including matters of public concern. It considered that the public, through exposure to various points of view on such issues, should be in a better position to reach informed opinions on such matters.

The Commission has, on such occasions, required that balance in the broadcasting system be maintained in the following manner:

a) Each undertaking must comply with the requirement of the Act regarding balance in its own programming.
b) Not all programming need be balanced, only that relating to matters of public concern.
c) In general, balance need not be attained in each program or series of programs, but rather in the overall programming offered by each undertaking over a reasonable period of time.
d) To attain balance, equal time need not necessarily be given for each point of view. Rather, it is expected that in the programming offered by an undertaking, a variety of points of view will be made available to a reasonably consistent viewer or listener over a reasonable period of time.

The Commission has always considered that it is the licensee's responsibility to decide whether an issue is a matter of public concern and to determine the manner in which balance is to be achieved. However, the Commission has also made it clear that it may review a licensee's handling of such a matter, in response to a complaint or otherwise.

[§251-7]

(iii) *High Standards*

Paragraph 3(d) of the Act also states that: "... the programming provided by each broadcaster should be of high standard...." [NOTE: For the current wording of this concept, see paragraph 3(1)(*g*) of the 1991 *Broadcasting Act*, above at §104-29.]

The Commission considers gratuitous personal attacks on individuals or groups, unresearched or inaccurate reporting and unprofessional on-air behaviour as examples of failure to meet the high programming standards required of each licensee.

[§251-8]

III. *COMMENTS RECEIVED IN RESPONSE TO PUBLIC NOTICE CRTC 1988-121*

[NOTE: This portion of the public notice is omitted.]

[§251-9]

IV. *POLICY REGARDING OPEN-LINE PROGRAMMING*

In consideration of the complaints received regarding open-line programs and the transgressions which have occurred in recent years, the Commission remains concerned regarding the conduct of open-line programming. Specifically, the Commission is concerned that licensees who carry open-line programs be aware of, and adhere to, the requirements with respect to abusive comment, balance and high standard, as set out in the Act and the regulations.

The Commission recognizes the responsibility demonstrated by the broadcasting and cable industries overall in the area of open-line programming. Moreover, it recognizes

hat many licensees have internal guidelines, policies, or other mechanisms in place vith respect to the conduct of open-line programs.

[§251-10]

Consequently, the Commission is not persuaded that it is either necessary or desirable ;or it to impose industry guidelines on open-line programs at this time, but will continue o deal with concerns regarding open-line programs on a case-by-case basis.

The Commission commends those broadcasting and cable licensees who have :stablished internal guidelines or other control mechanisms with respect to open-line)rograms. It also commends the CCTA for developing the CCTA Guidelines For Open-Line Community Programs. The Commission encourages all licensees who carry)pen-line programs and who do not currently have guidelines or other control :nechanisms in place to establish measures to ensure that their regulatory obligations and responsibilities with respect to open-line programming are met at all times.

[§251-11]

The Commission will require licensees it considers to have shown themselves unable to meet the provisions of the Act and regulations with respect to open-line programming to develop appropriate guidelines and other control mechanisms that address the requirements regarding abusive comment, balance and high standard as set out in the regulations and the Act. Moreover, such licensees will be required to file their guidelines and a description of any other proposed control mechanisms with the Commission for its approval. The Commission will closely monitor complaints concerning the open-line programming of these licensees. The conduct of their open-line programs and the effectiveness of their control mechanisms will subsequently be reviewed at licence renewal time. As stated in the decisions released today regarding the licence renewals of CJRN, Niagara Falls, and CHRC, Quebec City, the Commission requires these licensees to submit their guidelines and control mechanisms with respect to open-line programming for Commission approval within three months.

The Commission hereby puts Fundy on notice that it will be required to report on the guidelines and other control mechanisms it has in place with respect to open-line programming at the time the Commission considers the renewal of its licence for CFBC Saint John, which expires 31 August 1989.

[§252-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Policy Respecting Television Networks

[§252-2]

[Public Notice CRTC 1989-2, January 10, 1989.]

[§252-3]

I. *INTRODUCTION*

[This portion of the public notice, setting out the process and summarizing the submissions, is omitted.]

[§252-4]

II. *POLICY RESPECTING TELEVISION NETWORKS*

In setting out its policy regarding television networks, the Commission has taken into account the policies outlined in Public Notice CRTC 1988-89, "A Policy Respecting Radio Broadcasting Networks and Radio Syndication; and Proposed Amendments to the *Radio Regulations, 1986*". Clearly, the Commission's objectives in developing these proposals are the same. The Commission is aware of the need to be consistent in its approach to both radio and television networks. Increasingly, networks and syndicated programming activities are capable of reaching, informing and entertaining Canadians with high quality, diverse programming. Consequently, the Commission regards networks as an important vehicle to achieve the goals set out for the broadcasting system in the Act. However, there are important differences between the radio and television industries. While radio has been, and remains, primarily a local medium, the largest part of the broadcast day for many television stations is occupied with programming acquired from outside the local market. In the case of television network affiliates, most of the program material is usually supplied by a network operator while the remainder is produced or acquired by the local licensee. Radio uses network programming to complement its local programming and to add diversity, and such programming constitutes a relatively small percentage of its total output. Television, on the other hand, uses network programming in large blocks amounting, in many cases, to more than three-quarters of all programs broadcast.

There are three essential elements to the definition of a network as set out in the current *Broadcasting Act*. These are: the concept of delegation of control; the use of the word "includes"; and the existence of two or more broadcasting undertakings. [NOTE: The last concept has since been amended: see below at §252-10.] A discussion of these three elements and the criteria which the Commission will use to determine their existence respecting television are set out below.

[§252-5]

1. *Delegation of control*

The specific reference in the Act to the concept of control over programs or program schedules requires the Commission to regulate as a network operation any program distribution arrangement wherein such delegation occurs. To determine the existence of a delegation of control from a television station to another party, the Commission will use three primary criteria. These involve: formal reserved time; *de facto* reserved time; and, editorial control. Accordingly, delegation of control, and hence a television network operation, will be deemed to exist when one or more of the primary criteria are present.

[§252-6]

a) *Formal Reserved Time*

Formal reserved time exists where a television broadcaster, as a condition of the acquisition of all or parts of a program, is required by a formal agreement to broadcast the program at a specified time or within specified time frames. Where formal reserved time exists, the Commission will consider that a television network operation exists. Accordingly, it will require that, prior to the broadcast of the program, a network application be filed and a network licence obtained by the person who provides the proposed programming.

It is the Commission's view that a formal reserved time agreement clearly represents a situation where a local television station has, in effect, consented to relinquish control of the station's program schedule, or parts thereof, to another party. A formal reserved time agreement is generally evinced by the existence of an affiliation agreement or similar contractual arrangement.

Under a formal reserved time agreement, a local station generally does not have the power to refuse to air a program which it has contracted to broadcast until the expiration of the agreement, except on a temporary basis and under special circumstances as provided for in the contract. The local station is required to air the program at, or within, specified clock hours or time frames.

In contrast, a purchase contract allows individual television stations to determine the scheduling of the program, whether or not a time frame is suggested by the program distributor and, thus, does not constitute a formal reserved time commitment.

Whether the programming is distributed live, by tape, or is tape-delayed has no bearing on whether formal reserved time exists.

[§252-7]

b) *De Facto Reserved Time*

De facto reserved time exists where there is no formal contract or written reserved time commitment, but where there is evidence that a program, or programs, are being broadcast by more than one undertaking at a designated time and where, in the Commission's view, the program or programs affect the Canadian broadcasting system in a way similar to that where a formal reserved time agreement exists.

It is conceivable that program acquisition arrangements between distributors and local television stations may involve an informal or unwritten requirement for a program or programs to be scheduled at a specified time, as determined by a person other than the licensee of the local station. A useful indicator of the existence of such *de facto* reserved time is the presence of commercial content that is broadcast at a pre-determined time by the local station as a condition of the acquisition of the program. Another indicator of the existence of *de facto* reserved time is the simultaneous broadcast of the program by a number of local stations.

Consequently, the net effect of the distribution and broadcast of this programming on the broadcast system may be similar to the effect of centralized programming by networks and may produce a significant impact on other licensed components of the broadcast system and on a sizeable segment of the population. In such situations, the Commission may consider that a *de facto* television network operation exists.

As with formal reserved time, the fact that a program is delivered live, by tape or has been tape-delayed has no direct bearing on whether *de facto* reserved time may be deemed to exist.

[§252-8]

c) *Editorial Control*

The definition of "network" in the Act implies that broadcasters may delegate control over part or all of a program or program schedule to another party, namely a licensed network operator. The Commission considers that editorial control is central to the determination of "control" referred to in the definition of "network" in the Act. Editorial control is, therefore, a key criterion in determining the existence of a network. It should be noted that there are two distinct kinds of editorial control: the power to edit or alter the contents of a program, and the power to decide whether or not to broadcast a program.

In television, it is common for the local licensee to retain the power to decide whether or not to broadcast a program but, having decided to broadcast, the licensee does not have the power to edit or alter the program's editorial content. In such a case, the Commission could consider that the local licensee has delegated editorial control to a network operator.

With respect to news distribution arrangements which generally involve some degree of pre-screening and editing by the distributor and where the station is not bound by a formal agreement to broadcast the program, the Commission will not consider these to be network operations.

In addition, the Commission has considered the matter of brokered programs. Brokerage is the practice of purchasing blocks of time from stations to produce and broadcast programming oriented to specific audiences. As stated in Public Notice CRTC 1985-139 entitled "A Broadcasting Policy Reflecting Canada's Linguistic and Cultural Diversity" [NOTE: set out above at §215], the Commission recognizes that brokerage is an important source of programming, particularly for audiences not well served by mainstream broadcasting.

The Commission will not consider brokerage arrangements to be network operations provided the local station maintains control over the content of the programs and program scheduling, and brokered programs are not distributed as live programs to other stations.

In all cases where the existence of a network operation is not clear, the Commission will be guided primarily by the presence of some aspects of one or more of the above criteria, and the impact of that operation on the Canadian broadcasting system as a whole.

[§252-9]

2. *Use of the Word "Includes"*

In Decision CRTC 80-704, approving the issuing of a licence for the satellite distribution of the proceedings of the House of Commons, the Commission considered the use of the word "includes" in the definition of a network found in the Act to be enlarging. Consequently, the Commission is not restricted to treating as a network only those program distribution operations where a delegation of control is present. In support of this interpretation, the Commission made reference to section 3(j) of the Act, that the

system should be flexible and adaptable to new developments. [NOTE: See now subsection 5(2) of the 1991 *Broadcasting Act*, above at §104-50, for the references to "flexible" and "adaptable".]

Furthermore, section 15 [NOTE: now subsection 5(1), above at §104-49] of the Act confers upon the Commission the authority and responsibility to:

> regulate and supervise all aspects of the Canadian broadcasting system with a view to implementing the broadcasting policy enunciated in section 3 of the Act.

The licensing, as networks, of major television program distribution operations that fulfill the criteria of delegation of control or produce a significant impact on the broadcasting system allows the Commission to regulate and supervise centrally-distributed programming at the level of the program source, as well as regulating the affiliated stations.

The Commission considers that this approach allows it to supervise and regulate the broadcasting system more effectively, ensuring the fair treatment of such operations and the orderly utilization of such sources of programming.

[§252-10]

3. *Two or More Broadcasting Undertakings*

The network definition set out in the Act applies to arrangements which involve two or more broadcasting undertakings. In the past, the Commission has received several requests for an interpretation of this clause.

The Commission considers that a network operation may be deemed to exist in the case of a program arrangement involving a network operator and only one station, where the network operator also transmits the programming as a broadcaster. For private broadcasters where the undertakings are owned by the same licensee, no network licence is required since no delegation of control to another licensee occurs.

[NOTE: The updated definition of "network" in the 1991 *Broadcasting Act* no longer requires two or more broadcasting undertakings to be involved; see above at §104-15.]

[§252-11]

III. *CONCLUSION*

The Commission regards television network licensees as a primary component of the Canadian broadcasting system and the network licensing process as an important instrument to help strengthen that system. The programming of television network licensees contributes significantly to achieving the goals set out for the Canadian broadcasting system in the Act.

In considering a streamlined regulatory framework and licensing approach for television network operators, the Commission finds that the wide variation in network structures and programming makes it difficult to construct procedures applicable to all situations. In addition, the Commission is constrained by the Act, which, amongst other things, requires that all applications for network licences be handled via the public hearing process, with the exception of temporary network licences which may not exceed thirty days in duration. [NOTE: This has been extended to sixty days in the definition of "temporary network operation" in the 1991 *Broadcasting Act*: see above at §104-19.]

The Commission has therefore decided to maintain its current licensing procedures for the present time.

Recent CRTC Decisions: For cases that have considered what constitutes a "network", see Decisions CRTC 93-33, January 26, 1993 and Decision CRTC 90-1073, October 22, 1990. The former concluded that "ONT" was not a network and the latter concluded that the Global News Service was not a network.

[§253-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Radio Networks and Syndication Policy

[§253-2]

[Public Notice CRTC 1989-3, January 10, 1989]

[§253-3]

I. *BACKGROUND*

[This portion of the public notice is omitted.]

[§253-4]

II. *POLICY OBJECTIVES AND ISSUES*

The Commission's main objectives in developing a policy regarding radio networks and syndication were as follows:

1. to support the use and exposure of Canadian resources through acquired programming;
2. to encourage the development of a Canadian syndicated and network audio programming sector;
3. to clarify and consolidate regulations, practices and policies with respect to radio networks and syndication;
4. to streamline and rationalize the Commission's regulatory framework with respect to radio networks and the use of acquired audio programming;
5. to alleviate the administrative burden for the industry and for the Commission.

[§253-5]

The following issues were addressed in formulating the proposed policy:

1. the criteria to be used to determine the existence of a radio network, as per the definition of network in the *Broadcasting Act*;
2. the Commission's policies and regulations with respect to the operations of radio network licensees;
3. the Commission's policies regarding the use of acquired programming by radio licensees;

4. the establishment of a policy framework in support of Canadian acquired programming.

[§253-6]

III. *COMMENTS RECEIVED REGARDING PUBLIC NOTICE CRTC* 1988-89

[NOTE: This portion of the public notice is omitted.]

[§253-7]

IV. *RADIO NETWORKS AND SYNDICATION POLICY*

The following section presents the radio networks and syndication policy, as adopted by the Commission. The policy describes the criteria which will be used for the purposes of licensing radio network operations. The policy also sets out the Commission's regulatory approach to radio networks and the use of acquired programming by AM and FM licensees.

The Commission regards networks as a central component of the Canadian broadcasting system. Networks and other syndicated programming arrangements, by their nature, are uniquely capable of reaching, informing and entertaining Canadians with high quality, diverse programming. Consequently, the Commission regards networks as important vehicles to achieve the goals set for the system in the Act.

It is the Commission's view that the primary responsibility of AM and FM licensees is to provide locally oriented and original programming suited to the needs, interests and character of local communities. The Commission will, therefore, continue to seek assurances that most of the programming broadcast by AM and FM stations is of direct relevance to local communities, particularly during peak audience periods.

The Commission recognizes that future growth for certain radio stations may come from developing a complementary mixture of high quality local and acquired programs, particularly in light of the increased fragmentation of radio markets and the decreasing profitability of some segments of the radio industry. The policy, therefore, seeks to ensure that network and syndicated programs distributed and broadcast in Canada maximize the use and exposure of Canadian creative and other resources. At the same time, the Commission wishes to ensure that its regulation and supervision of networks and syndicated programming is efficient and imposes a minimal burden upon its radio licensees.

[§253-8]

A. *Definition of a Network*

There are three essential elements to the definition of a network as set out in the current *Broadcasting Act*. These are: the concept of delegation of control; the use of the word "includes"; and the existence of two or more broadcasting undertakings. [NOTE The updated definition of "network" in the 1991 *Broadcasting Act* no longer requires two or more broadcasting undertakings to be involved; see above at §104-15.] A discussion of these three elements and the criteria which the Commission will use to determine their existence respecting radio are set out below.

[§253-9]

1. *Delegation of Control*

The specific reference in the Act to the concept of control over programs or program schedules requires the Commission to regulate as a network operation any program distribution arrangement wherein such delegation occurs.

To determine the existence of the delegation of control from a radio station to another party, the Commission will use three primary criteria. These involve: formal reserved time; *de facto* reserved time; and, simultaneous distribution of live programs. Accordingly, delegation of control, and hence a radio network operation, will be deemed to exist when one or more of the primary criteria are present.

[§253-10]

a) *Formal Reserved Time*

Formal reserved time exists where a radio broadcaster, as a condition of the acquisition of all or parts of a program, is required by a formal agreement to broadcast the program at a specified time or within specified time frames. Where formal reserved time exists, the Commission will consider that a radio network operation exists. Accordingly, it will require that, prior to the broadcast of the program, a network application be filed and a network licence obtained by the person who provides the proposed programming. A formal reserved time agreement is generally evinced by the existence of an affiliation agreement or similar contractual arrangement.

Under a formal reserved time agreement, a local station generally does not have the power to refuse to air a program which it has contracted to broadcast until the expiration of the agreement, except on a temporary basis and under special circumstances as provided for in the contract. The local station is required to air the program at, or within, specified clock hours or time frames.

In contrast, a purchase contract allows a radio station to determine the scheduling of a program, whether or not a time frame is suggested by the program distributor, and thus does not constitute a formal reserved time commitment.

Whether the programming is distributed live, by tape, or is tape-delayed has no bearing on whether formal reserved time exists.

[§253-11]

b) *De Facto Reserved Time*

De facto reserved time exists where there is no formal contract or written reserved time commitment, but where there is evidence that a program, or programs, are being broadcast by more than one undertaking at a designated time and where, in the Commission's view, the program or programs affect the Canadian broadcasting system in a way similar to that where a formal, reserved time agreement exists.

It is conceivable that programming acquisition arrangements between distributors and local radio station licensees may involve an informal or unwritten requirement for a program or programs to be scheduled at a specified time, as determined by a person other than the licensee of the local station. A useful indicator of the existence of such *de facto* reserved time is the presence of commercial content that is broadcast at a pre-determined time by the local station as a condition of the acquisition of the program. Another

indicator of the existence of *de facto* reserved time is the simultaneous broadcast of the program by a number of local stations.

Consequently the net effect of the distribution and broadcast of this programming on the broadcasting system may be similar to the effect of centralized programming by networks and may produce a significant impact on other licensed components of the broadcast system and on a sizeable segment of the population. In such situations, the Commission may consider that a *de facto* radio network operation exists.

As with formal reserved time, the fact that a program is delivered live, by tape or has been tape-delayed, has no direct bearing on whether *de facto* reserved time may be deemed to exist.

[§253-12]

c) *Simultaneous Distribution of Live Programs*

In order to distinguish between network and syndicated operations, the Commission considers that the ability or opportunity on the part of the licensee to edit or alter the contents of a program is central to the determination of delegation of control referred to in the Act. This should not be confused with the power to decide whether or not to broadcast a program. This notion of editorial control is particularly significant in the case of live programs. Distribution arrangements involving pre-produced or pre-recorded programs that are made available to stations (e.g. via satellite), even in cases where stations retransmit such programs simultaneously over-the-air, will be treated as syndicated operations, except where formal reserved time or *de facto* reserved time exists.

In the case of a live program which is a program that involves the presentation of a live event, such as a sports event which is received and broadcast by a station simultaneously, the Commission considers that the station has abandoned its ability to edit or alter the contents of the program and therefore will consider that a network operation is in place. In situations where both live and pre-recorded elements co-exist within a single segment or continuous block of programming, the Commission will also consider this to be network programming.

With regard to live programs, several related issues are discussed below:

[§253-13]

(i) *Tape Delay*

The Commission will accept the use of a tape delay as a means for a local licensee to maintain editorial control over live programming if the length of the delay is sufficient to allow reasonable screening of the program. For this purpose, the Commission will consider the program to be live unless the time delay is at least equal to the duration of the actual program or one hour, whichever is less.

[§253-14]

(ii) *Rebroadcasting of Programs From Other Stations*

In certain situations, the Commission has authorized local radio broadcasters to pick up and rebroadcast the programming of other stations temporarily in situations where the local station is experiencing financial or other difficulty in filling its program schedule

Where the Commission has been satisfied in such cases that the terms of the arrangement between the originating and rebroadcasting stations are based on a form of co-operation that does not affect the ability of the rebroadcasting station to exercise control over its programs or program schedules, the Commission will continue its policy not to require a network licence application.

[§253-15]

(iii) *Brokerage*

Brokerage refers to the purchase by program distributors of blocks of time from local station licensees for the broadcast of programming oriented to specific audiences. As stated in Public Notice CRTC 1985-139 entitled "A Broadcasting Policy Reflecting Canada's Linguistic and Cultural Diversity" [NOTE: see above at §215], the Commission recognizes that brokerage provides an important source of programming, particularly for audiences not well served by mainstream broadcasting.

The Commission will not consider brokerage arrangements to be network operations provided the local station maintains control over the content and scheduling of the programs and brokered programs are not distributed as live programs to other stations.

[§253-16]

(iv) *News Services*

With respect to news distribution arrangements, which generally involve some degree of pre-screening and editing by the distributor, in cases where the station is not bound by a formal or an apparent *de facto* agreement to broadcast the program, the Commission will not consider these to be network operations.

In all cases where the existence of a network operation is not clear, the Commission will be guided primarily by the presence of some aspects of one or more of the primary criteria, and the impact of that operation on the Canadian broadcasting system as a whole.

[§253-17]

2. *Use of the Word "Includes"*

In Decision CRTC 80-704, which granted a licence for the satellite distribution of the proceedings of the House of Commons, the Commission stated its conclusion that the use of the word "includes" in the definition of a network found in the Act is enlarging. Consequently, the Commission is not restricted to treating as networks only those program distribution operations where a delegation of control and the criteria developed for determining it are present. In support of this interpretation, the Commission made reference to section 3(j) of the Act, that the system should be flexible and adaptable to new developments. [NOTE: See now subsection 5(2) of the 1991 *Broadcasting Act*, above at §104-50, for the references to "flexible" and "adaptable".]

Furthermore, section 15 [NOTE: now subsection 5(1)] of the Act confers upon the Commission the authority and responsibility to:

> regulate and supervise all aspects of the Canadian broadcasting system with a view to implementing the broadcasting policy enunciated in section 3 of the Act.

The Commission will continue to apply this interpretation of the Act's use of the word "includes" in cases where programming arrangements may have a significant impact on

the system. Nevertheless, the Commission is of the view that the vast majority of program distribution arrangements that fit the definition of a radio network will do so through the criteria established for determining delegation of control as discussed earlier in this document.

[§253-18]

3. *Two or More Broadcasting Undertakings*

The network definition set out in the Act applies to arrangements which involve two or more broadcasting undertakings.

The Commission considers that a network operation may exist in the case of a program arrangement involving a network operator and only one station where the network operator also transmits the programming as a broadcaster. For private broadcasters where all the undertakings are owned by the same licensee, no network licence is required, since no delegation of control to another licensee occurs.

[NOTE: The updated definition of "network" in the 1991 *Broadcasting Act* no longer requires two or more broadcasting undertakings to be involved; see above at §104-15.]

[§253-19]

B. *Radio Network Operations*

1. *Network Licensing Policy*

In the interest of providing increased efficiency to the industry and the Commission and enhanced flexibility to network operators, the Commission will authorize a network operator, where appropriate, to distribute a variety of network programs over the term of a single licence, based on the network applicant's programming proposals.

Applicants for network licences will be required to provide programming information regarding content and scheduling, as well as ownership and financial information. The Commission intends to issue new, separate application forms for network operations in the near future.

The Commission considers it fundamental to the system that network operators help achieve the objectives of the Act. To this end, the Commission expects network operators to support and distribute programs that utilize Canadian creative and other resources.

The Commission is of the view that network operators who distribute a substantial amount of network programs exercise considerable influence within the broadcasting system. Consequently, they have a special responsibility to assist in achieving the goals of the Act. Accordingly, the Commission will expect network licensees who distribute a weekly average of seven or more hours of network programming per year to distribute predominantly Canadian network programming.

The definition of a Canadian audio program will be determined through a consultative process involving the Commission and representatives of the radio broadcasting and audio program production and distribution industries. The definition of a Canadian audio program will be based on a self-administered point system, similar to the Commission's regulatory approach for television. [NOTE: For the later decision of the Commission regarding this matter, see below at §259.]

[§253-20]

2. *General Regulations on Network Broadcast Matters*

In the *Radio Regulations, 1986*, there are no references to networks in sections setting out general prohibitions and requirements for AM and FM licensees on matter broadcast. Consequently, network operators have not in the past been held accountable for certain aspects of their programming. While any Commission concerns regarding the programming broadcast by an affiliate station during network periods can be pursued with the affiliate, the Commission considers this to be administratively inefficient. The Commission considers it more reasonable to address network programming concerns to the network operators who have, by definition, assumed control of the network programming broadcast by an affiliate station.

The Commission has, therefore, amended the *Radio Regulations, 1986* so that sections generally applicable to AM and FM licensees, excluding logging requirements, are also applicable to network operators. Specifically, the definition of a licensee in Section 2 of the regulations has been amended to include network operators. This change also includes an amendment to Section 10 of the regulations, entitled "Affiliation" (SOR/88-549 dated 25 October 1988). [NOTE: See above at §135-23 and §135-64.]

[§253-21]

C. *AM AND FM LICENSEES*

1. *Stations' Usage of Non-local Programming*

The Commission recognizes the numerous benefits that can accrue to local licensees and their audiences from access to unique and high quality acquired programming. The Commission also recognizes that the needs of local broadcasters for acquired programming vary in accordance with a number of factors, such as individual station strategies and resources, and intra-market competition. The Commission emphasizes, however, that the fundamental responsibility of a local licensee is to provide original programming of direct relevance to its immediate local audience, particularly during peak audience periods.

The Commission does not intend to introduce policy or regulations limiting the level of non-local programming at this time. Instead, the Commission will require individual local licensees, at licence renewal time, to indicate and justify the levels and scheduling of acquired programming they intend to broadcast over their new licence term. The Commission considers that the intrinsic nature and role of radio as the provider of a local service effectively limit the level of network and syndicated programming broadcast by local licensees in the vast majority of cases. The Commission has revised the AM licence application forms to call for greater clarity and detail by licensees in outlining their plans for network and syndicated programs. It is in the process of making similar revisions to the FM licence application forms.

[§253-22]

2. *Use of Canadian Acquired Programming*

A major policy objective of the Commission is to promote the maximum use of Canadian resources within the Canadian broadcasting system. In keeping with this objective, the Commission supports the use and exposure of Canadian talent and

resources through acquired programming, particularly in light of the increasing use of acquired programming by broadcasters, including the growing influx of audio programs available from foreign sources. Moreover, the Commission wishes to encourage the development of a Canadian syndicated and network audio programming sector that will supply the needs of broadcasters and enhance the quality and diversity of programs offered to Canadians.

The existing regulatory requirements for local AM and FM licensees regarding Canadian musical selections, and the commitments made by broadcasters to support Canadian talent and production, provide an indirect incentive for stations to broadcast Canadian network and syndicated programs.

In addition, the Commission will generally expect AM and FM licensees who carry acquired programs to support Canadian acquired programs. The Commission does not intend at this time to implement a guideline or requirement regarding the proportion of Canadian acquired programming expected of licensees. The Commission will, however, review a station's use of acquired programs at the time of licence renewal. In this respect, the Commission will consider a station's use of Canadian acquired programs as part of its contribution in support of Canadian programming. The Commission also intends to discuss with the industry alternative approaches to promote the use of Canadian acquired programming. This discussion will take place in the context of the consultative committee which is referred to above.

In order that the Commission may monitor the uses of acquired programming by individual stations and by the radio industry as a whole, AM and FM licensees will be required to maintain a log of acquired programs broadcast according to type (network or syndicated program) and origin (Canadian or foreign program). Accordingly, the Commission will amend Schedule A (Code Indicating Origin) of the *Radio Regulations, 1986*. This amendment will be issued at the same time as the Commission publishes a definition of a Canadian audio program. [NOTE: For the definition of Canadian audio program, see below at §259. The CRTC did not amend Schedule A, but instead added a sentence to Part II of its AM and FM application forms committing applicants "to log acquired programs according to type (network or syndicated) and origin (Canadian or foreign)." See, further, *An FM Policy for the Nineties*, Public Notice CRTC 1990-111, December 17, 1990, below at §263.]

Stations submitting self-assessment reports should also describe their use of acquired programs.

[§253-23]

3. *Canadian Mosaic Programs*

[NOTE: This section is omitted, since the CRTC policy on mosaic and foreground programs was rescinded in *An FM Policy for the Nineties*, Public Notice CRTC 90-111, December 17, 1990, below at §263.]

[§253-24]

4. *Overnight Programming Services*

Network and syndicated overnight programming services provided between midnight and 6:00 a.m. allow stations, particularly those operating in small markets, to provide

programming that they otherwise could not afford to make available during these hours. Overnight programming services can also enhance the financial viability of broadcasters by providing new revenue sources. In light of these benefits, the Commission intends to maintain a relatively unburdened regulatory environment for overnight programming.

The Commission does not intend at this time to apply to the overnight programming period the existing regulatory requirements for AM and FM stations that currently pertain to the broadcast day or broadcast week, such as the regulatory requirements and conditions of licence for Canadian content. This issue will, however, be reviewed within the context of the upcoming Review of Radio Policies.

The Commission will expect overnight programming services to provide support for and exposure of Canadian artistic talent.

Moreover, the Commission will expect network licensees to make commitments regarding the use of Canadian resources within the overnight programming they provide.

[§253-25]

5. *Network Affiliation and Disaffiliation*

Pursuant to the provisions of the *Broadcasting Act*, a licensee wishing to operate its broadcasting undertaking as part of a network may do so only in accordance with conditions of its licence.

The following condition is attached to most licences:

The licensee shall not affiliate or disaffiliate with any network operator without first having obtained the written approval of the Commission.

The Commission has in the past approved affiliation and disaffiliation with a network operator on a case-by-case basis upon application.

In the interest of reducing administrative burden for the Commission and for radio licensees, the Commission, in Public Notice CRTC 1989-4 issued today [NOTE: set out below at §254] grants blanket authority for radio licensees whose licences are subject to the above condition to affiliate with and disaffiliate from any licensed radio network. Network licensees will be required to submit lists of affiliated stations to the Commission every three months.

In this regard, the Commission reminds all radio licensees whose licences are not currently subject to the above-noted condition of licence and who may wish to avail themselves of the blanket authorization, that they must first apply to add the appropriate condition.

This approach does not apply to the CBC radio networks and their affiliates. Radio licensees wishing to affiliate with or disaffiliate from the CBC are required to do so through application to the Commission.

[§254-1]

[CANADIAN RADIO-TELEVISION AND
TELECOMMUNICATIONS COMMISSION]

Radio Affiliation - Disaffiliation with Networks

[§254-2]

[Public Notice CRTC 1989-4, January 10, 1989.]

[§254-3]

Pursuant to the provisions of the *Broadcasting Act*, a licensee wishing to operate its broadcasting undertaking as part of a network may do so only in accordance with conditions of its licence.

The following condition is attached to most licences:

The licensee shall not affiliate or disaffiliate with any network operator without first having obtained the written approval of the Commission.

The Commission has in the past approved affiliation and disaffiliation with a network operator on a case-by-case basis upon application.

Its experience with network affiliation in radio has led it to the conclusion that this method is unduly burdensome to licensees and to the Commission.

[§254-4]

Therefore, the Commission announces that it hereby permits the affiliation or disaffiliation with any licensed radio network, for radio licensees whose licenses are subject to the above condition. This approach does not apply to the CBC radio network and its affiliates. Radio licensees wishing to affiliate or disaffiliate with the CBC will be required to do so through application to the Commission.

Radio network operators are expected to file a report with the Commission every three months listing their affiliates for each network program. In the future, the Commission proposes to attach this requirement as a condition of licence applicable to networks either at the time of issuance of a new licence or at the time of the renewal of current network licences.

The Commission reminds radio licensees that, even while affiliated to networks, they retain complete responsibility for their entire program schedule and will remain fully accountable for meeting regulatory requirements and operating in accordance with applicable conditions of licence and Commission policies.

Those radio licensees whose licences are not currently subject to the above-noted condition of licence and who wish to avail themselves of the blanket authorization are hereby invited to apply to the Commission to add this condition.

[§255-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Services Using the Vertical Blanking Interval (Television) or Subsidiary Communications Multiplex Operation (FM)

[§255-2]

[Public Notice CRTC 1989-23, March 23, 1989.]

[§255-3]

INTRODUCTION

In Public Notice CRTC 1984-117, the Commission outlined its policy objectives and regulatory approach for services using the Vertical Blanking Interval (VBI) of television stations and the Subsidiary Communications Multiplex Operation (SCMO) channel of FM stations.

Licensees authorized to distribute VBI/SCMO were required to file reports detailing their experiences in developing these services. These reports were taken into consideration by the Commission in preparing for the second phase of the regulatory process for VBI/SCMO introduced in Public Notice CRTC 1988-33.

Over this period, the Commission was developing a more supervisory approach to broadcasting and VBI/SCMO services seemed well suited to this approach. Consequently, in Public Notice CRTC 1988-33, the Commission proposed to eliminate the requirement that licensees must apply to use VBI/SCMO, and also proposed amendments to Television Broadcasting Regulations, 1987 (the television regulations) and to the Radio Regulations, 1986 (the radio regulations), in order that licensees would no longer be subject to these regulations, when they use VBI and SCMO to distribute programming. The version of Public Notice CRTC 1988-33 published in the Canada Gazette inadvertently omitted the text of the proposed changes to the television and radio regulations. Public Notice CRTC 1988-199, which corrected this omission, provided a second opportunity for public comment.

[§255-4]

ISSUES RAISED BY RESPONDENTS

[NOTE: This portion of the public notice is omitted.]

[§255-5]

POLICY ON VBI/SCMO

The Commission has carefully considered all of the comments received in response to Public Notices CRTC 1988-33 and CRTC 1988-199 and concludes that the proposed licensing policy for VBI/SCMO should be modified only with respect to an SCMO ethnic service. Specifically, an application to the Commission will be required if more than 15%

of the broadcast week of the SCMO service is devoted to ethnic programs as defined in the radio regulations (types A, B, C and D) and its service area overlaps an area already served by an authorized over-the-air conventional ethnic station. Service areas will be deemed to overlap if the 0.5 millivolt per metre official contour of the FM station carrying the proposed ethnic service on SCMO intersects:

- the 0.5 millivolt per metre official contour of an authorized over-the-air FM ethnic station; or
- the 5.0 millivolt per metre official day-time contour of an authorized over-the-air AM ethnic station.

The Commission will handle applications for such SCMO ethnic services through the normal Public Notice or Public Hearing process, as appropriate, and may impose specific requirements as conditions of licence.

The attached Appendix A contains guidelines to which licensees are expected to adhere in the provision of VBI/SCMO services.

[§255-6]

IMPLEMENTATION

The television licence form will be amended to indicate that the use of the VBI is included in the licence for the main service and these forms will be used for all future licence renewals. Any licensee wishing to begin to use VBI prior to the renewal of its licence may apply to the Commission for an amendment.

The FM licence form will be amended to indicate that, with the exception described in guideline 2) in Appendix A, the use of SCMO is included in the licence for the main service and these forms will be used for all future licence renewals. Any licensee wishing to begin to use SCMO prior to the renewal of its licence may apply for an amendment.

At the same time, the Commission has amended the television and radio regulations so that these regulations will not apply to the use by a licensee of its VBI or SCMO. The new regulations have been registered with the Clerk of the Privy Council to come into effect immediately. These regulations will be published shortly in the Canada Gazette. A copy of the new regulations is included as Appendix B of this Public Notice.

The Commission would like to thank those who have expressed their views and, thereby, have assisted in developing this policy on VBI/SCMO.

[§255-7]

APPENDIX A

Guidelines regarding the provision of VBI/SCMO Services

1) Broadcasters have a primary responsibility to fulfill the commitments made with respect to the main service they are licensed to provide. Any use of the VBI/SCMO should not detract from the licensee's ability to meet all of its responsibilities and to fulfill its Promise of Performance.

2) An application to the Commission is required only if more than 15% of the broadcast week of an SCMO service will be devoted to ethnic programs as defined in the radio regulations (types A, B, C and D) and its service area overlaps that

of an authorized over-the- air conventional ethnic station as defined previously at pages 7 to 8 of the accompanying public notice.

3) While the Commission is not limiting the types of VBI/SCMO services at this time, the Commission would be concerned:
   - if the VBI/SCMO were used in a manner that circumvents Commission policies;
   - if a VBI/SCMO service were to cause undue negative impact on existing local broadcasting services;
   - if long-term commitments for the provision of services that are unrelated to the licensee's primary programming service were to constrain a broadcaster's ability to respond to future programming needs.

4) Licensees adding a VBI/SCMO service or changing the nature of an existing VBI/SCMO service should inform the Commission in writing of the type of service to be provided.

5) Captions for the hearing impaired should be given a high priority; line 21 of the VBI should be reserved for this purpose.

6) Cable television licensees shall not curtail or alter VBI/SCMO services; if the carriage of these services causes undue technical interference to the programming on a main channel, the Commission may, upon application, exempt the cable licensee from this obligation by condition of licence.

7) Revenues may be derived through advertising or subscription fees for VBI/SCMO services, as appropriate.

8) Separate financial records should be kept for each VBI/SCMO service and should be made available to the Commission on request.

9) Revenues from the licensee's main programming service should not be used to subsidize VBI/SCMO services that are unrelated to the licensee's primary programming services.

10) Where appropriate and where capacity is available, licensees are encouraged to provide access to third parties on a mutually-agreed basis.

11) Technical quality on the main television or FM channels should not be impaired by the use of VBI/SCMO.

12) The Commission will monitor the development of VBI/SCMO services and will take appropriate steps, if required.

Recent CRTC Decisions: For cases which have dealt with SCMO applications, see Decision CRTC 93-746 December 14, 1993 (denied); Decision CRTC 91-639, August 26, 1991 (denied); Decision CRTC 90-1060 October 16, 1990 (approved); Decision CRTC 90-93, February 15, 1990 (denied); and Decision CRTC 89-313, June 7, 1989 (denied).

[§255-8]

APPENDIX B

[NOTE: This appendix is omitted. For the relevant provisions of the *Television Broadcasting Regulations, 1987*, as amended by SOR/89-162, in effect March 16, 1989, see above at §137-36 and §137-37. For the relevant provisions of the *Radio Regulations, 1986*, as amended by SOR/89-163, in effect March 16, 1989, see above at §135-30 and §135-31.]

[§256-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Overview: Local Television for the 1990s

[§256-2]

[Public Notice CRTC 1989-27, April 6, 1989. This policy statement, significant excerpts of which are set forth below, accompanied renewal decisions issued in 1989 for English language television stations across Canada. The portions below focus on policy issues relating to private television licensees. (Portions of the public notice relating to the CBC are omitted.) As indicated in editorial notes below, a number of policy matters set out in this notice have been subsequently varied in later public notices. In particular, CRTC policy towards local television programming obligations were reviewed in a 1991 policy set out below at §263. The policy introducing a licence condition requiring television stations with revenue in excess of $10 million per year to expend a stipulated ratio of Canadian program expenditures, was varied in subsequent public notices issued in 1992: see below at §279, §289, §298 and §304.]

[§256-3]

I. *INTRODUCTION*

During the fall of 1988, the Commission held seven public hearings to consider applications for the licence renewal of 76 television stations across Canada. These public hearings took place in Toronto, Winnipeg, Vancouver, Edmonton, Montreal, the National Capital Region and Halifax...

[§256-4]

II. THE PRIVATE SECTOR

1. *Economic Background*

With very few exceptions, the licensees appearing at the fall 1988 television licence renewal hearings described their revenue potential for the new licence term in very cautious terms...

The Commission recognizes that the broadcasting industry in Canada is faced with a degree of uncertainty over the next five years. However, the Commission considers that this uncertainty is no greater than for other service industries or other players in the Canadian economy as a whole. Moreover, many of the uncertainties which faced broadcasters over the past four or five years have now been resolved. The Canada/U.S. free trade legislation has been passed by Parliament and does not affect the Commission's regulations concerning the simultaneous substitution of broadcast signals or the income tax provisions governing the deductibility of expenses incurred by Canadians advertising on U.S. border television stations. The government's policies with respect to copyright are also public knowledge.

Indeed, there are reasons for Canadian broadcasters to be optimistic about the future. The audience viewing share of conventional television stations has remained relatively stable over the past several years. Although television's share of total advertising revenues may have declined slightly, it appears that television's total adverting revenues are continuing to increase and that private sector stations are, on average, experiencing growth in pretax profits...

In addition, as the CBC withdraws from the purchase of U.S. programs, competition for such programs may be reduced to the benefit of private sector broadcasters seeking to confirm increases in program acquisition costs.

The Commission considers that some caution in forecasting the future is prudent business practice and has therefore examined with the licensees ways of ensuring that spending on Canadian programs reflects changes in advertising revenues over the new licence term, should actual revenue growth exceed licensees' forecasts.

[§256-5]

2. *Programming*

... There is a clear consensus among the vast majority of licensees that the key to success in the local market lies with programming that is high-quality and relevant to viewers. Local news programming is appropriately considered most relevant to local audiences and most likely to ensure their continuing support.

[§256-6]

(i) News and Information

Local news and information programs provide the central focus of local television licensees' programming strategy... For most private sector broadcasters, between 70% and 80% of local programs belong to the information category. Almost all licensees now provide some level of local news on weekends -- an improvement over the recent past but an area in which there remains scope for more and better service...

... The Commission considers that, overall, local television broadcasters are providing a valuable service to their communities through their news and information programs and encourages licensees to continue to find ways to prove this kind of programming.

[§256-7]

(ii) Music and Entertainment

...[T]he Commission is reasonably optimistic regarding the future of local entertainment programming. In the area of local drama production, in addition to a number of projects recently commissioned or acquired by networks, private sector stations have participated in first-class projects, often through co-operative efforts or in co-production with independent producers...

The Commission encourages the initiatives of many private sector stations in the production of local children's or youth programming, particularly in the music and entertainment category... The scheduling of Canadian programs directed to children and youth has improved at the network level, particularly on weekends. However, the Commission notes that few private sector licensees broadcast local programming directed towards young people in the 4:00 to 6:00 p.m. period on weekdays... [T]he Commission

will continue to encourage licensees to develop suitable Canadian programming for young people to be scheduled during this time period.

The Commission does not expect every station to produce local programming in all categories. In some instances, the high cost of producing quality entertainment programming makes it unreasonable for smaller television stations to produce certain kinds of programs. In other instances, a station's production team may have developed expertise in a particular category of programming and the station may find it more efficient to utilize fully this expertise than to attempt to produce programming in all categories.

The Commission considers, however, that all broadcasters have a role to play, appropriate to their particular market and financial circumstances, in the development, production and broadcasting of local entertainment programming...

[§256-8]

(iii) Program Development

... In order to ensure an accurate assessment of licensees' contributions to such important activities, the Commission considers that all licensees should work towards common objectives and employ similar definitions with respect to development funds. The following paragraph sets out guidelines with respect to development funds which the commission considers to be appropriate for local stations.

The objective of program development funding is to ensure continuous investment in the script and concept development phases of entertainment and documentary projects. Emphasis should be upon providing "seed" money to less experienced writers, directors, performers and producers in order to encourage the development of innovative projects and Canadian creative talent. Script and concept development expenses should be restricted to those expenses incurred prior to the commencement of preproduction before the financing of the project is in place. Spending on programs that are assured of going to air at the time of the expenditure will not be considered as program development.

The Commission considers that licensees' commitments on development expenditures relating to the underrepresented program categories are important to the future success of Canadian television broadcasting...

[§256-9]

(iv) Definition of a Local Program

[NOTE: This section should now be read in light of *Policy for Local Television Programming*, Public Notice CRTC 1991-22, February 15, 1991, below at §266.]

The Commission notes the significant increase in recent years of co-operative productions among two or more broadcasters and of co-productions with independent producers. Such ventures have had a positive impact on both the volume and quality of Canadian entertainment programming broadcast on local stations.

In Public Notice CRTC 1985-58, the Commission introduced a measure of flexibility into the definition of local television programming. To encourage the production of better quality, more attractive and ore expensive programs in under-represented categories such as drama, music/dance, variety and children's programming, the commission stated that any program produced co-operatively by two or more broadcasters would be

considered as a local program, provided the program responds to the needs and interests of the audiences in the areas served by the licensees involved. The Commission also said that such co-operative programming should not result in a diminution of the total volume of spending on local programming as set out in a licensee's Promise of performance, particularly in the licensee's local news and public affairs programming.

During the course of the licence renewal hearings, the Commission noted some instances in which licensees are co-operatively producing programs in the information or sports categories and claiming these as "local" in their Promises of performance. Although the information and sports categories were not specifically excluded from the policy, Public Notice CRTC 1985-58 indicated the Commission's intent to limit the policy to under-represented categories of programming. Accordingly, the Commission will no longer accept co-operatively produced information and sports program as "local" programs on more than one station. However, in fairness, during the next licence period the Commission will continue to consider as local programs those co-operatively produced information and amateur sports programs which are being broadcast at the time of the publication of this Public Notice. Any new information or sports programs which may be co-operatively produced in the future will not be considered as a local program on more than one station.

The Commission encourages licensees to explore new ways to co-operate in the production of high-quality programming of all kinds. With respect to co-operatively produced programs, however, it will only consider under-represented programs in the music and entertainment categories as eligible for consideration as local programs for the purposes of Schedule I in each licencee's Promise of Performance.

With respect to co-productions involving independent producers, it is clear tha turban centres such as Montreal, Toronto and Vancouver support a sizeable community of independent producers. However, broadcasters in smaller markets are also seeking local co-production opportunities. The Commission commends broadcasters for the relationships they have established with local independent producers and for the generally successful programs which have resulted. Such arrangements, particularly when they involve Telefilm Canada or provincial funding agencies, have the potential to provide quality Canadian programs to each broadcaster at a fraction of total program cost. Furthermore, the Commission notes that Telefilm intends to increase its allocations to independent producers who are located outside the major network production centres.

[§256-10]

In Public Notice CRTC 1986-177, the Commission provided broadcasters with additional flexibility by agreeing to consider as "local", programs produced by an independent producer, provided such programs were commissioned by a broadcaster and the broadcaster was the only equity investor, aside from government funding agencies such as Telefilm Canada.

During the licence renewal hearings, the Commission noted that some broadcasters were claiming as "local", in their Promised of Performance, projects in which independent producers have various levels of equity participation. Such co-productions with the independent production community are generally less concerned with meeting local needs and the Commission therefore considers that such programs should not be

identified as "local" programs for the purpose of Schedule I in the Promise of Performance.

The Commission reaffirms its policy with respect to independent productions, as described in Public Notice CRTC 1986-177 and, where necessary, is requesting licensees to submit a revised Schedule I, the licensee is not required to make up the difference, unless otherwise discussed at the hearing. The revised Schedule I will reflect more accurately the actual volume of local programming broadcast. At the same time, the commission encourages all licensees to continue to develop working relationships with independent producers in their regions.

[§256-11]

A further issue relating to local programming which was discussed at many of the renewal hearings concerns programs produced for broadcast by a network. In the past, the Commission has accepted several such programs as "local" programs. With a view to a more consistent approach, the Commission considers that programs produced by a local station for a network are targeted to a national audience and will not therefore consider them as local programs for the purposes of a station's Promise of Performance. Where necessary, in the accompanying licence renewal decisions the Commission is requesting licensees to submit a revised Schedule I of their Promise of Performance in keeping with this approach. where such an adjustment results in a reduction in the total number of hours of local programs in a licensee's Schedule I, the licensee is not required to make up the difference, unless otherwise undertaken at the hearing. As indicated in the network licence renewal decisions, the Commission continues to encourage an increase in the volume of regionally-produced programming on the networks and the recent hearings have allowed several local stations to demonstrate their successful contributions in this respect.

The above clarification of the interpretation of a local program should provide consistent information and a more accurate measure of the efforts licensees are making to serve their local communities. The successful production of programs designed for network broadcast or international sales is a clear sign of the production capability of many local licensees. However, the primary role of a television station remains one of service to the local market. This is the most effective way of maintaining audience loyalty and market share.

[§256-12]

(v) *Infomercials*

The Commission also discussed the issue of "infomercials" with the licensees at most hearings. This program format generally combines information or entertainment material with the selling of goods or services. In CRTC Circular No. 350 dated 8 August 1988 [NOTE: set out above at §245], the Commission described its approach to such programming and advised licensees to ensure their proposed schedules for the new licence term would not contain programming which might contravene the Commission's regulations in this respect. While the Commission did not note any regularly-scheduled infomercial programming in the licensees' proposed schedules, it will continue to monitor developments in this area. [NOTE: For later developments, see below at §303 and §308.]

[§256-13]

3. *Canadian Program Expenditures*

[NOTE: The following section should be read in light of four public notices set out further below: *New Flexibility with regard to Canadian Program Expenditures by Canadian Television Stations*, Public Notice CRTC 1992-28, April 8, 1992, below at §279; *Increased Flexibility with regard to Canadian Program Expenditures by Canadian Television Stations*, Public Notice CRTC 1992-89, December 23, 1992, below at §289; *The Reporting of Canadian Programming Expenditures*, Public Notice CRTC 1993-93, June 22, 1993, below at §298, and *Additional Clarification regarding the Reporting of Canadian Programming Expenditures*, Public Notice CRTC 1993-174, December 10, 1993, below at §304.]

In recent years, the Commission has placed increased emphasis on licensees' expenditures on Canadian programs. While a program's costs are not always proportional to its quality, there is generally a relationship between the two. As a result, an evaluation of program expenditures provides the Commission with an indication of a broadcaster's priorities. At the fall 1988 licence renewal hearings, the Commission discussed with the licensees their commitments to Canadian programming in both qualitative and quantitative terms...

In virtually all cases, licensees' commitments to spending on Canadian programs closely reflect their revenue forecasts...

Historically, a relationship has been maintained between spending on Canadian programming and financial performance. In the absence of firm commitments from all licensees, the Commission discussed with licensees at the hearings the possibility of imposing a condition of licence which would ensure that each licensee's program expenditures varied directly with its financial performance...

[§256-14]

The Commission considers that the level of spending on Canadian programming is a vital element in ensuring the quality of Canadian programs. At the same time, the Commission acknowledges the suggestions made by various licensees and is aware of the importance of flexibility, simplicity and fairness in the application of any condition of licence based on a formula. For this reason, the Commission has decided to impose on the largest television stations under consideration a condition of licence relating each licensee's Canadian program expenditures to the station's financial performance as measured by its total advertising revenues in previous years.

The Commission considers that the application of the same approach to all private sector licensees is the most equitable way to ensure an appropriate level of expenditure on Canadian programs. The condition of licence applies to the seventeen television stations appearing at the fall 1988 public hearings whose total advertising revenues exceeded $10 million in the broadcast year ending 31 August 1988. All other privately-owned stations under consideration at the fall 1988 hearings will be expected to meet the same requirements, though not as a condition of licence. Privately-owned stations who are not subject to the condition of licence will be expected to spend no less on Canadian programs than the amounts indicated by the wording of the condition of licence.

[§256-15]

Over the proposed licence term, the condition of licence requires the following expenditures on Canadian programming:

Year 1: the dollar amount committed by the licensee in its Promise of Performance for the year ending 31 August 1990 (unless otherwise determined by the Commission);

Year 2: the dollar amount established for Year 1 adjusted to reflect the average annual growth rate of the licensee's time sale revenues plus network payments for the year ending 31 August 1990;

Year 3: the dollar amount established for Year 2 adjusted to reflect the average annual growth rate of the licensee's time sale revenues plus network payments for the previous two years ending 31 August 1991;

Year 4: the dollar amount established for Year 3 adjusted to reflect the average annual growth rate of the licensee's time sale revenues plus network payments for the previous three years ending 31 August 1992;

Year 5: the dollar amount established for Year 4 adjusted to reflect the average annual growth rate of the licensee's time sale revenues plus network payments for the previous three years ending 31 August 1993;

[§256-15]

The expenditure requirements are based on an average of annual changes in the total of three revenue components: local time sales, national times sales and network payments to the station (if any). An example of the averaging process follows:

Year Ending 31 August	Total Advertising Revenues	Average Annual Change (%)
1989	$10,000,000	---
1990	$11,000,000	+ 10.0
1991	$12,000,000	+ 9.1
1992	$13,000,000	+ 8.3

By this example, the average annual change would be 9.1% i.e. (10.0 + 9.1 + 8.3) divided by 3, and the licensee in question would be required to increase its Canadian program expenditures by 9.1% for the year ending 31 August 1993 (Year 4).

The precise wording of the requirement is set out in the Appendix to this Public Notice. [NOTE: the requirement was reworded in 1992: see below at §279-7.]

[§256-17]

The Commission's approach is designed to minimize any year-to-year fluctuation in Canadian program expenditures resulting from a sharp increase or decrease in advertising revenues by averaging the growth rate of the licensee's revenues by averaging the growth rate of the licensee's revenues over three years. In Years 2 and 3, however, a shorter time span for averaging has been chosen to remove the year ending 31 August 1989 from the calculation. Since the broadcast year ending 31 August 1989 is the first year in

which the full impact of the new CTV affiliation agreement is expected to take effect, the Commission has opted to eliminate the preceding years in its averaging approach.

The Commission also notes that since the amounts required to be spent in Years 2 through 5 are based on the required expenditure in the previous year, there is no subsequent "penalty" for spending more than the minimum amount that the condition requires in any given year.

In determining the amounts to be expended on Canadian programming, the Commission has taken into consideration the commitments set out in the renewal applications and any revisions thereto as presented at the hearings. Licensees should follow the same method of reporting their Canadian program expenditures as used in their Annual Returns. The Commission intends to monitor further the relationship between television stations and their associated production companies in order to better understand these relationships.

The Commission notes the flexibility and fairness built into this condition through the linkage of Canadian program spending to revenues. As licensees' revenues increase, so will their Canadian program expenditures; should advertising revenues decline, so will the required level of spending.

[§256-18]

4. *Capital Expenditures*

Collectively, the renewal applications contain projected expenditures of approximately $120 million for improvements to physical plant and equipment over the next five years...

The Commission notes that the volume of complaints from the public relating to the quality and reliability of television signals has declined dramatically in the 1980s and is generally satisfied that licensees have provided reasonable plans regarding capital and technical expenditures for the new licence term.

[§256-19]

5. *Social Issues*

At each public hearing, licensees were questioned with respect to their past performance and future plans relating to a variety of important social issues.

[§256-20]

(i) *Closed Captioning*

Regarding service to the deaf and hearing impaired, the Commission discussed licensees' plans to provide closed captioning in local news programs. The Commission is generally satisfied with the progress made in closed captioning services provided by television networks and in the level of Canadian and non-Canadian captioned programming acquired by many local stations...

The Commission considers it necessary for local broadcasters to make an effort to close caption as many local programs as possible during the course for the new licence term. In the case of broadcasters that have indicated their commitment to provide a reasonable service, the Commission has noted such commitments in the renewal decisions. Where broadcasters have not made such a commitment, the Commission expects those licensees who appeared at the hearings to close caption at a minimum, the

headlines and appropriate scripted portions of their local early evening newscast during the course of the new licence term. For licensees who were not requested to appear at the hearings, the Commission encourages them, as a minimum, to provide hearing-impaired viewers with access to local news and headlines through captions (open or closed) or signing during the new licence term...

In addition to closed captioning, an important concern of the deaf and hearing impaired viewers relates to their ability to communicate with the local station. In many instances, licensees have installed a telephone device for the deaf (TDD). These devices, or their equivalents, provide an important service to the hearing impaired...

...The Commission therefore expects all licensees to install a TDD within the first year of the new licence term. Licensees should ensure that such equipment is installed in an appropriate location within the station and that the telephone number is well publicized among the hearing impaired communities in their broadcast area and published in the local telephone directory.

[§256-21]

(ii) *Reflection of the Community*

...The priority for most licensees should be the fair and accurate reflection of the cultural diversity and ethnic participation in the community within mainstream programming.

The Commission notes the successful efforts of many licensees in recruiting and training on-air staff from different ethnic communities. Most stations have committed to continue their coverage of local events of importance to ethnic communities both through regular news and information programs and through special programs highlighting such events. The Commission continues to encourage all licensees to develop close links with representatives of the ethnic communities in their areas and to keep abreast of any concerns these communities may have. Further, the commission emphasizes to all broadcasters the necessity for all media, and television in particular, to reflect accurately the community they served.

The Commission notes that most of the major stations in western Canada provide some local programming of particular relevance to native peoples. Although only two stations offer access to native-produced programming on a regular basis, virtually all licensees are prepared to provide such access upon reasonable request.

Of greater concern to the Commission is the extent to which licensees accurately reflect the presence of ethnic and native peoples in their broadcast area and address their concerns through mainstream local programming. The Commission encourages all licensees to make greater efforts to ensure that the issues and concerns of ethnic and native Canadians are accurately reflected in mainstream programming, where appropriate.

[§256-22]

(iii) Sex-role Stereotyping

[NOTE: This section is omitted. See *1992 Policy on Gender Portrayal*, Public Notice CRTC 1992-58, September 1, 1992, below at §284.]

[§256-23]

(iv) Depiction of Violence

With respect to excessive violence in television programming, the Commission notes that no serious concerns were raised at any of the hearings. All licensees described adequate procedures for the identification and scheduling of programs containing violent scenes and for dealing with complaints form viewers. The Commission notes with some concern, however, the increasing trend int he United States towards the use of violence, or the threat of violence, in the so-called "trash" or "tabloid" television formats. The Commission will continue to monitor closely developments in this area to ensure that broadcasters continue to exercise their responsibilities in this regard.

[§256-24]

(v) Advertising to Children

Finally, in the area of advertising to children, the Commission notes that no complaints or interventions were received on the is subject and that all of the licensees have agreed to adhere to the CAB's Broadcast Code for Advertising to Children. However, as a result of the Commission's monitoring, it appears there are instances where some broadcasters fail to adhere to all aspects of the Code. The Commission intends to increase its monitoring and to discuss its concerns with the broadcasters involved at an appropriate time in the future.

The Commission will impose, as a condition of licence, the requirement that private licensees adhere to the provisions of the Broadcast Code for Advertising to Children published by the Canadian Association of Broadcasters, as amended from time to time and accepted by the Commission.

As set out in Public Notice CRTC 1988-159 dated 22 September 1988, the Commission has approved a proposal by the CAB to establish the Canadian Broadcast Standards Council which will address several of the social issues identified above.

[§256-25]

III. *THE CANADIAN BROADCASTING CORPORATION*

[NOTE: This portion of the public notice is omitted.]

[§256-26]

IV. *CONCLUSIONS*

The Commission wishes to acknowledge the co-operation it received from the licencees at the seven hearings held in the fall of 1988 and to thank the interveners for their contribution to the public process.

Overall, the Commission considers that the licensees of Canada's television stations are providing a high quality local programming service to their audiences and are gradually making more significant contributions to the Canadian broadcasting system. In addition to their individual efforts in news and public affairs, licensees are increasing co-operating with each other in the production of attractive Canadian drama, variety, music/dance and children's programming. While local stations are not expected to produce local programs in every category, each licensee ha a role to play, appropriate to the circumstances prevailing in its market, in the development and production of local

entertainment programs featuring local talent. Where appropriate in the renewal decisions accompanying this Public Notice, the Commission encourages stations to find new ways of reflecting and promoting local and regional talent through local entertainment programs, particularly music/dance, variety and drama. To ensure adequate funding for these initiatives, the Commission has adopted a new approach which associates requirements concerning Canadian program expenditures with each licensee's financial performance as measured by its total advertising revenues in previous years. This will ensure a level of spending on programming that is essential for continued improvement in the quality of local programs.

Broadcasters have generally demonstrated an increasing sensitivity towards the needs of the various communities in their broadcast areas. The conditions of licence, expectations and encouragements set out in the renewal decisions are designed to ensure that these contributions continue and that all licensees drive to find new ways to improve the service they provide.

[§256-27]

APPENDIX

The following is the text of the condition of licence as it will appear in the renewal decisions of the television stations indicated above:

It is a condition of licence that the licensee expend on Canadian programming, at a minimum:

(a) for the year ending 31 August 1990, the amount of $_____;

(b) for the year ending 31 August 1991, the amount set out in paragraph (a) above, increased (or decreased) by the year-over-year percentage change for the year ending 31 August 1990, in the total of the station's revenues from local time sales, national time sales and payments (if any) received from networks, as reported in the relevant Annual Return;

(c) for the year ending 31 August 1992, the minimum required expenditure calculated in accordance with paragraph (b) above, increased (or decreased) by the average of the year-over-year percentage changes for the years ending 31 August 1990 and 31 August 1991, in the total of the station's revenues from local time sales, national sales, national time sales and payments (if any) received from networks as reported in the relevant Annual Returns;

(d) in each subsequent year, an amount calculated in accordance with the following formula: the amount of the previous year's minimum required expenditure, increased (or decreased) by the average of the year-over-year percentage changes for the years ending on 31 August of the three previous years, in the total of the station's revenues from local time sales, national time sales and payments (if any) received from networks, as reported in the relevant Annual Returns;

with all terms or calculations found in paragraphs (b), (c) and (d) set out above to be interpreted or made in accordance with the explanations set out in this notice.

[NOTE: This wording was reformulated in 1992, as noted below at §279-7.]

[§257-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Review of Advertising Levels on AM Radio

[§257-2]

[Public Notice CRTC 1989-106, September 19, 1989.]

[§257-3]

I. *BACKGROUND*

On 19 September 1986, the Commission published new regulations respecting radio broadcasting entitled *Radio Regulations, 1986* (Public Notice CRTC 1986-248). The Commission's primary objective in enacting the new regulations was to provide a more streamlined, efficient and supervisory regulatory framework for broadcasters to meet the objectives of the *Broadcasting Act*.

In Public Notice CRTC 1986-66, "Proposed Regulations Respecting Radio (A.M.) and Radio (F.M.) Broadcasting", the Commission had expressed concern regarding the financial viability of many AM licensees. As a means of providing assistance to AM stations, as part of the new regulations, the Commission eliminated restrictions on advertising time for AM radio. Under the former regulations, broadcasters were restricted to 250 minutes of commercial content per day and 1,500 minutes of commercial content per week. The Commission anticipated that by permitting AM stations increased flexibility to schedule commercial messages, they would be in a position to strengthen their revenues, particularly those stations that were marginally profitable. Increased revenues, it was hoped, would be used to generate more support for the development of Canadian musical talent and for the production of high quality programming.

The Commission was of the view that in the absence of regulatory restrictions on commercial time, market forces would serve to limit the amount of advertising aired by AM stations. Such market forces include competition from within the radio industry, other advertising media and alternative information and entertainment sources, as well as response from advertisers and audiences to excessive advertising.

As an additional control, the Commission requested the radio industry to establish a self-regulatory mechanism pertaining to advertising levels on AM radio. In response, the Canadian Association of Broadcasters (CAB) added the following clause to its "Code of Ethics" in November 1986: "Broadcasters should ensure that the time allocated to commercial messages is not excessive at any period during the broadcast day, and particularly during high audience periods. The total quantity of commercial messages broadcast on a given station in one week should not, in any event, exceed 1,750 minutes". [NOTE: See clause 10(c) of the CAB *Code of Ethics*, set out above at §180.]

In Public Notice CRTC 1986-248, which announced the enactment of the new regulations, the Commission stated its intention to assess after two years the impact of

this change on the amount of advertising on AM radio. This assessment was to include an examination of the effectiveness of the industry's self-regulatory code on AM advertising levels. The two-year period ended in September 1988.

[§257-4]

II. *SURVEY OF COMMERCIAL CONTENT ON AM RADIO*

A. *Survey Methodology...*

B. *Results of the Survey...*

[NOTE: These sections of the public notice are omitted.]

[§257-5]

C. *Conclusions*

The following conclusions are based on the results of the survey of commercial minutes on AM radio:

(a) Since the removal of the regulation regarding advertising limits on AM radio in 1986, most AM stations have not increased the amount of commercial content aired beyond the amount previously permitted by regulation;

(b) the flexibility to schedule more commercial time, which was granted with the removal of advertising restrictions in 1986, is being used primarily by stations in smaller communities;

(c) market forces appear to be serving to limit the amount of advertising aired by AM stations in larger communities, at least with respect to weekly and daily maxima;

(d) AM broadcasters appear to be observing the guideline in the CAB's "Code of Ethics" that the total quantity of commercial minutes broadcast should not exceed 1,750 minutes; [NOTE: See above at §180.]

(e) some broadcasters appear to be not observing the guideline in the CAB's "Code of Ethics" that the time allocated to commercial messages should not be excessive at any period during the broadcast day; this is particularly evident during high audience periods. The Commission notes, however, that the Code does not define the terms "excessive", "period" or "high audience periods".

[§257-6]

III. *THE COMMISSION'S FINDINGS*

The Commission is of the view that, based on the results of the survey as to the amount of commercial content broadcast per week and per day by AM stations, there is no need at this time to propose changes to the *Radio Regulations, 1986* with respect to advertising levels on AM radio. The Commission will, however, continue to monitor the amount of advertising broadcast by AM stations to ensure that levels not become excessive in the absence of regulatory restrictions and will raise any concerns it has in this regard with individual licensees at licence renewal time.

The Commission welcomes the November 1986 amendment to the CAB's "Code of Ethics" which addresses the amount of commercial content broadcast by AM stations. The Commission notes that none of the stations included in the two-year advertising review surpassed the weekly limit of advertising specified in Clause 10 (c) of the Code.

The Commission is concerned, however, about the considerable amount of hourly commercial content that is aired by many AM stations during certain dayparts, particularly during the morning drive period. Accordingly, the Commission suggests that the CAB consider revising Clause [10](c) of the Code to include definitions for the terms "excessive", "period" and "high audience periods".

[§258-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Elements Assessed by the Commission in Considering Applications for the Transfer of Ownership or Control of Broadcasting Undertakings

[§258-2]

[Public Notice CRTC 1989-109, September 28, 1988. See also *Applcation of the Benefits Test Applied at the Time of Transfers of Ownership or Control of Broadcasting Undertakings*, Public Notice CRTC 1993-68, May 26, 1993, below at §293, for the results of a review of this policy.]

[§258-3]

The Commission has stated on numerous occasions in public notices and decisions involving applications for authority to transfer the ownership or effective control of broadcasting undertakings that because the Commission does not solicit such applications and because there is, thus, only one proposal presented to the Commission, the onus is on the applicant to demonstrate to the Commission that the application filed is the best possible proposal under the circumstances, taking into account the Commission's general concerns with respect to transactions of this nature.

Among other things, the applicant must satisfy the Commission that approval of the transaction would neither result in a reduction in the existing level of service nor create a financial burden which might impair the ability or willingness of the licensee to provide a quality service and to meet its obligations under the *Broadcasting Act*. In the case of transactions involving cable undertakings, the Commission wishes to be assured that the cost of financing the purchase will not result in proposed subscriber fee increases.

The applicant must also demonstrate that the proposed transaction is in the public interest. As well as considering such matters as concentration of ownership, cross-media ownership and local participation in ownership, the Commission, in its deliberations as to how the public interest would best be served, must be satisfied that the strength of the applicant's human and financial resources are sufficient to give it the capability to improve the undertaking in question and to make a contribution to the enhancement of the Canadian broadcasting system.

In addition to demonstrating that it has sufficient resources, an applicant is expected to propose a specific package of significant and unequivocal benefits that will yield

measurable improvements to the communities served by the broadcasting undertaking and to the Canadian broadcasting system. The Commission must be satisfied that the proposed benefits package is commensurate with the size and nature of the transaction and takes into account the responsibilities to be assumed, the characteristics and viability of the broadcasting undertakings in question and the scale of programming, management, financial and technical resources available to the prospective purchaser.

[§258-4]

The Commission reminds applicants that, in general, only those initiatives that would not be realized without approval of the proposed transfer are viewed as benefits. Moreover, in examining transactions of this nature, the quantifiable benefits proposed by an applicant are not assessed with reference to any benchmark or formula and each application is assessed on its own merits.

Benefits should be incremental, that is to say not part of the normal responsibilities of the existing licensee, unless that licensee could not afford the initiative or reasonably planned to delay such an improvement beyond the timeframe proposed by the purchaser.

The Commission has generally rejected certain types of proposals as benefits. Commitments by prospective purchasers to assume existing obligations of licensees, except where continuation of the service is itself in doubt, have not been accepted nor is the Commission prepared to accept as a benefit any proposed initiative that is dependent upon approval of an application yet to be considered by the Commission.

Applicants proposing benefits similar to those that are generally rejected will have to convince the Commission that their specific circumstances warrant a departure from general Commission practice. Some of the types of benefits that have been proposed by applicants in the past are described in the following paragraphs, as is the Commission's general practice with respect to its assessment of the acceptability of the benefits.

[§258-5]

Operating Expenditures

Examples of proposed initiatives that fit within the parameters of what are considered normal business operating expenditures, and which the Commission generally rejects as benefits, include such items as improvements to employee training programs, memberships in industry associations, marketing surveys and similar studies, and seminars dealing with industry problems and concerns.

The hiring of additional staff and related increases in various operating expenses, unless such additions can be tied to a specific incremental enhancement of a broadcasting operation such as the production of new programming, are also viewed as normal costs of doing business.

[§258-6]

Capital Expenditures

Proposed expenditures that fall within the parameters of what can be considered normal capital expenditures are also generally rejected by the Commission as benefits of a transfer. Capital expenditures for land and buildings are normally unacceptable as benefits of a transaction inasmuch as such facilities are required irrespective of any

transfer. Additionally, since land and building expenditures are generally recoverable either through reduced operating expenses or upon resale, the net cost to the applicant of the proposed benefit, if any, is not likely to be significant. Capital expenditures for items such as replacement transmitters are also usually viewed by the Commission as being part of a normal capital expenditure program. If replacements are needed, they are required irrespective of a transfer; if they are not needed, there is no discernible benefit to the public.

With respect to proposed capital expenditures for cable system plant and equipment, the Commission generally views such expenditures as being part of a normal capital expenditure program. In order for an applicant to claim such capital expenditures as a benefit, it must demonstrate that they benefit the public in some manner. For example, the licensee may forego increased subscriber fees that it might otherwise charge in order to recover the capital costs. When an applicant proposes as a benefit capital expenditures in respect of the extension of cable service within the authorized service area of the licence, it must first establish that such service would be over and above the service requirements specified in the regulations and, further, it must demonstrate that the benefit proposed is the capital expenditure net of any recovery from subsequent cash inflows that would be derived from the expenditure.

In proposing capital expenditures as benefits, the size and significance of the undertaking in question is assessed in order to ascertain whether the proposed capital expenditures are truly incremental or normal capital expenditures.

[§258-7]

Grants and Contributions

The Commission has accepted as benefits contributions to certain organizations for the production of Canadian programming and/or the promotion and development of Canadian talent. With respect to one-time contributions to existing organizations or the funding of scholarships or the endowment of new organizations, the Commission expects the contribution to be made at the time of approval of the transaction and, further, rejects as a benefit any claim in respect of the income derived by the recipient organization from such contributions. To accept both the contributions and derived income as a benefit would constitute double counting.

[§258-8]

Air-Time Availabilities

In many instances applicants have claimed as a benefit the provision of free air-time on radio stations for the promotion of Canadian talent. The Commission has considered such proposals to be non-quantifiable benefits owing to the difficulty in establishing a fair monetary value for such air-time.

[§258-9]

Implementation of Benefits

The Commission has insisted on obtaining definite commitments accompanied by a firm implementation schedule. In the case of benefits that are quantifiable in dollar terms,

the Commission generally expects the expenditures associated with such commitments to be included in the financial projections for the licensed undertaking.

[§258-10]

Public Process

The public hearing process provides the Commission with the opportunity to seek additional explanation or clarification as to the proposed benefits. Public hearings should not be used by applicants to attempt to negotiate or to present alternative bargaining positions nor are they held for the purpose of adding to the benefit packages contained in applications being considered.

In recent years, there has been a significant increase in the number of applications submitted to the Commission for authority to transfer ownership or effective control of broadcasting undertakings. Despite the complexity of such applications, the Commission makes every effort to process them as rapidly as possible, taking into account the public notification procedures it has in place to permit opportunity for comment.

Beginning with the decisions released today (Decisions CRTC 89-766 to 89-772), the Commission will make an assessment as to the acceptability of the overall benefits package and, when approving applications for authority to transfer the ownership or effective control of broadcasting undertakings, will require the full monetary commitment to be implemented within the proposed timetable.

[§259-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Recommendations of the Consultative Committee on Acquired Audio Programming: The Definition of a Canadian Audio Program and Incentives to Encourage the Use of Canadian Acquired Programming

[§259-2]

[Public Notice CRTC 1989-135, December 19, 1989.]

[§259-3]

I. *INTRODUCTION*

On 10 January 1989, the Commission issued Public Notice CRTC 1989-3 entitled *Radio Networks and Syndication Policy*. [NOTE: see above at §253.] The Public Notice announced that two aspects of the policy would be referred to a consultative committee: the definition of a Canadian audio program and approaches to promote the use of Canadian acquired audio programming.

The Consultative Committee on Acquired Audio Programming met on 22 March 1989 in the National Capital Region. The Committee was composed of representatives of the

radio broadcasting, audio program production and recording industries, as well as Commission staff...

The mandate of the Committee was twofold: (1) to recommend to the Commission a definition for a Canadian audio program, and (2) to recommend to the Commission incentives to encourage the use of Canadian programming acquired by AM and FM licensees.

This document sets out the Committee's recommendations to the Commission and the Commission's decisions regarding them...

[§259-4]

II. *Definition of a Canadian Audio Program*

A) *Background*

The concept of a Canadian audio program is an integral part of the Radio Networks and Syndication Policy. The policy refers to Canadian audio programs with respect to the programming distributed by radio network licensees, the use of programming acquired by radio licensees, logging requirements for AM and FM licensees and the double credit for mosaic segments with substantial enrichment.

In its proposed policy regarding radio networks and syndication, set out in Public Notice CRTC 1988-89, the Commission suggested a definition for a Canadian audio program. Because of the substantial number of comments and suggestions that were received regarding the proposed definition, the Commission decided to refer the matter to a consultative committee.

The Consultative Committee on Acquired Audio Programming was charged with recommending to the Commission a definition for a Canadian audio program that would apply to acquired programs, and could be used for other regulatory purposes. The definition was to be based on a points system that would be self-administered by the licensees.

[§259-6]

B. *The Committee's Recommendation*

The Consultative Committee on Acquired Audio Programming agreed to recommend to the Commission the following definition for a Canadian audio program.

[§259-7]

(a) *Music Programs*

A Music Program is a program that deals primarily with music and contains one or more musical selections as part of the program presentation rather than as background music, musical themes, bridges, or stingers as described in Category 7, Production, in Public Notice CRTC 1983-43. [NOTE: these are now in Category 4, as noted below at §265.]

To be considered Canadian, a music program must earn a minimum of five points based on the following criteria:

	Points
Canadian Producer	2
or	

Canadian Co-Producer	1
Canadian Writer	2
or	
Canadian Co-Writer	1
Canadian Recording Facility	1
Canadian Host or Hostess	1
Canadian Musical Content if the musical content satisfies one of the applicable conditions below: - a minimum of 30% of the musical selections in Category 5 music programs (except Easy Listening) are Canadian, - a minimum of 10% of the musical selections in Easy Listening music programs (in which at least 50% of musical selections are instrumentals) are Canadian, - a minimum of 7% of the musical selections in Category 6 music programs are Canadian, or - a minimum of 7% of the musical selections in Ethnic music programs (Category 5 or 6) are Canadian.	2

[NOTE: Category 5 became Category 2 and Category 6 became Category 3 in 1990, as noted below at §265. The 7% minimum for the latter category was raised to 10%, as noted below at §263-12, although Ethnic Music was maintained at 7%.]

[§259-8]

(b) *Spoken Word Programs*

A *spoken word program* is a program that deals primarily with the spoken word and contains no music other than as background music, musical themes, bridges or stingers as described in Category 7, Production, in Public Notice CRTC 1983-43. [NOTE: these are now in Category 4, as noted below at §265.]

To be considered Canadian, a spoken word program must earn a minimum of four points based on the following criteria:

	Points
Canadian Producer	2
or	
Canadian Co-Producer	1

Canadian Writer	2
or	
Canadian Co-Writer	1
Canadian Recording Facility	1
Canadian Host or Hostess	1

[§259-9]

Interpretative Notes

The Committee recommended the following interpretative notes with respect to producer, co-producer, writer and Canadian music.

Producer - The producer is the individual who has financial and creative control of the original audio production from beginning to end.

Co-Producer - The co-producer is an individual who has financial or creative control of the original audio production from beginning to end.

Writer - The writer is the individual who creates the original story script or dialogue for the audio program.

Canadian Music - Canadian musical selections are those that meet the criteria described in subsections 13(5), 13(6) and 13(7) of the *Radio Regulations, 1986*.

[§259-10]

C. *The Commission's Response*

The Commission has accepted the Consultative Committee's recommendation regarding the definition of a Canadian audio program, and has expanded upon the Interpretative Notes recommended by the Consultative Committee by adding notes for co-writer, host, recording facility and Canadian. It has also added clarification to the Committee's interpretation of the co-producer function.

Co-Producer - In a program involving no producer but more than one co-producer, at least half of the individuals sharing the responsibility for the production must be Canadian for the program to obtain a co-producer credit. Moreover, at least one of the individuals qualifying for the co-producer credit must have financial or creative control of the original audio production from beginning to end. If all of the co-producers are Canadian, the program will qualify for two points.

Co-Writer - In a program involving no writer but more than one co-writer, at least half of the individuals sharing the responsibility for the writing must be Canadian for the program to obtain a co-writer credit. If all of the co-writers are Canadian, the program will qualify for two points.

Host or Hostess - To obtain this credit, all individuals sharing the duties of host or hostess must be Canadian.

Recording Facility - To obtain this credit, the program must be wholly produced in a recording facility situated in Canada.

Canadian - A Canadian is defined as a person who meets at least one of the following criteria: is a Canadian citizen; is a permanent resident as defined in the *Immigration Act*;

or is a person whose ordinary place of residence was Canada throughout the six months immediately preceding that person's contribution to the production.

[§259-11]

According to Public Notice CRTC 1989-3, the Commission intended to amend Schedule A (Code Indicating Origin) of the *Radio Regulations, 1986* at the time that it published a definition for a Canadian audio program. The amendment is necessary to implement the requirement set out in the Radio Networks and Syndication Policy, that AM and FM licensees log acquired programs according to type (network or syndicated) and origin (Canadian or foreign).

On 14 April 1989, however, the Commission issued Public Notice CRTC 1989-30, announcing a plan to conduct a comprehensive review of the FM policy. This review, which is currently in progress, will involve the issuance for public comment of a draft policy early in 1990. The Commission intends to publish the final policy, with proposed amendments to the radio regulations, if any, by the end of 1990.

Amendments to Schedule A of the regulations, which will involve the definition of a Canadian audio program, will be introduced in the context of the FM policy review. Accordingly, radio licensees will not be required to log acquired programs according to type and origin until the amendments have been adopted.

[NOTE: The CRTC later decided not to amend Schedule A, as noted below at §263-37. Instead, Part II of the application form for AM and FM radio licensees contains a commitment to so identify these programs in their logs.]

[§259-12]

As described later in this document, the Commission has also decided to adopt an incentive scheme to promote the use of Canadian programming acquired by radio licensees. For purposes of implementing this incentive scheme, the Commission will adopt the definition of a Canadian audio program that was recommended by the Consultative Committee, with the modifications to the Interpretative Notes that are noted above. The definition will come into effect today for this limited purpose.

[§259-13]

[NOTE: The rest of this public notice dealt with incentives to promote the use of Canadian acquired programming. This is omitted because the incentives proposed have been superseded with later changes in the FM policy, as noted below at §263, §287 and §292.]

[§260-1]

[CANADIAN RADIO-TELEVISION AND
TELECOMMUNICATIONS COMMISSION]

French-Language Popular Music

[§260-2]

[Public Notice CRTC 1990-21, February 19, 1990]

[§260-3]

1. *Background*

At a Public Hearing held in Montreal beginning on 7 November 1989, the Commission heard interventions by representatives of broadcasters, record companies, and the concert and music industries in order to assess the situation in terms of the availability and distribution of French-language popular music and to determine the appropriate levels. The Public Hearing followed a temporary reduction in the required level of French-language popular music. Under this reduced requirement, all AM stations were authorized to decrease temporarily their French-language popular music content from 65% to 55%. Some FM stations were also allowed to reduce their levels to 55% as an absolute minimum.

This temporary measure was taken following the report of the consultative committee, which was created in 1985 to seek solutions to problems of availability and distribution of French-language material. In Public Notice CRTC 1986-67, the Commission described a number of the consultative committee's recommendations, and promised to review the question after a two year experimental period. This temporary measure was taken to permit the implementation of incentive programs for the production of French-language material, as proposed by the consultative committee.

[§260-4]

2. *The Commission's decision*

a) *French-language popular music content*

The Commission decided that a return to the 65% French-language popular music content requirement for all French-language AM and FM stations is justified, irrespective of station format or market. A number of studies submitted to the Commission in the context of this public hearing reveal a notable improvement in the quality of French-language Canadian material since 1986, and the Commission feels that enough French-language material is now available to allow the stations to reach this level.

[§260-5]

b) *Calculation of French-language popular music content*

The Commission has decided to continue calculating content levels for AM and FM radio on a weekly basis. This measure should give broadcasters the flexibility they have requested: it will allow them to achieve the distinctive sound they desire in the various portions of the broadcast day or week and include special broadcasts in their program

schedules from time to time. However, the Commission expects French-language broadcasters to maintain a reasonable distribution of French-language popular music throughout the day and week, and will monitor closely their performance in this area.

[§260-6]

c) *Canadian content of French-language popular music*

The Commission feels that a minimum content requirement over and above those prescribed in the Regulations Respecting Radio (AM) Broadcasting or the Policy on FM Radio is unwarranted. The Commission nonetheless encourages French-language broadcasters to achieve a 50 per cent level of Canadian content of French-language popular music selections.

[§260-7]

d) *Role of English-language radio stations*

The Commission is of the view that the primary role of an English-language radio station operating within a predominantly francophone area is first and foremost to provide a service to the anglophone residents of that area. Therefore, the Commission feels that the imposition of a higher level of French-language popular music on these stations cannot be justified. Rather, it encourages them to continue providing on-air promotion and financial assistance for Canadian talent in the markets they serve.

[§260-8]

e) *Incentives for the production of French-language recordings*

In view of the success achieved to date, the Commission strongly encourages the broadcasters and other organizations responsible for the various incentive programs for French-language recordings and francophone talent searches to continue their efforts to increase the availability of quality French-language material. In addition, the Commission strongly supports the establishment of a liaison committee of representatives from the recording and radio industries as proposed by the Association canadienne de la radio et de la télévision de langue française Inc. (ACRTF).

[§260-9]

3. *Studies and Comments*

[NOTE: This portion of the public notice is omitted.]

[§260-10]

4. *Findings*

The Broadcasting of French-Language Popular Music

(a) *Availability and Broadcasting*

According to RadioActivité data, and as confirmed by the ACRTF/ADISQ study, the number of French-language records on the market has not increased since 1985. However, while there has been no quantitative increase in French-language records, both [recording and broadcasting] industries say that the quality of the material available is considerably higher. In 1983, an average of 2.04 music selections from each album were played; in 1988, this figure rose to 3.5, representing an effective increase in the number

of French-language music selections available. The Commission is of the opinion that this return to the 65% level should stimulate the record industry to maintain this quality in order to ensure a continued availability of French-language recordings.

A study of the playlists of French-language FM stations in the Montreal and Quebec City markets shows that very few French-language music selections are rotated frequently. The Commission's FM Policy (Public Notice CRTC 1983-43) allows a maximum repeat factor of 18 for all music selections, except Canadian selections, which are not subject to a ceiling. However, the playlists that were analysed indicate that very few French-language selections are broadcast more than once a day, and that most selections (91.5%) are not repeated more than three times a week. A copy of this study was also placed on the public file.

While taking into consideration ACRTF's concerns regarding the danger of overexposing individual artists or records, the Commission feels that some French-language music selections could be played more often, thereby allowing for increased exposure of French-language artists.

A study of all AM stations' Promises of Performance reveals that stations operating in large markets have a rather high verbal content, while music plays a secondary role. However, regional AM stations have a musical level that is quite similar to that of FM stations, although they are not subject to the same degree of competition, and their musical formats are of a more flexible nature. These stations should therefore be able to increase their level of French-language popular music to that proposed in this notice.

[§260-11]

(a) *Scheduling*

The Commission's review of the playlists of 30 French-language radio stations shows that, in general, French-language popular music is generally well distributed throughout the broadcast day and week.

However, a comparison of levels of French-language popular music and ratings for four French-language FM stations in Montreal showed a trend among hard rock-oriented stations to reduce slightly their levels of English-language music during peak listening periods for the 18-34 age group and to increase French-language music content when that audience group decreases. A copy of the study was placed on the public file.

Nevertheless, a quick review of all francophone countries shows that Canada's French-language radio stations have the highest level of French-language popular music.

While not wishing to understate the role of regulations in this respect, the Commission acknowledges the important contribution of broadcasters in playing and scheduling French-language material, and it encourages them to continue their efforts in this area and to work toward a balanced mix of French-language popular music.

[§260-12]

c) *Canadian content*

The study of the playlists of 30 French-language radio stations, shows that an average of 42.9% to 55.1% of the French-language popular music broadcast each week is Canadian; the percentages vary depending on the market. Since most French-language

titles available are of Canadian origin, it is doubtful whether an intervention on the part of the Commission is necessary to ensure that these levels are maintained.

[§260-13]

Financial situation in the two industries

The results of the study by ACRTF and ADISQ and the data made available to the Commission indicate that the French-language recording and broadcasting industries are in fairly good financial health.

[§260-14]

a) *The broadcasting industry*

In 1988, the financial performance of the broadcasting industry in Quebec was comparable to that of the Canadian industry as a whole: the Quebec industry's revenues increased by 9.2% and the national industry's, by 9.3%. However, while the pre-tax and pre-interest profits of the Canadian industry increased by 12.5%, those of the Quebec industry grew by 30.4%. This upward trend has continued since 1983. In addition, while the financial health of AM stations in Canada as a whole continues to deteriorate, Quebec AM stations, although in a deficit situation, are improving financially.

At the Public Hearing, and in the ACRTF/ADISQ study, numerous rating statistics were provided to show that francophone listeners are switching to English-language stations, primarily in the Montreal market. A CRTC study of the audience ratings of English and French stations in Montreal showed that this trend is not widespread; it affects primarily the stations targeting the 18-34 age group (CKMF-FM, CKOI-FM and CHOM-FM). Further, surveys conducted in Fall 1989 showed that the ratings for CKMF-FM and CKOI-FM had risen significantly since Fall 1988, while those of CHOM-FM had dropped. During this period, the amount of French-language popular music broadcast by the two French-language stations had not decreased.

The Commission recognizes, however, that the industry must be viable in order for French-language popular music to be broadcast to the general public. Accordingly, it has chosen to be flexible in the scheduling of music selections and has avoided imposing minimum requirements on a daily or time slot basis.

[§260-15]

b) *The record industry*

Despite the reduction in the amount of French-language popular music broadcast, the Quebec record industry has experienced considerable expansion since incentive programs were established by various levels of government, in particular the joint initiatives by government and industry (MusicAction) and the broadcasters' programs for developing local Canadian talent. Particularly noteworthy is the substantial increase in the number of gold and platinum French-language records produced in Canada. The Commission congratulates all the organizations involved for the important role they have played in the production of Canadian French-language material.

The Commission takes special note of the results obtained by MusicAction and by the Sound Recording Development Program (SRDP) of the Department of Communications. Further, according to ACRTF and the data available to the Commission, Quebec

broadcasters in 1988 invested more than $800,000 in record production and the discovery of new talent, including contributions to MusicAction.

The Commission feels that these investments in new talent by the recording and broadcasting industries are essential to the discovery and promotion of new artists, and it strongly encourages the producers of French-language records to continue to make such investments.

[§260-16]

5. *Application of the policy*

In Decision CRTC 89-458, the Commission approved, by condition of licence, the request by ten French-language radio stations to extend until 30 June 1990 the authority to broadcast less than 65% French-language popular music. Accordingly, the policy set out in this notice will come into effect on 1 July 1990 for these stations. In the case of other French-language FM stations whose Promise of Performance include a condition of licence to broadcast a lower level of French-language popular music, this condition will lapse at the expiry date of their licences. All French-language AM radio stations will be expected to comply with this policy effective 1 July 1990...

[NOTE: This policy was later reaffirmed in 1992, as noted below at §287-14. In 1993, the CRTC amended the *Radio Regulations, 1986*, to require radio stations operating in the French language to devote at least 65% of category 2 vocal selections to musical selections in the French language and to schedule such selections in a reasonable manner throughout each broadcast day. See subsection 2(5), in effect November 4, 1993, set out above at §135-35a.]

[§261-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Cable Television Regulations, 1986 - Changes to the Regulation of Subscriber Fees and Related Matters

[§261-2]

[Public Notice CRTC 1990-53, May 15, 1990. For the introduction of the regulations to implement the policy set out below, see Public Notice CRTC 1991-12, below at §264. This policy should now be read in light of the changes made in *Structural Public Hearing*, Public Notice CRTC 1993-74, June 3, 1993, below at §294.]

[§261-3]

I. INTRODUCTION

At a public hearing commencing 5 February 1990 in Hull, Quebec, the Commission considered a number of proposals to change the regulation of cable television subscriber fees, as well as various related matters. These proposed changes and other issues had

been set out for public comment in CRTC Notice of Public Hearing 1989-14 (the October notice) dated 18 October 1989.

The Commission received 282 written submissions in response to the October notice, including a large number from individual cable subscribers. Submissions were also received from cable licensees and associations, provincial governments, public interest and consumer groups, telephone companies, pay television and specialty service licensees, broadcasters and others. A total of 49 parties appeared at the public hearing to expand upon their written submissions.

The Commission wishes to thank all those who took part in this proceeding. Their contributions have greatly assisted the Commission in reaching its conclusions on the matters under consideration.

The existing provisions for the regulation of monthly basic cable service fees are contained in section 18 of the *Cable Television Regulations, 1986* (the regulations), which were enacted on 1 August 1986. In Public Notice CRTC 1986-182 accompanying the regulations, the Commission stated that the impact of the rate setting provisions for Class 1 and Class 2 systems would be reviewed in two years.

In the October notice, the Commission stated:

> In light of the Commission's promise to review its approach to cable rate regulation in Public Notice CRTC 1986-182, and in recognition of the changes that have occurred in the broadcasting environment since 1986, in clouding the increase in cable industry profitability (as measured by the return on net fixed assets), the Commission has reviewed the impact of the rate setting provisions of the regulations on subscribers, service suppliers and the cable industry.

[§261-4]

As a result of this review, the Commission proposed in the October notice certain revisions to the fee increase mechanisms contained in section 18 of the regulations. These proposed revisions were the primary focus of the hearing.

The proposed revisions reflected the Commission's attempt to address concerns related to cable industry profitability as well as the affordability of basic cable service. Both of these issues were the subject of considerable discussion at the hearing.

With regard to the issue of profitability, the Commission has made the following assessments.

[§261-5]

First of all, the Commission is of the view that industry profitability should be examined over an eight year business cycle rather than for just a single year. In this regard, the Commission notes that the earned return before interest and income taxes on net fixed assets for the most recent eight year period for which data are available (1981-1988) was 24.2%. This is based on information reported to Statistics Canada by individual licensees and adjusted by the Commission to reflect standardised rates of depreciation.

Secondly, in terms of the profitability benchmark against which to assess this industry return, the Commission has concluded, on the basis of the evidence submitted at the hearing, that its current benchmark of 24% is too high. This benchmark was derived from the earned return on net fixed assets for the industry as a whole, measured over the period 1973 to 1979.

The Commission considers that the profitability benchmark should no longer be haded only on historical averages, but rather on an appropriate rate of return for basic cable service determined by means of an independent assessment. In this regard, the Commission notes that the Price Waterhouse study submitted by the Canadian Cable Television Association (CCTA) provided the only independent assessment of the rate of return for basic service. For reasons discussed more fully in a later section of this notice, the Commission has concluded that the Price Waterhouse study, which estimated the expected return for the cable industry to be between 22.8% and 25.6%, is flawed in several ways and overstates a reasonable return by at least two percentage points.

At the same time, the evidence in this proceeding is insufficient to allow the Commission to reach a final conclusion as to the specific profitability benchmark it should use. Accordingly, the Commission has decided to retain a consultant to conduct an independent analysis of the appropriate measures of cable industry profitability and to propose a benchmark rate of return. The consultant's report will be made available for public comment prior to the Commission making a final determination.

[NOTE: The conclusions of the CRTC following consideration of the consultant's report were later issued in *Rate of Return Measures and Profitability Benchmarks for the Cable Television Industry*, Public Notice CRTC 1991-29, March 14, 1991. However, this was later replaced in 1993 with a new policy, set forth in *New Assessment Guidelines for Fee Increases Under Subsection 18(8) of the Cable Television Regulations, 1986*, Public Notice CRTC 1993-146, October 21, 1993, set out below at §302.]

[§261-7]

Finally, the Commission notes that industry profitability, measured in terms of the annual return on net fixed assets, has been increasing steadily since the early 1980s, reaching a high of 28.1% in 1988. After consideration of the evidence filed in this proceeding, the Commission is not convinced that profit levels will decline significantly in the absence of regulatory intervention. Accordingly, the Commission is proposing amendments to the section 18 fee increase mechanisms which would have the effect of lowering the rate of return for the industry, thereby addressing the Commission's concerns with respect to profitability for the industry as a whole.

The Commission will continue the current supervisory approach to the regulation of cable fees. The proposed amendments to section 18 of the regulations would ensure that allowable fee increases compensate only for increased costs, without increasing the profitability of individual licensees. The Commission recognizes that not replacing this section with some form of rate-of-return regulation might allow more efficient licensees to earn or,continue to earn a rate of return in excess of the Commission's profitability benchmark. Therefore, the Commission intends to monitor profitability levels closely

over the next several years to determine whether further regulatory action may be necessary or appropriate.

[§261-8]

The Commission will soon issue proposed amendments to the regulations to reflect the specific conclusions set out in the following sections of this notice. Until the amendments are enacted, the current provisions of the regulations will remain in effect.

[NOTE: For the announcement of the eventual regulations, see below at §264.]

[§261-9]

With regard to the affordability of cable service, it is clear that subscribers are concerned about the rapid increases in fees over the last few years. The changes proposed to the section 18 fee increase mechanisms would reduce the magnitude of basic cable service fee increases in the future, while still allowing cable operators to earn a fair rate of return.

However, the Commission recognises that there are other issues affecting the affordability of basic cable service, and these are related to the structure of the basic service. Some of the discussion at the hearing focused on the possible restructuring of the basic service as a means of allowing subscribers greater ability to choose which services they want to receive and then to pay only for those services.

Other issues discussed at the hearing having implications for the cost and structure of the basic service include the cable industry's evolution to addressable technology and concomitant new service options.

In light of these broader issues, the Commission has decided to undertake a review of the structure and cost of cable service, including tiering and linkage policies, and has tentatively scheduled a public hearing on these matters for mid-1991.

This time frame will allow the Commission to develop specific proposals with regard to the possible restructuring of basic service and consequent tiering and linkage rules. It will also give the cable industry more time to develop strategies with respect to the issue of addressable technology.

[NOTE: The Commission's review of these matters took place in 1993, and was announced in *Structural Public Hearing*, Public Notice CRTC 1993-74, June 3, 1993, below at §294.]

[§261-10]

II. SUBSCRIBER FEE REGULATION

1. *Connection Fees* (section 17)

Subparagraph 17(b)(i) of the regulations limits the charge for the installation or reconnection of a subscriber drop to an amount not exceeding the non-recurring costs to he reasonably incurred in mailing the installation or reconnection.

The Commission clarified this provision in Circular No. 354, dated 29 November 1988 [NOTE: set out above at §249], which required licensees to establish separate charges for three categories of connections: new installations, "hot reconnects" and "cold reconnects" .

The Commission allowed costs to be averaged within each category to establish a single charge per type of connection. The total revenue collected for each category may not exceed the actual non-recurring costs for that category.

In the October notice, the Commission confirmed its intention to amend section 17 of the regulations to incorporate the requirements of Circular No. 354, taking into account both the need for cost-related charges and the need for administrative simplicity and practicality.

At the hearing, a large number of cable operators expressed support for the approach set out in the circular. Others, however, proposed that they he allowed to subsidize the cost of new installations with revenues from "hot" and "cold" reconnects by increasing the charge for these latter connections beyond their non-recurring costs.

[§261-11]

The Commission is of the view that the cost-related framework for connections set out in Circular No. 354 ensures an appropriate balance between the interests of licensees and subscribers in determining the maximum fee for installations. More specifically, the connection policy enunciated in Circular No. 354 allows operators to average the costs of new installations between underground installations and lower cost aerial installations. At the same time, this Circular does not preclude licensees from charging less than the non-recurring costs for a new installation on a regular or a promotional basis. It simply ensures that subscribers are not required to pay more than the nonrecurring costs incurred in reconnecting an existing installation for the purpose of cross-subsidizing new installations or for any other purpose. Accordingly, the Commission intends to amend section 17 of the regulations to incorporate the framework set out in Circular No. 354.

In response to concerns expressed at the hearing about the difficulty of ensuring that technical standards are maintained when offering "hot reconnects" , the Commission wishes to clarify that Circular No. 354 does not require licensees to establish this category of connection. However, those licensees that choose to offer this category must adhere to the requirements outlined in the circular.

The October notice also invited comments as to bow to ensure that a subscriber is not charged more for an installation or reconnection than that permitted in Circular No. 354. Some parties at the hearing proposed that the Commission require licensees to file documentation pertaining to the non-recurring costs for installations and reconnections.

The Commission has concluded that it is not necessary to require licensees to file such data on a regular basis. Instead, the Commission will require licensees, upon request by a subscriber or the Commission, to provide details as to how the total installation or reconnection charge equivalent to the total non-recurring costs of the installation was derived.

[§261-12]

2. *Monthly Fees*

2.1 *Partial Indexing Increases* (subsection 18(2))

[NOTE: This section is omitted, since the Commission revoked the partial indexing method of obtaining fee increases as part of its new policy set out in *Structural Public Hearing*, Public Hearing CRTC 1993-74, June 3, 1993, below at §294.]

[§261-13]

2.2 *Pass-Through Increases and Copyright Payments* (subsection 18(3))

In the October notice, the Commission proposed to narrow the definition of "pass-through portion" in subsection 18(3) to encompass only CRTC-authorized wholesale fees for programming services. As a result of this change, other types of charges, such as pole attachment fees and microwave charges, would no longer he treated as pass-through but rather as normal expense items.

At the public hearing, the CCTA argued that the definition should be expanded to include fees approved by bodies other than federal or provincial telephone authorities, on the basis that any charge that has been scrutinized by an independent body other than the Commission should become an eligible pass-through. This position was also held by Cogeco Tělécom Inc. and Cablenet Limited.

The CCTA, the Ontario Cable Telecommunications Association and some cable companies further suggested that, for amounts payable to third parties for pole attachment and microwave fees, the pass-through portion should be limited to the amount of the increase in excess of 80% of inflation.

The Commission has not found sufficient merit in either of these suggestions to warrant any modification to the proposal outlined in the notice. Accordingly, the Commission intends to amend the definition of "pass-through portion" to include only CRTC-authorised wholesale fees for programming services, and to exclude pole attachment fees and microwave charges. Meanwhile, pass-through charges previously authorized pursuant to subsection 18(3), with respect to pole attachment fees and microwave charges, will remain part of the basic monthly fee but will not he included in the base portion for the purpose of calculating fee increases pursuant to subsection 18(2).

[§261-14]

The October notice also requested comments as to whether copyright royalties for the retransmissions of distant signals should be treated as pass-through charges under subsection 18(3). At the hearing, the CCTA argued that copyright fees should be considered as eligible pass-through charges on the grounds that they meet the objectives originally established for pass-through charges outlined in Public Notice CRTC 1986-182. The CCTA maintained that copyright fees for the retransmissions of distant signals should he treated in the same manner as wholesale fees for specialty services.

The Provinces of Nova Scotia and Ontario suggested that copyright fees should he considered a "one-time-only" pass-through.

After considering the evidence presented at the hearing, the Commission has decided that copyright fees should not become an eligible pass-through charge.

In reaching this decision, the Commission recognizes that copyright royalties are similar to the wholesale fees for specialty services in that they represent charges for programming services and are approved by a federal authority. The Commission notes, however, that the criteria used by the Copyright Board to assess the appropriate level of royalties for the retransmissions of distant signals necessarily reflect the legislative framework of the *Copyright Act*, and not the broadcasting policy set out in the *Broadcasting Act*.

The Commission considers it appropriate to limit pass-through charges to fees that the Commission itself has scrutinized and authorized in accordance with its mandate under the Broadcasting Act. Only in this manner can the Commission be satisfied as to the reasonableness of the charges and ensure that the issue of affordable rates is adequately addressed. Accordingly, the Commission considers that copyright fees can be distinguished from the wholesale fees for specialty services and should be treated as a normal expense item rather than a pass-through charge.

Although the Commission has decided not to allow copyright fees as a direct pass-through to subscribers, it recognizes that this additional expense may impose economic hardship on some licensees. In this context, the Commission notes that the subsection 18(8) fee increase mechanism continues to be available to those licensees that can demonstrate economic need.

[§261-15]

2.3 *Capital Expenditure Increases* (subsection 18(6))

In the October notice, the Commission proposed to discontinue the capital expenditure method of obtaining rate increases for Class 1 systems. In making this proposal, the Commission noted that "in order to ensure an appropriate balance between the interests of subscribers and the needs of licensees, fee increase proposals made by Class 1 licensees based on further capital expenditure requirements should be subject to the more detailed regulatory scrutiny provided for by the subsection 18(8) fee increase method".

[NOTE: A summary of submissions is omitted.]

[§261-16]

The Commission appreciates the many constructive suggestions presented at the hearing concerning the capital expenditure fee increase method. They have been instrumental in persuading the Commission to modify the proposed changes to subsection 18(6) contained in the October notice.

The Commission proposes to retain the capital expenditure fee increase method for both Class 1 and Class 2 licensees, but with certain changes. The Commission intends to amend the regulations to introduce an upper limit to the total amount of each licensee's annual capital expenditure increase. This upper limit would be equivalent of 3% of the base portion of the authorized basic monthly fee at the end of the previous fiscal year. although the cable industry had suggested a limit equal to 4% of the basic monthly fee, the Commission has reviewed the increases taken by the industry since the introduction of the capital expenditure method and considers that the lower limit of 3%, taken on the base portion only, would be sufficient to yield potential fee increases, based on eligible expenditures, consistent with the requirements of most licensees.

Such a limit would enable licensees to continue to plan rebuilds on an evenly-paced, long-term basis. Proposed fee increases related to higher levels of capital investment in any given year will have to be justified under the more detailed process provided for under subsection 18(8).

[§261-17]

The Commission also proposes to amend the regulations by adding sunset provisions applicable both to subsection 18(6) increases implemented prior to the date of this public notice, and to future capital expenditure increases. In recognition of concerns expressed at the hearing by many cable operators with regard to a sunset provision on previous subsection 18(6) increases, the Commission proposes to allow these increases to remain in effect until 1 January 1995. All future capital expenditure increases would be terminated five years after the date they go into effect.

This approach is consistent with the Commission's view that the capital expenditure fee increase method is intended only to provide an incentive to licensees for certain types of desirable projects and was never intended to provide for full recovery of eligible expenditures.

[NOTE: In *Structural Public Hearing*, Public Notice CRTC 1993-74, June 4, 1993 at §294, the CRTC decided to allow the sunset provision to be suspended for those licensees who contribute 50% of the amount by which the basic monthly fee would otherwise be reduced to a new fund for Canadian programming.]

[§261-18]

With regard to the definition of eligible capital expenditures, the Commission intends to make two changes. First, the definition would be clarified to ensure that eligible capital expenditures include only those expenditures that would not have been incurred if the project in question had not been undertaken. Accordingly, expenses such as overhead, that cannot be related to a specific capital project and would have been incurred whether or not the project had been undertaken, would no longer be considered eligible.

Secondly, as proposed in the October notice, new plant construction would no longer be considered an eligible expenditure. The Commission notes that a large part of such construction relates to the servicing of new subdivisions in urban areas and is therefore required by regulation. Accordingly, the Commission considers that it is inconsistent with the incentive-based objective of the capital expenditure fee increase method to have subsection 18(6) apply in these circumstances. Furthermore, the Commission notes that it does not favour the use of the capital expenditure method as an incentive to make expenditures that generate an additional revenue stream.

[NOTE: In *Structural Public Hearing*, Public Notice CRTC 1993-74, June 4, 1993 at §294, the CRTC decided to amend the definition of eligible capital expenditures to allow a portion of the cost of an addressable digital decoder box, up to a maximum of $150 per household, to be included.]

[§261-19]

In recognition of the fact that the above change could affect a licensee's ability or willingness to extend cable service into uneconomic low-density areas, the Commission wishes to emphasize that such initiatives will be given favourable consideration in the context of subsection 18(8) fee increase proposals, to the extent that economic need can be demonstrated.

In the future, eligible capital expenditures would include head end equipment for the reception and processing of programming services distributed on the basic service, community programming equipment, and direct costs associated with the upgrading and rebuilding of distribution plant and existing subscriber drops. However, only that portion of the costs of the distribution plant and subscriber drops allocated to the basic service, in accordance with the method of cost separation and recovery outlined in a subsequent section of this notice, would be considered eligible for a corresponding fee increase using the capital expenditure method.

[§261-20]

With regard to the procedural aspects of the capital expenditure method, the Commission finds considerable merit in the proposal put forward by several cable industry participants that future fee increases be based on eligible expenditures incurred during the previous fiscal year. The Commission therefore intends to amend the regulations to this effect.

As a result of this change, capital expenditure fee increases for eligible capital expenditures incurred during any fiscal year commencing 1 September would be implemented no earlier than the first day of January following the end of the fiscal year. For example capital expenditure fee increases for eligible expenditures incurred during the fiscal year commencing 1 September 1990 would be implemented no earlier than 1 January 1992. As part of the documentation to be submitted in support of such increases, licensees would be required to file a schedule showing eligible expenditures actually incurred during the previous fiscal year. The amounts indicated would have to reconciled with information contained in the Statistics Canada Annual Return- Cable Television for that year, which would also be filed with the supporting documentation.

[§261-21]

Until the current regulatory provisions with respect to the capital expenditure fee increase mechanism are amended, the Commission will not be favourably disposed towards filings for implementation during the fiscal year commencing 1 September 1990, based on new spending. However, the Commission will be favourably disposed towards filings with respect to eligible spending during the current fiscal year ending 31 August 1990, and for which subsection 18(6) increases have not already been implemented, provided they meet the existing requirements of the capital expenditure fee increase method.

With regard to any underspending during the current fiscal year, related to subsection 18(6) increases that have previously been implemented, the Commission will take this into account when assessing future capital expenditure fee increase proposals.

Cable subscribers should benefit from the revised capital expenditure provisions in a number of ways. Specific system improvements would be carried out before the associated fee increase goes into effect. Concerns about the continued affordability of monthly fees would be addressed by means of the annual limit and the five-year sunset provision. Further, the Commission notes that, after five years, the capital expenditure component of the basic monthly fee would in fact decrease unless a licensee continues capital spending on system improvements at close to historic levels.

For cable licensees and the Commission, this revised mechanism would continue to provide a streamlined process for obtaining modest fee increases, without the paper burden and regulatory lag associated with subsection 18(8). It should also provide an incentive for licensees to carry out the planning of upgrades on a steady, long-term basis.

[§261-22]

2.4 *Economic Need Increases* (subsection 18(8))

In the October notice, the Commission proposed that, rather than continue to assess subsection 18(8) submissions under the six criteria set out in the public announcement dated 18 September 1974 [NOTE: set out above at §203-5], it would assess all future subsection 18(8) submissions on the single criterion of economic need using well-defined profitability measures and associated benchmarks. In assessing economic need, the Commission proposed to take into account the revenues and expenses associated with "extended basic" discretionary tiers offering Canadian specialty services.

[NOTE: In *Structural Public Hearing*, Public Notice CRTC 1993-74, June 3, 1993, below at §294, the CRTC altered its approach to subsection 18(8) applications. For the new policy, see *New Assessment Guidelines for Fee Increases Under Subsection 18(8) of the Cable Television Regulations, 1986*, Public Notice CRTC 1993-146, October 21, 1993, below at §302.]

The Commission currently measures the profitability of basic cable service on the basis of rate of return on net fixed assets before interest and taxes. In the October notice, the Commission invited interested parties to propose alternative methods for measuring industry profitability and to suggest appropriate benchmarks for use in connection with the current or proposed methods of establishing profitability levels.

Both in the written submissions and at the hearing, there was considerable discussion of the proposal to assess subsection 18(8) filings on the basis of the single criterion of economic need. Views expressed ranged from those advocating the maintenance of the current criteria to those arguing that the criteria should be replaced by strict rate-of-return regulation. However, the majority of those addressed this issue favoured the Commission's proposal.

[§261-23]

After considering all the evidence, the Commission has decided to adopt economic need as the sole criterion for assessing subsection 18(8) fee increase proposals. Further, in assessing economic need the Commission will taken into account the total revenues and expenses associated with "extended basic" discretionary tiers where such tiers contain one or more Canadian specialty services authorized for distribution on the basic service.

As part of the supporting documentation, a licensee will be required to submit a copy of the Statistics Canada annual Return - Cable Television for the most recently completed fiscal year.

The Commission recognizes that subsection 18(8) filings will no longer be assessed on the basis of criteria such as quality of service and proposed additions to service, including improvements to community programming. At the same time, licensees should continue to address subscriber complaints with respect to quality of service and fulfil their community programming obligations.

Furthermore, as discussed in a later section of this public notice, once an industry code of service standards is developed, the Commission will take into account the expenses reasonable incurred by a licensee to achieve the prescribed levels of service, in assessing subsection 18(8) fee increase proposals.

[§261-24]

With regard to appropriate benchmarks for use in connection with current or proposed methods of establishing profitability levels, three parties made submissions and commented at the hearings: the CCTA, the Consumers' Association of Canada (CAC), and Bell Canada (Bell).

[NOTE: A summary of the submissions is omitted.]

[§261-25]

After detailed examination of these three submissions, the Commission has concluded that there is insufficient evidence to make a final determination as to the appropriate benchmark to use for assessing the profitability of basic cable service.

Accordingly, the Commission intends to retain a consultant to carry out a detailed independent study to: (i) propose and assess various methods that could be used to measure cable industry profitability, including rate of return on net fixed assets, and any alternative measures which might be appropriate; (ii) propose appropriate benchmarks for use in connection with current or proposed methods of establishing profitability levels; and (iii) assess the feasibility of establishing an appropriate profitability benchmark within a range, rather than as a single, fixed number. With respect to the latter, the consultant would examine the basis on which a licensee's allowed return would be established within the range.

The consultant's report will be made available for public comment prior to the Commission making a final determination. In the interim, the Commission will continue to measure profitability primarily on the basis of the rate of return on average net fixed assets, measured over an historical period of 8 years, and will maintain the benchmark at its current level of 24%.

[NOTE: The Commission's decision following comments on the consultant's report was issued in *Rate of Return Measures and Profitability Benchmarks for the Cable Television Industry*, Public Notice CRTC 1991-29, March 14, 1991. However, this approach was superseded in 1993 by *New Assessment Guidelines for Fee Increases Under Subsection 18(8) of the Cable Television Regulations, 1986*, Public Notice CRTC 1993-146, October 21, 1993, below at §302.]

[§261-26]

3. *Subscriber Notification and Administrative Procedures*

In the October notice, the Commission proposed to lengthen the period that must elapse between the date on which a licensee provides note to subscribers and the Commission regarding a proposed increase in its basic monthly fee and the date on which the increase is implemented. It proposed to change the notification period from 40 days to 9 days for increases pursuant to subsections 18(2), 18(3) and 18(6). In addition,t he Commission proposed that subscribers be provided with 30 days to submit comments

regrading subsection 18(6) increases, rather than the current 20 day period. This would make the comment period for subsection 18(6) increases the same as that for subsection 18(8) increases.

At the hearing a number of cable industry representatives and Government of Nova Scotia suggested that the notification period should be extended to 60 days rather than 90 days as proposed in the notice. Generally, these parties were concerned that, with a 90 day notification period, some subscribers will have forgotten the notice by the time the fee increase goes into effect.

[§261-27]

The Commission acknowledges this concern and therefore proposes to implement a 60 day notification period for subsection 18(2), 18(3) and 18(6) fee increases. The Commission also proposes to implement the 30 day subscriber response period for subsection 18(6) increases.

Furthermore, as indicated in the October notice, the Commission intends to modify its practice with respect to the suspension or disallowance of a proposed capital expenditure fee increase so that any such action would be taken no later than 60 days after the Commission has received notification from the licensee.

The Commission considers that these changes would improve notification to subscribers, simplify and standardize rules for notifications, and give the Commission more time to process submissions and take subscriber comments into account.

[§261-28]

In an earlier section of this public notice, the Commission decided that subsection 18(6) fee increases should be based on eligible expenditures made during the previous fiscal year. As a result of this change, capital expenditure fee increases for the fiscal year ending 31 August will be implemented no earlier than 1 January of the following year. Given these changes, the Commission considers it appropriate that 1 January also be used for subsection 1(2) increases. This change would take effect on 1 January 1992. The current partial indexing formula would remain in effect for increases to take effect on 1 September 1990.

With regard to the CPI reference date used to calculate allowable partial indexing increases commencing 1 January 1992, the Commission proposes to use the percentage increase in the CPI for the twelve-month period ending the previous 31 July.

[§261-29]

The Commission's internal procedures for processing fee increase applications currently involve the verification by the Commission of the completeness and accuracy of the calculations prior to the implementation of the fee increase by licensees. At the hearing, the commission proposed an alternative procedure whereby the onus of ensuring the correctness of the calculations for rate increases would be placed on licensees. Fee increases would be implemented by licensees provided they had complied with the appropriate notification period. at the same time, if a subsequent audit revealed that an incorrect increase had been implemented, the Commission would require a reduction of the rate and a refund to subscribers.

The CCTA agreed in principle to this proposal, but was concerned about the possibility of licensees having to provide a refund to subscribers. Instead, the CCTA recommended a roll-back of any improper fee increase and a credit to subscribers on subsequent bills.

In light of the discussion at the hearing, the Commission proposes to adopt this alternative procedure, including the implementation of a roll-back and credit system to deal with any inaccuracies in rate increase filings submitted by licenses, and intends to amend the regulations to this effect.

The Commission will ensure the accuracy of fee increase notifications through subsequent monitoring and in response to subscriber complaints.

[§261-30]

III *RELATED ISSUES*

1. *Cost Separation and Recovery*

The original CCTA proposal with respect to cost separation, as described in its December 1986 document entitled "Recommendations on Accounting for Non-Rate-Regulated Services", was based on the principle of "incremental recording" to govern the recording of revenues, operating expenses, and capital expenditures associated with non-programming services and discretionary programming services.

The CCTA subsequently modified its recommendations in a letter dated 15 June 1989, by proposing an extension to the incremental costing approach to include an allocation to non-programming services of a portion of the common facilities operating costs and annual capital expenditures, using a formula based on net revenues.

While acknowledging the merit of the general thrust of the revised proposal, the Commission had concerns with respect to certain details contained in the 15 June letter. In the October notice it proposed to adopt the CCTA's cost separation methodology, but with three amendments.

[§261-31]

First of all, the Commission considered that the CCTA's proposal should be expanded to include an allocation of the total historical cost of distribution plant and subscriber drops in use at the end of a given fiscal year, in addition to common facilities operating costs and annual capital expenditures.

Secondly, the Commission indicated that gross revenues, rather than net revenues, should be used to calculate the percentage allocation of these costs to non-programming services.

Finally, whereas the CCTA had recommended that Class 2 licensees not be required to allocate these costs to non-programming services, the Commission proposed to treat Class 1 and Class 2 licensees alike.

[§261-32]

In written submissions and at the hearing, interested parties commented on the CCTA's cost separation procedures, as amended by the Commission, and suggested alternative cost separation methodologies. These alternatives ranged from eliminating the need for cost separation, by using the combined rate of return from all services carried

by a licensee when assessing fee increase requests for the basic service, to adopting a measure of relative use such as bandwidth to determine the allocation of common costs.

Based on the discussion at the hearing and after considering all the evidence, the Commission has reached a number of conclusions. First, the Commission considers tha the common facilities operating costs as well as the annual and historic capital expenditures on distribution plant and subscriber drops are not causal to basic service Rather, the Commission is of the view that these costs are incurred in common for the provision of basic programming, discretionary programming and non-programming services.

Secondly, having determined that these common costs cannot be allocated to the various services on the basis of cost causation the Commission has decided that these cots should be recovered from basic and non-programming services on the basis of their share of total gross revenues. In reaching this decision, the Commission is of the opinion that, since the facilities are used in common to provide basic and non-programming services, as well as other services, it is fair and appropriate that non-programming services contribute to the recovery of the associated costs. In the Commission's view, a formula based on gross revenues is easy to apply and yields results as fair as any other measures proposed.

Finally, the Commission has decided not to require discretionary programming services to contribute, at this time, to the recovery of common facilities operating costs and the annual and historic cost of distribution plant and subscriber drops. The Commission is of the opinion that this cost recovery procedure will assist the financial viability of the many Canadian specialty programming and pay television services and thereby further the objectives of the *Broadcasting Act*.

[§261-33]

Accordingly, the Commission has decided to adopt, for both Class 1 and Class 2 licensees, the CCTA's cost separation proposal as amended by the Commission and set out in the notice. Specifically:

1. The Commission will continue to apply the incremental costing approach to discretionary programming services.
2. The Commission will continue to apply the incremental costing approach to non-programming services. In addition, non-programming services will be required to recover a portion of the common facilities operating costs (i.e. system powering, plant leasing, pole attachment, duct rental, maintenance materials, salaries and asset based taxes), and a portion of the annual capital expenditures and total historical costs for distribution plant and subscriber drops in use at the end of a given year.
3. For the purpose of calculating the contribution by non-programming services towards the recovery of the common facilities operating costs and the annual and historical distribution plant and subscriber drop costs, a formula based on the ratio of gross revenues form non-programming services to total gross revenues will be used.

   Gross revenues from non-programming services are defined as the total gross revenues, including any revenue from the rental of equipment related exclusively to eh delivery of such services that are earned directly or indirectly by a 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*, for any cable-delivered service other than a programming service. Total gross revenues are defined as the gross revenues from non-programming services, as above, plus the total gross direct and indirect subscription revenues, including any revenue from the rental of equipment other than converters related exclusively to the delivery of programming services, that are earned directly or indirectly by a licensee or other entity as described above for any cable-delivered programming service. Where revenues are earned fro the delivery of a discretionary service package containing both programming and non-programming services revenues from the package are to be allocated to non-programming services using a formula based on the ratio of the number of non-programming services to the total number of programming and non-programming services offered in the package.

4. For the purpose of filing the Statistics Canada Annual Return - Cable Television and future subsection 18(8) fee increases, Class 1 and Class 2 licensees must identify total gross revenues by source, all incremental costs and the share of common costs related to the provision of basic and non-programming services, calculated in accordance with the cost separation and recovery procedures outlined above.

These procedures for the separation and recovery of costs will be implemented for the fiscal year commencing 1 September 1990.

[§261-34]

2. *Fee Deregulation of Small Systems*

In the October notice, the Commission invited comments as to whether the principle of fee deregulation, currently applicable to Part III licensees only, should be extended to very small Class 2 licensees (e.g. those with systems serving fewer than 1,000 subscribers), and it so, whether the Commission should establish any mechanism(s) to enable it to safeguard subscriber interests, particularly as they relate to cable fees.

[NOTE: A summary of submissions is omitted.]

[§261-35]

In light of the views expressed in written and oral submissions, the Commission intends to deregulate the fees of all Class 2 systems serving fewer than 2,000 subscribers. In coming to this conclusion, the Commission notes that there have been very few complaints with respect to the fees charged by Part III licensees.

[NOTE: In *Structural Public Hearing*, Public Notice CRTC 1993-74, June 3, 1993, below at §294, the CRTC extended this fee deregulation to Class 2 systems having fewer than 6,000 subscribers. Further to this policy, the Commission amended the regulations to allow review and variance of basic monthly fee changes upon receipt of written complaints from 10% or more of the subscribers.]

In order to ensure that subscriber interests are safeguarded, however, the Commission has determined that a review mechanism is warranted for all fee deregulated cable licensees.

As existing licences are renewed, and new licenses issued, the Commission intends to attach a condition of licence allowing it to modify the basic monthly fee upon receipt of legitimate subscriber complaints.

The Commission is satisfied that this safeguard mechanism addresses the legitimate concerns raised at the public hearing respecting the need to ensure that subscriber interests are adequately protected under a regime of rate deregulation.

[NOTE: This policy was later modified, as noted below at §270 and §294.]

[§261-36]

The Commission has decided not to deregulate the signal carriage requirements for Class 2 systems under 2,000 subscribers. In arriving at this decision, the Commission has taken into account the concerns raised by some pay television licensees, and notes that existing Class 2 systems serving fewer than 2,000 subscribers are currently abiding by the Commission's signal carriage requirements as well as the tiering and linkage rules.

[NOTE: This was changed in the *Structural Public Hearing*, Public Notice CRTC 1993-74, June 3, 1993, below at §294.]

[§261-37]

3. *Standards of Service*

In the October notice, the Commission stated that it "is concerned that subscribers receive the highest standard of cable service achievable at an affordable cost and invites the industry ad other interested parties to comment on the possibility of developing an industry code respecting standards of cable service".

Virtually all parties commenting on this issue were in favour of the establishment of an industry code concerning standards of service to be provided to subscribers. Most cable licensees supported the process currently under way within the CCTA to develop a code of service standards for ratification by its membership by June of this year.

According to the CCTA, once the standards have been approved, they will be submitted to the Cable Television Standards Foundation for adjudication purposes.

The Commission considers that this is an important initiative taken by the cable industry. The development of an industry-wide code of service standards will help ensure that all cable subscribers have access to the best possible quality of service. Further, as discussed in a prior section of this public notice, the expenditures reasonably incurred by a licensee to achieve these service standard will be taken into account by the Commission in assessing subsection 18(8) fee increase proposals. In this context, it is essential that the code ultimately adopted by the industry include specific, quantifiable criteria with respect to customer service.

[§261-38]

[NOTE: The remainder of the public notice, setting out the matters that such standards should address, is omitted. For the text of the *Cable Television Customer Service Standards*, as approved by the Commission in Public Notice CRTC 1991-60, June 10, 1991, see above at §177.]

[§262-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Native Broadcasting Policy

[§262-2]

[Public Notice CRTC 1990-89, September 20, 1990.]

[§262-3]

Background

[NOTE: This section of the public notice is omitted.]

[§262-4]

Regulatory Framework for Aboriginal Broadcasting

1. *Role and Objectives*

Although aboriginal broadcasting in Canada began in the 1960's, its development remained slow until the federal government established the Northern Native Broadcast Access Program (NNBAP) in 1983.

Today, thirteen regional native communications societies funded by the NNBAP employ over 380 personnel and together produce an average of 315 hours per week of radio programming and 12 hours per week of television. In addition, dozens of community radio stations have been established to distribute the network programs of the regional societies while providing a complementary local service.

It is clear that the NNBAP funding program has become a significant factor in facilitating the provision of valuable broadcasting services to aboriginal audiences. These services have taken on a role akin to other publicly-mandated services, such as the CBC, in that they deliver a much-needed first level of service, often in aboriginal languages and unavailable from the private sector.

At the same time, by virtue of their dependence on public funding, native broadcasters are vulnerable to the effects of the government's restraint program. The recent funding cuts resulted in the elimination of the Native Communications Program which supported community radio, trail radio and native press. Concurrently, the NNBAP budget was reduced by sixteen percent. The overall effect of these measures was to reduce substantially the operating budgets of the thirteen NNBAP societies, some by up to twenty-five percent. As a result, a number of aboriginal broadcasters see no alternative but to pursue advertising revenue and subsequently expand their commercial orientation.

In the Commission's view, it is essential that aboriginal broadcasters receive sufficient funds to enable them to fulfill their responsibilities. Furthermore, native broadcasters should be mindful of the inherent pressures exerted on their programming and resources by the adoption of a commercial orientation.

The advent of satellite technology has had a dramatic effect on remote and isolated communities due to the wholesale importation of southern broadcasting services. Therefore, the primary role of aboriginal broadcasters is to address the specific cultural

and linguistic needs of their audiences, while creating an environment in which aboriginal artists and musicians, writers and producers, can develop and flourish. In this way aboriginal broadcasters can provide an element of diversity to counter-balance and complement non-native programming sources.

For its part, the Commission considers it essential that the regulatory framework within which aboriginal broadcasters operate remain flexible and adaptable to the varying circumstances of each region. Such a regulatory framework needs to be tailored to reflect the specific needs of native audiences, while remaining streamlined to minimize the regulatory burden.

The Commission recognizes that, subject to broad CRTC objectives and to statutory requirements, it is the aboriginal broadcasters themselves who are best qualified to determine and meet the needs of their audiences.

[§262-5]

2. *Definitions*

In its proposed policy, the Commission set out tentative definitions of a native undertaking, a native program and native music.

A number of submissions suggested that the Commission clarify these definitions by providing one for the term "native".

In its public announcements and decisions, the Commission uses the terms native and aboriginal interchangeably, with the knowledge that the native broadcasters themselves have differing preferences for these terms.

The Commission considers that a definition of "native" should coincide with the definition of "aboriginal" as contained in the Canadian Constitution; that is, "aboriginal peoples of Canada includes the Indian, Inuit and Métis peoples of Canada."

[§262-6]

2.1 *Definition of Native Undertaking*

Currently there is no specific type of licence for native broadcasters. In its proposed policy the Commission set out a definition of a native undertaking which provided for a concise reflection of the mandate of such an undertaking.

While most submissions supported the proposed definition, commercial broadcasters and the Canadian Association of Broadcasters (CAB) recommended that it specifically address the preservation of aboriginal languages and cultures. The CAB proposed that the programming be "significantly distinct...having at least a minimum requirement of native language programming."

The Commission considers that the definition of a native undertaking should be amended to include the maintenance and development of aboriginal cultures and, where possible, the preservation of ancestral languages, as essential aspects of the role to be performed by such stations. In this context, the Commission notes that in certain regions of the country, the use of native languages has all but disappeared among some segments of the population.

[§262-7]

The revised definition of native undertaking is as follows:

Native undertaking: This undertaking is characterized by its ownership, programming and target audience. It is owned and controlled by a non-profit organization whose structure provides for board membership by the native population of the region served. Its programming can be in any native Canadian language or in either or both of the two official languages, but should be specifically oriented to the native population and reflect the interests and needs specific to the native audience it is licensed to serve. It has a distinct role in fostering the development of aboriginal cultures and, where possible, the preservation of ancestral languages.

The Commission intends to amend its licence application and renewal forms to include, as a new category, that of a native undertaking.

The Commission encourages the participation by aboriginal people in all aspects of the broadcasting system, including the commercial sector. The above definition reflects the current reality in which native broadcasting undertakings are confined, for the most part, to non-profit operations reflecting, to a large degree, the existence of government funding and the fact that most native broadcasters are situated in remote areas unable to sustain viable commercial undertakings. Where native Canadians wish to apply for licences to operate commercial undertakings, they will be required to meet the same obligations and expectations as other commercial broadcasters.

[§262-8]

2.2 *Definition of Native Program*

In its proposed policy the Commission defined a native program as follows:

Native Program: A program in any language directed specifically towards a distinct native audience, or a program about any aspect of the life, interests or culture of Canada's native people.

This definition does not impose quotas with respect to the use of non-native language or music. Further, it recognizes that the broadcasting of native programs should not be restricted to native broadcasters, and that non-native individuals should not be prevented from making programs of interest to aboriginal people.

The CAB and individual representatives of the private radio sector expressed some concerns with the proposed definition. The CAB stated that, while it may no longer be reasonable to define a native program solely on the basis of language spoken or music played, it considers the definition too broad and suggested that it include the provision that each program be required to meet a single criterion, specifically that it serve as "a tool to enhance and preserve the culture of Canada's native people".

The Commission notes that this principle is already encompassed in the definition of native undertaking. Moreover, the Commission considers that it would be too onerous, and often inappropriate to apply it to each and every program. For example, it would be unreasonable to require or expect news programming aired by native radio stations to serve as a tool to preserve aboriginal culture.

The Commission has therefore decided to adopt, without change, the originally proposed definition of a native program set out in its proposed policy.

[§262-9]

2.3 *Definition of Native Music*

The Commission had proposed to adapt the MAPL formula for the purpose of identifying those musical selections that would qualify as Canadian native music. The intended goal in identifying the quantity of Canadian native music broadcast by a licensee had been to monitor its efforts in the area of talent development and the subsequent increase in the recording and airplay of indigenous native music.

In its proposed policy the Commission noted the paucity of native musical recordings and stated that it was neither possible nor desirable to impose airplay quotas at this time.

The response of the aboriginal broadcasters to the proposed definition of native music was generally negative. They argued that a definition was unnecessary in the absence of airplay requirements. They also argued strongly that aboriginal music is not confined by political borders and that any definition would of necessity have to encompass all North American Indian music. The Inuit Broadcasting Corporation noted that, for its purposes, Inuit music is the music that emanates from the indigenous peoples of the entire Circumpolar region, including Alaska, Greenland and the USSR.

[§262-10]

In light of these arguments, the Commission has decided not to put forward a precise definition of native music at this time. However, as noted below, the Commission is firmly of the view that aboriginal broadcasters must play an effective leading role in the development and airplay of native musical talent. This will be a major factor in assessing a licensee's proposed Promise of Performance and at subsequent licence renewals.

The Commission commends the CBC for its efforts in native talent development and is pleased to note the Corporation's intention to make its native recordings available to aboriginal broadcasters.

[§262-11]

3. *Types of Native Stations*

The greatest concentration of activity in aboriginal broadcasting involves community-based radio stations in small remote locales. The Commission notes that there were in excess of 100 hundred native community radio stations in operation in 1988, and that more than two-thirds of these were receiving and rebroadcasting native-language radio programming produced by the regional NNBAP-funded networks.

Native television services have been slower to develop and, in all instances to date, the programs produced by the aboriginal television networks are distributed by either the CBC or TVOntario.

The Commission has proposed that aboriginal radio and television networks be required to complete the same application form as conventional networks.

[§262-12]

For individual native radio stations, the Commission has established two types.

Type A: A native radio station is a Type A station if, at the time the licence is issued or renewed, no other commercial AM or FM radio licence to operate a station in all or any part of the same market is in force.

Type B: A native radio station is a Type B station if, at the time the licence is issued or renewed, at least one other commercial AM or FM radio licence to operate a station in all or any part of the same market is in force.

[§262-13]

Currently, all native radio stations make use of FM frequencies. Any new aboriginal undertakings wishing to use the AM band will assume the same mandate and operate under a regime similar to that of FM stations.

Licensees are reminded that they are subject to the requirements set out in the *Radio Regulations, 1986*, and the *Television Regulations, 1987*, including the provisions respecting logs and logger tapes.

[§262-14]

In response to suggestions, the Commission may be willing to grant Type A status to small low-power native radio stations that, although within the contour of an adjacent urban commercial station, do not compete directly in that market. Such variances would be considered on a case-by-case basis.

The proposed policy was silent on a regulatory framework for individual native television stations, since there is currently none in operation. If and when such native stations are licensed, they could be accorded the status of "remote station" as defined in the *Television Regulations, 1987*. This would allow for individual flexibility in the areas of Canadian programs, logs and records, and advertising material.

[§262-15]

4. *Promise of Performance*

The Commission has proposed that all aboriginal radio and television networks and Type B native radio stations be required to file a Promise of Performance when applying for a new licence or licence renewal. By far the vast majority of aboriginal undertakings will be in the category of Type A native radio station, and will not be subject to this requirement.

The Commission also noted that aboriginal broadcasting is still in the developmental stage, and that unstable funding and high personnel turnover can create difficulties in maintaining full compliance with the Promises of Performance. The Commission therefore proposed that adherence to Promises of Performance not be imposed as a condition of licence at this time.

Although most submissions agreed with this approach, a few raised concerns that the Commission's policies would be unenforceable if adherence to the Promise of Performance is not made a condition of licence.

On the one hand, the Commission acknowledges that, in the absence of such a condition of licence, its policies, which are designed to meet the objectives of the *Broadcasting Act*, could be ignored by some broadcasters. On the other hand, it believes it has arrived at a realistic policy framework with the goodwill and cooperation of all parties involved, and does not wish to impose binding requirements unless they are warranted. Accordingly, the Commission has decided not to impose a condition of licence

at this time requiring substantial compliance with the Promise of Performance. However, the usual conditions of licence will continue to be imposed with respect to advertising, a thirty percent Canadian musical content requirement for radio stations, and adherence to industry codes respecting sex-role stereotyping and advertising to children.

[§262-16]

A number of submissions requested clarification regarding those situations where a Type B native station is the main originating feed of the network. Since two separate licences would be required, one each for the station and for the network, it is apparent that both Promises of Performance would be identical, unless a split feed were installed to allow different programming to be broadcast over each undertaking.

In describing the elements of the Promise of Performance, the Commission suggested that it should include the licensee's proposed program schedule and programming policies, as well as its commitment to the development and airplay of native talent. It should also describe how the proposed programming reflects the needs and preferences of its target audience, and the specific measures taken to ensure that such programming fosters the enhancement of aboriginal languages and culture. Licensees will be required to specify their proposed hours of operation, language(s) in which programming will be broadcast, the time to be devoted to different program types and musical formats (for radio), policies on advertising, and commitments regarding the presentation, promotion and development of native talent.

The Commission intends to devise a specific Promise of Performance for aboriginal radio broadcasters, based on the above criteria.

[§262-17]

5. *Advertising*

Initially, most of the NNBAP-funded communications societies did not envisage a need to pursue advertising revenue. Funding levels were frozen in 1987, however, and then substantially reduced in 1990; as a result, most aboriginal broadcasters are now of the view that they must be permitted to diversify their sources of funding if they are to maintain an acceptable level of service to their audiences.

Conversely, private broadcasters submitted that government-funded native radio stations should not be permitted to compete for the limited advertising revenues available in the markets they serve. The CAB suggested that requests by aboriginal broadcasters for authority to engage in advertising activity be examined on a case-by-case basis.

In its proposed policy, the Commission stated that:

> there is no justification for the placing of commercial restrictions or distinctions on native broadcasters as such. The Commission concurs with the majority of submissions which favour treating native radio stations in the same manner as other community radio licensees. Therefore, the Commission is proposing that Type A native community radio stations be permitted to broadcast up to 250 minutes of advertising a day, up to a maximum of 1,500 minutes per week, for stations broadcasting between 6:00 a.m. and midnight seven days a week, otherwise 20% of a station's total broadcasting time. Type B native community radio stations will be

permitted to broadcast an average of four minutes of advertising per hour per day, with a maximum of six minutes in any single hour. These advertising restrictions will be imposed as a condition of licence on each native community radio station. The *Radio Regulations, 1986* do not impose commercial restrictions at the network level.

[§262-18]

In the case of Type A native radio stations, the Commission has decided to remove all advertising restrictions due to the fact that there are no other commercial stations in these markets, and because the advertising potential is so limited that a maximum inventory of 250 minutes per day is well beyond the capacity of these markets to sustain.

Type B native radio stations will remain subject to the limitations outlined in the proposed policy, which permits an average of four minutes of advertising per hour per day, with a maximum of six minutes in any given hour.

The Commission has received an application from a Type B aboriginal radio station to affiliate with a private country music network service, and requesting authority to sell the commercial avails within that service. The Commission considers that such applications should be subject to public comment and considered on a case-by-case basis.

A number of submissions by aboriginal broadcasters raised the concern that the limitation of an average of four minutes per hour of advertising for Type B radio stations poses a serious restriction in that commercials are often translated from English or French for further broadcast in aboriginal languages or dialects. Thus, if a commercial is aired in English and three native languages, it must be counted four times. The broadcasters submitted that, in such circumstances, the allowable advertising quota would be rapidly consumed. They further argued that the translated versions may run fifty per cent longer than the original English version due to the grammatical structure of some aboriginal languages. The Commission agrees that, in this unique situation, the proposed advertising restrictions would impose unfair limitations on aboriginal radio broadcasters and could act as a deterrent to the broadcast of commercial messages in all the appropriate languages.

The Commission has thus decided that only the original versions of commercials in English, French or a native language should be counted for the purpose of meeting the average of four minutes per hour advertising restriction. Versions of commercials translated into aboriginal languages will not be counted.

[§262-19]

Native television stations and networks will be required to adhere to the advertising restrictions set out in the *Television Regulations, 1987*, which allow for up to 12 minutes per hour of advertising.

At present, no native television broadcasters, and only a few native radio networks, operate their own distribution systems. For the most part, they have access agreements with either the CBC or TVOntario.

Over the past few years there have been discussions with the CBC to determine whether it would amend its access agreements with aboriginal broadcasters to allow them to engage in advertising activity.

The CBC has indicated that it is now prepared to agree to native television broadcasters' use of the CBC's distribution facilities to sell commercials in the native access programs, provided that the native broadcasters abide by the CBC's commercial acceptance guidelines and that they secure the necessary indemnity insurance. The Corporation further indicated that it would be willing to assist aboriginal broadcasters in obtaining group rates for such insurance coverage.

With respect to radio, the CBC indicated that it was unwilling to change its policy of prohibiting advertising in the native access programming.

TVOntario distributes the radio and television programming of the Wawatay Native Communications Society of northern Ontario.

TVOntario submitted that its current access agreements do not prohibit advertising, and that "the decision to advertise or not would be Wawatay's. The authority to do so would lie between Wawatay and the Commission." The Commission is pleased to note that TVOntario does not currently restrict advertising in the native access programs.

In Public Notice CRTC 1990-12, the Commission mistakenly characterized TVOntario's corporate underwriting activity as sponsorship revenue, and regrets this misinterpretation.

[§262-20]

6. *Conflicts with Private Broadcasters*

Private radio stations in Whitehorse and Yellowknife have raised concerns that the native broadcasters in their communities have caused significant audience erosion because they broadcast mainstream country or rock music. They also submitted that native stations should not be permitted to compete for advertising revenue. Conversely, some submissions indicated that the onus should be on private broadcasters to substantiate any claim of financial harm caused by native broadcasters.

The Commission considers that limiting the advertising activity of Type B native radio stations to an average of four minutes per hour of commercials (in their original versions) provides adequate protection for the private commercial stations. Furthermore, the overall regulatory framework, including the requirement that native radio networks and Type B stations file Promises of Performance, further ensures that the programming of these undertakings is specifically oriented to the aboriginal population.

Any further complaints will be dealt with through the Commission's normal complaints procedure, and through the intervention process at the time of licence renewal.

[§262-21]

7. *Distribution*

Each of the thirteen regional networks funded by the NNBAP is mandated to serve a large geographic area, such as Arctic Quebec, the entire Yukon Territory, northern Ontario, and so on. Few of these regional services could exist without the benefit of satellite technology.

The CBC plays a primary role by providing access to its distribution facilities to aboriginal networks in Alberta, Saskatchewan, Manitoba, Quebec and the Northwest Territories. TVOntario provides satellite distribution for the radio and television services of the Wawatay Native Communications Society in Ontario. Canadian Satellite

Communications Inc. (Cancom) currently provides free audio subcarriers to native radio networks in the Yukon and MacKenzie Delta areas, and will provide two additional subcarriers pursuant to its latest licence renewal decision (Decision CRTC 90-92). In British Columbia, a number of private commercial stations have assisted in the distribution of aboriginal radio by providing free access time.

The Commission recognizes the significant contributions made by the various parties involved in providing native broadcasters with access to their distribution facilities over the past few years. In particular, the CBC's involvement in promoting and assisting native broadcasters dates back to the Corporation's earliest days in the Arctic, and to a large degree provided the impetus that sparked the imagination of aboriginal people to establish their own broadcasting services.

In its submission, the CBC suggested that it and other broadcasters involved in distributing aboriginal programming should continue to provide access time, and recommended that the Commission maintain its Access Committee to resolve conflicts respecting access and scheduling.

Finally, the Commission is pleased to note the Minister of Communications' announcement on 9 May 1990 of the government's commitment to the establishment of a dedicated northern satellite transponder, known as TVNC. This will alleviate the pressures currently imposed on the CBC's overloaded Northern Television Service, and will fulfill a longstanding dream of aboriginal television broadcasters to control the distribution of their services.

[§262-22]

8. *Conclusion*

This review of aboriginal broadcasting began in 1988 with the awarding of a research study to Greg Smith and Associates, and this was followed by two separate calls for comments. The Commission extends its appreciation to all those who contributed to this review, and is gratified by the constructive and cooperative spirit in which this policy was developed.

[§263-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

An FM Policy for the Nineties

[§263-2]

[Public Notice CRTC 1990-111, December 17, 1990. See also *A Review of the CRTC's Regulations and Policies for Radio*, Public Notice CRTC 1992-72, November 2, 1992, below at §287, and *Policies for Local Programming on Commercial Radio Stations and Advertising on Campus Stations*, Public Notice CRTC 1993-38, April 19, 1993, below at §292, for a number of revisions to this policy.]

[§263-3]

I. *INTRODUCTION -- Blueprints for Change*

On 16 February 1990 the CRTC issued Public Notice CRTC 1990-20 entitled "A Review of the Policy for FM Radio." In the notice, the Commission announced that it considered the time right to conduct a comprehensive review of its policy for FM radio in the private sector.

The current FM policy has been in effect for 14 years. Since that time the radio industry has changed dramatically. FM radio has experienced growth in the number of stations and level of listening, as well as in revenues and profits. At the same time the audience share, revenues and profits of AM radio have declined. This period has also seen expansion in the Canadian music industry as well as in the number of private Canadian radio networks and program syndicators.

The Commission believes that the policy had to be reviewed to ensure that it was still relevant, given the changes that have taken place in the broadcasting and related industries, and in view of the Commission's goal of streamlining its policies, regulations and administrative practices to retain only those mechanisms necessary to attain the objectives set out in the *Broadcasting Act*...

[§263-4]

II. *THE GENERAL APPROACH -- Laying the Foundation*

After considering the submissions received and the discussion at the hearing, the Commission remains convinced that the objectives and key considerations identified at the beginning of the process provide a sound foundation for the new FM policy. As well, the Commission accepts as valid the arguments put forward by several French-language broadcasters that the new policy must recognize the special circumstances and challenges that they face.

This section provides a brief discussion of each of the Commission's objectives and key considerations.

[§263-5]

A) *The Objectives*

1) *Canadian Resources -- The First Priority*

The *Broadcasting Act* stipulates that programming provided by each broadcaster should make use of "predominantly Canadian creative and other resources".

The maturation of the Canadian music industry over the past two decades has made it practical to increase the Canadian broadcasting system's reliance on Canadian talent. Programming must give pride of place to Canadian performers and address matters of Canadian concern. Accordingly, increased emphasis on Canadian musical and other creative resources is the primary thrust of the new policy.

[§263-6]

2) *Maintaining and Developing Diversity*

The notion of diversity comes from the *Broadcasting Act's* call for programming that is "varied and comprehensive". This concept implies not only that different types of

programming should be available, but that programming should cover a wide range of tastes and interests.

Strategies to provide diversity are not limited to commercial radio. The Commission continues to view the diverse and balanced programming of the CBC's radio service as the cornerstone of Canadian radio. In addition, educational, community and campus radio contribute alternative programming and access by local community groups.

While diversity among commercial pop and rock stations is a desirable objective, the private sector is limited in this regard. At a certain point, programming becomes so specialized that audience levels become too low to generate the revenues that commercial stations need to survive.

Almost all commercial FM stations concentrate on the presentation of popular music. This approach enables them to appeal to the broad general audiences they must attract to generate adequate advertising revenues. However, with the convergence of pop and rock music styles over the years, it has become increasingly difficult to retain the distinctions between stations basing their programming on pop and rock music. The Commission believes that a level of diversity will result as stations differentiate themselves in order to serve different audiences. At the same time there is still a necessity to ensure that a wide range of all types of musical and spoken word programming is available in the broadcasting system.

[§263-7]

3) *Maintaining and Developing High Standards*

The *Broadcasting Act* requires that the programming provided by each broadcaster be of "high standard". The 1975 FM policy expressed the view that quality was directly related to the level of care and preparation that was invested in program production. The policy therefore introduced the concept of foreground format programming. The Commission, however, is convinced that well-prepared and thoughtful programming should be present throughout a station's programming and not limited to a station's foreground format.

For example, regular newscasts provide an important source of information for many Canadians. As well, radio continues to provide the only daily broadcast source of local information in many communities. Analysis of local issues, commentary on music played, and even coverage of local sports events, can contribute to a high quality radio service.

The Commission has therefore decided, through its new policy, to continue to encourage stations to complement their music with high quality spoken word programming, including news, that is relevant to the communities they serve. Broadcasters are encouraged to demonstrate that the increased freedom in this regard will result in creative, quality programming.

[§263-8]

B) *Key Considerations*

1) *Reliance on Competitive Forces*

As noted earlier, the number of FM stations has increased significantly since 1975. Many communities are served by several local stations and also receive signals from stations in other communities.

The Commission considers that the need to maintain format distinctions has diminished and that competition between broadcasters striving to attract audiences in a multi-station environment will ensure a measure of diversity among stations seeking mass audiences. In addition, it believes that broadcasters are best situated to determine which spoken word and special interest programs serve their audiences best. Accordingly, the Commission will lessen its regulatory involvement in this area, while maintaining some basic policy objectives.

[§263-9]

2) *Protection of AM*

AM stations have generally encountered lower audiences and revenues in recent years, in the face of growing competition from FM stations and their superior technical sound. The Commission considers that AM should be provided a measure of protection until a more effective strategy for strengthening it is realized. The new policy will therefore make provision for programming strategies designed to allow AM stations a measure of competitive flexibility.

[§263-10]

3) *Reduced Regulation*

The reduction and simplification of regulations has again been an important consideration in the current review.

Consistent with these goals, the Commission now plans to reduce significantly the scope of the Promise of Performance. Only essential aspects of a station's programming will be included in the Promise of Performance, and a licensee's adherence to its commitments in these areas will be strictly enforced. The new Promise of Performance will be based on objective, measurable commitments to the greatest extent possible, and the number of content Categories and Subcategories will be reduced.

To reduce the paper burden further, stations applying to renew their licences will no longer be required to file a Description of Programming form. However, a section entitled "Part III - Supplementary Questions" has been appended to the Promise of Performance. Following the upcoming round of licence renewals, the Commission also intends to introduce a "postcard" application renewal form for stations that do not propose changes to their Promise of Performance.

To emphasize the importance of Canadian music and the provision of Spoken Word programming further, the Commission will propose, at a later date, amendments to the *Radio Regulations, 1986* (the regulations) by adding requirements dealing with these areas.

[§263-11]

4) *French-language Broadcasting -- A Distinct Environment*

During the Commission's review at the public hearing of the impact of its proposals on French-language broadcasting, the necessity of introducing a fourth key consideration became apparent. French-language AM and FM radio have evolved differently from their English-language counterparts. English-language AM stations offer a variety of music formats, including contemporary hit, adult contemporary, Gold and Country music

formats, whereas most French-language AM stations offer formats based on spoken word programming. Thus, restrictions on the music of French-language FM stations would not be effective in providing a diversity of music formats, or any meaningful measure of protection for French-language AM stations.

French-language FM stations, however, still face stiff competition from English-language music stations in communities such as Montréal and Ottawa-Hull which are also served by stations broadcasting in English. The French-language stations must ensure that at least 65% of the vocal selections they broadcast are in French. English-language stations generally have no obligation to broadcast French-language music, although the Commission notes that some stations in Montréal and Ottawa-Hull have made a minimum commitment of 5%. Some enjoy considerable success in attracting young francophones with rock music formats. Moreover, the "pool" of French-language music available to French-language broadcasters is considerably smaller than that of English-language music available to English-language broadcasters.

Recognizing the difficulties that French-language stations face -- particularly in bilingual areas -- and in light of the fact that there are few music-oriented French-language AM stations, the Commission has made allowances with respect to Music Usage Indicators.

[§263-12]

III. *THE TOOLS -- RESPONDING TO THE ISSUES*

A) *CANADIAN CONTENT*

The Commission had proposed that all popular music-based stations except those in the Easy Listening (predominantly instrumental) format be required to program a level of at least 30% Canadian content in their popular music, on a daily basis. The Commission further proposed that levels for Category 6 and Ethnic music remain at 7%, measured on a weekly basis...

[NOTE: A summary of the submissions is omitted.]

As stated in the proposed policy, in light of the growth of the Canadian music industry and the FM broadcasting sector, the Commission considers that FM stations should no longer have lower Canadian music requirements than AM stations in the popular music categories. Accordingly, **the Commission will increase the Canadian content requirement for popular music to 30% for all FM stations except those with commitments to a level of instrumental selections of 35% or greater.** The Commission considers that the flexibility being given to FM stations with respect to other programming commitments will allow broadcasters to adjust to these increases.

The Commission does not agree with the suggestion that an increased Canadian content requirement for popular music should not apply to French-language broadcasters. As Télémédia pointed out, French-language broadcasters generally exceed the current Canadian content requirement. Moreover, the lack of restrictions on hits and the ability to program both French- and English-language selections should aid French-language broadcasters in increasing their Canadian content.

To provide an added measure of stimulation for the production of Traditional and Special Interest Music by Canadian artists, **the Commission will increase the requirement for Canadian content for Traditional and Special Interest Music to 10%**

within the regulations. An appropriate level of Canadian music for the CBC stereo networks and the few private stations specializing in Concert Music will continue to be governed by their existing condition of licence and will be explored at the time of their next licence renewal. **The Canadian content requirement for Ethnic Music will remain at 7%.**

[§263-13]

The Commission will continue to measure compliance with Canadian content regulations on a weekly basis for FM stations. The Commission will also measure compliance with the Canadian content regulation on a weekly basis for AM stations, in order to put them on an equal footing with FM stations.

The Canadian content requirements for AM and FM radio will be incorporated into the regulations. The Commission considers that the required time to enact the revised regulations should be sufficient for FM broadcasters to adjust their programming in this area.

[§263-14]

To ensure an even distribution of Canadian selections throughout the broadcast day and week, **the Commission will expect that at least 25% of popular music selections broadcast by AM and FM stations between 6 a.m. and 7 p.m. Monday through Friday be Canadian. Furthermore, the Commission will expect reasonably even distribution of Canadian selections throughout these dayparts and throughout the broadcast week. The Commission will further expect a significant presence of Canadian music in high audience periods -- these traditionally being the morning and afternoon drive periods.**

The Commission will monitor the distribution of Canadian music to ensure that the above guidelines are observed. If, however, the distribution of Canadian music should not reflect the guidelines, the Commission is prepared to establish more stringent measures.

[§263-15]

B) *CANADIAN TALENT DEVELOPMENT*

In its Public Notice, the Commission asked for comments regarding the efficacy of Canadian talent development initiatives and for suggestions as to how they may be assessed.... [NOTE: A review of the submissions is omitted.]

The Commission is of the view that the Canadian broadcasting system has an important role to play in the development of Canadian artists, primarily through airplay. It believes that it is equally important to ensure that an adequate supply of Canadian material is available to offer Canadian listeners a diversity of high quality Canadian content on each station, and in various musical as well as spoken word categories. While broadcasters are not solely responsible for seeking out and developing Canadian creative talent, it is clearly in their interest to take an active role in this process to ensure that there is a sufficiently large pool of Canadian recorded music as well as other types of Canadian creative material available for broadcast.

To achieve these goals, the Commission has, for some time, expected Canadian broadcasters to include, as part of their Promises of Performance, some commitment to encourage and promote the development of new Canadian talent. These commitments have most often been of a financial nature directly related to record production, live concerts, and special on-air productions featuring Canadian artists.

[§263-16]

In recent years, a number of licensees have asked the Commission to issue clear guidelines as to what exactly is expected of them in this area; some have even suggested a "percentage of revenue" formula that could be applied across the board.

Although the Commission recognizes the practical advantage of clear guidelines, a number of unresolved issues remain, some of which are not within the Commission's domain, and others which may have a significant impact on broadcasters' ability to commit to substantial initiatives in the near future. These include the revision to the Copyright Act to include "neighbouring rights", which may have an impact on licensees' budgets.

Another factor that is also likely to have an impact is the increased requirement for Canadian content proposed earlier in this document. Before it makes any final determination on a standard approach for assessing Canadian talent development initiatives, the Commission wishes to consider the impact of these factors on broadcasters' future commitments in addition to the impact that Canadian talent development initiatives have had on the Canadian broadcasting industry to date.

The development of a standard formula for determining the acceptability of Canadian talent development projects could form part of a separate process to be held at a later date, once a study of the impact of all factors mentioned above has been conducted, and after the Commission has completed its hearings on the renewal of most commercial FM stations in 1992.

In the meantime, the Commission will continue to assess Canadian talent development initiatives according to such criteria as a licensee's revenue and profitability, the resources available to it, and the size of the market in which it operates. Individual initiatives will also continue to be assessed according to their potential impact on the development of Canadian talent.

[§263-17]

A major concern continues to be the provision of adequate exposure for *new* Canadian artists. Therefore the Commission will ask broadcasters to indicate any commitment to the on-air exposure of new Canadian talent through their Canadian talent development initiatives.

The Commission has generally treated certain types of direct and indirect expenditures as constituting acceptable Canadian talent initiatives, while others have been disqualified generally on the basis that they are more appropriately considered a "normal cost of doing business". To assist broadcasters in formulating developmental projects, a list of various types of initiatives that have generally been accepted or rejected by the Commission in the past is attached in Appendix I. This list is not exhaustive, and other types of initiatives not listed will continue to be assessed on a case-by-case basis.

[§263-18]

C) *STATION FORMATS*

The Commission had proposed that station formats might be retained with some amendments principally relating to stations programming mainly popular music... [NOTE: A summary of the submissions is omitted.]

The Commission continues to be of the view that there is sufficient competition among FM stations providing pop and rock programming in most Canadian communities to ensure the presence of diversity among formats, without the need for regulation. In order to reflect the emergence of dance music, the Commission is adding a reference to this music genre in its definitions, and couples it with pop and rock music. Stations specializing in dance music, and formerly finding themselves in the Group IV format, will now fall within a newly defined Group I format of Pop, Rock and Dance. In addition, the increasing convergence of music types and the inclusion of many new elements in popular music make differentiation by musical category increasingly difficult in the pop, rock and dance areas. At the same time, the Commission considers that regulation is required to maintain the presence of diverse station formats beyond the pop, rock and dance areas.

[§263-19]

For these reasons, the Commission has decided **to eliminate the differentiation between pop and rock subcategories. The popular music subcategories will be reduced to the following (definitions are included in Appendix II):**

Subcategory 21 - Pop, Rock and Dance

Subcategory 22 - Country and Country-oriented

Subcategory 23 - Folk-oriented

Subcategory 24 - Jazz-oriented.

[§263-20]

The removal of the distinction between the old music Subcategories 51 - Pop and Rock - Softer and 52 - Pop and Rock - Harder also renders the old format groups I, II and IV irrelevant. The revised new format system will be as follows:

Group I - Pop, Rock and Dance:

The language of broadcast of the station is English or French, at least 50% of the broadcast week (period 6 a.m. to midnight Sunday to Saturday) is devoted to music, and at least 70% of the music broadcast is from Subcategory 21 (Pop, Rock and Dance).

Group II - Country:

The language of broadcast of the station is English or French, at least 50% of the broadcast week is devoted to music and at least 70% of the music broadcast is from Subcategory 22 (Country).

Group III - Specialty:

Any station other than one operating in Group I or II.

[§263-21]

Stations proposing to broadcast in Group III - Specialty may be those specializing in Ethnic programming, News or Talk programming, Traditional and Special Interest musical programming or a combination of a number of kinds of special programming.

As discussed in greater detail later in this notice, **licensees will be expected to make minimum commitments in their Promises of Performance to the language of broadcast, News, Spoken Word - Other and, where applicable in the case of Group III stations, to Traditional and Special Interest programming. Stations wishing to operate in Group III will be expected to outline their music proposals in a schedule to be appended to the Promise of Performance.**

[§263-22]

D) *MUSIC USAGE INDICATORS*

The Commission relies on Music Usage Indicators to ensure that music programming styles are differentiated and to provide a minimum amount of protection to music-oriented AM stations.

[§263-23]

1. *Hits*

The FM policy currently requires FM stations to restrict their use of hits to less than 50% of all popular music selections broadcast each week, and stipulates that non-Canadian selections may not be repeated more than 18 times per week.

In response to requests, the Commission had proposed to exclude all Canadian selections from the calculation of the hit factor. Since this change could result in the airplay of a greater number of old Canadian hits to the neglect of newer Canadian music, the Commission suggested the inclusion of a "new music" indicator in the Promise of Performance.

The Commission had also proposed that hits be measured on a daily, rather than on a weekly basis... [NOTE: A summary of submissions is omitted.]

[§263-24]

The Commission, having considered these views, has determined that the level of hits allowed on FM should continue to be regulated. This will ensure a differentiation between the sound of FM and that of AM, and provide a measure of protection for AM radio. It has decided, however, to redefine **"hits" so as to exclude Canadian selections for the 12-month period after they first appear on a Top 40 hit chart. The Commission will limit the use of hits on FM stations to less than 50% of all music broadcast**.

This new approach will allow FM broadcasters to maintain their current level of foreign hits, while encouraging them to increase the use of current Canadian hits and removing disincentives to the programming of new Canadian hits.

The Commission considers that the inclusion of Traditional and Special Interest music in the hit factor calculation may be an incentive for broadcasters to program such music. Therefore, **all musical selections broadcast (Category 2 as well as Category 3) will be included in the calculation of hits.**

[§263-25]

The Commission accepts the argument that the calculation of hits on a daily basis would remove broadcasters' current flexibility to average hit material over the week. The Commission also notes that a daily measurement would be inconsistent with other FM policy requirements. Accordingly, **the Commission will continue to assess compliance in this respect on a weekly basis.**

[§263-26]

The Commission has also decided that **an exemption from the hit restrictions will be granted to French-language stations.** In Circular No. 332, dated 15 May 1987, the Commission announced that it was suspending its evaluation of the use of French-language hits by FM radio stations for a period of two years, in view of the inadequacy of the available French-language hit charts as a measuring tool, the limited availability of French-language music, and the requirement that 65% of vocal music be in the French-language. The Commission considers that imposition of restrictions on the use of hits under these circumstances would represent an undue burden for French-language broadcasters.

[§263-27]

2. *Vocal-to-Instrumental Ratio*

The Commission had proposed to retain the Easy Listening format for those stations broadcasting more instrumental than vocal selections.

At the hearing several groups, including the CAB, supported the retention of the Easy Listening format, but suggested that the minimum percentage of instrumentals be lowered to between 20% and 25% to accommodate changes in the musical tastes of the traditional Easy Listening audience. Others recommended the elimination of the format distinction.

As with the hit factor calculation, the CAB and several others proposed that Category 6 music be included in the calculation of the vocal-to-instrumental ratio to encourage the use of specialty music.

The Commission agrees that tastes of the Easy Listening audiences have changed, and that today's audiences generally expect a more contemporary, more vocal sound. The Commission is of the view, however, that a level of at least 35% instrumentals is necessary to ensure that the Easy Listening format remain unique.

[§263-28]

The Commission has therefore decided that **there will be three levels of instrumental music (less than 35%; 35% up to, but not including, 50%; and 50% and over), each tied to a specific level of Canadian content. Stations programming less than 35% instrumentals will be required to program at least 30% Canadian content; stations programming 35% up to, but not including, 50% instrumentals will be required to program at least 20% Canadian content; stations programming 50% or more instrumentals will be required to program at least 15% Canadian content.**

Although the Commission will no longer define **Easy Listening as a specific station format, commitments to a vocal-to-instrumental ratio will be maintained in the Promise of Performance as the means of measuring compliance by licensees.** Since

Canadian content levels are tied to the vocal-to-instrumental ratio, retention of this indicator as a regulating tool is essential.

The calculation of the vocal-to-instrumental ratio will include all musical selections broadcast, i.e., music from both Categories 2 and 3. The Commission considers that this will encourage the broadcast of more Traditional and Special Interest Music.

[§263-29]

3. *Maximum Repeat Factor and Weekly Music List Size*

[NOTE: A summary of submissions is omitted.]

The Commission considers that the Maximum Repeat Factor and the Music List Size remain important measures of musical diversity on FM. The elimination of these indicators, combined with the changes in the hit definition, could result in a Top 40 sound on FM radio, a reduction in diversity, and an increased threat to AM radio.

The Commission has therefore decided **to retain both the Maximum Repeat Factor and the Music List Size as commitments in the Promise of Performance. The Maximum Repeat Factor will remain at 18 and the minimum weekly Music List Size will be 850 distinct selections per week**

[NOTE: This policy was later reversed in *A Review of the CRTC's Regulations and Policies for Radio*, Public Notice CRTC 1992-72, November 2, 1992, below at §287-13.]

French-language stations will be exempt from the application of these two indicators. Due to the limited supply of French-language music, their application could result in an increased similarity of music programming among stations in any given area.

[§263-30]

4. *New Canadian Music*

The Commission had proposed to exclude Canadian selections from the hit count. Since this change could lead stations to broadcast a greater number of older Canadian hits and neglect newer Canadian music, the Commission had proposed to include in the Promise of Performance a new music indicator with respect to a percentage of new Canadian music. The Commission had asked for views regarding an appropriate definition of a "new Canadian selection" and the level of new Canadian music that would be appropriate... [NOTE: A summary of submissions is omitted.]

The Commission is of the view that implementing a "new" artist requirement may be difficult to apply to all formats equally, and difficult to monitor as no measurable criteria have yet been established. The treatment of Canadian selections as non-hits for one year following their appearance in the Top 40 charts will act as an incentive favouring new Canadian music.

Accordingly, although **a commitment to program new Canadian music will be introduced in Part III - Supplementary Questions, no minimum level will be imposed. Licensees will also be asked in making their commitments to Canadian Talent Development to indicate their efforts on behalf of the exposure of new Canadian talent.**

[§263-31]

5. *Current:Recent:Past Indicator*

The Commission had proposed to retain this indicator and move it from the Description of Programming to the Promise of Performance... [NOTE: A summary of the submissions is omitted.]

The Commission having considered these views, has decided that moving the Current:Recent:Past ratio to the Promise of Performance could well reduce broadcasters' flexibility unnecessarily. Furthermore, it would require licensees and the Commission to establish and maintain data bases to reflect release dates for all selections, adding to the complexity of the regulatory process.

The Commission has therefore decided **not to require commitments with respect to a Current:Recent:Past ratio in either the Promise of Performance or the Part III - Supplementary Questions.**

[§263-32]

E) *TRADITIONAL AND SPECIAL INTEREST MUSIC*

The Commission had proposed a minimum guideline for "non-format" music... [NOTE: A summary of the submissions is omitted.]

After considering the submissions, the Commission has decided to allow broadcasters to determine whether or not to program Traditional and Special Interest Music. Consequently, **no minimum commitment for non-format music will be introduced. Private commercial broadcasters will have the ability to determine the type and level of Traditional and Special Interest Music most appropriate to their stations' format.**

While the Commission appreciates the several suggestions received for broadening the definitions of Traditional and Special Interest Music, there will be no need to expand the definition since discretion in this area will rest with individual broadcasters.

Therefore, **the definitions of the various subcategories of Traditional and Special Interest Music will remain essentially the same, except that the current subcategories for classical, opera, and operetta and musical will be combined into one subcategory know as Concert Music.** (See **Appendix II**, Content Categories and Subcategories).

[§263-33]

F) *SPOKEN WORD*

The Commission had proposed to replace the requirements for foreground and mosaic programming with enrichment guidelines... [NOTE: A summary of submissions is omitted.]

The Commission is of the view that a requirement for spoken word content will give broadcasters flexibility in programming and facilitate the measurement of compliance. A requirement for spoken word, however, must be sufficient to ensure that programming is of high quality and is distinct in style from that found on AM radio.

An examination of the Promises of Performance of a large number of different types of FM stations indicated that the average commitment to Spoken Word content was 19.7%, with the lowest being 11.7%.

Accordingly, **the Commission will replace requirements for the broadcast of foreground and mosaic programs with a regulatory requirement that spoken word**

content constitute a minimum of 15% of the broadcast week. The Commission will consider spoken word to include all programming except music, musical production and advertising.

The Commission emphasizes that the fundamental responsibility of radio broadcasters is to provide original programming of direct relevance to the communities they serve. In this regard, the Commission will expect that the local component of news continues to be an integral part of FM broadcasters' programming. Accordingly, **the Commission will require FM broadcasters to continue to make commitments regarding the amount of news they will broadcast as part of their overall Spoken Word commitment. Three hours of news per week will be the minimum level acceptable to the Commission. The definition of News will be expanded to include backgrounding of current news events** (currently included in subcategory 3A). Commitments to news will continue to be part of a broadcaster's Promise of Performance.

[NOTE: The above policy was reversed in 1993, and replaced with a requirement that FM stations devote at least 1/3 of the broadcast week to local programming. See *A Review of the CRTC's Regulations and Policies for Radio*, Public Notice CRTC 1992-72, November 2, 1992, below at §287, and *Policies for Local Programming on Commercial Radio Stations and Advertising on Campus Stations*, Public Notice CRTC 1993-38, April 19, 1993, below at §292.]

[§263-34]

G) *COMMERCIAL CONTENT*

The current regulations restrict joint and independent FM stations to a maximum of 150 commercial minutes each broadcast day.

In its proposed policy statement, the Commission noted that some broadcasters had argued that this regulation be removed on the grounds that competitive forces would ensure that advertising on commercial FM stations not reach an unacceptable level... [NOTE: A summary of the submissions is omitted.]

The Commission is of the view that the removal of advertising limits on FM radio may have an adverse effect on the financial situation of AM stations. The Commission, however, considers that a **weekly limit on advertising will give FM broadcasters the flexibility to adjust their commercial content to local advertising patterns, which tend to be higher on certain days of the week. This would be particularly beneficial to small market stations.**

The Commission, therefore, has decided to **limit the amount of advertising broadcast by commercial FM broadcasters to no more than 15% (maximum 1134 minutes) of the broadcast week.** Such a limit will give FM stations some latitude to increase their advertising from that currently permitted while limiting any adverse effects on AM radio.

Furthermore, **the Commission will amend the definition of advertising to exclude Promotional Contests (currently Subcategory 82)**, which do not contain mention of a sponsor. Promotion with Sponsor Mention, which by definition contains mention of a sponsor, will continue to be treated as commercial activity.

[NOTE: Later in 1993, the CRTC announced that it would no longer impose limits on the level of advertising broadcast by commercial FM stations. See *Policies for Local Programming on Commercial Radio Stations and Advertising on Campus Stations*, Public Notice CRTC 1993-38, April 19, 1993, below at §292.]

[§263-35]

H) *ACQUIRED PROGRAMMING*

In its proposed policy, the Commission invited comments on the three incentives recommended by the Consultative Committee as Acquired Audio Programming for the purpose of encouraging the use of Canadian acquired programming, as outlined in Public Notice CRTC 1989-135.

[NOTE: The rest of this section is omitted, since the CRTC removed the basis for the incentive in 1993 with the removal of commercial limits on FM stations.]

[§263-36]

With respect to *logging requirements*, the Commission had announced in the *Radio Networks and Syndication Policy* (Public Notice CRTC 1989-3) [NOTE: above at §251] that AM and FM licensees will be required to maintain a log of acquired programs broadcast according to type and origin. This practice will enable the Commission to monitor the uses of acquired programming by individual stations and by the radio industry as a whole.

As part of the changes affecting current policies and practices, **FM stations will be required to log acquired programs broadcast according to type (network or syndicated) and origin (Canadian or foreign). A section in the new Promise of Performance will ask licensees to make commitments to so identify these programs in their logs.**

[§263-37]

I) *DEFINITION OF A MARKET*

In its proposal, the Commission noted that some broadcasters had expressed concern about the fairness of the current definition of a joint FM station, and had invited suggestions for a revised definition of a market.

The regulations define a Joint FM station as follows:

> A Joint FM licence is an FM licence, other than a CBC FM licence, a special FM licence or an experimental licence where at the time the licence was issued or renewed, the licensee, or if the licensee is a corporation, that corporation or any corporation associated with it, was licensed to operate an AM station in the same language in all or any part of the market.

Joint FM stations are currently required to broadcast higher levels of foreground format programming than independent FM stations. Holders of Joint FM licences are also prohibited from simulcasting programming on their FM and AM stations. The Commission views such simulcasting to be an inappropriate use of scarce public frequencies and considers that this prohibition should be maintained except in exceptional circumstances.

[§263-38]

The "market" of an FM station is currently defined as:

"the geographical area:

a) within the 5 millivolt per metre daytime official contour of an AM station, or

b) within the 500 microvolt per metre official contour of an FM station."

The current definition of the market of an FM station, which relies entirely on technical criteria, can lead to situations where an FM station in one community is required to fulfil the more stringent requirements of a joint station because of a slight overlap between its contours and the contours of a commonly-owned AM station situated in a community with which it has few, if any, social or economic ties.

At the hearing the CAB recommended that the current distinction between joint and independent FM stations be abolished. It pointed out that, while joint FM stations command a large share of AM and FM profits since they represent the majority of stations, these profits are often offset by the more difficult financial situation of the associated AM stations.

The Central Canada Association of Broadcasters (CCBA), among others, suggested that the technical definition of a market be replaced with the Central Area definition used by the Bureau of Broadcast Measurement (BBM). This definition would focus on the area from which stations attach most of their audiences and generate the bulk of their revenues.

[§263-39]

The Commission no longer sees a need to differentiate between Joint and Independent stations. Hence there is no further need for a definition of a market for this purpose.

There is, however, a need for a definition for the purpose of considerations of ownership, which are germane in the awarding of licences and the transfer of control of licences.

In these respects, the Commission's policy is to grant no more than one licence of the same kind in the same language in the same market to a single operator. Consequently, the Commission has also been traditionally reluctant to authorize a transfer of control, the effect of which would run contrary to this policy.

Nonetheless, the Commission notes that the current definitions of markets, based on the 5 mv/m (AM) and the 500 uv/m (FM) signal contours, very often lead to overly stringent separation requirements. Such contours often exceed significantly the areas from which stations attract most of their audiences and generate the bulk of their revenues. In this regard, the Commission notes that licensees usually attempt to provide signals that are at least 3 mv/m in the case of FM stations, and 15 mv/m (day-time) in the case of AM stations.

[§263-40]

On this basis, **the Commission will define the market of an FM station to be any area within either the 3 mv/m signal contour or the Central Area of the community served by the station as defined by BBM whichever is smaller.**

In the case of an AM station, the Commission will define a market as any area found within either the 15 mv/m (daytime) signal contour or the Central Area as defined by BBM, whichever is smaller.

For purposes of issuing new licences or examining transfers of ownership, the Commission will continue to rely on a variety of factors, including the above.

[§263-41]

J) *SMALL MARKETS AND BORDER MARKETS*

Although the Commission did not make specific proposals regarding FM stations in small markets and border markets, several parties discussed these topics at the hearing... [NOTE: A summary of the submissions is omitted.]

The Commission acknowledges the difficulties faced by some FM stations in border markets where tuning to U.S. stations is considerable. It also recognizes the problems encountered by some FM stations operating in small markets where advertising revenues are limited. Accordingly, **the Commission, upon application, will consider granting flexibility with respect to certain programming commitments to stations operating in border markets or in small markets. Flexibility regarding Canadian content will not be considered except for stations in border markets where exceptional circumstances are present. Similarly, flexibility will generally not be considered with respect to spoken word commitments.**

Flexibility regarding programming commitments will be considered by the Commission on a case-by-case basis, taking the particular circumstances of the market into account. The onus will be on the licensee, upon application to the Commission, to demonstrate why exceptions to normal programming requirements are warranted.

[NOTE: See further below, *Guidelines for Assessing Applications for Programming Flexibility from Licensees of Radio Stations in Border Markets and Small Markets*, Public Notice CRTC 1992-3, January 16, 1992, below at §276.]

[§263-42]

IV. *IMPLEMENTATION -- CUTTING THE RIBBON*

A. *THE SCOPE OF THIS POLICY*

This policy and its associated regulations have been designed for, and will apply in its entirety to, the licensees of private commercial FM stations.

Nevertheless, certain changes to the regulations (e.g., those with respect to Canadian Content, Foreground and Spoken Word), will also have an impact on other broadcasters, such as the CBC, and the licensees of Educational, Institutional, Student, Community, Native and Experimental stations. The Commission is of the view that the increased requirement for Canadian Content, deletion of the requirement for foreground and mosaic programming, and the related imposition of a Spoken Word requirement should have little effect on non-commercial stations.

Non-commercial stations will be required to meet the levels specified by their conditions of licence with respect to Spoken Word and Traditional and Special Interest music.

The Commission intends to conduct a review of both student and community radio to consider, among other things, more fully how the principles outlined in the policy affect

them. [NOTE: See *Policies for Community and Campus Radio*, Public Notice CRTC 1992-38, May 29, 1992, below at §281.]

[§263-43]

B. *THE DATE OF IMPLEMENTATION*

The regulations and all other changes to the FM Policy introduced in this Public Announcement will come into effect on 1 September 1991. The Commission will announce its proposed amendments to the regulations in the near future. [NOTE: For the *Radio Regulations, 1986*, as amended by SOR/91-517, see above at §135.]

The Commission stresses that its **existing policies and regulations, as well as licensees' obligations set out as conditions of licence, remain in effect until then.** The policies will thus continue to be applied, and the regulations and conditions will continue to be enforced.

[§263-44]

C. *OTHER ASPECTS OF IMPLEMENTATION*

Except as expressly provided for in this policy, broadcasters continue to be bound by their commitments in their current Promises of Performance or as noted in their most recent licensing decision.

There are 19 stations that are still in their first licence term. The Commission licensed these stations (many in a competitive process) on the basis of specific undertakings mentioned in their licensing decisions. While adherence to some of these commitments will no longer be required upon the implementation of the revised policy and regulations, the Commission will continue to regard, as essential undertakings for their entire licence term, the commitments of these licensees as set out in their Promises of Performance and noted in their licensing decision, with respect to the following:

Canadian Content above 30%,
Spoken Word levels above 15%,
News,
Public Affairs programs,
Hit levels below 50%,
MRF levels below 18,
Music List Size above 850,
The Vocal:Instrumental ratio,
Canadian talent development,
Local Orientation, and
Special Programs.

[§263-45]

D. *RADIO MARKET CRITERIA*

At the public hearing, the Commission expressed concern regarding the amount of time and expense borne by applicants in the process of applying for licenses -- for AM as well as FM -- particularly in areas where the potential viability of new broadcasting enterprises is marginal at best.

Because this matter has an implication not only for FM but for AM as well, the Commission has published today a separate document (Public Notice CRTC 1990-112) addressing this subject. [NOTE: See now *Radio Market Policy*, Public Notice CRTC 1991-74, July 23, 1991, below at §274.]

[§263-46]

E. *THE FREEZE*

In Public Notice CRTC 1989-30, the Commission announced that it would not consider applications received after 14 April 1989, until completion of the policy review.

As noted, this policy and its related regulations will go into effect on 1 September 1991. At that time, many stations may be making adjustments to their programming. In the Commission's view, it would not serve the public interest to hear new applications predicated on circumstances that may not be present when the policy and regulations go into effect. For that reason **the Commission will not be ready to receive applications for new private commercial radio stations until after 1 September 1991**. This includes applications by AM stations to switch to an FM frequency.

The Commission will, however, continue to accept applications for non-commercial stations where such applications propose to use the lower 20 channels on the FM band or commercial frequencies in areas where there still is a relative abundance of such channels.

[§263-47]

F. *THE PROMISE OF PERFORMANCE*

1. *Compliance*

The Commission had asked for comments on whether adherence to all or any of the parts of the Promise of Performance should be a condition of licence.

There was a general consensus among those appearing at the hearing that licensees should meet the commitments made in their Promises of Performance, especially if the number of commitments they are required to make is reduced substantially.

In the past, the Commission has allowed certain variations to commitments in assessing substantial compliance. Under the new policy, the Commission will require licensees, by condition of licence, to fulfil absolutely each of the commitments made in a new Promise of Performance. The content of the new Promise of Performance, the form for which is to be reduced in length, is described in the next section.

[§263-48]

2. *The Form*

The revised Promise of Performance form will contain 7 main sections:

a. Language of Programming
   This section will include the languages of broadcast. Details of ethnic programming will be set out in a separate appendix.
b. Program Origination
   This section will include a licensee's commitment to a minimum weekly amount of local programming.
c. Spoken Word

This section includes commitments to minimum levels of News and other Spoken Word content.

d. Station Format
The applicant will specify Group I -- Pop, Rock and Dance, Group II -- Country, or Group III -- Specialty. Where appropriate, specific ratios of music content for Group III stations will be requested in a separate appendix.

e. Music Categories 2 and 3
This section will include commitments in respect of the weekly Music List Size, the Maximum Repeat Factor, the level of hits, Canadian Content percentages, level of instrumental music and the language of vocal selections.

f. Station Policies
This section will include, as a minimum, confirmation of a licensee's commitments regarding adherence to both the broadcast code for advertising to children, the industry code on sex-role stereotyping and logging requirements.

g. Canadian Talent Development
This section will include proposed direct and indirect expenditures under Broadcasting, Promotion and Other Categories.

[§263-49]

The Promise of Performance will be followed by the following appendices:

- Ethnic Programming
- Music Category Breakdown

Part III - Supplementary Questions - This section will not form part of the Promise of Performance, but will include questions on the following:

i. Sources of Programming
ii. Local and Regional News
iii. Canadian Talent Development
iv. Station Policies
v. Native and Community Access

[§263-50]

V. *CONCLUSION -- A NEW RADIO LANDSCAPE*

The Commission wishes to thank all who participated in this review. Revision of a complex initiative such as the FM Policy is an imposing task, and the well-researched written briefs and the thoughtful comments at the hearing were of immeasurable assistance to the Commission in developing the policy outlined in this document, a summary of which is contained in **Appendix III**.

The Commission is confident that this policy will allow broadcasters the freedom to excel in a highly competitive radio environment, while ensuring that Canadians continue to receive the high quality, diverse radio programming to which they are entitled.

[§263-51]

APPENDIX I -- CANADIAN TALENT DEVELOPMENT

[§263-52]

Initiatives Generally Accepted by the Commission

The attached is a list of initiatives generally accepted by the Commission as contributions to the development of Canadian talent. This list indicates whether the Commission usually considers these expenses to be direct or indirect.

[NOTE: See next page at §263-54 for table]

[§263-53]

Initiatives Generally Not Accepted By the Commission

Initiatives that are not accepted usually include program hosts and programs that are more or less part of regular programming schedules, or that do not promote Canadian artists or Canadian arts, or that make minimal use and have minimal impact on Canadian creative and other resources. While the programs can be of excellent quality and supportive of community events, they do not further the knowledge or understanding of Canadian artistic or creative issues or events, nor did they provide exposure to Canadian artists; they also have a minimal direct benefit to Canadian creators.

Similarly the Commission recognizes the training and financial benefits provided to summer students when hired by a station but considers that the station benefits as much from this type of initiative as do the students. The Commission considers that Canadian initiatives should be over and above regular station programming, should be exclusively Canadian in nature and if possible have an impact on the Canadian creative and artistic community.

Other initiatives that are generally not accepted include Music Directors' salaries, membership fees for music and other associations, staff travel costs to music and broadcasting seminars and events, and telephone lines or costs for open-line programming.

[§263-54]
Initiatives Generally Accepted by the Commission

Type of Initiative	Generally Accepted - Direct	Generally Accepted - Indirect
Program	- Station-produced Concert, Drama, etc. - Poetry, Drama	- Interviews - Artist features - Historical, other Canadian Features - Canadian countdown - Album Sweeps
Promotion		- Artists, Concerts & New Recordings
Talent Contest	- Concert - Record Promotion - Video production - Recording Time - Prizes	- Promotion - Interviews
Concerts	- Musician and staff pay - Hall rental - Recording for airplay	- Interviews - Promotion
Record or Video Production	- Studio time - Musicians' fees - Production costs - Record pressing - Record distribution	- use of Station Studio
Scholarships & Grants	- Cash Donation	
Industry Talent Organizations* *e.g. Musication, FACTOR, Videofact, Country Talent Development Foundation, Alberta Music Project, etc...	- Cash Donation	
Grants to Local Arts Assoc.	- Cash Donation	- Promotion
Use of Studio Facilities	- Audio tape for artist	- Time in Studio
Seminars	- Hall rental - Guest speakers	- Promotion

[§263-55]

APPENDIX II

CONTENT CATEGORIES AND SUBCATEGORIES

[NOTE: This Appendix was superseded by Public Notice CRTC 1991-19, February 14, 1991, set out below at §265.]

[§263-56]

APPENDIX III

SUMMARY OF THE MEASURES TAKEN

[NOTE: This summary is omitted.]

[§264-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Changes to the Regulation of Subscriber Fees and Related Matters

[§264-2]

[Public Notice CRTC 1991-12, January 24, 1991.]

[§264-3]

At a Public Hearing commencing 5 February 1990 in Hull, Quebec, the Commission considered, among various related matters, proposals to change the regulation of cable television subscriber fees. The Commission set out its position with respect to these proposals in Public Notice CRTC 1990-53 dated 15 May 1990 [NOTE: set out above at §261]. In line with the views presented in that Public Notice, the Commission proposed for public comment, in Public Notice CRTC 1990-83 dated 23 August 1990, amendments to the *Cable Television Regulations, 1986* (the regulations) which would, among other things: revise the definition of pass-through charges; establish a new formula for calculating partial indexing increases of basic monthly rates; limit the fee increases for capital expenditures (capex) to 3% of the basic monthly fee; establish a sunset mechanism for capex increases; extend the periods for prior notification by licensees of proposed rate increases and for comment thereon by subscribers; and deregulate the rates for Class 2 systems with fewer than 2000 subscribers.

In response to its notice, the Commission received eight comments addressing particular aspects of the proposed regulations. These are discussed below. Some interveners suggested additional amendments, also addressed below.

[§264-4]

With respect to the proposed amendment to narrow the definition of "pass-through portion" to encompass only CRTC-authorized wholesale fees for programming services,

the Manitoba Cable TV Association (MCTA) stated its opposition to the elimination of Manitoba Telephone System lease costs for cable distribution plant from the definition of eligible "pass-through" charges. Fundy Cable Ltd./Ltée (Fundy) also stated its opposition to the deletion of support structure payments from the pass-through provision. In Public Notice 1990-53-1, the Commission proposed to treat third-party payments for pole attachment fees, plant leasing costs and microwave fees as normal costs of doing business. The Commission notes that cable operators will still have recourse to the subsection 18(8) fee increase mechanism to recover such expenses, should economic need be demonstrated, and considers that the interveners have not provided any compelling arguments that would warrant a change to the amendment as proposed.

[§264-5]

The Canadian Cable Television Association (CCTA) proposed that the wording of subsection 18(3) be amended to delete the phrases "and that is contained in the pass-through portion" and "after September 1, 1986" which, in its opinion, could lead to confusion.

The Commission has no objection to the deletion of the first phrase as it concurs that it is no longer required. The Commission, however, will retain the phrase "after September 1, 1986" in subsection 18(3); the reference to this date is to ensure that only those pass-through charges that the Commission has authorized after 1 September 1986 are eligible for recovery pursuant to subsection 18(3).

[§264-6]

With respect to the proposed amendment to the definition of "capital expenditure" for the purpose of subsection 18(6), the Ontario Closed Caption Consumers (OCCC) requested that closed caption decoders be considered as eligible capital expenditures, while Fundy objected to the elimination of new plant construction from the capex provision.

The Commission proposed to eliminate new plant construction in unserved areas from the definition of eligible capital expenditures because a large part of such construction relates to the servicing of new subdivisions in urban areas, which is required by regulation, and because the Commission does not favour the use of the capital expenditure method as an incentive to make expenditures that generate an additional revenue stream. The Commission considers that Fundy has presented no compelling arguments that would justify modifying this proposal.

The Commission has considered the OCCC's suggestion that closed caption decoders should be treated as eligible capital expenditures in order to make them widely available to the hearing impaired community. The Commission notes, however, that these costs do not fall within the objectives of subsection 18(6), which relate primarily to encouraging the up-grading and rebuilding of cable distribution plant in order to improve the quality of service provided to all basic service subscribers. The Commission is not of the view that the scope of subsection 18(6) should be expanded at this time, and has therefore concluded that the regulations should not be amended to allow closed caption decoders as eligible capital expenditures.

[§264-7]

With respect to the proposed amendment relating to the introduction of a five-year "sunset" provision applicable to all previous capital expenditure increases and to all such increases in the future, the CCTA suggested that licensees who have implemented capex increases during the period 1986 to 1990 should be required to reduce their fees on 31 August of the year of the ninth anniversary of the implementation of the increases, to allow an equal phasing-out of the capex increases implemented before the May 1990 notice. Fundy also supported CCTA's suggestion except that it proposed 1 January, following the ninth anniversary, as the effective date of the reduction.

In its 15 May 1990 public notice, the Commission proposed to take a uniform approach for all past capex increases by requiring a lump sum adjustment covering all subsection 18(6) increases since 1986, effective 1 January 1995, notwithstanding substantial opposition raised in interventions at that time.

After considering the interveners' comments, the Commission has determined that there are no compelling arguments that would warrant changing this position. It notes that licensees will still have recourse to the subsection 18(8) rate increase provision, should their return on net fixed assets fall below the profitability benchmark as a result of reduced revenues due to the sunset clause.

[NOTE: The sunset policy was later modified in *Structural Public Hearing*, Public Notice CRTC 1993-74, June 3, 1993, below at §294.]

With respect to the procedure that the Commission proposes to implement in dealing with overcharging of subscribers, the CCTA stated its opposition to the inclusion of a refund mechanism in the regulations as a method of compensation.

While it appreciates the CCTA's preference for a credit mechanism, the Commission notes that subsection 18(11) does not oblige licensees to provide a refund mechanism. Rather, this subsection provides licensees with the discretion to use this method or a credit on subsequent bills to correct for overcharging. Accordingly, the Commission considers it unnecessary to change the proposed regulation.

[§264-8]

The CCTA also suggested that the term "fee", contained in subsection 18(11), should be clarified to exclude explicitly federal and provincial taxes. The Commission considers that the meaning of the word does not normally include such taxes and that, accordingly, there is no need for such clarification.

The CCTA was concerned with the proposed 60-day "suspension/disallowance" notification period for subsection 18(6) increases, and the 90-day notification period for subsection 18(8) increases. The CCTA stated that situations might still occur where increases would be suspended or disallowed at the end of the notification period or after it had expired, thereby creating billing problems for licensees. Instead, the CCTA proposed suspension/disallowance periods of 40 days and 60 days for subsection 18(6) and subsection 18(8) increases, respectively, and also suggested that these deadline dates be incorporated in the amended regulations.

While the Commission recognizes the CCTA's concerns, it has decided not to amend the regulations as suggested by the CCTA. The Commission will therefore amend the regulations as proposed in Public Notice 1990-53-1 with respect to minimum notification

periods. The Commission has also decided to adopt a policy whereby it will notify licensees of its decision to suspend or disallow a proposed increase within 60 and 90 days of receipt by the Commission of a filing for increases pursuant to subsections 18(6) and 18(8), respectively.

[§264-9]

Both the CCTA and C-l Cablesystems Inc. (Cl) opposed the "reasonableness" requirement proposed for deregulated fee increases of Class 2 systems with fewer than 2000 subscribers. In their view, the "reasonable amount" constraint for such systems would represent a vague and subjective form of regulation, and could ultimately become a question of law to be determined by the courts instead of by the Commission.

The Commission wishes to emphasize that the reason for the proposed introduction of the "reasonable amount" requirement for Class 2 deregulated systems was not to limit their rate increases, but rather to authorize such increases in the case of undertakings with fewer than 2000 subscribers, thereby facilitating the resumption of rate regulation once the limit of 2000 subscribers was passed. At the same time, it recognizes the validity of the concerns raised by the CCTA and Cl.

In view of these concerns, the Commission has reviewed its approach to the deregulation of subscriber fees for Class 2 systems having fewer than 2000 subscribers, and has decided to amend the regulations to deregulate the rates for all Class 2 systems with under 2000 subscribers, as of 31 August 1990. Once a Class 2 licensee has more than 2000 subscribers, the Commission will consider the resumption of rate regulation at the next renewal hearing, by condition of licence. In light of this revised approach, the Commission considers that a "reasonable amount" requirement for Class 2 deregulated systems is no longer necessary.

The Commission also received a comment from the Conseil des usagers des médias de la Sagamie, asking that measures be taken to ensure that subscribers in small communities not pay an unreasonable amount for basic service. As stated in the 15 May 1990 notice, the Commission intends to adopt a rate review mechanism that will enable it to review and possibly modify the basic monthly fees of deregulated cable systems upon receipt of legitimate subscriber complaints. The Commission considers that this safeguard mechanism, which it proposes to attach as a condition of licence when it issues or renews the licences of deregulated Class 2 and Part III cable systems, should provide it with the means to ensure that all subscriber interests are adequately protected.

[NOTE: The CRTC later decided to forego the condition of licence: see below at §270.]

Fundy also reiterated a number of concerns regarding the proposed new rate-setting provisions, most of which have already been considered at the 5 February 1990 hearing, and which, in the Commission's opinion, do not warrant changes to the amendments as proposed. Additional concerns were raised by Michael E. Pongray of Port Erie, Ontario, the Yukon Community and Transportation Services, and by previously-mentioned interveners, with respect to the intricacy of Commission-originated publications and procedures; tiering of specialty services; poor quality of cable service; obsolete equipment used by cable companies; commercial substitution practices; need for satisfactory notification for changes to rates of, and program services distributed by, Part III

licensees; and possible municipal tax demands. Although the Commission has taken note of each of these concerns, it is of the view that these comments go beyond the scope of the changes upon which public comment was sought in this proceeding.

[§264-10]

Accordingly, on the recommendation of the Executive Committee, on 10 January 1991 the Commission approved the amendments to the regulations as they appeared in the schedule attached to Public Notice CRTC 1990-83, except for the technical changes to the wording of subsection 18(3) and for the modification to the deregulation approach proposed for Class 2 systems of under 2000 subscribers, as discussed above.

The amendments, which are included in the schedule attached to this notice, were registered on 17 January 1991 (SOR/91-96), to come into force immediately.

[§265-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Radio Content Categories and Subcategories

[§265-2]

[Public Notice CRTC 1991-19, February 14, 1991.]

[§265-3]

Implementation of an F.M. Policy

In Public Notice 1990-111, *An FM Policy for the Nineties* [NOTE: set out above at §263], the Commission set out its policy for FM radio in the private commercial sector. Appended to that Notice were program content categories and subcategories related to the FM policy.

The content categories and subcategories published with the present notice, which vary from the original definitions by virtue of a few minor clarifications, supersede those set out as Appendix II to Public Notice 1990-111, and will apply to the FM Policy as well as to the amendments to the *Radio Regulations, 1986*, which will be published shortly. [NOTE: see above at §135-15 and §135-16.]

[§265-4]

APPENDIX -- CONTENT CATEGORIES AND SUBCATEGORIES

[§265-5]

CATEGORY 1

Spoken Word: This category includes the following two subcategories:

Subcategory 11: News

The recounting and reporting of local, regional, national and international events of the day or recent days, with particular emphasis on the topicality of the events or

situations selected, or on the constant updating of information, or both as well as background material about current events when included in newscasts but excluding weather, traffic and sports and entertainment reports.

Subcategory 12: Spoken Word-Other

All programming with the exception of material falling under subcategory 11-News and categories 2, 3, 4 and 5 (Music General, Music Traditional and Special Interest, Musical Production and Advertising).

[§265-6]

CATEGORY 2

Music-General: Live or recorded entertainment music of one minute in length or more, broadcast uninterrupted, extending from the advent of mass-produced recordings to the latest hits as defined in charts of recognized trade publications, including popular songs and compositions that fall under the headings "pop", "country-and-western", "rhythm and blues"; "dance"; "rock", "easy listening", "middle-of-the- road", "beautiful music", "mood", and "mainly for dancing"; popularized arrangements of classical music, jazz or authentic folksongs, music written and performed in a folk idiom by present-day artists;which may include songs of protest and/or political and/or social comment, humorous and satirical songs, chansonniers and chansonnettes, English music hall and North American vaudeville; individual excerpts from works from the musical stage, non-religious Christmas songs, popular music for films and television; and popularizations of folk idioms, such as Latin American, Hawaiian and Calypso. For greater particularity the category includes the following four subcategories:

Subcategory 21: Pop, Rock and Dance:

This subcategory includes music from the entire pop, rock and dance music spectrum. This music includes styles generally described as "easy listening", "beautiful music", "pop adult", "soft rock", "dance", "rock and roll", "rhythm and blues", "jazz rock", "folk rock" and "heavy metal", as well as all other forms of music generally referred to as either MOR (middle-of-the-road) or rock. This subcategory includes musical selections listed in recognized trade publications as AC (Adult Contemporary), AOR (Album-Oriented Rock) or Dance.

Subcategory 22: Country and Country-Oriented:

This subcategory ranges from "country and western" and "bluegrass" to "Nashville" and "country-pop" styles and other music forms generally characterized as country, including musical selections listed in recognized trade publications as Country.

Subcategory 23: Folk-Oriented:

This subcategory includes music in a folk style composed by the troubadours and chansonniers of our time, popular arrangements of authentic folksongs, and popularizations of folk idioms.

Subcategory 24: Jazz-Oriented:

Music sung or played in a popular style by performers with a jazz background, including "cocktail" jazz and jazz improvisation when presented against a popularized orchestral background, but not including jazz-rock, falling under subcategory 21.

[§265-7]

CATEGORY 3

Music-Traditional and Special Interest:

Music of one minute or more in length, broadcast uninterrupted, characterized as traditional authentic songs and dances of the people, institutionalized music of religious faiths, "classical" music, authentic improvised jazz, and extended excerpts from popular musical theatre. For greater particularity, this category includes the following four subcategories:

Subcategory 31: Concert Music:

This subcategory includes: "classical", music which embodies standards of form, structure and taste, established by artists through the centuries, as a means to communicate complex thoughts in the most coherent way, including music by a contemporary composer when it utilizes entirely or in modified form those established standards, but not including orchestrations of the entertainment music of our time, however classical in form; "opera, operetta and musical", including grand opera, comic opera, music drama, narrative musical plays, operettas and extended dramatic excerpts of popular musical theatre, when performed in a full-cast version.

Subcategory 32: Folk:

Authentic traditional folk songs and dances.

Subcategory 33: Jazz:

Authentic jazz containing a large element of improvisation, including early blues and gospel shouts, ragtime, Dixieland, authentic early swing including early golden age (late 30's-40"s) and modern, bebop and "cool" jazz, Modern, Avant-Garde, Contemporary Jazz Fusion, New European, Afro/New World and contemporary jazz experiments, but not including jazz-rock, falling under subcategory 21.

Subcategory 34: Non-Classic Religious:

Music of the church or of religious faiths, other than in a classical form, or occurring in the course of a ritual service or other form of public worship, or having a jazz character.

[§265-8]

CATEGORY 4

Musical Production:

Musical matter broadcast by a station to identify itself or any of the components of its programming, including musical linking devices used to highlight elements of the broadcast service. For greater particularity, this category includes the following five subcategories:

Subcategory 41: Musical Themes, Bridges and Stingers:

Musical selections used to identify particular program segments, or to extend programming segments to the end of their allotted time as well as applause, brief musical and other sound effects intended to punctuate the presentation of other broadcast matter, where this matter is less than one minute in duration.

Subcategory 42: Technical Tests:

Broadcast matter intended to be used for the purposes of technical tests by the station or its listeners.

Subcategory 43: Musical Station Identification:
Short musical selections designed to identify the station by call letters or frequency.
Subcategory 44: Musical Identification of Announcers, Programs:
Musical material identifying and accompanying the use of specific announcers, programs or programming elements.
Subcategory 45: Musical Promotion of Announcers, Programs:
Musical material promoting increased listening to specific announcers, programs or programming elements.

[§265-9]

CATEGORY 5
Advertising:
Broadcast matter intended to promote services or products offered to the public by persons normally advertising in the course of their business. For greater particularity, this category includes the following three subcategories:
Subcategory 51: Commercial Announcement:
A commercial announcement for a business, product or service, presented in return for consideration.
Subcategory 52: Sponsor Identification:
Identification of the sponsor of a program or program segment other than under subcategories 51 and 53.
Subcategory 53: Promotion with Sponsor Mention:
Verbal or musical material promoting increased listening to the station or to specific announcers, programs or programming elements, when accompanied by the identification of a sponsor.

[§266-1]

[CANADIAN RADIO-TELEVISION AND
TELECOMMUNICATIONS COMMISSION]

Policy for Local Television Programming

[§266-2]
[Public Notice CRTC 1991-22, February 15, 1991.]

[§266-3]

I. *INTRODUCTION*
In Public Notice CRTC 1990-95 dated 18 October 1990, the Commission issued for public comment a proposed policy for local television programming. This proposal grew out of the Commission's ongoing review of its regulations and policies with respect to Canadian programming. [NOTE: A summary of submissions is omitted.]
The Commission has carefully considered all of the comments received, particularly those which opposed the proposed policy, and has concluded that the anticipated benefits

to the Canadian broadcasting system, the production industry, and the creative community warrant confirmation of the policy, essentially as proposed.

With respect to programming commitments by program category, accepted as benefits in an ownership transaction, the Commission will expect licensees to fulfil these obligations without variance within the time frame set out in the licensing decisions.

Since most of the individual station licences that were renewed a little more than a year ago contained expectations or conditions of licence with respect to captioning, the Commission considers that the appropriate time to evaluate and review this matter will be at the time of licence renewal.

[§266-4]

II. *POLICY RESPECTING LOCAL PROGRAMMING*

THE PRINCIPLE OF LOCAL REFLECTION

It is the statutory obligation of all broadcasters to provide programming of high standard, using predominantly Canadian creative and other resources. It follows, therefore, that the central objective for all television broadcasters must be participation in the production and distribution of Canadian programming. As a consequence, the Commission's regulations require all television licensees to achieve certain minimum quantitative requirements with respect to Canadian programs.

While each television licensee must ensure that it meets the Canadian content requirements set out in the regulations, it also has a special responsibility to serve the public residing within the particular geographic area it is licensed to serve. Licensees should do so through programs directed towards local concerns as well as through the provision of programs of regional, national or international interest.

This concept of local reflection is founded on the principle that the right to use the public airwaves entails a responsibility to those members of the Canadian public resident in a licensee's service area. The Commission, therefore, will continue to evaluate how television licensees meet the needs and reflect the interests of their local audiences.

[§266-5]

THE IMPORTANCE OF FLEXIBILITY

The Commission recognizes that, in order for the broadcasting system as a whole to produce a critical mass of attractive Canadian programming, whether designed for local, regional or national audiences, broadcasters require flexibility to pool resources through co-operative ventures, co-productions and other imaginative partnership arrangements. Canadian broadcasters, producers, investors and funding agencies need to co-operate, in the most effective and efficient manner possible, to produce high quality programming, particularly entertainment programming.

Broadcasters can play a variety of roles in contributing to quality Canadian programming. Some licensees, on their own or with local independent producers, are capable of producing excellent programming in various categories to meet community needs. Others can best make use of their resources and the talent present in their communities by producing programs in co-operation with other broadcasters. The Commission encourages each licensee to undertake as much original programming as its circumstances permit. In addition, the Commission recognizes that the acquisition of good

Canadian programming contributes to the Canadian broadcasting system. A strong domestic market will, in turn, be a great advantage to the Canadian production industry.

[§266-6]

LOCAL PROGRAMMING - A NEW EMPHASIS

As stated above, reflecting local communities and meeting the needs of local audiences remains the particular responsibility of each television licensee. The Commission will continue to require applicants for television licences to describe how their program schedules reflect the needs and concerns of the communities they serve. At renewal, licensees will be evaluated on how successfully local needs have been met. In making this evaluation the Commission will take into account the comments of individual viewers and representative community groups. Should the Commission determine that licensees have failed to respond to legitimate community needs, appropriate action - including precise conditions of licence - may be taken on a case-by-case basis.

With this proposed new emphasis on licensees' overall performance with respect to local reflection, the Commission no longer requires television licensees to make quantitative commitments to local programming in categories other than news. Consequently, the definitions of a local program set out in Public Notices CRTC 1985-58, 1986-177 and 1989-27 will no longer apply as of 1 September 1991, the implementation date of this policy.

The Commission reiterates that the changes set out in this public notice do not apply to any quantitative programming commitments accepted by the Commission as benefits in relation to an ownership transaction. In such cases, the Commission will continue to define a local program according to the criteria set out in Public Notice CRTC 1989-27.

[§266-7]

Changes regarding the reporting requirements of television licensees are set out in the Appendix to this Public Notice.

With regard to locally-based creative talent, the Commission continues to expect licensees to search out and develop talented individuals such as performers, writers, directors and producers. In some cases, these individuals may be showcased in programs produced by the station or by local independent producers. In other circumstances, the local broadcaster may choose to develop and promote local talent in co-operation with other broadcasters, networks or specialty programming services. However if this responsibility is discharged, the Commission will continue to expect local licensees to demonstrate that they actively develop, support and reflect local talent in as many ways as possible.

The Commission is confident that this new approach to local programming will benefit the public, the broadcasting system, the production industry and the creative community. This policy enunciates a renewed commitment to local reflection, without artificial quantitative measures in non-news programming. The Commission is satisfied that the industry will have more flexibility to provide Canadians with a wide range of Canadian programming of the highest possible quality.

[§266-8]

APPENDIX
REVISED REPORTING PROCEDURES

[§266-9]

1. *Implementation*

This policy will come into effect on 1 September 1991. As of that date, the definitions of a local program found in Public Notices CRTC 1985-58, 1986-177 and 1989-27 will no longer apply, except in regard to commitments already accepted by the Commission as benefits of an ownership transaction.

The Commission requires licensees to meet their minimum quantitative commitments in respect of the average, weekly hours of original Category 1 (news) programming as recorded on the most recent Schedule I on file with the Commission.

The Commission expects all licensees to ensure that the programming they offer reflects the varied needs and concerns of the communities they serve, as generally described in their most recent licence renewal application and consistent with the principles set out in this policy.

[§266-10]

2. *Promise of Performance*

The Commission will issue revised application forms reflecting this policy.

Applicants for licence renewal will be required to outline their plans for Canadian programming reflecting the particular needs of their communities. Such programming may be produced or acquired by the licensee. Applicants will also be required to outline their plans for co-operative programming and programs co-produced with Canadian independent producers.

In a revised Question 11 of Part II of the application for a new television licence or for the renewal of such licence, applicants will be required to commit to a minimum average weekly quantity of station-produced news programming (Category 1).

[§266-11]

3. *Program Logs and Annual Returns*

Applicable changes will be made as required.

[§268-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Exhibition of Promotional Material - Part-Time Special Programming Service

[§268-2]

[Public Notice CRTC 1991-31, March 19, 1991]

[§268-3]

The Commission authorizes cable television licensees to distribute promotional material as a special programming service, on a part-time basis, on the channel used to distribute Canal Famille once the programming day of Canal Famille has ended, subject to the terms and conditions specified below:

[§268-4]

Authorization for the above-noted service is subject to the following:

- such material must be limited to promotional programming, including previews, clips or trailers. No trailer shall exceed 10 minutes in duration and no full-length program shall be presented on this service;
- access to this service must be available on a non-discriminatory, equitable basis for the promotion of all pay and non-pay Canadian television services which a licensee is authorized to exhibit;
- at least 50% of the time devoted each month to promotional material for each service must be used for the promotion of Canadian programs;
- no fees may be charged for the exhibition of this promotional service.

[§268-5]

The Commission will also expect cable television licensees to ensure that the distribution of the promotional service does not adversely affect the distribution of other licensed special programming services and that all promotional material is of high quality and in good taste, taking into account the potential viewing audience at the time the promotion is aired.

[§269-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Community Channel Policy

[§269-2]

[Public Notice CRTC 1991-59, June 5, 1991.]

[§269-3]

Introduction

On 5 June 1990 the CRTC issued Public Notice CRTC 1990-57 (the notice) entitled "Community Channel Policy Review". In the notice, the Commission announced that it was undertaking a review of its policy respecting the community programming service provided by cable television undertakings.

The current community channel policy has been in effect for 15 years. During that time the cable industry has matured considerably both in terms of subscriber growth and financial stability. This maturity has been reflected in the quality and quantity of community programming and is further evidenced by a generally supportive attitude on the part of cable operators toward their community channel activities.

In the notice, the Commission indicated that, while it was intent on preserving the fundamental principles and spirit of the 1975 community channel policy, it considered it necessary to review a number of key issues in order to strengthen the mechanisms by which the community channel would meet the objectives of the *Broadcasting Act* and ensure that community programming remains a vital and important component of the broadcasting system. It was intended that the review also accommodate the Commission's goal of streamlining its policies, regulations and administrative practices to retain only those mechanisms necessary to attain the objectives set out in the *Broadcasting Act*.

The notice set out the Commission's proposals on a number of key issues including financial support, sponsorship advertising, and certain content-related questions.

The Commission received 52 written submissions in response to the public notice, all of which have been carefully considered in arriving at this new community channel policy.

The Commission will publish its proposed amendments to the *Cable Television Regulations, 1986* (the regulations) for public comment in the near future. [NOTE: For the proposed amendments, see below at §288.]

[§269-4]

Role and Objectives

The Commission acknowledges the admirable degree of commitment and dedication of community programming staff and volunteers. In updating its regulations and policies with respect to community programming, the Commission seeks to build upon the proven strengths of the medium and encourage continued innovation in the years ahead.

In many instances the community channel has developed into a vibrant and important element within the broadcasting system overall, and has become particularly meaningful as a provider of local information, views and entertainment. This function of local self-expression takes on even greater significance in those areas where the community channel is the only source of local television programming.

The role of the cable industry in the provision of local programming will become increasingly important in light of the evolving situation with respect to the provision of local services within the broadcasting system as a whole.

[§269-5]

The Commission considers that the role of the community channel should be primarily of a public service nature, facilitating self-expression through free and open access by members of the community. Also, community programming should complement that provided by conventional broadcasters. The provision of adequate financial resources to support the community channel remains the cable licensee's principal contribution to the public in exchange for the privilege of holding a cable television licence. Within this context, licensees will be expected, as far as their individual circumstances permit, to:

- engender a high level of citizen participation and community involvement in community programming;
- actively promote citizen access to the community channel and provide and promote the availability of training programs; -provide feedback mechanisms, such as advisory boards, to encourage viewer response to the range and types of programs aired;
- seek out innovative ideas and alternative views;
- provide a reasonable, balanced opportunity for the expression of differing views on matters of public concern;
- reflect, where appropriate, the bilingual and ethnic composition of the community;
- provide coverage of local events; and,
- publicize the program schedule.

In addition, licensees are encouraged to develop innovative approaches toward collaborative efforts involving special projects which may extend beyond the traditional scope of a licensee's authorized service area. Recognizing the community channel's proven strengths in such areas as the production of telethons, coverage of local and regional sporting events, and other significant endeavours, the Commission encourages licensees to take the lead in further developing cable television's potential for new programming initiatives.

[§269-6]

Financial Support

In its 1975 policy, the Commission decided not to impose a fixed funding formula for the community channel. Instead, it established a policy guideline whereby licensees were expected to contribute 10% of gross subscriber revenues to the support of community programming, and noted that, since the cable industry was still in its formative stages, profits and cash flow available to the licensee would be taken into consideration in judging the adequacy of the resources made available. It is noteworthy that Statistics Canada data indicate an expenditure of $6.3 million in 1975, which had increased to $61.8 million by 1990.

In the notice, the Commission observed:

> A review of financial data provided in the Annual Returns indicates that the average industry allocation to the community channel between 1985 and 1988 remained constant at about 5 per cent of basic service revenues, although contributions by individual licensees range from 1.2% to 19%.

With the intention of establishing a secure and consistent funding level, the Commission proposed in the notice to amend the regulations to require the licensees of

Class 1 systems and Class 2 systems with more than 2,000 subscribers to provide financial support to the community channel of not less than 5% of the revenues derived from the base portion of the basic monthly fee, ie. exclusive of revenues earned as a consequence of fee increases introduced pursuant to subsections 18(3) and 18(6) of the regulations.

The Commission further proposed that this financial contribution relate solely to expenses on operations and not include capital expenditures, since capital expenditures are provided for separately in subsection 18(6) of the regulations. The Commission proposed to limit expenditures on overhead and other indirect expenses to a maximum of 30% of community programming expenses.

While most submissions from the cable industry were generally supportive of the 5% funding formula, the vast majority favoured a policy guideline similar to that in effect since 1975, rather than a regulation. Some cable operators suggested that the Commission address any concerns respecting the adequacy of the level of financial support on a case-by-case basis at the time of individual licence renewals.

A number of multiple system operators (MSOs), including Maclean Hunter Cable TV (Maclean Hunter) and Shaw Cable Systems Ltd., proposed that MSOs should be assessed differently because smaller systems generally require a financial contribution in excess of 5% while very large systems can meet their programming commitments with a lower percentage of revenues.

[§269-7]

The Commission recognizes that there are inherent problems in the imposition of a rigid funding requirement and has decided to maintain a flexible approach. The Commission will retain its current method of assessing the financial contribution of licensees on a case-by-case basis and hereby announces as a policy guideline a funding benchmark, exclusive of capital expenditures, of 5% of base portion revenues. Licensees must continue to report their levels of direct and indirect expenses, and will be expected to dedicate the large majority of their expenditures to the direct expense category.

Direct expenses are those expenses solely attributable in full to the acquisition or production of programming. This would include, for example, salaries and benefits paid to staff who work exclusively in the programming department, non-staff talent fees, films, tapes, props, sets, program related materials and supplies as well as program vehicle operating costs.

Indirect expenses are those expenses that cannot be attributable in full to the acquisition or production of the programming but which are nevertheless necessary for the acquisition or production of programming. This would include, for example, a percentage of heat, light and hydro related to the building in which the programming facilities are located, a percentage of salaries and benefits paid to staff who do not work exclusively in the programming department, but are, at least on occasion, directly involved in its operation; programming equipment maintenance, and other costs for such things as office cleaning, entertainment related to the community programming department, etc.

In arriving at the 5% benchmark, the Commission has taken into consideration the historical operating expenses of the community channel, as reported in the Statistics

Canada Annual Returns, exclusive of capital expenditures. To allow the inclusion of capital expenditures in this formula could result in a significant dilution of operating funds, possibly below the historic average of 5% of basic service revenues. Therefore, the Commission will not allow licensees to include capital expenditures, depreciation or lease payments, whether on account of capital or operating leases, in the calculation of their financial contribution to the operation of the community channel.

In the notice, the Commission observed that some licensees may have been including the costs associated with other services such as the barker channel, Broadcast News and stock market reports in their calculations of community programming expenses. Since these costs should be separately identified, and not included in the allocation to the community channel, the Commission intends to consult with Statistics Canada to formulate revisions to the Annual Return forms to identify only those expenses directly related to the operation of the community channel.

The 5% level of financial contribution will be the *minimum* required of licensees. The Commission will expect those licensees that currently fund their community channels at a higher level to continue to do so in the future.

[§269-8]

Advertising

With the release of the revised regulations in 1986, the Commission permitted limited forms of sponsorship and contra advertising. Cable licensees are allowed to distribute simple oral or written acknowledgements in return for financial assistance or the provision of goods or services. The introduction of advertising on the community channel was followed by a period of experimentation, with the result that some licensees exceeded the intended limit of the regulations. In Circular No. 348 *Sponsorship Messages on the Community Channel*, dated 27 July 1988, [NOTE: set out above at §243], the Commission clarified the parameters of the regulations:

> In the case of "sponsorship" and "contra" messages, a moving visual presentation cannot be included because it consists of more than "an oral or written acknowledgement". Similarly, the still visual or pictorial display of goods sold by a sponsor cannot be included because a pictorial display of goods is clearly in excess of "an oral or written acknowledgement".

The Circular further clarified that company slogans or jingles are not permitted, unless a slogan is trademarked and thus considered to be part of the name of the sponsor. Words that promote goods or services are not permitted; however, company logos and the still depiction of the sponsor's building are permitted as long as they do not include the display of any material that actively promotes goods or services.

The definition of sponsorship contained in the regulations allows the mention of the address or telephone number of a sponsor while the definition of contra advertising does not. In response to a request from the National Programming Committee of the Canadian Cable Television Association (CCTA), the Commission proposed in the notice to amend the regulations to permit the mention of a sponsor's address or telephone number in contra advertising.

Furthermore, the Commission proposed to enact a regulation limiting each contra or sponsorship message to 15 seconds duration. The cable industry argued that such a time

limitation on contra and sponsorship messages would impose a further restriction on their ability to attract sponsors. The Commission considers that, in the absence of a demonstrated problem in this regard, it is unnecessary to impose time restrictions on sponsorship messages at this time.

However, the Commission proposes to amend subsection 14(1) of the regulations (logging requirements) to include the categories of "commercial message" and "alphanumeric programming", in order to monitor the time allocated to sponsorship activity and local bulletin board messages.

[§269-9]

In the notice, the Commission also affirmed its intention to maintain restrictions limiting the commercial orientation of the community channel:

> The Commission is confident that most licensees are currently complying with the regulations respecting advertising. However, there is some concern that certain licensees are employing moving video and, in extreme cases, are engaging in conventional spot advertising. The Commission emphasizes that it will not tolerate such activity. Moreover, the Commission will continue to insist that the orientation of the community channel must remain that of a public service vehicle for free and open access and community expression. Licensees must not deny, restrict or reduce access opportunities if a community citizen group or individual is unable or unwilling to attract a sponsor. Under no circumstances should a licensee charge a fee for providing access programming, or insist that programs have sponsorship.
>
> The Commission emphasizes that it is committed to retaining its prohibition against commercial spot advertising on the community channel.

[§269-10]

Representatives of the commercial broadcasting sector were strongly opposed to the possibility of cable licensees competing with them for local advertising revenues. In support of this position, they pointed out that cable licensees have a stable revenue base through monthly subscriber fees, whereas commercial radio and television stations must rely on the support of local merchants.

A number of community groups and individuals stated that advertising is incompatible with the basic premise underlying the purpose of community access television, and would ultimately distort the principle of open citizen access.

The cable industry was strongly supportive of a regulatory framework that would permit greater opportunity to generate advertising revenue on the community channel. There was broad support for relaxing the advertising restrictions for small cable systems serving communities lacking local conventional broadcast outlets. The Commission's policy respecting small cable systems is outlined in a subsequent section of this notice.

On a number of occasions over the years, the Commission has cited two major concerns regarding the commercialization of the community channel. The first is the inevitable change in orientation brought about by a reliance on advertising revenue. The second is that cable licensees, who already have a reliable revenue base from subscription fees, would siphon advertising revenue from conventional broadcasters, who rely on this revenue as their major source of income. The Commission will therefore retain its

current restrictions on sponsorship and contra advertising as outlined in the regulations and as clarified in Circular No. 348. The Commission proposes, however, to amend the regulations to permit the mention of both the address and telephone number of sponsors in contra and sponsorship messages.

All revenues generated by such advertising must be reinvested in the operation of the community channel. Since these revenues are incremental to the financial contribution required by the Commission, licensees must identify these revenues and associated expenditures separately when reporting their community programming expenses to the Commission.

The Commission is aware that a number of licensees rent their production facilities for external commercial and industrial productions. The Commission considers that the revenue associated with this activity should also be reinvested in the community channel, thus avoiding the requirement for cost separation procedures.

[§269-11]

Bicycling and Interconnection

The regulations allow for the exchange of relevant programs between licensees through bicycling or interconnection. In most cases, adjacent systems in urban areas have interconnected by means of microwave or hard wire and have thus created mini-networks.

In the notice, the Commission recognized the benefits of program sharing among licensees, and acknowledged the particular benefit that interconnection provides by enabling live open-line programming to be made available across an entire city. The Commission further noted that interconnection has the potential to interfere with the scheduling of local programs and that the community programming of small systems on the outskirts of large metropolitan areas may, once interconnected to a regional network, be overshadowed or usurped by the programming of the larger systems. In the notice, the Commission stated:

> There are a number of options to resolve this concern. The Commission could establish a benchmark with respect to the percentage of an individual licensee's schedule to be devoted to programs originating with another licensee. In this regard, the Commission considers that a level of 40% may be appropriate. Alternatively, the Commission could require systems that intend to utilize interconnection to a significant extent to apply for a network licence.

Most submissions opposed the imposition of a quota on the exchange of programs. The government of Ontario considered that there was insufficient data to suggest that there is a problem and suggested that the Commission could deal with situations of abuse on a case-by-case basis. Most parties expressed the view that the exchange of programs was a positive development and noted that small systems require maximum flexibility.

A number of cable operators suggested that programs from adjacent systems within a common metropolitan area should not be considered bicycled programs for the purpose of the suggested 40% quota on the basis that these programs are "local" to the area.

[§269-12]

The Commission's primary concern with respect to the issue of bicycling and interconnection is the retention of the local flavour of the community channel.

The Commission considers that there is considerable merit to the argument that contiguous systems in a single urban area should not be subject to a 40% limitation on programs produced by another licensee since, typically, they each share a common schedule.

The Commission will therefore not consider those programs produced by an adjacent system in a common metropolitan urban area as bicycled or non-local programming. Non-adjacent systems will be subject to a policy benchmark whereby no more than 40% of the community programming schedule may be devoted to non-local programs.

[§269-13]

With respect to interconnection, the Commission considers that a network situation exists when one licensee delegates a portion of its schedule to another licensee and engages in simultaneous airing of programs originating from that licensee. In this regard, the Commission notes that, in most cases, adjacent systems in urban areas have interconnection by means of hard wire or microwave for the purpose of exchanging community programs and, essentially, share a common schedule.

This practice of interconnection is widespread and provides tangible benefits to licensees and audiences alike. After the new *Broadcasting Act* is proclaimed, the Commission will consider whether to exempt these networks from the requirement to hold a network licence. [NOTE: See Public Notice CRTC 1992-5, set out below at §277, for follow-up on this issue.]

[§269-14]

Sharing the Community Channel with Complementary Programming

Pursuant to the regulations, Class 2 licensees are allowed to distribute complementary programming on the community channel. Complementary programming, as described in Public Notice CRTC 1985-151 [NOTE: set out above at §216] consists of:

> community programs produced by other cable television licensees, government or public service information material, NFB productions, children's programs; educational programs not provided by the Provincial Education Authority, alphanumeric services such as Broadcast News, the Question Period portions of the House of Commons or provincial legislatures and multicultural programs.

Local programs must retain scheduling priority, and foreign or commercial programs are not permitted.

In the notice, the Commission acknowledged that, unlike conventional television stations, community channels must originate all their programs, creating a high proportion of repeat airings and long periods consisting of only alphanumeric messages.

The National Programming Committee of the CCTA requested that Class 1 systems be permitted to distribute limited forms of complementary programming, specifically "government or public service information material".

Broadcasters and some of the community groups that submitted comments in this proceeding indicated their opposition to diluting the local nature of the community channel.

Maclean Hunter suggested that registered charities continue to have free access to the community channel while government agencies and professional organizations pay for

airtime. Maclean Hunter proposed that complementary programming should be limited to ten or fifteen per cent of the program schedule, and that any funds derived from such programming should be reinvested in community programming.

There was strong support from the cable industry for the authorization of the Question Period portions of the proceedings of the provincial legislatures.

The Commission is aware that many program directors include in their schedules programs supplied by the Red Cross, provincial tourism agencies, Revenue Canada, and others. All these programs are technically prohibited because they fall outside the definition of community programming, yet all appear to have a valid place within the public service mandate of the community channel. In the Commission's view, the exhibition of a limited amount of government and public service information material would be in the public interest.

There is also a valid argument for permitting the carriage of the Question Period portions of the provincial or territorial legislative proceedings since, in and of itself, such material would be beneficial to the public.

[§269-15]

The Commission therefore proposes to amend the regulations to authorize the distribution, by Class 1 licensees, of government and public service information material as well as the provincial or territorial Question Period proceedings. Licensees will be expected to adhere to the principle that local programs be given scheduling priority.

In keeping with the Commission's policy of free and open access, licensees will not be permitted to receive financial payment in exchange for the distribution of government or public service information material.

[§269-16]

Small Class 2 Systems

The regulations require the licensees of all Class 1 and Class 2 systems to distribute community programming on the community channel. Many small Class 2 systems lack the financial resources necessary to program the channel actively, and provide instead an alphanumeric service consisting of local public service announcements.

In keeping with its objective of reducing the regulatory burden on small licensees, the Commission had proposed to amend the regulations to permit Class 2 systems with fewer than 2,000 subscribers to be relieved of the requirement to provide community programming on the community channel as long as a local non-commercial alphanumeric message service was provided.

The Ontario Cable Television Association and Cl Cablesystems Inc. were opposed to the notion that small Class 2 systems be required to provide a non-commercial alphanumeric service, favouring instead the ability to blend both classified ads and public service announcements on the alphanumeric channel.

[§269-17]

The Commission considers that it would be an unnecessary burden on small licensees to provide a separate channel solely for community announcements. The Commission therefore proposes to amend the regulations to remove the requirement that licensees of

Class 2 systems with fewer than 2,000 subscribers provide community programming on the community channel. In such instances, these licensees will be expected to provide a local alphanumeric service which could include both classified advertising and public service announcements.

Although small Class 2 licensees will no longer be required to program the community channel actively, the Commission considers it appropriate to adopt incentives that will encourage these licensees to maintain some degree of local service.

In this regard, the Commission acknowledges the numerous suggestions that Class 2 and Part III licensees serving communities that have no local commercial broadcasting service be permitted to engage in conventional local advertising.

[§269-18]

The Commission proposes to amend the regulations to permit Class 2 licensees with fewer than 2,000 subscribers that provide service to unserved communities and Part III licensees also providing service to unserved communities to air up to 12 minutes of local advertising material per hour.

The Commission proposes to further amend the regulations to define an "unserved community" as having no local AM or FM radio stations or local television stations that originate programming, overlapping all or any part of a cable licensee's authorized service area. For this purpose, in this definition, local television station will be defined to exclude rebroadcasting undertakings. The regulations include this exclusion in the definitions of local AM and FM radio stations.

The Commission is confident that the increased ability of small cable systems to engage in advertising will be an incentive to actively program the community channel. However, the Commission would be concerned if this greater freedom to advertise resulted in a change in orientation of the programming provided.

[§269-19]

Access

Citizen participation is the cornerstone of the community channel. The 1975 policy noted that the factor that most distinguishes the content of community programming from conventional television services is the ability of community programming to turn the passive viewer of television into an active participant. From this participation flows programming of a nature that is as varied as the imagination and skills of the participants.

Licensees are expected to give the community the widest opportunity for self-expression by actively encouraging groups and individuals to present program ideas, produce their own programs with the help of the licensee's staff, and submit videotapes and films produced by them for replay by the licensee.

Licensees should actively consult members of the community to determine the mix, scope and types of programs that would best serve the needs and interests of the community at large. In some instances, licensees have established formal advisory boards while, in other cases, informal feedback from volunteers serves this purpose. What is important is that licensees actively encourage citizen participation in determining the range and types of programs aired. Care must be taken to ensure that no group or

individual dominates the use of the channel and that all groups and individuals have the opportunity to participate in the presentation of program ideas.

[§269-20]

In the notice, the Commission stated it is satisfied that, for the most part, licensees have succeeded in their efforts to animate their communities and foster citizen involvement. However, as stated earlier, the Commission requires that access to the community channel be free and open and insists that access should not, under any circumstances, depend on the availability of a sponsor, or other forms of financial support.

Licensees are reminded that the community channel should reflect the bilingual and multicultural natures and characteristics of their communities. Licensees should also make special efforts to meet the needs of the disabled and other minority groups.

Licensees are expected to provide regular training programs for volunteers and to publicize the availability of access opportunities and production training programs.

The Commission considers that community programmers should continue to strive for innovation in programming concepts and communications methods.

The cable industry requested the Commission's acceptance of the CCTA's *Industry Standards for Community Programming*. These guidelines deal with issues such as access, balance, stereotyping and sponsorship.

The Commission has established *Guidelines for Developing Industry-Administered Standards* as outlined in Public Notice CRTC 1988-13 [NOTE: above at §237]. In particular, the Commission draws the CCTA's attention to guidelines 3 and 4, concerning the extent of public participation and the establishment of a fair consultative process in developing the standards.

Prior to accepting the CCTA's *Industry Standards for Community Programming*, the Commission expects the CCTA to respond to the guidelines contained in Public Notice CRTC 1988-13.

[§269-21]

Finally, licensees are reminded to consult the guidelines and expectations regarding controversial subject matter or open-line programs in Public Notice CRTC 1988-61 [NOTE: should be 1988-161] entitled *Balance in Programming in Community Access Media* [NOTE: above at §247] and Public Notice CRTC 1988-213 entitled *Policy Regarding Open-Line Programming* [NOTE: above at §251].

[§269-22]

7. *Assessment*

In its public notice, the Commission indicated that it was necessary to update its community channel assessment mechanisms and to implement a monitoring program. The Commission proposed to adopt a simplified procedure based on three criteria: adherence to the 5% funding benchmark; the provision of regular training programs; and the implementation of an access policy.

As noted earlier, the Commission will retain its current method of assessing the funding of the community channel on a case-by-case basis and will be guided by the 5% benchmark.

The cable industry suggested that the requirement for individual licensees to develop and publicize an access policy and file it with the Commission is redundant if the Commission accepts the CCTA *Industry Standards for Community Programming*. These standards, once accepted, would be administered by the industry through the Cable Television Standards Council.

[NOTE: For the text of the *Cable Television Community Channel Standards*, as approved by the CRTC, see above at §179.]

[§269-23]

The criteria relating to training programs and access policies may be administered by the Cable Television Standards Council provided that the Commission receives copies of each complaint along with the disposition of the complaint by the Council. Licensees are reminded that the existence of a degree of industry self-regulation does not override the Commission's ultimate responsibility under the *Broadcasting Act* to regulate and supervise all aspects of the broadcasting system.

The Commission proposes to amend the regulations to require licensees to retain an audiovisual recording of all their programming for four weeks from the date of distribution, so that Class 1 and Class 2 licensees with 2,000 or more subscribers can submit an audiovisual recording, upon request, to the Commission to ensure that licensees are in compliance with the community channel policy, particularly with respect to advertising, citizen access and the overall orientation of the community channel. In this regard, the Commission notes that cable licensees generally supported the retention of an audiovisual recording of all their programming for a 28-day period.

[§269-24]

Other Matters

In its public notice, the Commission announced its proposal to amend the regulations to include the provisions respecting "programming content" (i.e. abusive comment, etc.) that are found in the Commission's radio, television, pay television and specialty services regulations. The Commission also indicated that it proposed to amend its policy respecting special programming channels to allow the distribution of community programs containing the original sponsorship messages. There was widespread support for both these proposals and the Commission will proceed to implement each of these measures.

Finally, licensees are reminded that locally-originated special programming channels are subject to the logging requirements set out in section 14 of the regulations.

[§270-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Subscriber Safeguard Mechanism for Fee-Deregulated Cable Systems

[§270-2]

[Public Notice CRTC 1991-62, June 14, 1991.]

[§270-3]

Following a Public Hearing commencing 5 February 1990 in the National Capital region, at which it considered changes to the regulation of cable television subscriber fees, the Commission announced that it intended to deregulate the fees of all Class 2 systems serving fewer than 2,000 subscribers (Public Notice CRTC 1990-53 dated 15 May 1990). In order to ensure that subscriber interests would be safeguarded under this deregulatory approach, the Commission indicated that it would consider a mechanism to enable it to review the fee increases of all fee- deregulated cable licensees, i.e. Part III licensees as well as licensees of Class 2 systems with fewer than 2,000 subscribers.

More specifically, the Commission stated in this notice its intention to attach a condition of licence to new and renewed licences of fee- deregulated cable systems allowing it to modify their basic monthly fee upon receipt of legitimate subscriber complaints. Subsequently, in Public Notice CRTC 1991-12 dated 24 January 1991, the Commission announced several amendments to the Cable Television Regulations, 1986, including the implementation of fee deregulation for Class 2 systems having fewer than 2,000 subscribers.

[§270-4]

The Commission has recently reviewed its proposal to attach a condition of licence to the licences of all fee-deregulated systems. In particular, it has considered various criteria that could be used to assess the reasonableness of fee increases implemented by the licensees of such systems. The Commission has also examined the specific procedural steps that would have to be taken in order to enable it to modify those increases it considered unreasonable.

As a result of this review, the Commission is concerned that the additional administrative complexity of implementing, monitoring and enforcing the proposed condition of licence may not be justified, particularly in view of the relatively small number of complaints that have been received from subscribers of Part III licensees, whose fees have been deregulated since 1986.

[§270-5]

The Commission has therefore decided to maintain its current deregulatory approach with respect to Part III licensees and to extend this approach to Class 2 licensees serving

fewer than 2,000 subscribers. It will not, at this time, proceed with the implementation of a condition of licence which would allow it to set a maximum basic monthly fee for a fee-deregulated system during the term of the licence.

At the same time, however, the Commission wishes to emphasize that it expects licensees of fee-deregulated systems to continue to act responsibly and to ensure that fee increases are implemented in a reasonable manner. Licensees will continue to be required to comment on each complaint regarding fee increases, in keeping with the Commission's current practice. Moreover, should the Commission have cause to believe that a licensee has increased its basic monthly fee by an unreasonable amount, the Commission will not hesitate to take action, which could include calling the licensee to a public hearing, at any time during the licence term, to address the issue.

Periodically, the Commission will review its approach to deregulation with respect to fee increases for Class 2 licensees serving fewer than 2,000 subscribers and Part III licensees, to determine whether any modification to this approach is required.

[§271-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

New Broadcasting Act - Amendments to Classes of Licence

[§271-2]

[Public Notice CRTC 1991-63, June 19, 1991.]

[§271-3]

The Commission is currently reviewing all of its procedures, regulations and policies to ensure that they correspond to the environment created by the new Broadcasting Act (the Act), assented to on 1 February 1991, and proclaimed on 4 June 1991. The Commission will announce its findings immediately following completion of its review of each of these affected sectors.

Regularly, the Commission issues, renews or amends broadcasting licences and forwards the appropriate documents to licensees. In order to ensure that this process continues uninterrupted, the Commission, as its first priority, has focused on the new definitions in the Act relating to broadcasting undertakings and on the amendments that will be required with respect to the different classes of licence it issues.

[§271-4]

The Act defines three major types of broadcasting undertakings. Generally, what were previously termed "broadcasting transmitting undertakings", "broadcasting receiving undertakings" and "networks" are now defined in section 2 of the Act as "programming

undertakings", "distribution undertakings" and "networks", respectively. The new definitions read as follows:

"programming undertaking" means an undertaking for the transmission of programs, either directly by radio waves or other means of telecommunication or indirectly through a distribution undertaking, for reception by the public by means of broadcasting receiving apparatus.

"distribution undertaking" means an 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.

"network" includes any operation where control over all or any part of the programs or program schedules of one or more broadcasting undertakings is delegated to another undertaking or person.

[§271-5]

The Commission has considered the application of these definitions to the various classes of licence it has issued in the past. The appendix to this Public Notice illustrates the correlation between the former licence classes and the new classes the Commission has adopted and will use in the future.

With regard to existing licences, the Commission will inform all licensees in writing of any changes to their licence class. Where the class of existing licences must be amended as a result of the changes mentioned above, the actual changes will be done at licence renewal time. However, for the purpose of ongoing licensing operations, current licences will be treated as per the schedule attached.

The new licence classes reflect the primary function of the undertaking to be licensed, be it for program origination, program distribution or as a network operation. As indicated in Part A (1 and 3) of the appendix, 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.

[§271-6]

The Commission also notes that undertakings licensed as broadcasting receiving undertakings will be issued a distribution undertaking licence, as indicated in Part B of the appendix. As further indicated in Part C, undertakings licensed as network operations, but which in reality act more like program originators, will be issued programming undertaking licences. Other undertakings now licensed as network operations will be licensed as set out in Part C.

Further, in accordance with paragraphs 9(1)(b) and (d) of the Act, the Commission may now grant terms for new licences and licence renewals of up to seven (7) years rather than five (5).

[§271-7]

In addition, the Commission notes that subsection 9(4) of the Act reads as follows:

> The Commission shall, by order, on such terms and conditions as it deems appropriate, exempt persons who carry on broadcasting undertakings of any class specified in the order from any or all of the requirements of this Part or of a regulation made under this Part where the Commission is satisfied that compliance with those requirements will not contribute in a material manner to the implementation of the broadcasting policy set out in subsection 3(1).

Under subsection 9(4), the Commission may now make orders exempting the operators of any class of broadcasting undertakings from certain requirements. At present, the Commission grants exemptions from holding a broadcasting licence to persons operating Master Antenna Television Systems (MATV) and Resource Development Installations, provided they meet the criteria set out in Public Notices CRTC 1989-47 and CRTC 1981-79 dated 18 May 1989 and 19 October 1981, respectively. For the time being, the Commission intends to maintain these exemptions. It is, however, examining the possibility of granting similar exemptions to the operators of other classes of broadcasting undertakings such as low-power real estate or tourist information radio operations, and it will call for public comment on its proposals in this regard in a notice to be issued in the near future. [NOTE: For follow-up on this proposal, see Public Notice CRTC 1992-5, set out below at §277.]

[§271-8]

APPENDIX

Current licences	*New licences*
Part A: Broadcasting Transmitting Undertakings	
1- Radio (AM & FM) - originating programs (includes mother stations and their rebroadcasting undertakings when owned by a single licensee, as well as Carrier Current stations)	**(Radio) Programming Undertaking**
2- Radio (AM & FM) - rebroadcasting only	**(Radiocommunication) Distribution Undertaking**
3- Television - originating programs (includes mother stations and their rebroadcasting undertakings when owned by a single licensee)	**(Television) Programming Undertaking**
4- Television - rebroadcasting only	**(Radiocommunication) Distribution Undertaking**
5- Multi-channel rebroadcasting only a number of TV and/or radio signals	**(Radiocommunication) Distribution Undertaking**

6- Subscription Television (STV) where acting as a rebroadcaster	**(Radiocommunication) Distribution Undertaking**
7- Distribution (BDU) - includes Multipoint Distribution Systems (MDS)	**(Radiocommunication) Distribution Undertaking**

[§271-9]

Part B: Broadcasting Receiving Undertakings

Cable	**(Cable) Distribution Undertaking**

[§271-10]

Part C: Network Operations

1- AM & FM Radio Programs	**(Radio) Network**
2- Television Programs	**(Television) Network**
3- Cable Community Programs	**(Community Programs) Network**
4- Cable Microwave - retransmitting	**(Relay) Distribution Undertaking**
5- Satellite - retransmitting	**(Relay) Distribution Undertaking**
6- Satellite Programs	**(Satellite to Cable) Programming Undertaking**
7- Pay-Television Programs	**(Pay-TV) Programming Undertaking**
8- Specialty Programs	**(Specialty) Programming Undertaking**

[§272-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Commission's Findings with Respect to its Proposal to Eliminate the Distinction between Broadcast Advertising of Beer, Wine, Cider, Coolers and Spirits

[§272-2]

[Public Notice CRTC 1991-65, June 21, 1991.]

[§272-3]

In Public Notice CRTC 1990-86 dated 11 September 1990, the CRTC called for comments regarding a proposal to eliminate the distinction between broadcast advertising of beer, wine, cider, coolers and spirits from the *Television Broadcasting Regulations, 1987*, the *Radio Regulations, 1986* and the *Specialty Services Regulations, 1990* (the regulations). Under the proposed regulatory amendments, broadcast advertising of spirits would be subject to the same rules that are currently applied to commercial messages for alcoholic beverages with 7% or less of distilled spirits (beer, wine, cider and coolers). Public comments were requested regarding specific evidence (or the lack thereof) in support of, or against, the distinction made under the existing regulations. The Commission, without wishing to limit the scope of the discussion, asked for evidence demonstrating whether there are distinctions between beer, wine, and spirits as they relate to issues such as drunk driving, domestic violence and absenteeism from work.

The Commission received a total of 582 comments as follows. Most comments (79%) were from individuals. Less than 1% of those individuals favoured permitting broadcast advertising of spirits; 35% were in favour of retaining the status quo, and the majority (64%) wanted all alcoholic beverages to be banned, without exception, from broadcast advertising.

All of the fourteen comments received from federal, provincial and municipal governments opposed broadcast advertising of spirits. Of these, a majority suggested a total ban and the remainder preferred the status quo.

Ninety-eight responses were received from interest groups. A small number of those stated that advertising of spirits should be permitted in the broadcast media, generally on the grounds that they are roughly equivalent to other forms of alcohol and that a ban on advertising would perpetuate the myth that beer and wine are less harmful than spirits. Approximately one third of the groups preferred the status quo. Again, the majority opposed broadcast advertising of all alcoholic beverages.

A further ten comments were submitted by individual broadcasters and their industry associations, advertisers or manufacturers and their associations, and advertising agencies or their associations. They were all in support of allowing broadcast advertisement of spirits. Few of the 582 submissions included any scientific evidence in support of the arguments made. Of the studies provided, none addressed the issues in such a manner as to distinguish between spirits and other alcoholic beverages in terms of their effects and their relationship to broadcast advertising.

[§272-4]

In the public notice calling for comments on this important matter, the Commission made reference to legal proceedings initiated by The Association of Canadian Distillers (ACD). Subsequent to the deadline for the receipt of comments on the proposed regulatory amendments, the ACD insisted that the legal proceedings it had instituted challenging the constitutional validity of the Commission's prohibition against the advertising of spirits proceed without further delay.

The ACD submits that the current ban against broadcast advertising of spirits infringes upon its freedom of expression as guaranteed in subsection 2(b) of the Canadian Charter of Rights and Freedoms (the Charter), and cannot be justified under section 1 of

the Charter. Under the latter provision, a limitation on a right or freedom guaranteed in the Charter must be a reasonable one, prescribed by law and demonstrably justified in a free and democratic society.

[§272-5]

At this time, given that this matter is currently before the Federal Court, and that few of the comments received supported the proposed change, the Commission has decided not to alter its regulations on the advertising of alcoholic beverages. Any further action by the Commission will await the result of the legal proceedings. The Commission notes the extent of public comment on this important matter and thanks all those who participated in the process.

[§274-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Radio Market Policy

[§274-2]

[Public Notice CRTC 1991-74, July 23, 1991. This policy was reaffirmed in Public Notice CRTC 1992-72, November 2, 1992, below at §287.]

[§274-3]

I. *BACKGROUND*

On 17 December 1990, the CRTC issued Public Notice CRTC 1990-112 entitled "Radio Market Criteria". In this Notice, the Commission proposed:

(i) a set of criteria that could be used by the public and the Commission to give indications at an early stage of the capacity of markets to support additional commercial radio stations; and,

(ii) a revised CRTC procedure for handling applications, incorporating the use of these criteria and other measures.

The Public Notice further explained how the Commission would apply the results of the tests. It stated that, regardless of the indication of these tests, the proposed procedure did not envisage any unilateral decision on the part of the Commission to terminate the process [i.e. deny the applications at this point without going to a public hearing].

The proposals were framed against the background of radio's declining share of advertising revenue, the declining profit performance of radio in recent years, a continuing demand by applicants for licences to establish new radio stations, and precedents in which the Commission has had to deny all applications due to the lack of evidence of the capacity of the market to support new stations.

In response to the public notice, the Commission received comments from 12 parties, and is grateful for the assistance they provided.

[§274-4]

II. *DISCUSSION OF ISSUES*

a) *Basic Criterion*

The Basic Criterion was:

> The introduction of an additional commercial AM or FM station must not affect the ability of existing commercial AM and FM stations to discharge their programming responsibilities.

Some submissions argued that this criterion would restrict too greatly the entry of new competition, and for this reason should not be used.

In response, the Commission notes that, while it has always placed a high value on competition, and that competition among multiple broadcasting services is present in most radio markets in Canada, it is a fact that any new entry will have some impact on existing stations' operations. Clearly, the availability of varied and comprehensive programming using predominantly Canadian creative and other resources, objectives which are set out in the *Broadcasting Act* (the Act), requires financially healthy licensees. It is also the case that licensees only continue to hold their licences on the condition that they discharge the programming responsibilities placed on them in accordance with the Act. Their performance in this respect is reviewed in a public process at regular intervals, and this practice will continue.

For the above reasons, and as long as the Act requires licensees to pursue objectives that are not always strictly in accordance with economic self-interest, the Commission considers that an approach based on the above criterion is appropriate, and is likely to be a more efficient means than unlimited competition, to foster a continued, varied and comprehensive service.

[§274-5]

b) *The Tests*

Public Notice CRTC 1990-112 listed the three tests as follows:

1. *Group Profitability*

   To measure this indicator, the Commission will determine the average profitability of all commercial stations in the market over the preceding 5 years. Should this profitability be negative, the market will be deemed to have failed this test. Profits are measured before interest expense and taxes (PBIT).

2. *Individual Profitability*

   To measure this indicator, the Commission will examine whether each of the stations in the market was profitable or unprofitable in each of the preceding 5 years. The total number of instances where stations were profitable will be compared with the number where they were unprofitable. Should the number of unprofitable station-years be equal to or greater than the number of profitable station-years, the Commission will consider the market to have failed this test.

3. *Revenue Growth*

   To measure this indicator, the Commission will examine the growth of total advertising revenues within the market. If advertising revenues have exhibited no positive real growth (i.e. after inflation) over the preceding 5 years, the Commission will consider the market to have failed this test.

[§274-6]

Most submissions supported the use of profitability and growth as the parameters for measuring the levels of performance expected before entry would likely be favourably considered.

Some submissions preferred a definition of profitability in which profits would be measured after deduction of interest expenses.

In measuring profitability, the Commission has opted for the exclusion of interest charges for two reasons:

(i) it is the only fair method of comparing situations in which licensees rely to differing extents on debt financing; and,

(ii) interest payments are a return on capital used in the business, and a P.B.I.T. check discloses whether there is any return on capital, whether to equity holders or to debt holders. A test measuring profits after the deduction of interest expenses and taxes (P.A.I.T.) only discloses whether there is a return on capital to equity holders.

[§274-7]

c) *Data Used In Tests*

Other submissions questioned whether the Commission should rely on data submitted by licensees, suggesting that this raised the possibility of deliberate or accidental distortions.

The Commission requires that all operating data submitted by licensees be accompanied by a related financial statement that has been audited by an outside party. While this data may still be subject to some degree of distortion (as suggested in the comments), it is the best information of its kind available to the Commission. The degree of distortion is not considered critical because, in the procedure proposed, these tests are only a first check. In all cases where a complete application is received and proceeds to a public hearing, it is to be accompanied by a more comprehensive study of the market, performed by an independent expert, relying to a considerable extent on other data.

For the purposes of the tests, which measure only a specific and limited situation, this data is considered adequate.

[§274-8]

d) *Data Disclosure and Confidentiality*

Public Notice CRTC 1990-112 indicated that the Commission would adhere to its standard policy guideline of making public all data except where this would be to the competitive disadvantage of individual licensees.

The Commission requested comments as to whether it should publish the results for each station in a market or for market aggregates only. It received suggestions both for and against the publication of the revenue and profitability data for individual stations. Those who supported the release of individual station data argued that such disclosure would permit better assessment of market conditions, and that since these operations used public frequencies, the public was entitled to such disclosure. Others argued that such disclosure could expose broadcasters to competitive disadvantage.

After consideration of all arguments, the Commission has decided to release market aggregates only, at this time, but will continue to monitor whether further disclosure is necessary for successful operation of the new procedure.

[§274-9]

e) *Independent Market Study*

Terms of Reference

Public Notice CRTC 1990-112 had proposed that, in cases where a complete application had been submitted, the CRTC would commission an independent study to consider the capacity of the market to support an additional commercial station with special reference to relevant features of the local economy and the impact on licensees already serving the market. After review of the submissions, the Commission has decided that the independent studies will be conducted along the lines indicated. It has also decided that it will bear all costs pertaining to such studies, as originally proposed. The studies would also consider past cases of new entries, involving markets with similar characteristics and of comparable size, and the impact of the proposed new entry on other markets in the surrounding area. On the other hand, the studies will not investigate particular station formats, as this area is best left to applicants to investigate.

[§274-10]

Maximum Number of Studies

The Commission proposed to have a maximum of six studies conducted per year, this figure being the average recorded in recent years. On the basis of considerations related to the expected availability of internal resources, as well as the demonstrated reasonableness of the number, and its plan to review these practices after three years, the Commission considers retention of the six-study maximum to be reasonable.

[§274-11]

f) *Procedure*

Calls

In section 3(a) of Public Notice CRTC 1990-112, the Commission stated that, in the situation where an independent study concludes that there is no room in a market for an additional station, the following procedure would be followed:

> ... If the applicant decides to continue, (i) the study will then be made public, (ii) a call will be issued, and (iii) all complete applications will be considered at a public hearing.

It should be noted firstly that the issuance of calls is not a requirement under the Act. Secondly, in processing applications for entry into a market, the Commission has, under certain circumstances in the past, proceeded to a public hearing without issuance of a call.

In most of the instances envisaged in 3(a) involving applications for prospective new commercial entries, the Commission intends to continue with its current practice of issuing a call for applications. In this respect, the Commission wishes to emphasize that, should the original applicant wish to proceed, its application will be heard at a public hearing, whether or not a call is issued. Notwithstanding the above, the Commission will

not generally be disposed to entertain applications for authority to establish a new entry in markets where a new station has been in operation for a period of less than twelve months.

[§274-12]

g) *Applicants' Market Studies*

In addition to the independent market studies commissioned by the CRTC, the Commission will continue to require all applicants to conduct their own studies in support of their new entry proposals.

The Commission will expect applicants' market studies to be comprehensive and provide an adequate framework for analysis and comparison. They should provide information on the capacity of the market to support the particular format proposed and investigate the impact of their proposal on the ability of existing licensees to fulfill their programming responsibilities.

[§274-13]

h) *Review of Procedure*

The Commission will review these new procedures and the criteria outlined above after three years, as recommended in some of the submissions.

[§274-14]

III. *SUMMARY OF THE NEW PROCEDURES AND CRITERIA*

In the following pages, the Commission sets out in consolidated form the procedures and criteria that it intends to use in the processing of applications for conventional, commercial AM and FM undertakings. It expects that these practices will preserve the right of potential applicants and all other parties to be heard according to the provisions of the Act, and that they will allow for the rational entry of new services into markets, while promoting the efficient utilization of scarce resources.

[§274-15]

THE BASIC CRITERION

The capacity of the market must be such that the introduction of an additional commercial AM or FM station will not unduly affect the ability of existing commercial AM and FM stations to discharge their programming responsibilities.

[§274-16]

THE SPECIFIC TESTS

1. *Group Profitability*

   To measure this indicator, the Commission will determine the average profitability of all commercial stations in the market over the preceding 5 years.

   Should this profitability be negative, the market will be deemed to have failed this test. Profits are measured before interest expense and taxes.

2. *Individual Profitability*

To measure this indicator, the Commission will examine whether each of the stations in the market was profitable or unprofitable in each of the preceding 5 years. The total number of instances where stations were profitable will be compared with the number where they were unprofitable. Should the number of unprofitable station-years be equal to or greater than the number of profitable station-years, the Commission will consider the market to have failed this test.

3. *Revenue Growth*

To measure this indicator, the Commission will examine the growth of total advertising revenues within the market. If advertising revenues have exhibited no positive real growth (i.e. after inflation) over the preceding 5 years, the Commission will consider the market to have failed this test.

[§274-17]

INDEPENDENT MARKET STUDIES

Terms of Reference

The CRTC will commission a maximum of six independent studies each year to investigate the capacity of markets to support an additional radio station, with special reference to the impact on licensees already serving those markets. The studies will provide projections of market capacity for the future, highlight any specific relevant features of the local economy, and where relevant, draw inferences from past cases of new entries into specific markets and their neighbours.

[§274-18]

REVISED PROCEDURE

The revised procedure for consideration of applications for entry into a market are as follows:

1. An application for a conventional AM or FM undertaking is received.
2. Through correspondence with the applicant, the Commission ensures that the application is complete.
3. Following receipt of a complete application, the CRTC will commission an independent study to investigate more fully the capacity of the market to support an additional station.
4. The findings of the study will be made available to the applicant as soon as possible following its completion. The applicant will then be required to decide whether to proceed with the application, given the findings of the study, and the criteria of the Commission set out in the previous Section of this Public Notice.
5. (a) If the applicant decides to proceed, i) the study will then be made public; ii) a call for applications from other interested parties may be issued; and, iii) all complete applications will be considered at a public hearing.
   (b) If the applicant decides not to proceed, the process will be terminated and its application returned.
6. The study will be placed on the public record.

[§274-19]

Scheduling of applications for consideration at hearings will be determined, in part, on the basis of feasibility as indicated by the criteria and studies, and the date of receipt of complete applications in the Commission.

The Commission emphasizes that the modifications to its procedure do not include any unilateral decision on its part to terminate the process following the first stage described above, even if the independent study concludes that the market cannot support an additional station.

Notwithstanding the above, the Commission will not generally be disposed to entertain applications for authority to establish a new entry in markets where a new station has been in operation for a period of less than twelve months.

If the process does result in a call, applicants will be expected to carry out their own market studies in support of their individual applications and, through reference to the Commission's new criteria, to demonstrate the capacity of the market to support the additional service they wish to provide and the impact of their proposal on existing licensees. Applicants will also be expected to address the appropriateness of their chosen format.

[§274-20]

RELEVANT DATA

The financial data relevant to group profitability of stations, and to the growth of radio revenues in the various radio markets across Canada, will be made public and updated on an annual basis by the Commission.

The following data will be published for all radio markets:

1. The five-year average of Profits before Interest and Taxes (PBIT) for all stations as a group.
2. The total number of instances over the preceding five-year period in which individual stations within a market have been profitable or unprofitable on an annual basis.
3. The five-year average of the annual growth rate (after inflation) of radio revenues in the market.

[§274-21]

Where, in its judgment, licensees will not be placed at a competitive disadvantage, the Commission may also release additional data.

[§275-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Submission of "Description of Canadian Programs" (DCP) Forms

[§275-3]

[CRTC Circular No. 378, August 2, 1991.]

[§275-3]

Circular Letter To All Television Licensees

On 5 December 1990, the Commission issued Circular Letter No. 374 to all television licensees asking them to submit their programming information for the 1990/91 season and inviting them to participate in an experiment aimed at reducing the amount of time spent by both licensees and Commission staff in correcting errors in TV logs. The experimental portion involved the voluntary completion of a "Description of Canadian Programs" (DCP) form (sample attached). The form was created pursuant to the recommendations of the internal committee that examined methods to streamline Commission procedures and reduce the paper burden borne by licensees. It is designed to replace the more lengthy program description packages traditionally submitted to the Commission on an annual basis.

Several stations participated in the experiment. A hard copy of the information submitted on the forms was extracted from the system and sent to each participating licensee. This copy was to be prominently posted in the traffic department as a reference for station staff in preparing future program log information.

The Commission's purpose in conducting the DCP experiment was to reduce the incidence of error by standardizing as much as possible the information entered in program logs. As envisaged, the content of the program logs has shown significant improvement since the DCP experiment began. The Commission has, therefore, determined that this procedure should be adopted on a general basis.

[§275-4]

Accordingly, commencing this summer and annually thereafter, the Commission will require each licensee of a television programming undertaking (except those providing an educational service pursuant to a provincial authority) to submit a completed DCP form accompanied by a block program schedule for the fall season. This information should be received by the Commission no later than mid-August each year. For this year only, however, the submission date is 3 September 1991. Any licensee wishing to submit more detailed program description packages to supplement the DCP form is welcome to do so. The Commission will generally be satisfied, however, with the information contained on the form, provided this information is complete. Licensees of provincial educational services should continue to submit only block program schedules.

[§275-5]

STATION: _____

DESCRIPTION OF CANADIAN PROGRAMS - Fall 1991

* PROGRAM TITLE	CRTC 8-DIGIT KEY FIGURE	NO. OF EPISODES ORIGINALS/ REPEATS	PRODUC-ING STATIONS	** ETHNIC TYPE	** L1 L2	** ETHNIC TARGET AUDI-ENCE

* Exactly as it will appear on your program log.
** Information to be provided for ethnic programs only.

[§276-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Guidelines for Assessing Applications for Programming Flexibility from Licensees of Radio Stations in Border Markets and Small Markets

[§276-2]

[Public Notice CRTC 1992-3, January 16, 1992.]

[§276-3]

I. Background

In Public Notice CRTC 1990-111 entitled *An FM Policy for the Nineties* [NOTE: above at §263], the Commission announced that, upon application, it would consider

granting flexibility to the operators of radio stations in border markets or in small markets with respect to certain of their programming commitments.

Subsequently, the Commission conducted studies of the financial and audience characteristics of radio stations in border markets and small markets. The Canadian Association of Broadcasters (CAB) also submitted recommendations.

After consideration of the findings of the studies, as well as the recommendations submitted by the CAB, the Commission has established the following guidelines, which it will now use to assess applications for programming flexibility.

[§276-4]

II. Guidelines for Border Market Stations

a) Flexibility Guidelines

The Commission will use the following guidelines for the purpose of assessing applications for programming flexibility submitted by licensees of stations serving border markets:

1. **Substantial tuning to U.S. stations in the market.** The Commission will consider a share of 20% tuning or more to U.S. stations receivable over-the-air as indicative of "substantial tuning".
2. **Unprofitability of the market.** Consistent with the procedures set out in Public Notice CRTC 1991-74 entitled *Radio Market Policy*, the Commission will measure profitability according to the average profit before interest and taxes (PBIT) of all commercial stations in the market over the preceding 5 years.

   In addition, the Commission will take into account the economic impact that any new station(s) may have on the overall profitability of the market. The Commission will generally consider a station that has been in operation for less than five years to be a new station.

[§276-5]

b) Areas of Programming Flexibility

The Commission may be prepared to grant flexibility with respect to the level of hits and the maximum repeat factor to the licensees of FM stations in border markets that meet these guidelines. It may also allow the licensees to decrease their music list size, change their vocal-to-instrumental ratio or increase the allowable amount of commercial content. The Commission, however, will not likely grant flexibility with respect to station formats or requirements for French-language vocal music.

The Commission will generally grant reductions in spoken word programming only in those cases where applicants can demonstrate that it is essential to the station's competitive position vis-à-vis U.S. stations.

As stated in Public Notice CRTC 1990-111, flexibility regarding Canadian content will not generally be accorded except for the licensees of AM and FM stations in border markets where exceptional circumstances are present, such as those identified in Public Notice CRTC 1984-233 entitled *Windsor Radio Review*.

The Commission maintains the position expressed in Public Notice CRTC 1984-233, that in Windsor and other border markets that are greatly affected by the presence of U.S. signals, the Commission's objectives "will be achieved by programming services

that reflect a firm Canadian orientation in their approach to the provision of spoken word and music programming." The Commission will, therefore, expect applicants proposing a reduction in spoken word programming and/or Canadian content to demonstrate how they will continue to provide identifiably Canadian programming services.

Recent CRTC Decisions: For cases where the applicant did not meet the border market outline required and the requested flexibility was denied, see Decision CRTC 92-205, April 3, 1992; and Decision CRTC 93-655, October 21, 1993. For cases where some relief was granted, see Decision CRTC 92-598, August 20, 1992; Decision CRTC 93-52, February 11, 1993, Decision CRTC 93-92, March 12, 1993; and Decision CRTC 93-687, November 23, 1993. It should be noted that even in these cases, the CRTC declined to relax its Canadian content requirements.

[§276-6]

III. Small Market Stations

a) Flexibility Guidelines

The Commission will use the following guidelines for the purpose of assessing applications for programming flexibility from the licensees of stations in small markets:

1. **Population of less than 100,000 in the market,** based on Statistics Canada population census data.
2. **Unprofitability of the market.** As will be the case for border markets, the Commission will measure profitability according to the average PBIT of all commercial stations in the market over the preceding 5 years.

   In addition, the Commission will take into account the economic impact that any new station(s) may have on the overall profitability of the market. The Commission will generally consider a station that has been in operation for less than five years to be a new station.

   The Commission may also take into account such factors as the location of the community in relation to others and the amount of out-of-town tuning on the market's financial situation.

[§276-7]

b) Areas of Programming Flexibility

The Commission may be prepared to grant flexibility with respect to the level of hits and the maximum repeat factor to the licensees of FM stations in small markets that meet these guidelines. It may also allow licensees to decrease their music list size, change their vocal-to-instrumental ratio or increase the allowable amount of commercial content.

As stated in Public Notice CRTC 1990-111, the Commission will not likely be prepared to accord flexibility with respect to Canadian content and spoken word to FM licensees operating in small markets. Nor will flexibility likely be granted with respect to station formats or requirements for French-language vocal music.

Further, the Commission will not likely allow reductions in Canadian content requirements for AM stations operating in small markets.

[§276-8]

IV. Applications for Flexibility: Areas to be Addressed by Applicants Serving Border Markets and Small Markets

The onus will be on the licensee, upon application to the Commission, to demonstrate why exceptions to normal programming requirements are warranted for each of its proposals.

Applicants whose stations serve border markets or small markets will also be expected to demonstrate how:

i. Each of the proposed changes will help the competitive situation of the station;

ii. The station will continue to serve the particular needs and interests of the community;

iii. The proposed changes will not cause undue harm to local AM broadcasters and AM and FM broadcasters in neighbouring communities; and

iv. In the case of licensees of border market stations that are proposing reductions to Canadian content and/or spoken word, the station will remain an identifiably Canadian service.

[§276-9]

V. "First Radio Service" FM Stations

There are several communities in which the FM station licensed to serve the community is essentially the only station receivable. Before the recent amendments to the *Radio Regulations, 1986* arising from the FM policy review, such stations were licensed as "First Radio Service FM Licences".

The Commission will adopt a more flexible approach with respect to such first service stations because concerns about diversity of service within the market and the impact of such flexibility on AM stations are not present in these cases.

The Commission may grant the same flexibility to licensees of first service stations as it does to AM station licensees with respect to music use indicators, format and advertising content levels. The primary consideration with respect to first radio service stations will be maintenance of the best possible service to the community.

The Commission, however, will not likely grant flexibility to licensees of first service stations with respect to Canadian content, spoken word and French-language vocal music.

[§278-1]

[CANADIAN RADIO-TELEVISION AND
TELECOMMUNICATIONS COMMISSION]

A Review of CRTC Policies Governing the Use of Low-Power Radio Frequencies

[§278-2]

[Public Notice CRTC 1992-21, March 12, 1992. The CRTC set out its policy in *A Licensing Policy for Low-Power Radio Broadcasting*, Public Notice CRTC 1993-95, June 28, 1993, below at §299. However, this initial Public Notice has been retained since it provides useful definitions and historical context.]

[§278-3]

A. *INTRODUCTION*

In Decision CRTC 91-813 dated 23 October 1991, the Commission announced that it would undertake a full examination of its policies concerning the use of low-power frequencies. This public notice is the first step in this process; it explores the principal issues relating to the use of low-power radio, and poses specific questions for public comment.

[§278-4]

B. *CLASSES OF LOW-POWER UNDERTAKINGS*

1. *Technical Classifications*

Low-power undertakings, according to the rules of the Department of Communications (DOC), comprise the following:

Low-Power AM -- an **LPAM** is an undertaking with transmitter power of less than 100 watts. Each LPAM is licensed on a specific frequency in the 525 - 1705 kHz band, and at a specific transmitting site. LPAM undertakings are not protected against interference from regular, protected AM undertakings (this would mean that, in case of a frequency conflict between an LPAM and an existing or a newly approved regular, protected AM undertaking, the LPAM would have to change frequency or cease operation). LPAM undertakings are protected, however, against interference from each other on a first-come, first-served basis and from LPAS undertakings (defined below). This protection is based on the daytime 0.5 millivolt per metre (mV/m) contour which usually falls within a few kilometres (km) of the transmitter site, depending on the actual power, frequency and ground conductivity. The DOC does not publish an allotment plan for LPAM frequencies.

Low-Power FM -- an **LPFM** is an undertaking with maximum Effective Radiated Power (ERP) of 50 watts and transmitting antenna height of 60 metres. Each LPFM is licensed on a specific frequency in the 88 - 108 MHz band, and at a specific transmitting site. LPFM undertakings are not protected against interference from regular, protected FM undertakings. LPFM undertakings are protected, however, against interference from

each other on a first-come, first-served basis and from VLPFM and LPAS undertakings (defined below). This protection is based on the 3 mV/m contour whose nominal distance from the transmitting site is 4 km. The DOC FM Allotment Plan includes licensed LPFM undertakings but not frequencies that might be available for LPFM use.

Very Low-Power FM -- a **VLPFM** is an undertaking operating with maximum ERP of 10 watts and transmitting antenna height of 30 metres. Each VLPFM is licensed on a specific frequency in the 88 - 108 MHz band, and at a specific transmitting site typically situated in a small remote community. VLPFM undertakings are not protected against interference from regular, protected FM undertakings or from LPFM undertakings. VLPFM undertakings are, however, protected against interference from each other on a first-come, first-served basis, and from LPAS undertakings (defined below). This protection is based on the 3 mV/m contour whose nominal distance from the transmitting site is 2 km. The DOC FM Allotment Plan includes existing VLPFM undertakings but not frequencies that might be available for VLPFM use.

Low-Power Announcement Service -- an **LPAS** is an AM or FM undertaking with a very limited coverage area. In the case of AM (535 - 1605 kHz), transmitter power must be such that it does not produce a field strength level of more than 0.25 mV/m at a distance of 30 metres (note that the daytime protected contour of a regular, protected AM undertaking is 0.5 mV/m). In the case of FM (88 - 107.5 MHz), transmitter power must be such that it does not produce a field strength level of more than 0.1 mV/m at a distance of 30 metres (note that the protected contour of a regular, protected FM undertaking is 0.5 mV/m).

LPAS undertakings can be referred to as "30-metre coverage" undertakings. Operators of LPAS undertakings are not licensed to make use of specific frequencies or transmitting sites. Usually, the licensee operates a system of multiple transmitters at different transmitting sites in the community, using any frequency within the bands defined above. These undertakings can operate only as long as they do not cause interference to other broadcasting services. LPAS undertakings are not protected against interference from other broadcasting services, not even from other LPAS undertakings.

[§278-5]

2. *Types of undertakings licensed by the Commission*

In the past, the Commission has issued licences for low-power undertakings for a variety of purposes:

a. *Rebroadcasters*: Retransmitters of licensed radio programming undertakings have been authorized either to improve service within the existing licensed coverage area of the parent undertaking, or to extend service to smaller outlying communities. Such retransmitters include Temporary Resource Development ("work Camp") Undertakings. These generally operate on LPAM or LPFM frequencies and rebroadcast, in its entirety, the programming of another licensed undertaking. They are on the air from a few months to a few years (until the termination of the logging, construction, or similar project) and are generally situated in remote areas where no other AM or FM radio broadcasting alternatives exist. In Public Notice CRTC 1992-5 of 17 January 1992, the Commission announced a proposal to exempt operators of this class of undertaking from the requirement to hold a licence.

There are approximately 400 licensed low-power rebroadcasters (including those of the CBC), of which 35 are partial and 363 are full rebroadcasters.

b. *Community Radio*: Most community radio undertakings operate in small, rural markets or remote areas; these are known as Type A Community undertakings. Type B undertakings, most of which operate in the province of Quebec, are found in markets where there are one or more conventional commercial broadcasters operating in the same language (for definitions of Type A and Type B Community undertakings, please refer to Public Notice CRTC 1985-194 -- "The Review of Community Radio"). Some exist in major metropolitan areas. There are currently 4 Type A and 3 Type B low-power community undertakings in small rural areas. There are also 16 licensed low-power community undertakings operating in remote areas. These 16 undertakings have the attributes of a Type B community undertaking, although they have not been licensed as such.

c. *Native undertakings*: Most are LPFM or VLPFM. There are currently 29 Type A and 10 Type B low-power native undertakings (for definitions of Type A and Type B native undertakings, please refer to Public Notice CRTC 1990-89 -- "Native Broadcasting Policy").

d. *Ethnic undertakings*: Only one low-power ethnic service was authorized by the Commission to date. In 1990, however, the Commission approved an amendment to its licence, increasing the effective radiated power of the undertaking to 250 watts and changing the class of channel it occupied to "Class A1 Protected".

e. *Student undertakings*: There are 11 low-power FM Student undertakings.

f. *Special Events undertakings*: These usually operate on low power, are on the air for a few days or weeks, either on an annual or sporadic basis, and are used to provide information to those attending a specific sports or social event.

As with Work Camp undertakings, the Commission has recently called for comments on its proposal to exempt operators of this class of undertaking from the requirement to hold a licence.

g. *Travel/Traffic Information Services undertakings*: These TIS undertakings generally operate on LPAM or LPFM frequencies. TIS undertakings, of which there are currently 12, are characterized by their broadcast of repetitive messages intended for travellers visiting tourist sites, parks, or airports, or to provide travel and weather advisories at specific locations. The vast majority of these undertakings is non-commercial.

h. *Low-Power Announcement Service undertakings*: These undertakings usually carry paid announcements pertaining to real-estate ("Talking Signs") or to tourist sites ("Heritage Messages"). There are currently 54 of these services.

As with Work Camp and Special Events undertakings, the Commission has proposed to exempt operators of this class from the requirement to hold a licence.

[§278-6]

C. *ISSUES RELATING TO PRIORITY OF SERVICE*

The Commission's main concern is that optimum use be made of the limited number of low-power, unprotected broadcasting frequencies.

In the past, the Commission has licensed low-power undertakings on a first-come, first-served basis. The Commission's policy, as noted in Decision CRTC 91-813, has

been to ensure that the licensing of new undertakings not unduly jeopardize access to low-power frequencies by community, student, and native groups. In general, these more conventional broadcast programming services have been given priority over strictly one-dimensional services such as voice announcement services. This policy, however, has never been formalized or presented for public comment.

In the Commission's view, the growing use of low-power frequencies for new service applications requires a more comprehensive policy establishing priorities for their use, with a view to fulfilling the objectives of the *Broadcasting Act* (the Act).

While many of the requirements of the policy section of the Act, such as those calling for varied and comprehensive programming and a balanced expression of views, apply to the broadcasting system as a whole, the Commission has been of the view that the only way to achieve certain of the statutory policy objectives is to impose certain requirements at the level of the individual undertaking. Some of the services currently licensed, by their very nature, do not have the attributes of services provided by conventional commercial broadcasters or student, community, native and ethnic undertakings.

Any increase in the use of LPAM or LPFM frequencies by non-conventional services will bring about a corresponding reduction in the availability of these frequencies for potential use by broadcasting services whose programming would be more in accord with the objectives of the Act. On the other hand, in locations where there is a relative abundance of frequencies, there may be arguments for permitting their use for other, less conventional purposes rather than allowing them to remain unused.

The Commission seeks comments on the following questions related to the issue of service priority.

[§278-7]

GENERAL QUESTIONS:

1. Should a system of priorities be devised as part of a licensing policy for low-power radio?
2. What should be its elements?
3. In what order of importance should those elements be ranked?

[§278-8]

SPECIFIC QUESTIONS REGARDING POSSIBLE ELEMENTS OF A LOW-POWER POLICY:

The Commission has identified seven issues to be examined in formulating a system of policy priorities, or criteria, for the licensing of low-power radio undertakings. These are discussed below, but not necessarily in order of their relative importance. The Commission also emphasizes that this list may not be exhaustive, and that other issues may be identified for examination.

[§278-9]

1. *The Availability of Frequencies*

The fewer low-power frequencies that are available in any area, the greater the need for the Commission to ensure the best use of these frequencies.

While there is no allotment plan for low-power FM frequencies, there is a scarcity of such frequencies in most metropolitan areas, particularly those along the Windsor-Quebec City corridor, and on the lower B.C. mainland. The AM broadcast band is also approaching saturation in the more densely populated areas of Canada, leaving few opportunities for the use of low-power frequencies.

Demand for new radio frequencies -- whether regular or low-power -- in the AM and FM bands in Canada's more populated areas is estimated to be such that it would be imprudent for the Commission to license low-power services that would not provide a significant public service.

QUESTION 1: What should be the relative importance in a priority hierarchy of the availability of low-power frequencies in any area?

[§278-10]

2. *The Content*

The principal question is whether (and to what degree) the service proposed will contribute to the attainment of the objectives of the Act.

Conventional programming undertakings would appear to come closest to meeting most, if not all, of the objectives in the Act relating to such matters as diversity, balance, enlightenment and entertainment. In the past, licences for most originating low-power undertakings have been issued to persons carrying on non-profit student, community and native undertakings. They have generally been licensed based on the perceived needs of a community or groups within a community to:

(a) foster a sense of community, for instance, French-language community undertakings outside Quebec;
(b) preserve and encourage the development of aboriginal cultures and languages;
(c) provide special ethnic language programming not available on conventional mainstream radio; and
(d) develop programming that is an alternative to mainstream commercial undertakings.

Other types of programming services, however, may also be in the public interest or of interest to the public.

For instance, some services may enhance the enjoyment of those attending certain events, while others may be effective in promoting certain commercial activities. Some services may be desirable from the perspective of *public safety*, such as weather alert services in remote communities, or highway alert services to notify motorists of hazards, obstructions or delays.

Other services, such as those providing information to motorists and tourists or those using airports, may be based more on an assumption by those providing the services of an interest or demand on the part of the public, and may thus be seen to appeal to convenience rather than respond to necessity.

Restricting the use of these frequencies may unduly inhibit the implementation of innovative, less-conventional service applications, particularly in locations where there is a relative abundance of frequencies.

QUESTION 2: a) What should be the relative importance of content among the elements in a priority hierarchy?

b) Should the various types of services (conventional, safety, traffic information, etc.) be ranked in order of public necessity and, if so, how?

[§278-11]

The commercial messages contained in the programming of information services that make use of LPAM or LPFM frequencies may have an impact on conventional licensees: depending on the amount and type of advertising broadcast, these services may fragment the market. On the other hand, some of these services might draw on new sources of advertising revenues not currently available to conventional broadcasters.

The Commission must therefore determine the permissible type and amount of commercial activity on these undertakings. The demand for low-power frequencies would be reduced if LPAM and LPFM frequencies were reserved for use only by non-commercial services. Exceptions might be made for those operating LPAS undertakings (currently mostly for real estate announcements).

QUESTION 2: c) Which of the various types of undertakings should be allowed to provide commercial content? What types of commercial activity (conventional or sponsorship) should be permitted, and how much? Should there be a provision with respect to certain undertakings to ensure equitable opportunity for advertisers to have their messages broadcast?

[§278-12]

3. *The Correlation Between Power and Potential Audience*

There has generally been a relationship between the power of an undertaking, that is to say the reach of an undertaking in terms of the size of its potential audience, and the scope and nature of the broadcast programming objectives it may be asked to fulfil. If a service reaches a relatively small area or neighbourhood, it is unreasonable to expect a licensee to provide a full conventional broadcasting service. On the other hand, the use of a 50-watt transmitter to serve as an amplifier for a travel/traffic information service may not represent optimum usage, particularly if there are competing demands for access to a limited number of frequencies by community, student and native groups.

It might be possible for the Commission, in coordination with the DOC, to establish levels of transmitter power and the corresponding coverage areas for different types of undertakings; for instance, it could set certain content and other criteria for undertakings of less than 1 watt, others for undertakings from 1 to 5 watts, and yet others for those above 5 watts. However, any low-power undertaking (apart from LPAS undertakings) operating on a frequency, even at minimal power, may render that frequency unusable by any other operator in that area.

QUESTION 3: a) What should be the relative importance among the elements in a priority hierarchy of transmitter power or coverage area? b) What would be the appropriate power and coverage combination for each type of low-power undertaking?

[§278-13]

4. *The Duration of the Service*

The number of days of the year, and the number of hours per day an undertaking is on the air would seem relevant in determining its priority status. An undertaking that offers 18 hours a day of service would generally appear to be making more efficient use of the frequency spectrum than one that is on the air for only two hours a day. On the other hand, a community undertaking that is on the air for only 6 hours per day could be said to provide a greater or more necessary service than a TIS undertaking operating 24 hours per day.

QUESTION 4: What should be the relative importance among the elements in a priority hierarchy of duration of service?

[§278-14]

5. *Alternative Means of Delivery*

Several applications have been submitted for low-power frequencies that would appear to make use of them as billboards, electric signs or loudspeakers, delivering a very limited service to a very limited audience.

For some, the use of low-power frequencies for such purposes is attractive because of the availability of radio receivers in most automobiles. It may reasonably be questioned, however, whether it is appropriate to assign to such use, frequencies that have been set aside for the provision of services to the public, particularly if there are alternative ways in which the information or service can be provided.

QUESTION 5: What should be the relative importance in a priority hierarchy of the availability of alternative means of delivery?

[§278-15]

6. *The Application of Priority*

Although unprotected low-power undertakings must change frequency or cease operation to make room for any new broadcast undertaking of a higher class on that same frequency, no low-power undertaking has yet been forced to shut down to allow another low-power undertaking to go on the air. Nor has the Commission had to decide the merits of two applications for the same low-power frequency in the same area at the same public hearing.

To deal with such situations, the Commission could apply its service priorities through a condition of licence approach, so that an existing low-power undertaking with an overall lower priority would have to change frequencies or close down as soon as the new undertaking was ready to go on the air. While this might be the most efficient way of achieving the most effective use of these frequencies in the long term, it does not address the concerns attached to the potential disappearance of an established service.

An alternative would be for such service priority to be applied only at the time of licensing. Under such a regime, a licensed, low-power undertaking would not have to close down or shift frequencies for any other low-power undertaking, except perhaps in extraordinary cases. There is the possibility, however, that commercial, non-conventional users may be quicker to take up the low-power frequencies, particularly in urban areas, where there are few low-power frequencies to begin with, to the potential disadvantage of student, community, native, and ethnic groups.

A third possibility would be to apply the priority system for low-power radio at renewal time. This, in effect, would result in "competitive renewals" in certain cases. While such a plan may present difficulties, it would avoid the possibility of a low-power undertaking having to close down or change frequencies during its term, and would limit the concern attached to the alternative discussed in the preceding paragraph.

QUESTION 6: Should a priority system be applied at the time of the licensing decision, at the time of renewal, or at the time the undertaking with the higher priority goes on air?

[§278-16]

7. *The Need for a Call*

The Commission currently does not issue a call in response to every low-power application it receives. The question arises as to whether it should.

One possibility might be for it to do so only in those areas where low-power frequencies are scarce, or where there is only a single frequency available. At the same time, given the nature of low-power frequencies, it may be difficult to determine whether any frequency is indeed the last available frequency.

To call for competitive applications in response to the receipt of an initial application for use of a low-power frequency would cause delays in the handling of such applications. On the other hand, the fact that the Commission would be dealing with what may be the last or one of the last remaining frequencies in an area, may warrant a more careful licensing process.

QUESTION 7a): Should the Commission issue a call for competing applications in the case of applications for low-power undertakings, and, if not generally, under what circumstances?

In Public Notice CRTC 1991-74 dated 23 July 1991 and entitled "Radio Market Policy", the Commission described the process and criteria it would use to determine whether markets could sustain new radio services.

QUESTION 7b): Should this process and these criteria be applied to low-power undertakings?

[§278-17]

D. *OTHER ISSUES*

1. *Low-Power Rebroadcasting Transmitters*

The Commission has in the past dealt with applications to extend the coverage area of radio undertakings via low-power rebroadcasting transmitters. It has authorized use of many such rebroadcasters by the CBC, and several by private commercial undertakings.

QUESTION 8: Should the Commission continue to consider applications for the use of low-power transmitters to rebroadcast the programming of existing undertakings? Under what circumstances should it do so, for instance, in cases where technical problems limit coverage within an undertaking's licensed service area?

[§278-18]

2. *Applications for a Group of Low-Power Frequencies for Non-Conventional Use*

One application recently considered by the Commission contemplated the use of several low-power frequencies for non-conventional use. The economic viability of such proposals may depend on one or more transmitters in key areas. In competitive circumstances, the Commission may then have to decide whether an applicant proposing use of the last available frequency at a community for the broadcast of a more conventional service has greater claim to that frequency than one proposing use of that and several other frequencies to offer a less conventional service to a number of communities.

QUESTION 9: How could the relative merits of the types of proposals described above be assessed in a priority system?

[§278-19]

3. *Competitive Non-Conventional Services*

Although the composition of the local population would have to be taken into account, the Commission sees no need to limit the number of low-power frequencies that may be devoted to any particular type of conventional service, such as ethnic or native radio, in any one community, particularly in urban areas.

The Commission could either take a similar approach to non-conventional services, or place restrictions on such services so as to keep as many frequencies as possible available for conventional uses.

QUESTION 10: Should the Commission's licensing policy for low-power radio preclude the licensing of competitive, non-conventional services?

[§278-20]

4. *The Use of the Extended AM Band for Certain Types of Services?*

Potential licensees might wish to apply for one or more of the approximately 115-125 potential AM frequencies available for Canadian use under the new Canada-US AM Broadcast bilateral agreement, which extended the AM band to 1705 kHz. Although the limited number of radios capable of receiving these frequencies may limit their attractiveness to broadcasters at this time, highly targeted programming might be an inducement for people to buy the new expanded receivers.

QUESTION 11: To what extent might some of the services currently being contemplated for low-power undertakings be accommodated on the newly extended upper portion of the AM band?

[§278-21]

5. *The Regulation of Low-Power Radio*

The *Radio Regulations, 1986* (the regulations) contain requirements, including those relating to Canadian content in music and the maintenance of program logs and logger tapes, that may not be relevant to the various types of non-conventional low-power undertakings discussed above.

At the same time, it may be necessary to ensure that those authorized to use low-power frequencies for the broadcast of non-conventional programming not alter their services, for instance, through the introduction of programming elements usually found in conventional competitive, commercial programming services.

QUESTION 12: To what extent should the provisions of the regulations be applicable to the various types of low-power programming undertakings? To what extent should such low-power undertakings be required to comply with a Promise of Performance?

[§279-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

New Flexibility with Regard to Canadian Program Expenditures by Canadian Television Stations

[§279-2]

[Public Notice CRTC 1992-28, April 8, 1992. This notice was further amended in *Increased Flexibility with regard to Canadian Program Expenditures by Canadian Television Stations*, Public Notice CRTC 1992-89, December 23, 1992, below at §289 *The Reporting of Canadian Programming Expenditures*, Public Notice 1993-93, June 22, 1993, below at §298, and *Additional Clarification regarding the Reporting of Canadian Programming Expenditures*, Public Notice CRTC 1993-174, December 10, 1993, below at §304.]

[§279-3]

In the spring of 1989, the Commission renewed the licences for a large number of English-language television stations across Canada. Public Notice CRTC 1989-27, which accompanied the renewal decisions [NOTE: set out above at §256], announced that, in the case of those stations whose annual total advertising revenues exceeded $10 million in the broadcast year ending 31 August 1988, the Commission would impose a condition of licence requiring a minimum level of Canadian program expenditures. The Commission stated that the minimum required level of spending would be calculated yearly in accordance with a formula tied to each station's financial performance, as measured by its total advertising revenues in previous years. The same formula was made an expectation for television licensees whose advertising revenues were less than $10 million in the broadcast year ending 31 August 1988.

At the Public Hearing held in the National Capital Region beginning on 5 November 1991, the Commission considered, among other things, applications for licence renewal by Nation's Capital Television Incorporated (CJOH-TV Ottawa), and by Global Communications Limited (Global) (CIII-TV). The Canadian Association of Broadcasters (CAB), representing the majority of Canada's privately-owned television stations and networks, appeared before the Commission at this hearing to support these licence renewals.

At the hearing, both Global and the CAB raised concerns regarding the Canadian program expenditure formula. Among other concerns, the CAB noted that the "formula does not allow broadcasters to carry forward expenditures from year to year because it

requires compliance on an annual basis". The CAB proposed, as one option, that the Commission permit a licensee "to meet its Canadian programming expenditure target over the life of the licence, not on an annual basis".

The Commission has carefully considered the views expressed on this matter and the various suggestions for modifying the formula. It is satisfied that certain adjustments could be made that will not compromise achievement of the objectives for which the formula was designed. Accordingly, and consistent with its desire to afford licensees as much flexibility as possible, the Commission has developed revisions to the condition of licence regarding expenditures on Canadian programming.

[§279-4]

For the balance of the licence term, and beginning with the current year, the Commission will consider compliance as follows. The Commission will permit a licensee to underspend with respect to Canadian programming, in each year of the licence term other than the final year, by an amount representing no more than 5% of the minimum amount otherwise established for that year by condition of licence. If a licensee utilizes this flexibility to underspend in a given year, the amount by which the licensee has underspent must be added to the amount required to be spent, by condition of licence, for the following year.

Notwithstanding the additional flexibility outlined above, the Commission will require each licensee to spend on Canadian programming, over the full licence term, the sum of the minimum amounts required by condition of licence for each year of the licence term.

[§279-5]

In Public Notice CRTC 1989-27, the Commission pointed out that there would be no penalty to those licensees spending more on Canadian programming than the minimum amount that the condition of licence requires in any given year. With a view to encouraging increased spending on Canadian programming and to enhancing licensees' ability to plan their operations, the Commission has decided that licensees may credit against required expenditures in future years of the licence term, the amount that exceeds the minimum required. Thus, if a licensee spends more in any given year, the amount of the overexpenditure may be deducted from the amount required to be spent, by condition of licence, for the following year. Alternatively, the amount of overexpenditure can be applied to the condition of licence expenditure requirements for future years, as shown in the example of the application of the revised formula set out in Appendix II.

For purposes of interpreting the condition of licence, repayments of a previous year's underspending are not to be regarded as overexpenditures relative to the minimum amount required by condition of licence in the year of the repayment.

[§279-6]

Licensees should continue to report their Canadian program expenditures in their annual returns, along with a reconciliation of any underspending or spending that exceeds the minimum required by condition of licence.

Aside from the revisions to the formula described above, there are no changes to the Canadian programming expenditure requirements set out on page 26 of Public Notice CRTC 1989-27 [NOTE: set out above at §256-13].

The precise wording of the revised condition of licence is set out in Appendix I to this Public Notice. As noted, an example of the application of the revised formula is set out in Appendix II.

The added flexibility discussed in this Public Notice has been incorporated in the conditions of licence imposed on CJOH-TV and Global in Decisions CRTC 92-219 and 92-220, respectively, of today's date. All other television licensees who are subject to a condition of licence or an expectation related to Canadian programming expenditures may immediately take advantage of the flexibility described in this public notice. These conditions of licence and expectations will be amended at the time of licence renewal.

[§279-7]

APPENDIX I

The following is an example of the text of the condition of licence related to Canadian programming expenditures including the flexibility outlined in this public notice.

1. For purposes of conditions 2 to 5 inclusive, all terms are to be interpreted and all calculations are to be made in accordance with the explanations set out in Public Notice CRTC 1992-28, dated 8 April 1992.
2. Subject to conditions 3 and 4, the licensee shall expend on Canadian programming, at a minimum:

(a) for the year ending 31 August 199_ (year 1), the amount of _____;

(b) for the year ending 31 August 199_ (year 2), the amount set out in paragraph (a) above, increased (or decreased) by the year-over-year percentage change for the year ending 31 August 199_ (year 1), in the total of the station's revenues from local time sales, national times sales and payments (if any) received from networks, as reported in the relevant Annual Return;

(c) for the year ending 31 August 199__ (year 3), the minimum required expenditure calculated in accordance with paragraph (b) above, increased (or decreased) by the average of the year-over-year percentage changes for the years ending 31 August 199_ (year 1) and 31 August 199_ (year 2), in the total of the station's revenues from local time sales, national times sales and payments (if any) received from networks, as reported in the relevant Annual Returns; and

(d) in each subsequent year, an amount calculated in accordance with the following formula: the amount of the previous year's minimum required expenditures increased (or decreased) by the average of the year-over-year percentage changes for the years ending on 31 August of the three previous years, in the total of the station's revenues from local time sales, national times sales and payments (if any) received from networks, as reported in the relevant Annual Returns.

3. In any year of the licence term, excluding the final year, the licensee may spend an amount on Canadian programming that is up to five percent (5%) less than the minimum required expenditure for that year set out in or calculated in accordance with condition 2; in such case, the licensee shall expend in the next year of the

licence term, in addition to the minimum required expenditure for that year, the full amount of the previous year's underspending.

4. In any year of the licence term, including the final year, the licensee may spend an amount on Canadian programming that is greater than the minimum required expenditure for that year set out in or calculated in accordance with condition 2; in such case, the licensee may deduct
   (a) from the minimum required expenditure for the next year of the licence term, an amount not exceeding the amount of the previous year's overspending; and
   (b) from the minimum required expenditure for any subsequent year of the licence term, an amount not exceeding the difference between the overspending and any amount deducted under paragraph (a) above.
5. Notwithstanding conditions 3 and 4 above, during the licence term, the licensee shall spend on Canadian programming, at a minimum, the total of the minimum required expenditures set out in or calculated in accordance with paragraphs (a) to (d) of condition 2.

[§279-8]

APPENDIX II

The following example is set out in order to clarify how licensees should calculate the annual minimum expenditures on Canadian programming, taking into account the added flexibility permitted by the revisions to the formula outlined in this Public Notice. The actual amounts used in this example are for illustrative purposes only.

		(DOLLARS)
YEAR 1	BASE EXPENDITURE REQUIREMENT	10,000,000
LESS -	5% UNDER-EXPENDITURE	(500,000)
	YEAR 1 ACTUAL EXPENDITURE	9,500,000
YEAR 2	MINIMUM EXPENDITURE AS PER CONDITION OF LICENCE (COL) (ASSUMES 4.5% REVENUE GROWTH IN YEAR 1)	10,450,000
PLUS -	YEAR 1 REPAYMENT	500,000
LESS -	5% UNDER-EXPENDITURE (BASED ON YEAR 2 COL MINIMUM)	(522,500)
	YEAR 2 ACTUAL EXPENDITURE	10,472,500
YEAR 3	MINIMUM EXPENDITURE AS PER COL (ASSUMES AVERAGE OF 7% REVENUE GROWTH IN YEARS 1 & 2)	11,181,500
PLUS -	YEAR 2 REPAYMENT	522,500
PLUS -	$1 MILLION OVER-EXPENDITURE	1,000,000
	YEAR 3 ACTUAL EXPENDITURE	12,704,000
YEAR 4	MINIMUM EXPENDITURE AS PER COL (ASSUMES AVERAGE OF 6.5% REVENUE	

	GROWTH IN YEARS 1, 2 & 3)	11,908,297
LESS -	YEAR 3 OVER-EXPENDITURE PARTIAL CREDIT APPLIED	(500,000)*
	YEAR 4 ACTUAL EXPENDITURE	11,408,297

*LICENSEE ELECTS TO APPLY ONLY $500,000 OF THE PREVIOUS YEAR'S $1,000,000 OVEREXPENDITURE AND TO CARRY FORWARD THE REMAINING $500,000.

YEAR 5	MINIMUM EXPENDITURE AS PER COL (ASSUMES AVERAGE OF 5.0% REVENUE GROWTH IN YEARS 2, 3 & 4)	12,503,711
LESS -	5% UNDER-EXPENDITURE (BASED ON YEAR 5 COL MINIMUM)	(625,185)
	YEAR 5 ACTUAL EXPENDITURE	11,878,526

YEAR 6	MINIMUM EXPENDITURE AS PER COL (ASSUMES AVERAGE OF 4.5% REVENUE GROWTH IN YEARS 3, 4 & 5)	13,066,377
PLUS -	YEAR 5 REPAYMENT	625,185
LESS -	YEAR 3 OVER-EXPENDITURE PARTIAL CREDIT	(500,000)
LESS -	5% UNDER-EXPENDITURE (BASED ON YEAR 6 COL MINIMUM)	(653,319)
	YEAR 6 ACTUAL EXPENDITURE	12,538,243

YEAR 7	MINIMUM EXPENDITURE AS PER COL (ASSUMES AVERAGE OF 6.0% REVENUE GROWTH IN YEARS 4, 5 & 6)	13,850,359
PLUS -	YEAR 6 REPAYMENT	653,319
	YEAR 7 ACTUAL EXPENDITURE	14,503,678

NOTE: Regardless of the extent to which the added flexibility is used, the licensee is required to spend, over the licence term, the sum of the minimum amounts required by the condition of licence for each year of the licence term.

	COL REQUIREMENT (DOLLARS)	ACTUAL EXPENDITURE (DOLLARS)
YEAR 1	10,000,000	9,500,000
YEAR 2	10,450,000	10,427,500
YEAR 3	11,181,500	12,704,000
YEAR 4	11,908,297	11,408,297
YEAR 5	12,503,711	11,878,526
YEAR 6	13,066,377	12,538,243
YEAR 7	13,850,359	14,503,678
TOTAL	82,960,244	82,960,244

[§281-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Policies for Community and Campus Radio

[§281-2]

[Public Notice CRTC 1992-38, May 29, 1992.]

[§281-3]

POLICIES FOR COMMUNITY AND CAMPUS RADIO

In Public Notice CRTC 1991-118 the Commission requested comments on new policy proposals for campus and community radio. The proposed policy followed consultations between representatives of the Commission and various parties interested in that sector of the broadcasting system. This document includes a discussion of the points made in the 35 submissions received, and sets out the policies that the Commission has now adopted.

Although the Commission proposed separate policies for community radio and campus radio, there are many similarities between the two. As noted in some of the submissions, community and campus radio are important components of the private non-profit sector of Canadian broadcasting. These stations, along with other non-profit stations operated by native broadcasters, provincial educational station CKUA-FM in Alberta, and CJRT-FM Toronto, make up a third sector of Canadian radio broadcasting that provides to Canadians a style of radio that is an alternative to that available from the CBC or private commercial stations.

A major goal of the Commission in developing these policies, which will apply to community and campus stations operating on both the AM and FM bands, has been to ensure that community and campus stations have the necessary flexibility to respond to

the needs of listeners in their communities while ensuring that these stations offer a programming alternative.

[§281-4]

A COMMUNITY RADIO

1. *Definition*

In its draft policy on community radio, the Commission proposed to retain the same definition it has used since the emergence of this type of broadcasting undertaking in the early 1970s. That definition is based on the principles of collective ownership, member access, and commitment to the community. [NOTE: A summary of submissions is omitted.]

The Commission acknowledges the evolutionary process that community radio has undergone in recent years. It also recognizes that the present economic climate, and the decreasing availability of funding from all levels of government, have led to many changes in this sector of the broadcasting system. The Commission is therefore prepared to be flexible in allowing these stations to develop in an orderly fashion. Nonetheless, it considers it important to reaffirm that community involvement in all aspects of community radio, particularly programming, is essential to the development, and thus, to the preservation of the distinct character of community radio within the Canadian broadcasting system. Accordingly, the Commission has decided to retain the following definition of community radio:

> **A *community radio station* is characterized by its ownership and programming and the market it is authorized to serve. It is owned and controlled by a not-for-profit organization whose structure provides for membership, management, operation and programming primarily by members of the community at large. Its programming should be based on community access and should reflect the special interests and needs of the listeners it is licensed to serve.**

[§281-5]

2. *Types of Stations*

The existing policy recognizes two types of community radio stations: Type A stations, which provide first service in one of the two official languages in a particular market; and Type B stations, which operate in competitive markets.

In Public Notice CRTC 1991-118, the Commission proposed to maintain the existing definition of "market", that being the geographical area:

(a) within the 5 millivolt-per-metre daytime official contour of an AM station; or
(b) within the 500 microvolt-per-metre official contour of an FM station.

[NOTE: A summary of submissions is omitted.]

[§281-6]

Regarding the definition of market, although the Commission received some valid arguments in favour of expanding the definition, it remains convinced that the proposed criteria are adequate for the purposes of a general policy. Accordingly, **the Commission has retained the existing definition of market. Although the Commission will not**

generally be prepared to make exceptions in this area, it is aware that exceptions may be warranted in particular circumstances.

[§281-7]

Regarding licence types, the Commission does not share the view that the language of broadcast should be disregarded in determining what type of community radio licence should be issued. The Commission does not intend to create a new licence category for community stations operating in a market that is served by one or more stations operating in the other language. Nonetheless, the Commission is aware of the problems that can arise in a market where this situation exists. Such cases will be considered on an individual basis.

The Commission also recognizes that first service (Type A) community stations have been pioneers in serving markets that were once considered unprofitable. Moreover, these stations continue to provide an essential service as agents of cultural and social development within the communities they serve. The Commission considers that the establishment of a new station in a market hitherto served exclusively by a community station should not automatically cause the community station to forfeit its Type A status. **Accordingly, the Commission has amended, as follows, the definitions of the types of licence to allow Type A stations to retain their Type A status when one or more new stations are established in the same market:**

Type A

A community radio station is a Type A station if, when the licence is issued, no other AM or FM radio station is licensed to operate in the same language in all or any part of the same market.

If one or more stations are licensed to operate in the same language in all or any part of the same market at the time of the licence renewal, the station will retain its Type A status. In all other cases, including applications to increase power, the Commission will assess the application on its merits.

Type B

A community station is a Type B station if, when the licence is issued, at least one other AM or FM station is licensed to operate in the same language in all or any part of the same market.

Recent CRTC Decisions: For instances in which Type A licences have been granted, see Decision CRTC 93-32, January 26, 1993; and Decision CRTC 93-76, February 24, 1993. In the latter decision, a Type A licence was issued to serve the Cornwall area. At the time, signals could be received locally in the same language (French) from Montreal and Ottawa. However the Commission opted for a Type A licence because the new station would provide the only local French radio service in the area. For instances in which Type B licences have been issued, see Decision CRTC 93-171, May 28, 1993 and Decision CRTC 93-335, August 12, 1993.

[§281-8]

For the purpose of determining whether a licence should be a Type A or Type B licence, the Commission proposed that existing campus radio stations would be counted as stations operating in a market, while CBC originating stations would not.

The Commission received only one brief opposing this proposal. The brief recommended that the presence of a campus radio station in a market not be considered in the determination as to which type of community licence should be issued. Despite this opposing view, the Commission is satisfied that this measure is appropriate and will further enhance diversity in the Canadian broadcasting system. **Accordingly, the Commission has decided that the existence of campus radio stations in the same market will be considered in the determination as to whether to issue a Type A or Type B licence in the same market. CBC originating stations, however, will not be included in such determination.**

[§281-9]

3. *Role and Mandate*

The Commission proposed to retain the six characteristics of community radio as set out in the existing policy.

The briefs received generally support this proposal. However, some of those commenting argued that, in the current economic context, the Commission should remove the requirement that community stations diversify their sources of funding.

The Commission considers that, in view of the nature of community radio and its role in the Canadian broadcasting system, it is essential that it continue to derive its revenues from a variety of sources. The Commission views revenue diversification as being much more than a laudable objective; it is essential to the existence and preservation of the distinctive character of community radio. **Accordingly, the Commission has retained the definition of the role and mandate of community radio based on the following six essential elements:**

- **the type of corporation and ownership;**
- **participation of volunteer workers in management (board of directors) and programming;**
- **membership;**
- **local information, including news, community services, and air time available to organizations;**
- **diversity of programming; and**
- **diversity of funding.**

[§281-10]

4. *Commercial Activity*

While reaffirming the requirement for diversity in the sources of funding for community radio, the Commission also proposed to abolish the limit of 1500 minutes of advertising per broadcast week for Type A stations. It also proposed to maintain the requirement that Type B stations adhere to an average, measured on a weekly basis, of 4 minutes of advertising per broadcast hour, with a maximum of 6 minutes in any single hour, for an overall maximum of 504 minutes of advertising per week.

The Commission examined the issue of advertising by stations broadcasting ethnic programming. Based on requests received from some broadcasters, it proposed in Public Notice CRTC 1991-118 to consider on an individual basis applications by licensees that broadcast ethnic programming to increase the maximum level of advertising to 8 minutes per hour during ethnic programs. [NOTE: A summary of submissions is omitted.]

[§281-11]

The Commission is fully aware that the present economic situation and the trend toward less financial participation by governments has influenced the opinions and recommendations of various parties concerning commercial activity by community stations. Indeed, it recognizes that the radio industry, including community radio, is going through a period of financial difficulty. Nonetheless, the Commission considers that an increase in advertising revenues is not the only nor the best solution to the financial problems of community radio. Rather, other solutions may very well lie in greater diversification of revenue sources and sound financial management. At the same time, it sees no need to limit the percentage of revenues derived from advertising.

Accordingly, the Commission has adopted its proposals concerning commercial activity by community radio stations. The new policy will be as follows:

***Type A stations*: There will be no limit on advertising by Type A stations.**

***Type B stations*: Type B stations will be permitted to broadcast a weekly average of 4 minutes of advertising for every hour of broadcast, up to an overall total of 504 minutes of advertising per week. The Commission will maintain the maximum of 6 minutes of advertising in any single hour by community stations. The Commission will not take into account any material broadcast between midnight and 6 a.m.**

Recent CRTC Decision: Notwithstanding the Commission's statement that there would be no limits on advertising on Type A stations, in Decision CRTC 93-32, January 26, 1993, the CRTC did impose a condition of licence on the new French language community station limiting it to a maximum of six minutes of advertising in each form of broadcast time, so as not to jeopardize advertising revenues of an English commercial station in the market.

[§281-12]

With regard to advertising by broadcasters of ethnic programming, those who commented on the issue supported the Commission's proposal. One group, however, recommended that this enhanced flexibility be allowed only in markets where there are no commercial stations broadcasting the same kind of programming to the same ethnic community, and only where the licensee, despite this greater flexibility, observes the maximum advertising limit per broadcast week (504 minutes per week).

The authorization to increase the hourly maximum for advertising in ethnic programs must not be interpreted as an encouragement to exceed the total advertising time limit applicable to these stations. At the same time the Commission considers that it is inappropriate to apply this measure only to stations operating in markets where there are no commercial stations broadcasting ethnic programming to the same cultural community. **Accordingly, the Commission has adopted the following policy for advertising during ethnic programs:**

The Commission is prepared to consider on an individual basis applications by licensees broadcasting ethnic programming to increase their maximum advertising time to 8 minutes per hour during ethnic programs provided that the licensee observe the overall maximum of 504 minutes of on-air advertising per broadcast week.

[§281-13]

5. *Promise of Performance*

a) *Spoken Word*

The Commission proposed to maintain the current requirements for spoken word content on Type A stations; these requirements are limited to the 15% minimum per broadcast week prescribed in the *Radio Regulations, 1986* (the regulations). It also proposed to lower the requirement for Type B stations from 35% to 25%.

[NOTE: A summary of submissions is omitted.]

[§281-14]

The Commission has always sought to foster diversity within the Canadian broadcasting system by maintaining a clear distinction between community radio and commercial radio. It is also aware of the difficulty of maintaining a high level of spoken word content because of the limited human resources available to most community radio undertakings. Based on its analysis of the programming broadcast by community radio stations, the Commission considers the proposed level to be a reasonable one that will both preserve the diversity in radio services and provide enough flexibility to enable these stations to produce quality community-oriented programming. **Accordingly, the Commission has decided to adopt the following measure:**

For Type A stations, the Commission will not set a specific minimum spoken word requirement. However, community stations will be expected to adhere to the minimum level of 15% spoken word per broadcast week required of all FM stations under the regulations. The Commission expects Type A stations to continue to produce community-oriented programming and, thus, to offer a level of spoken word sufficient to provide adequate service to their audience. Promises of Performance filed by Type A applicants and licensees will be assessed on an individual basis.

As for Type B stations, the Commission will impose a minimum weekly requirement of 25% spoken word programming, with an emphasis on community-oriented programming.

[NOTE: In Public Notice CRTC 1992-72, November 2, 1992, the CRTC amended the foregoing policy by stipulating that the 25% target for spoken word programming will apply to the time periods of 6 a.m. to 6 p.m. only. See below at §287-32.]

Recent CRTC Decision: In Decision CRTC 93-335, August 12, 1993, the CRTC issued a new Type B licence for a French language service in Balmoral. It accepted the applicant's request to allocate only 15% of the broadcast week to spoken word programming, but imposed a condition of licence requiring a level of 25% before the end of the third year of operations. The Commission also granted relief from the requirements regarding the maximum repeat factor, acquired programming and network programming until the station achieved a more secure financial position.

[§281-15]

b) *Musical Diversity*

In the draft policy, the Commission proposed that at least 20% of the music on community radio be drawn from sub-categories other than 21 (Pop, Rock and Dance), and from Category 3. It also proposed not to impose a minimum level for Category 3 music. [NOTE: A summary of submissions is omitted.]

The vast majority of commercial stations play mainly sub-category 21 selections. As stated in the current policy, community stations should offer highly diversified musical fare in order to serve the musical tastes of all segments of the community. The Commission considers, however, that in promoting musical diversity, one cannot ignore the realities of community radio and the availability of material and financial resources. **Accordingly, the Commission has decided to adopt the following measure:**

At least 20% of the music broadcast by community stations must be drawn from sub-categories other than 21 (Pop, Rock and Dance), and from Category 3. There will be no minimum level for Category 3 music, but the Commission will assess commitments regarding this category on an individual basis. Adherence to such commitments will be a condition of licence upon the issuance or renewal of a licence.

[§281-16]

c) *Program Formats*

Rather than restrict community stations to specific musical groups, the Commission proposed to classify them as Community Format stations without reference to musical groups. Of the comments received, all supported this proposal except for one, who proposed a new format for alternative music programming.

Because the Commission encourages community radio stations to diversify their music programming by drawing on as many sub-categories as possible, it considers that they should be assigned a format that allows maximum programming latitude. The Commission also views its proposal as providing the flexibility required. **Accordingly, the Commission will consider community stations as Community Format stations without reference to musical groups.**

[§281-17]

d) *Music Usage Indicators*

The Commission proposed to maintain the maximum repeat factor of 10 for Type B stations only, and to disregard the list of distinct musical selections. In view of the inadequacy of the available French-language hit charts as a measuring tool, it proposed to continue to place no limit on the use of hits by French-language stations. The Commission further proposed to require English-language stations to make specific commitments in this regard, but not to impose a maximum level.

[NOTE: A summary of submissions is omitted.]

[§281-18]

Although there are differences of opinion regarding the proposed repeat factor of 10, the Commission considers that this measure will promote musical diversity in the

programming of each Type B station. It is confident that this measure need not be applied to Type A broadcasters in competitive market situations. **Accordingly, the Commission has adopted the following measure:**

The Commission will maintain as an important element of musical diversity, the maximum repeat factor of 10 only for Type B stations.

The number of distinct musical selections will no longer be taken into account. The Commission will continue to place no limit on the use of hits by French-language stations; English-language stations, however, will be expected to make specific commitments in this regard. Although no universal maximum level will be imposed, the Commission reserves the right to set limits by condition of licence.

Recent CRTC Decision: For a case in which relief from the maximum repeat factor was granted to a new Type B licensee, see Decision CRTC 93-335, August 12, 1993.

[§281-19]

e) *Canadian Content and French-language Vocal Music*

As of 1 September 1991, community stations, unless otherwise authorized by condition of licence, have been required to broadcast a weekly level of at least 30% Canadian content which is the same minimum level required of commercial stations. In addition, French-language stations are generally required to play 65% French-language vocal music over the broadcast week. The draft policy proposed to maintain these requirements.

Most of the comments expressed support for this proposal, while two parties had reservations. One music industry representative stated that the Commission should require community stations to play 50% Canadian music, which is the level required of the CBC. One community station pointed out that, because of the kind of music it plays, defined by the Commission as falling in sub-category 21, it is concerned that it may have difficulty conforming to the 30% Canadian content requirement.

[§281-20]

Having considered these arguments, the Commission is confident that it is appropriate and reasonable to continue to require 30% Canadian music content and, in the case of French-language stations, 65% French-language vocal music. It does not consider it appropriate to require community stations to comply with the same Canadian content requirement as the CBC. Unlike community stations, which play a great deal of popular music, a very high proportion of CBC programming consists of spoken word and special interest music. Thus, a 50% Canadian content requirement for all popular music on community radio could jeopardize the musical diversity that these stations provide. **Accordingly, the Commission has adopted the following measure:**

As required by the regulations, all community stations will be expected to ensure that at least 30% of general popular music selections (category 2) and at least 10% of traditional and special interest music selections (category 3) broadcast each week are Canadian.

At least 7% of music in ethnic programming periods must be Canadian, as set out in the regulations.

The guidelines on reasonable distribution of Canadian music set out in the policy for commercial FM stations (Public Notice CRTC 1990-111) also apply to community stations. These guidelines are as follows:

- **at least 25% of popular music selections broadcast between 6 a.m. and 7 p.m. Monday through Friday should be Canadian,**
- **Canadian selections should receive reasonably even distribution throughout these dayparts and throughout the broadcast week,**
- **there should be a significant presence of Canadian music in high audience periods, these traditionally being the morning and afternoon drive periods, and**
- **French-language stations must continue to ensure that at least 65% of the vocal music broadcast each week is in the French-language.**

[NOTE: For the text of Public Notice CRTC 1990-111, see above at §263.]

[§281-21]

6. *Networks and Acquired Programming*

a) *Networks*

The Commission proposed to maintain the existing policy for Type A stations and amend the policy for Type B undertakings with a view to facilitating network affiliation.

As no views were submitted opposing the Commission's proposal, the policy has been adopted as proposed, that is:

The Commission will continue to permit Type A stations to affiliate with networks or acquire programming from other radio stations to avoid having to sign off at the end of their local programming.

Type B station applicants and licensees will be required to file an appendix to their Promises of Performance demonstrating that the network programs or acquired programs they wish to broadcast will complement, but not replace, their local programs. Such filings will not form part of the Promise of Performance, and adherence to the commitments made in the filings will not be part of any condition of licence. Stations originating programming for network broadcast will also be required to file network applications in accordance with the Radio Networks and Syndication Policy (Public Notices CRTC 1989-3 and 1989-4).

[NOTE: For the text of the above notices, see above at §253 and §254.]

Recent CRTC Decision: For a case in which relief from network programming requirements was granted to a new Type B licensee, see Decision CRTC 93-335, August 12, 1993.

[§281-22]

b) *Acquired Programming*

In response to a recommendation made during the consultation process, the Commission proposed to allow community stations to exclude up to 30 minutes per week of the commercials contained in Canadian syndicated programs when calculating the weekly total of advertising material broadcast.

Different viewpoints were expressed by those who commented on this issue. Some were in favour of the Commission's proposal, while others were opposed, claiming that the exemption is not generous enough to encourage community stations to increase the exchange of acquired programming. They recommended raising the exemption to 60 minutes, which is the exemption accorded to commercial undertakings. On the other hand, one group recommended a 30-minute exemption for Type B stations, provided that the programs concerned are produced by another community broadcaster.

The Commission is of the view that the formation of networks and the ability to exchange programs produced by other community broadcasters would contribute significantly to the development of community radio. Based on the comments received on this issue, the Commission considers that it is appropriate to allow community stations more flexibility in calculating their exemptions for acquired programming. It believes, however, that these programs must have a high spoken word content and be produced by not-for-profit organizations, producers or broadcasters. **Accordingly, the Commission has adopted the following policy on acquired programming:**

The Commission will allow community stations to exclude up to *60 minutes* per week of advertising material contained in Canadian syndicated programs when calculating their advertising broadcast time, provided that these programs are produced exclusively by a community or student organization (or broadcaster or producer), that the programs have a high spoken word content or are of concerts broadcast live or on a tape delay (first play) basis, and that they be of specific interest to the community served.

Recent CRTC Decision: For a case in which relief from acquired programming requirements was granted to a new Type B licensee, see Decision CRTC 93-335, August 12, 1993.

[§281-23]

7. *Hours of Broadcasting*

The Commission proposed to continue permitting community radio stations to increase or decrease their weekly broadcast time by 20% without application to the Commission.

The few comments that were received on this matter supported the Commission's policy proposal. **Accordingly, the Commission has adopted the proposal without amendment.**

[§281-24]

8. *Local Talent Development*

In response to suggestions received during consultations conducted prior to the announcement of its policy proposals for community radio, the Commission proposed to no longer require community stations to make monetary contributions to the development of Canadian talent. Community broadcasters were to continue promoting the development of local artists through their programming.

In general, the comments received concerning this question expressed satisfaction with the Commission's proposal.

The Commission wishes to acknowledge the important role of community radio stations in providing on-air exposure for young talent. In its view, this contribution amply

justifies relieving such stations of any requirement that they make financial commitments to the development of Canadian talent. **Accordingly, the Commission has adopted the following measure:**

Community stations will no longer be asked to make monetary contributions to the development of Canadian talent. Instead, they will be expected to outline plans to promote and feature music by new Canadian artists, local artists and artists whose music is seldom heard on other stations.

[§281-25]

9. *Volunteer Participation*

Although the Commission made no specific proposals regarding public access to community radio programming, it remains a major Commission preoccupation. The issue was also raised in the filings received by the Commission.

The licensee of a commercial station expressed the view that the Commission should require community stations to make specific commitments to maintain a strong element of volunteer participation. It proposed that such participation should be present in a minimum of 33% of all radio programming and that this percentage of the programming should be distributed uniformly throughout the broadcast day.

The Commission notes that most community radio stations allocate a substantial proportion of their schedules to programming produced by individuals or organizations on a volunteer basis. The Commission considers that it is important that community stations encourage as much as possible community access to their programming. As the Commission has stated several times, community access to the airwaves was one of the principles underlying the establishment of this type of broadcasting undertaking. Accordingly, the Commission's concern is to ensure that this principle is reflected in the definition, role and mandate of community radio.

Nevertheless, the Commission is aware of the limitations of volunteer participation, especially in sparsely populated areas.

Accordingly, the Commission will not require community broadcasters to maintain any specific minimum level of volunteer involvement. At the same time, all community radio licensees will be expected to facilitate community access to their programming by clearly informing the public of the opportunities for community participation. The Commission further expects community radio applicants and licensees to describe in their licence applications or renewal applications the measures to be taken to promote volunteer training and the mechanisms put in place to train and supervise volunteer workers.

[§281-26]

10. *Implementation*

All community stations will be considered to be operating in compliance with their Promises of Performance until their next licence renewal provided they meet the guidelines set out in the policy, with the exception of any commitments that are subject to specific conditions of licence. Any changes to specific conditions of licence will require Commission approval before implementation.

Stations that currently have commitments in their Promises of Performance that are outside the limits specified in the policy may continue with their current commitments and conditions of licence until the end of their current licence term.

[§281-27]

B CAMPUS RADIO

1. *Defining Campus Radio*

In its draft policy, the Commission proposed to define two types of campus stations. Instructional stations would have formal associations with broadcasting courses and broadcast training as a primary objective. Campus/community stations would be stations not formally associated with broadcasting courses and would provide programming produced primarily by volunteers who are either students or members of the community at large.

[NOTE: A summary of submissions is omitted.]

[§281-28]

The Commission views as a positive development the evolution of campus/community stations toward greater involvement with and by the community at large, especially in areas without community stations, since such stations provide the means for all members of a community to have access to alternative programming that is of interest to them. However, it is also possible for a campus-based station to provide a diverse service to the community without assuming the role of a community station. In fact, in areas already served by a community station, this might be desirable to maximize program diversity. The policy should leave room for stations that maintain a strong campus orientation and also provide a mechanism for helping to ensure that a campus and a community station operating in the same area provide services that are different from each other.

The Commission will therefore amend its proposal in several aspects as it relates to the distinction between campus/community stations and community stations. First, it will generally expect representatives of the student body, faculty, alumni or administration representatives of the university or college with which the station is associated, considered together, to form the majority of the board of directors of a campus station. The Commission considers that this will help ensure a distinction in orientation between campus and community stations.

It will also require that, at the time of application for a new licence or for licence renewal, a campus station indicate how it will provide a service that is different from that of other campus or community stations serving the same market. The Commission will retain the option of making these commitments conditions of licence.

[§281-29]

Three briefs requested that the definitions of campus/community and instructional stations be clarified by specifying in what category a station devoting only a portion of its broadcasting time to students doing programming for class credit would fall.

The Commission's definition of instructional stations was intended to include only those stations whose *primary* purpose is to train professional broadcasters. During

consultations conducted prior to the release of the proposed policy, it was agreed that these stations are, indeed, different in purpose and philosophy from stations that fall into the campus/community category.

In light of the above, the Commission adopts the following definitions of campus radio:

***Campus station*: A campus station is a station owned or controlled by a not-for-profit organization associated with a post-secondary educational institution. There are two types of campus stations:**

***Campus/community*: This is a campus station with programming produced primarily by volunteers who are either students or members of the community at large. The training of professional broadcasters is not the station's primary objective.**

***Instructional*: This is a campus station that has the training of professional broadcasters as its primary objective.**

(These definitions replace the current definitions of student and institutional stations)

Recent CRTC Decisions: For examples of new campus instructional licences, see Decision CRTC 93-231, June 23, 1993 and Decision CRTC 93-634, September 29, 1993.

[§281-30]

2. *Structure of the Board of Directors*

The Commission will generally expect representatives of the student body, faculty, alumni or administration representatives of the university or college with which the station is associated, considered together, to form the majority of the board of directors of a campus station.

The Commission would, however, in locations where there are no community stations, consider as acceptable under the policy, boards whose majority is not connected with the associated university or college, where it can be demonstrated that such flexibility is necessary for the station to operate effectively.

[§281-31]

3. *Complementarity*

The Commission seeks to ensure that each campus station provides a service that is complementary, not only to those of commercial broadcasters, but also to the services provided by community stations and other campus broadcasters in the same area. Therefore, at the time of application for a new licence or for licence renewal, campus stations will be asked to demonstrate how they provide a service that is different from other stations, including community stations and other campus stations, serving their community. They may address this through reference to:

- **the level of student involvement in membership, on the board of directors, management and programming of the station,**
- **technical coverage of the station,**
- **language(s) of programming,**
- **orientation of spoken word and music programming,**
- **types of special interest programming offered,**

- **access policy,**
- **the extent to which the station intends to reflect the campus to the community, and**
- **other areas considered relevant by the applicant.**

[§281-32]

4. *The Role of Campus Radio*

The Commission's policy proposal suggested the following roles for campus stations:

Campus/community: The primary purpose of these stations is to provide alternative programming such as music not generally heard on commercial stations or the CBC (including traditional and special interest music as well as popular music), in-depth spoken word programming, and programming addressed to specialized groups within the community.

Although students play a major role in programming, campus/ community stations should also provide access to members of the community at large when their signals reach beyond the campus.

Such stations also provide training in radio production to volunteers.

Instructional: A primary role of these stations is to provide a training ground for students in broadcasting courses. At the same time, these stations must also provide their communities with alternative programming. Alternative programming should include music not heard on other stations (including traditional and special interest music as well as popular music), in-depth spoken word programming, and some formal educational programming produced in cooperation with the sponsoring institution.

[NOTE: A summary of submissions is omitted.]

[§281-33]

In light of the concerns noted above, the Commission adopts the following policy with respect to the role of campus stations:

***Campus/community*: The primary role of these stations is to provide alternative programming such as music, especially Canadian music, not generally heard on commercial stations (including traditional and special interest music, as well as styles of popular music seldom broadcast), in-depth spoken word programming, and programming targeted to specialized groups within the community [*and programming serving the needs of socially, culturally, politically and economically disadvantaged groups within the community*]. Although students play an important role in programming, campus/community stations may also provide access to members of the community-at-large. Such stations also provide training in radio production to volunteers.**

***Instructional*: The primary role of these stations is to provide a training ground for students in broadcasting courses. These stations must also provide their audiences with alternative programming. Alternative programming should include music, especially Canadian music, not generally heard on commercial stations (including traditional and special interest music, as well as styles of**

popular music seldom broadcast), in-depth spoken word programming, and some formal educational programming.

All campus stations (both *campus/community* and *instructional*) should provide programming that is complementary, not only to that of commercial stations but also to that of community stations and other campus stations operating in the same location.

[NOTE: The italicized words in square brackets, defining the role of campus/community stations, were added in Public Notice CRTC 1992-72, November 2, 1992, as noted below at §287-37.]

[§281-34]

5. *Financing and Advertising*

In its draft policy, the Commission proposed that campus/community stations continue to be allowed to broadcast a maximum of four minutes per hour of restricted advertising. Instructional stations would be expected to be financed by sources other than advertising.

[NOTE: A summary of submissions is omitted.]

[§281-35]

In light of the above comments, the Commission adopts the following policy with respect to advertising on campus stations:

Campus stations (both *campus/community* and *instructional*) will be permitted to broadcast a maximum of four minutes per hour of restricted advertising. Restricted advertising is defined as follows:

The Commission will permit simple statements of sponsorship that identify the sponsors of a program or of the station. Such statements may incorporate the names of the sponsor, the business address, hours of business and a brief general description of the types of services or products that the sponsor provides, including the price, name and brand name of the product. Such statements must not contain references to convenience, durability or desirability or contain other comparative or competitive reference.

Advertising in Canadian programming acquired from other campus or community stations or from non-profit syndicators will not be counted in the assessment of compliance with the four minute per hour advertising limit. All advertising, however, including that in Canadian acquired programming, must fall within the definition of "restricted" advertising set out above.

Additional advertising flexibility will be considered on a case-by-case basis in exceptional circumstances, such as where a campus station provides the only private local service in one of the official languages in its community.

[NOTE: On November 2, 1992, in Public Notice CRTC 1992-72, below at §287-35, the CRTC called for comments on revisions to the above policy. Then, in Public Notice CRTC 1993-38, below at §292-16, the Commission announced that campus radio stations would be permitted to broadcast up to 504 minutes of advertising per week, with a maximum of 4 minutes in any one hour.]

[§281-36]

6. *Canadian Talent Development*

The Commission's policy proposal with respect to Canadian talent development was that campus stations no longer be asked to make monetary contributions to the development of Canadian talent. Instead, they would outline plans to promote and feature music by new Canadian artists, local artists and artists whose music is seldom heard on other stations, and to submit plans for training students and other volunteers. All briefs commenting on this proposal expressed general agreement. However, one submission requested the Commission to clarify what would be expected in plans for training, and asked if this expectation would apply to both campus/ community and instructional stations.

In light of the above, the Commission adopts the following policy with respect to Canadian talent development by campus stations:

Campus stations (both *campus/community* and *instructional*) will no longer be asked to make monetary contributions to the development of Canadian talent. Instead, they will be expected to outline plans to promote and feature music by new Canadian artists, local artists and artists whose music is seldom heard on other stations.

Licensees of all campus stations (both *campus/community* and *instructional*) must indicate the role their stations will play in training students and other volunteers, as well as the approximate percentage of total programming that will be produced by students to fulfil requirements of courses they are taking.

[§281-37]

7. *News*

The Commission proposed that instructional stations would have to devote at least 4% of the broadcast week to news. No minimum level for news was proposed for campus/community stations, but they would be expected to include programming addressing public issues in their schedules.

All of the briefs addressing the issue agreed with the proposal, with one exception, which suggested that campus/community stations should continue to make commitments for news.

The Commission proposed no minimum level for news on campus/community stations because, during consultations, these stations explained that they would prefer to concentrate on other types of public affairs programming. It is this type of spoken word programming, rather than newscasts, that is often lacking in the programming of commercial stations. The Commission therefore considers that allowing campus/community stations to concentrate on public affairs programming would serve to increase rather than decrease diversity.

[§281-38]

In light of the above, the Commission adopts the following policy with respect to news on campus stations:

No minimum guideline for the amount of news broadcast by *campus/community* stations will be established. They will, however, be expected to include programming

addressing public issues in their schedules (see the next section of this document dealing with spoken word).

***Instructional* stations should devote at least 4% of the broadcast week (e.g. 5 hours per week for a station with a broadcast week of 126 hours)to news. Local news coverage, whether of issues related to the campus or the community, should be emphasized. This is an expectation, not a Promise of Performance requirement, and will not be in effect during vacation periods.**

[§281-39]

8. *Spoken Word*

In its draft policy, the Commission proposed a spoken word level of at least 25% of all programming broadcast by both campus/community and instructional stations. It indicated that specialized presentations such as public and community affairs programs should be included in the schedule.

A few briefs expressed concern that a level of 25% spoken word could be difficult to achieve by lower-power stations or those in smaller communities, especially during vacation periods. One brief, on the other hand, suggested a 30% level to ensure a distinction between campus and commercial stations.

The 25% level was proposed by the Commission because it found general acceptance during consultations and was the same as that being proposed for Type B community stations. The Commission also notes that the revised radio categories and subcategories adopted in 1986 have expanded the definitions of what qualifies as spoken word programming, thus making a 25% level easier to achieve.

The 30% minimum suggested is exactly double that required of commercial stations. During consultations, several campus/community stations indicated that such a minimum would only be possible for the largest stations to produce.

The Commission recognizes the concern about vacation periods, and in the section of this document entitled "Other Matters", discusses circumstances under which campus stations may reduce their hours of operation during the summer months so long as they remain in compliance with the percentage commitments set out in their Promises of Performance.

[§281-40]

In light of the above, the Commission adopts the following policy with respect to spoken word programming broadcast on campus stations:

At least 25% of programming broadcast on both *campus/community* and *instructional* stations should be spoken word.

Specialized spoken word presentations, such as public and community affairs programs, should be included in the schedule.

[§281-41]

9. *Categories of Music*

In its draft policy, the Commission proposed that at least 20% of music played by campus stations should come from subcategories other than "Pop, Rock and Dance." At least 5% of music played would have to come from category 3 with the remaining 15%

coming from category 3 or from subcategories of category 2 other than Pop, Rock and Dance.

A few briefs expressed concern with the proposal. Some suggested that 20% was too low, while others suggested that instructional stations should be able to operate as closely as possible to the rules students would be required to follow when they are eventually employed by the broadcasting industry.

The Commission notes that, in fact, campus/community stations play little of the music that is heard on most commercial stations. They tend to concentrate on new artists and musical styles that have not achieved general popularity. However, under the Commission's system of content categories and subcategories, much of this material still falls into the Pop, Rock and Dance subcategory. Some suggested that the music subcategories be redefined to make the differences more evident, but no specific suggestions were received on exactly how this could be done.

With respect to comments from licensees of instructional stations, the Commission is not persuaded that exposure to a wider range of music would jeopardize the training of students. It notes that there is a broad range of music that could be used to satisfy the requirement. As well, as indicated earlier, an important role of campus stations is to add to the diversity of programming available in a community; the Commission considers that presenting a significant amount of music from categories other than pop, rock and dance is an important element in providing this diversity.

[§281-42]

In light of the above, the Commission adopts the following policy with respect to music subcategories:

At least 20% of music played on all campus stations (both *campus/community* and *instructional*) should come from subcategories other than "Pop, Rock and Dance. At least 5% of the music played should come from category 3. The remaining 15% may come from category 3 or from subcategories of category 2 other than "Pop, Rock and Dance."

[§281-43]

10. *Music Use Indicators*

a) *Hits*

In its draft policy, the Commission proposed that the level of hits broadcast each week should not exceed 15% of all musical selections for campus/community stations or 30% for instructional stations. These limits would apply only to English-language stations in view of the inadequacy of the available French-language hit charts as a measuring tool and the requirement that at least 65% of popular vocal music be in the French-language.

No objections were raised with the proposal as it relates to campus/ community stations. However, those associated with instructional stations argued that these stations should be able to program up to 50% hits so that students can be trained in situations that are the same as those they would face as employees of radio stations. The Commission is not convinced that a level of 30% hits rather than 50% hits would seriously impede the training process of students. It also notes that the CBC and a number of other radio stations employing professional broadcasters do not emphasise hit selections in their

programming. Finally, it considers that a lower level of hits is necessary to ensure that an instructional station makes an effective contribution to diversity.

[§281-44]

In light of the above, the Commission adopts the following policy with respect to the use of hits by campus stations:

The level of hits broadcast each week should not exceed 15% of all musical selections for campus/community stations or 30% for instructional stations (not applicable to French-language stations).

[§281-45]

b) *Repeats*

In its draft policy, the Commission proposed a maximum repeat factor of 10 for campus/community stations and 18 for instructional stations.

Although no concerns were expressed with the proposal as it relates to campus/community stations, one brief suggested that both instructional and campus/community stations should have the same maximum repeat factor of 10 to ensure diversity.

The Commission considers that the requirements of the new policy for music from subcategories other than pop, rock and dance and restrictions on the use of hits are sufficient to ensure musical diversity.

[§281-46]

In light of the above, the Commission adopts the following policy with respect to the repeating of musical selections by campus stations:

***Campus/community* stations should not repeat any non-Canadian musical selection more than 10 times in a broadcast week. For *instructional* stations the limit is 18 times per broadcast week.**

[§281-47]

c) *French-Language Vocal Music*

No comments addressed the Commission's proposal in this area.

The Commission therefore adopts the following policy with respect to the programming of French-language vocal music selections by campus stations:

At least 65% of vocal music selections from category 2 played each broadcast week must be in the French language. This applies to both *campus/community* and *instructional* stations (French-language stations only; commitments by stations proposing programming in both French and English will be considered on a case-by-case basis).

[§281-48]

11. *Levels of Canadian Music*

In its draft policy, the Commission proposed levels of Canadian music that are the same as those that commercial stations must meet: at least 30% of all popular music

selections (category 2) and at least 10% of all traditional and special interest music selections (category 3).

Three briefs stated that the levels could be hard to attain if the stations were to continue to emphasize alternative music. One of those suggested that ethnic programming be exempted from Canadian content calculations.

On the other hand, one brief suggested that campus stations should have to meet the same 50% level of Canadian content that CBC stations must achieve.

The Commission notes that there are distinct differences between campus/community stations and the CBC. The CBC stereo services broadcast classical formats and the CBC radio services feature talk formats. The reason they have the 50% requirement for popular music is that they, unlike campus stations, play very little popular music over the broadcast week.

With respect to those expressing concern that the proposed levels might be too high, the Commission recognizes that there may be a scarcity of Canadian selections for some more esoteric types of popular music. However, during consultations, representatives of campus stations discussed extensively the role they play in encouraging local and other Canadian "alternative" artists. It is therefore difficult to conclude that they should not have to meet at least the minimum requirements for Canadian music set out in the *Radio Regulations, 1986* (the regulations) in light of the emphasis that the *Broadcasting Act* places on the use of Canadian creative resources.

With respect to comments on ethnic programming, the Commission notes that the regulations provide for a lower Canadian content requirement (7%) for ethnic programming periods.

[§281-49]

In light of the above, the Commission adopts the following policy with respect to the level of Canadian music broadcast on campus stations:

All campus stations (*campus/community* and *instructional*) will be expected to ensure that at least 30% of general popular music selections (category 2) and at least 10% of traditional and special interest music selections (category 3) broadcast each week are Canadian.

At least 7% of music in ethnic programming periods must be Canadian, as set out in the regulations.

The guidelines on reasonable distribution of Canadian music set out in the policy for commercial FM stations (Public Notice CRTC 1990-111) also apply to campus stations. These guidelines are as follows:

- **at least 25% of popular music selections broadcast between 6 a.m. and 7 p.m. Monday through Friday should be Canadian,**
- **Canadian selections should receive reasonably even distribution throughout these dayparts and throughout the broadcast week, and**
- **there should be a significant presence of Canadian music in high audience periods, these traditionally being the morning and afternoon drive periods.**

[§281-50]

12. *Block Programming and Educational Programming*

In its draft policy, the Commission proposed that campus/community stations would be expected to devote at least 15% of each broadcast week to focused spoken word programs, specialized block programs that showcase particular types of music, or programs targeted to identifiable groups within the community. Instructional stations would be expected to devote at least 2 hours per week to formal educational programming that provides academic instruction.

One brief expressed support for the broadcast of formal educational programming by instructional stations, but suggested that this commitment be suspended when regular classes are not in session.

Although the Commission agrees that it would be difficult to produce formal educational programming outside the academic year, it considers that vacation periods could be used to repeat programs produced earlier in the year so that audiences could have an additional opportunity to listen to the material.

[§281-51]

In light of the above, the Commission adopts the following policy with respect to block programming and educational programming by campus stations:

***Campus/community* stations will be expected to devote at least 15% of each broadcast week to focused spoken word programs, specialized block programs that showcase particular types of music, or programs targeted to identifiable groups within the community.**

***Instructional* stations must devote at least 2 hours per week to formal educational programming that provides academic instruction.**

[§281-52]

13. *Licensing More than One Campus Station in an Official Language in a Community*

No objections were received concerning the Commission's proposal. **It therefore adopts the following policy with respect to the licensing of more than one campus station in the same official language in a community:**

The Commission is willing to license more than one campus station in the same official language in a community where an adequate number of frequencies is available and where the applicant demonstrates that the programming broadcast will be clearly complementary to that broadcast by other campus and community stations currently operating in that area.

Applicants will be expected to identify and project revenues they expect to derive from various sources.

[§281-53]

14. *Campus Carrier Current Stations*

The Commission requested campus broadcasters and other interested parties to comment on the advisability of exempting campus carrier current stations from the requirement that they hold broadcasting licences. There seems little reason not to exempt carrier current stations that are simply "in-house" systems.

A few briefs, however, expressed concern about an overall exemption for carrier current stations. It was suggested that some form of licensing be available to facilitate the

cable carriage of carrier current stations. Concern was expressed that cable systems would be reluctant to carry services that do not have a licence because responsibility for the content of these services would fall to cable operators. Some campus stations have applied for carrier current licences primarily to satisfy the concerns of cable companies in this regard because cable carriage is the only way they can be received off-campus.

[§281-54]

In light of the above, the Commission will issue an order exempting carrier current services not carried on cable from the necessity to hold a broadcasting licence. Nevertheless, operators of such services are reminded that they must comply with requirements of the Department of Communications for technical certification. Carrier current services carried on cable systems will continue to require a licence.

Licensed carrier current stations will have to meet the regulatory requirements for AM stations (since they use the AM band), meet the ownership requirements for campus stations set out in this policy, and meet the same advertising restrictions as campus FM stations.

[§281-55]

15. *Low-Power Stations*

No concerns were expressed regarding this aspect of the policy proposal. **The Commission therefore adopts the following policy with respect to low-power campus stations:**

The campus radio policy will generally apply to all campus stations regardless of their power. On a case-by-case basis, however, the Commission is willing to exercise flexibility when dealing with applications for stations of low power whose signals would only serve the campus of the associated university or college.

Low-power stations will be expected to fulfil all aspects of the policy if granted a power increase.

Recent CRTC Decision: In Decision CRTC 93-634, September 29, 1993, the CRTC granted a low power English campus instructional station some flexibility. It agreed to delete the requirement for 2 hours per week of educational programming and agreed to a reduction to 15% (from the normal 20% level) of music for subcategories other than "Pop, Rock and Dance". However, the Commission denied a request to play up to 49% hits weekly and imposed a condition of licence requiring a maximum of 30%.

[§281-56]

16. *High School Stations*

In its policy proposal, the Commission indicated that it would generally not license campus FM stations associated with high schools. High school carrier current stations however, would be allowed. The Commission indicated that this would not prevent the Commission from approving an application for a community station that is housed in a high school, but otherwise fulfils all aspects of the community radio policy.

Although not proposing to issue community licences to high schools, the Commission recognizes that a high school might be the logical place to accommodate the studios of a community station in a smaller community. Such a station would still have to qualify fully as a community station.

[§281-57]

In light of the above, the Commission adopts the following policy with respect to the licensing of high school stations:

As a general policy, the Commission will not licence campus AM or FM stations associated with high schools. High school carrier current stations, however, will be allowed in accordance with the policy for carrier current stations outlined earlier in this document.

This will not prevent the Commission from approving an application for a community station that is housed in a high school, but otherwise fulfils all aspects of the community radio policy.

[§281-58]

17. *Content Categories and Subcategories*

In its draft policy, the Commission proposed to apply to campus stations the same content categories and subcategories, and definitions of music use indicators that it adopted for commercial stations. One submission suggested that the music definitions be changed so that all "alternative music" would fall into category 3.

In the past, the Commission has found that defining and enforcing distinctions between different types of music is difficult. Defining "alternative" music would be especially hard. As well, the Canadian content requirement for category 3 music is only 10%, while that for category 2 is 30%. One of the effects of the change proposed in this submission might thus be an overall reduction in the amount of Canadian music played. For these reasons, the Commission is not prepared to redefine its definitions of music.

In light of the above, the Commission has decided that the content categories and subcategories, and definitions of music use indicators, adopted for commercial stations will also apply to campus stations.

[NOTE: For the text of the categories and subcategories referred to, see above at 265.]

[§281-59]

18. *Other Matters*

a) *Application Forms*

Some briefs noted that the Commission has, in the past, used the same application forms for campus stations as it uses for community stations, and requested that simplified forms relevant to the particular situation of campus and community radio be developed. **The Commission agrees and will develop application forms especially for campus and community radio. It will also develop a guide to licensing for the use of campus broadcasters, similar to the Glossary of Radio Terms developed for commercial stations.**

[§281-60]

b) *Hours of Broadcast*

One submission suggested that campus stations be allowed to reduce their hours of broadcast during vacation periods. The Commission has allowed such flexibility in the past and agrees that it should be incorporated in the new policy. **Accordingly, campus**

stations will have the same flexibility as that adopted for community stations. They may thus reduce or increase broadcast hours by up to 20% without application to the Commission provided they meet the minimum percentage commitments set out in their Promises of Performance.

[§281-61]

c) *Implementation*

The new policy will be implemented as follows:

All campus stations will be considered to be operating in compliance with their Promises of Performance until their next licence renewal provided they meet the guidelines set out in the policy, with the exception of any commitments that are subject to specific conditions of licence. Any changes to specific conditions of licence will require Commission approval before implementation.

Stations that currently have commitments in their Promises of Performance that are outside the limits specified in the policy (e.g. spoken word below 25%, maximum repeat factor above 10 for campus/community stations or 18 for instructional stations, hit factor above 10% for campus/community or 30% for instructional stations) may continue with their current commitments until the end of their current licence term.

[§281-62]

d) *Applications by Campus Stations to Become Community Stations*

During consultations with the representatives of campus/community stations, a few indicated that their stations might eventually evolve to the point where they would sever their connections with the campus and become full-fledged community stations. They were interested in knowing if the Commission would be receptive to a station making this change. Such a change would not appear to raise serious concerns in areas that are not already served by community stations provided the station making the switch fulfilled all elements of the community radio policy and ceased to receive funding from student organizations, student fees or other sources from the associated university or college. **The Commission therefore adopts the following policy with respect to campus stations applying to become community stations:**

The Commission will generally be willing to approve applications for campus stations to become community stations in areas not already served by community stations where proof is provided that they would no longer be funded by student organizations, student fees or other sources from the associated university or college, and that they would fulfil all elements of the community radio policy.

[§281-63]

C ACKNOWLEDGEMENTS

[This portion of the public notice is omitted.]

[§283-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Private French-Language Television

[§283-2]

[Preamble to Decisions CRTC 92-544 to 92-565; Public Notice CRTC 1992-53, August 13, 1992. This statement was issued at the time of the renewals of the private sector French-language television networks and most individual stations in 1992. For the earlier statement issued at the time of the renewal of English-language television stations, see *Overview: Local Television for the 1990s*, Public Notice CRTC 1989-27, April 6, 1989, set out above at §256.]

[§283-3]

I. INTRODUCTION

At a public hearing commencing on 23 March 1992, the Commission considered the licence renewal applications of the private sector French-language television networks as well as those of most of the individual stations. The hearing was divided into two sessions: in Montréal, the networks and mother stations were heard, and at Quebec City, the regional stations. The Commission also considered the licence renewal applications announced in Public Notice CRTC 1992-7 issued in January 1992.

The hearing provided an opportunity to assess the performance of one of the major components of the Canadian broadcasting system. In its evaluation, the Commission paid particular attention to each station's financial performance, programming and its response to complaints from the public received during the current licence term.

With respect to the licensees' plans for the new licence term, the Commission assessed the role each intends to play within its market in broadcasting Canadian programs that respond to the needs and interests of its audience. The Commission also sought to establish how the proposed programming would meet the objectives of the Canadian broadcasting policy, particularly the objective that such programming should reflect the circumstances and aspirations of Canadian men, women, and children, and should be varied, drawing from local, regional, national and international sources. In addition, the Commission discussed with the applicants their strategy for responding to changing market conditions.

In this regard, the Commission noted an industry tendency towards retrenchment, centralization of operations and restraint, as indicated by a reluctance to make future commitments. The Commission recognizes that the poor financial results of the past years and the uncertain economic climate do not constitute a favourable context for a review of licence renewal applications. In these circumstances, the Commission has decided to renew most licences of the private television stations for a period of no more than 5 years to allow for an early review of the situation.

[§283-4]

II. THE CONCEPT OF LOCAL REFLECTION

The hearing and the applications themselves revealed that, in the period since publication of the *Policy for Local Television Programming* (Public Notice CRTC 1991-22) [NOTE: set out above at §263], the private French-language television industry has tended to opt for a restrictive interpretation of the policy, described by some interveners as minimalist. The Commission therefore considers it useful to clarify its current policy on local television programming.

[§283-5]

1. News category

In its policy, the Commission stated that licensees, at renewal, would be evaluated on how successfully local needs have been met. With this proposed new emphasis on local reflection, the Commission decided that it would no longer require television licensees to make quantitative commitments to local programming in categories other than news.

In this regard, the Commission notes that the cuts private television broadcasters are making in their budgets because of their financial results are affecting their news programming. In its intervention, the Quebec Federation of Professional Journalists points out that the public's knowledge of local events helps shed light on the patterns that form the basis of any truly democratic way of life. Noting recent changes in the quantity of information available in a number of regions in Quebec, the Commission calls upon French-language television broadcasters to make every effort to ensure that the public is better informed of current events within their service area.

[§283-6]

2. Other program categories

The Commission's policy on local television programming states that each television licensee has a special responsibility to serve the public residing within the particular geographic area it is licensed to serve.

In the Commission's view, programming cannot completely reflect the community if it is limited to only brief news clips. A number of interveners offered evidence of this fact. The Commission considers that the public debate should be enriched by presenting and discussing complex issues on public affairs programs; and that the cultural life could be enhanced by enabling locally-based talent to benefit not only from promotion, but from on-air television exposure as well. Accordingly, when economically feasible, variety programming should also be produced regionally for broadcast on regional stations and/or on the networks.

The aim of the Commission's policy on local programming is not to centralize production of programs that could be produced anywhere, but is intended to ensure that most local and regional programming serves, first and foremost, the public living in a station's coverage area and that intra-regional communication is preserved.

[§283-7]

3. Scheduling Practices

In its policy, the Commission stated that it would continue to require television licensees to describe how their program schedules reflect the needs and concerns of the communities they serve.

At the hearing, the Commission noted a tendency on the part of regional stations to broadcast programming devoted to local reflection at times other than peak viewing hours. Inasmuch as it is the networks that generally control the opportunities for the distribution of local programs, the Commission considers that they should be sensitive to this situation and ensure that such programs can be broadcast at times convenient to the viewers.

Even though news programs are generally broadcast at popular viewing times, the Commission considers that depending on the size of the region, regional news headlines should also be broadcast during peak viewing hours, in addition to late night and weekend regional newscasts.

[§283-8]

III. DUBBING

Since 1987, the dubbing of television programs (generally American) into French has emerged as an issue of greater importance among Canadian performers. Currently, as a consequence of agreements between the major television networks in France and unions of French artists, most dubbing from English to French is performed in that country.

In a letter dated 12 September 1988 to the Chairman of the CRTC, the Deputy Minister of the federal Department of Communications requested that the Commission establish a consultative committee to review the matter. The Commission tabled its report on 18 May 1989 and subsequently announced that the matter would be raised at the public hearings for the licence renewals of French-language stations and networks. At the hearing, the Union des Artistes requested the Commission to establish minimum requirements for programming dubbed in Canada, comparable to the current Canadian content requirements.

The Commission considers that quotas would be ineffective; specifically, they could have a negative effect on the production of original Canadian programs, since funds for Canadian programming would be diverted to dubbing. In addition, such a measure would constitute excessive regulation and would be economically inefficient since many programs already dubbed in France would be dubbed a second time in Canada.

The Commission has determined that the public interest is best served by placing emphasis on Canadian program production through promotion of investment in such programs, rather than on the dubbing of non-Canadian programs. Consequently, it will not impose any dubbing quotas.

[§283-9]

IV. INDEPENDENT PRODUCTION

At the hearing, the Association des producteurs de films et de télévision du Québec (APFTQ) presented a submission arguing that the Commission should require licensees to allocate a portion of their programming budgets to the association. The APFTQ based its argument on paragraph 3.(*i*)(v) of the *Broadcasting Act*, which states that the

programming provided by the Canadian broadcasting system should "include a significant contribution from the Canadian independent production sector".

The Commission notes that Télévision Quatre-Saisons allocates most of its production budget to independent productions, whereas Télé-Métropole allocates a much smaller portion to this sector given the size of its own production facilities.

In the past, the Commission has encouraged television broadcasters to work actively with the independent production sector and has often emphasized commitments of licensees regarding the levels of programming from that sector in their schedules. Given the success already achieved by these measures at various levels, the Commission does not consider it necessary to set quotas in this area. The Commission, however, views as unacceptable the failure of some licensees to make any commitments, even if it is only the continuation of cooperative efforts with the independent sector. Consequently, certain of the decisions that follow contain expectations in this regard.

[§283-10]

V. CHILDREN'S PROGRAMMING

In Quebec, some provincial restrictions may limit the availability of funding for children's programming. For example, there is a prohibition against advertising to children. Consequently, owners of private French-language television networks refuse to produce and broadcast new Canadian children's programming.

The Commission rejects the notion that licensees of over-the-air television stations - traditionally the source of broad, general interest programming - should be permitted to abandon whole segments of their audience because they do not generate sufficient profits. The Canadian broadcasting system is made up of public, private and community elements. To date, public (the CBC) and private television have shared responsibility for ensuring that programming is varied and as comprehensive as possible.

The Commission views as unacceptable that over-the-air television undertakings should seek to delegate responsibility for the production and provision of children's programming, a less profitable area, to certain specialty services. Slightly more than 30% of the population of Quebec does not receive specialty services. The Commission will therefore expect the private television networks to broadcast, on a regular basis, new Canadian children's programming that reflects the concerns and aspirations of young "Québécois". Moreover, since Canadian children's programs are generally less violent than many foreign programs, their development and broadcast becomes a means of combatting television violence.

[§283-11]

VI. TELEVISION VIOLENCE

Since 1985, violence in programming has been the main source of complaints made by Quebec residents to the Commission about television.

On 27 May 1992, the Commission published an internal report entitled "Scientific Knowledge about Television Violence" and an external report entitled "Summary and Analysis of Various Studies on Violence and Television". At that time, the Commission indicated that it would continue to require that Canadian television broadcasters deal with this issue, specifically by implementing, without delay, an industry code on violence.

[§283-12]

VII. ACCESS TO TELEVISION BY PERSONS WITH VISUAL OR HEARING IMPAIRMENTS

The Québec Center for the Hearing Impaired, the Canadian Captioning Development Agency, the Regroupement québécois pour le sous-titrage and the Canadian Disability Rights Council made a joint presentation at the public hearing. They requested that the number of hours of captioned programming be increased each year so that all programs would be captioned by year 2000. The interveners also addressed the quality of captioning in French-language programming by presenting a video recording to demonstrate their point. In particular, the interveners requested:

- that the use of a live captioning method recently perfected by the CBC be promoted, thus improving the captioning quality and quantity and reducing the unit price;
- that improvements be made in services available to publicize captioned programs by avoiding such occurrences as announcing the captioning of programs which, in fact, have not been captioned; by announcing changes in the scheduling of captioned programs; and by better promoting the scheduling of captioned programs; and
- that the industry implement a descriptive video system for the visually impaired.

Most of the renewal applications under consideration reflect no improvement in the measures taken to provide the visually or hearing impaired with better access to television.

Given the current social and technological context, and consistent with the approach taken in its decisions of 6 April 1989 renewing the licences of 76 English-language television stations, the Commission has required local and regional stations, as a minimum, to provide captioning or sign-language interpretation for the headline portion of their local news programs.

The Commission will expect mother stations to increase the number of hours of captioned programming provided from year to year, and to submit reports to the Commission on the increase, in particular, on the measures taken to publicize program changes and announce new captioned programs.

In addition, the Commission will monitor the technological development and implementation of a descriptive video system for the visually impaired and other improvements such as live captioning. Finally, the Commission has required that television broadcasters acquire a telecommunications device for the deaf (TDD), and that the telephone number be well publicized and listed in the local telephone directory.

[§283-13]

VIII. CONCLUSION

French-language television viewers have demonstrated a marked preference for Canadian programs produced in Quebec. Since the early days of the industry, broadcasters have offered a large amount of Canadian programming because of public demand. Under the circumstances, the Commission does not consider it necessary to apply a formula, as it has imposed on English-language television stations, for the purpose of ensuring Canadian program expenditures.

The conditions of licence, expectations and incentives described in the licence renewal decisions that follow are designed so that all licensees will strive to find new means of improving the service they provide to their francophone audience in Quebec.

The Commission thanks the interveners for their extremely valuable contribution to this public hearing.

[§284-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

1992 Policy on Gender Portrayal

[§284-2]

[Public Notice CRTC 1992-58, September 1, 1992.]

[§284-3]

1. *BACKGROUND*

[NOTE: This portion of the public notice is omitted.]

[§284-4]

2. *REVIEW OF THE POLICY ON SEX-ROLE STEREOTYPING*

On 28 December 1990, the Commission issued Public Notice CRTC 1990-114, which announced its intention to review its policy on sex-role stereotyping and invited comments in this regard.

In conducting the review, the Commission has taken a number of considerations into account. These include: progress made by the [Canadian Broadcasting Corporation (CBC)], the [Canadian Association of Broadcasters (CAB)] and the Canadian Advertising Foundation (CAF)] in fulfilling the commitments made at the 1986 public hearings, as well as the expectations and recommendations set out by the Commission; the initiatives undertaken by the Commission since the 1986 public notice; initiatives undertaken by the broadcasting and advertising industries in addition to those discussed in 1986; the findings of the follow-up study to the 1984 content analysis; and public comments received in response to Public Notice CRTC 1990-114.

[§284-5]

(1) *Developments Since the 1986 Policy*

(a) *CBC*

The CBC has met all of the expectations and commitments set out in the 1986 notice, largely through the policies and procedures developed by the Office of Equitable Portrayal in Programming, the Employment Equity Office and the Advertising Standards Office.

The Office of Equitable Portrayal in Programming (formerly the Office of Portrayal of Women in Programming), established in 1979, is responsible for policies and procedures concerning the portrayal of women and minority groups in programs

broadcast by the CBC. The Employment Equity Office, created in 1986, generates corporate initiatives relative to equitable employment.

The Office of Advertising Standards administers policies and programs regarding sex-role portrayal in advertisements submitted to the CBC for broadcast. As well as handling complaints, the office screens advertisements in advance of broadcast to ensure their compliance with the CBC's Guidelines on Sex-Role Portrayal and works with advertisers to ensure that commercials reflect a positive portrayal of women.

The Corporation has reported to and met with the Commission regularly to discuss efforts and future plans with respect to sex-role portrayal and the disposition of complaints. It has also commissioned several content analyses of its own programs, which it has made available to the public.

The CBC revised its guidelines on sex-role portrayal, which were approved by the Commission in Public Notice CRTC 1991-109. [NOTE: For the text of these guidelines, see above at §178.] It also published and distributed throughout the Corporation its gender-neutral linguistic guidelines in 1987. These have since been incorporated into the *CBC Guidelines on Sex-Role Portrayal.*

Action plans have been developed by both the network and the regions. These include objectives for female on-air personnel and female interviewees, for hiring and training programs, programming concepts and evaluation measures. The CBC also publishes internal directories of qualified women for use in selecting interviewees, actors, etc., and has participated financially with other organizations in the publication of external directories. The Corporation has also been active in education regarding sex-role portrayal, for example, by conducting sensitizing and information sessions for management and production staff.

Activities relating to employment equity undertaken by the Corporation include the development of staffing and promotion measures for women and members of the other designated groups, the establishment of hiring objectives for the network and the regions, and the implementation of training courses focused on improving job accessibility for women.

[§284-6]

(b) *CAB*

The CAB has fulfilled most of the expectations set out for it by the Commission as well as most of the commitments it made at the 1986 hearings. Since 1986 the CAB has maintained a committee on societal issues to track and respond to social concerns such as the portrayal of women.

The CAB submitted revised guidelines on sex-role portrayal, which were approved by the Commission in Public Notice CRTC 1990-99. [NOTE: For the text of these guidelines, see above at §174.] The Association also developed and distributed guidelines for non-sexist language in 1987.

The Association has reported to and met annually with the Commission to discuss initiatives to eliminate sex-role stereotyping in the broadcast media and has submitted semi-annual reports on the disposition of complaints.

In 1989, the CAB established the Canadian Broadcast Standards Council (CBSC). The role of the CBSC is to promote high quality, responsible broadcasting in Canada; to

administer codes of industry standards, including those on sex role portrayal; and to deal with complaints from members of the public. The Council has an educational component that organizes activities such as workshops and seminars.

The Commission conveyed its support of the objectives of the CBSC in Public Notice CRTC 1991-90. Since that time, the Commission has been willing to suspend, upon application, the condition of licence requiring adherence to the CAB's sex-role portrayal guidelines in the case of licensees that have been members in good standing of the CBSC for at least six months. Membership in the CBSC requires adherence to the CAB sex-role portrayal guidelines.

The CAB has been active in creating plans and mechanisms to promote employment equity in the industry, including the development of a plan to assist broadcasters in identifying, employing and promoting an increased number of qualified women into the mainstream of their operations. In response to a proposal by the CAB, the Department of Employment and Immigration is currently conducting a labour force development strategy to determine future human resource needs of the Canadian broadcasting industry. The CAB also prepared a strategic plan in 1991 to identify, recruit and encourage the involvement of women on CAB committees and boards of directors, as well as on committees and boards of regional broadcast associations.

[§284-7]

(c) *CAF*

The Commission regulates and monitors all matters pertaining to broadcasting, including advertising, pursuant to the Broadcasting Act and regulations. It has the authority to make regulations respecting the character of advertising and the amount of time that may be devoted to it. The CRTC, however, has no mandate to regulate the advertising industry itself. Nevertheless, the Commission notes the many efforts of the CAF to improve the portrayal of women in advertising, as well as the cooperation it has received from the Foundation.

The CAF has, for the most part, met the commitments it made in 1986, as well as the expectations and recommendations set out for it by the Commission. In 1987 the CAF revised its Sex-Role Stereotyping Guidelines that apply to advertising. The Foundation has recently undertaken to further review and revise these guidelines to attain consistency with the CAB's sex-role portrayal guidelines that were approved by the Commission in 1990. [NOTE: For the text of the CAF guidelines, see above at §175.] The Foundation also revised the Canadian Code of Advertising Standards in 1990 to address exploitation of sexuality.

The CAF has reported to and met with the Commission on an annual basis regarding activities undertaken to improve the portrayal of women in advertising. It has also reported semi-annually to the Commission on complaints received about commercials broadcast on radio and television.

The CAF established the Advisory Panel on Sex-role Stereotyping in 1987. The group is responsible for the dissemination and administration of guidelines relating to the portrayal of the sexes in advertising, and oversees the Foundation's on-going education program among its constituents. Public representatives were added to the group's

membership in response to the Commission's request for expansion of the CAF's review boards.

The CAF revised its complaint handling procedures to be more streamlined and effective. Moreover, it worked closely with the CAB in the establishment of the CBSC and has agreed to handle any advertising-related complaints received by the Council.

The CAF has undertaken various efforts to educate and work with advertisers in the area of sex-role portrayal, including publicizing its sex-role stereotyping guidelines and other codes among the industry and the public, participation in meetings and consultations, and the launching of an industry advertising campaign (Advertising. Talk To Us About It) in 1988. The CAF is currently developing plans to extend its educational program and, dependent upon resources, to conduct industry seminars on self-regulatory issues, including the portrayal of women. The CAF also refers to its sex-role stereotyping guidelines when pre-clearing scripts with respect to the codes for advertising to children, advertising of feminine sanitary protection products and cosmetics, and provides consultations with advertisers and agencies in instances where a potential problem with regard to sex-role portrayal is found to exist. The Commission notes that the CAF has recently undertaken to flag potential sex-role stereotyping problems in all scripts submitted to it for pre-clearance, including advertising pertaining to food and non-alcoholic beverages.

The CAF contributed to the funding of the 1988 replication study, pursuant to the commitment made by the Foundation in this regard at the 1986 public hearings.

[§284-8]

(d) *Canadian Women in Radio and Television*

In 1991, Canadian Women in Radio and Television (CWRT) was established by women in the broadcasting industry. The goal of the CWRT, a non-profit organization, is to increase the involvement and impact of women in broadcasting and related fields. Its activities focus on training and development programs, such as educational seminars and workshops and the creation of a job bank. CWRT's membership includes private broadcasters, the CBC and program producers.

[§284-9]

(e) *CRTC*

For its part, the Commission has fulfilled the initiatives set out for itself in the 1986 public notice. The Commission has maintained an internal committee on sex-role stereotyping to oversee the implementation of the commitments made by the industry associations in 1986, as well as its own recommendations. On behalf of the Commission, the committee meets with the CBC, the CAB and the CAF on a yearly basis and reviews the reports submitted on the industries' activities with respect to sex-role portrayal and the disposition of complaints.

In its 1986 public notice, the Commission notified radio and television broadcasting licensees that it would impose conditions of licence at the time of licence renewal, requiring their adherence to the industry sex-role stereotyping guidelines. In general, the Commission has applied the condition of licence to the licensees of radio and television stations that originate 42 or more hours of programming per week and of radio and

television networks that distribute 7 or more hours of network programming per week. The Commission has also reviewed at the time of licence renewal the efforts of broadcasters to improve the portrayal of women.

As indicated in the 1986 notice, the Commission undertook a follow-up study of the 1984 content analysis in 1988 to assess what degree of change had occurred in the portrayal of women and men over the four-year period. The findings of the 1988 study are contained in five reports, which were made available to the public in December 1990.

[§284-10]

(2) *Public Comments Received in Response to Public Notice CRTC 1990-114*

[NOTE: This portion of the public notice is omitted.]

[§284-11]

3. *AVENUES FOR THE FUTURE*

The Commission considers that the broadcasting and advertising industries have demonstrated increased awareness and responsibility in the area of gender portrayal over the last decade. This is evidenced by the fulfilment of commitments and expectations set out in Public Notice CRTC 1986-351, as well as the various initiatives that have been undertaken in recent years, in particular since the 1988 replication study.

The Commission especially notes the organizational structures that have been developed by the industry to address gender portrayal and related issues, including the creation of the CBC's Office of Equitable Portrayal in Programming and Employment Equity Office, the Canadian Broadcast Standards Council and Canadian Women in Radio and Television.

Other activities undertaken by the broadcasting and advertising industries have also contributed to the development of an infrastructure to deal with and bring about positive change in the area of gender portrayal. Strengthened guidelines on sex-role portrayal and gender-neutral linguistic guidelines have been put in place by the CBC and the CAB. The CAF, which revised its guidelines for the advertising industry in 1987, is in the process of once again reviewing and updating them. Each of these organizations, as well as the CBSC, has undertaken efforts to educate and sensitize broadcasters and advertisers to the issue of sex-role portrayal, by convening workshops and seminars and by distributing information on the issue. Both the public and private broadcasting industries have recently implemented strategies and programs to encourage employment equity. The CBC's practice of pre-screening commercials and the commitment by the CAF to flag commercials submitted to it for pre-clearance also demonstrate a commitment to improving gender portrayal in advertising.

[§284-12]

The Commission considers that continued progress may be achieved more effectively through institutional mechanisms such as those described above, that focus on such aspects as education, awareness and employment equity, rather than through regulatory intervention.

Based on the research findings and public comments received, the Commission has identified a number of areas in which it considers that greater progress could be achieved in the representation of women. These include the following areas:

* on-air staff positions, such as news reporters and announcers;
* interviewees and experts in news and information programming;
* characters portraying non-traditional roles in entertainment programs;
* persons 35 to 65 years of age appearing in programs and commercials;
* voice-overs in advertising;
* characters in advertisements for high-ticket items.

The Commission considers that, of these areas, those that pertain to the portrayal, or roles, of women (the use of female interviewees and experts, characters in non-traditional roles, persons aged 35-65, and characters in advertisements for high-ticket items) can be addressed through such mechanisms as application of the strengthened guidelines on sex-role portrayal and, most importantly, through education and awareness. The areas that pertain to the "presence" of women (on-air staff positions and voice-overs) can most immediately be addressed through employment equity initiatives.

While progress should be demonstrated in all programming, the Commission is of the view that the greatest potential for change lies in licensee-produced programming and commercials, where broadcasters have the most direct daily control. The Commission notes that one area in which progress was seen between 1984 and 1988 is in the greater participation of women as program staff, particularly television newscasters and information program staff, and radio announcers.

[§284-13]

Future Policy

The CBC, the CAB and the CAF have taken a number of steps to improve the presence and portrayal of women in the broadcast media and the Commission expects them to continue their work. In particular, it encourages these organizations to continue and increase their involvement in the education and sensitization of individual broadcasters and advertisers on the issues of gender portrayal.

The Commission especially notes comments received from the public that the CRTC continue to be involved in the area of gender portrayal. Accordingly, the Commission will continue to supervise efforts to improve gender portrayal and equitable representation in programming and advertising.

The Commission will continue to meet on a yearly basis with the CBC, the CAB and the CAF to receive their reports on the activities they have undertaken to improve gender portrayal and to hear each organization's yearly plans for continued progress. Moreover, as noted in Public Notice CRTC 1991-90, the Commission requires the CBSC to keep it informed of the Council's activities, including its educational efforts. The Commission will require the CBC and the CAF to continue to file semi-annual reports on the disposition of complaints regarding sex-role portrayal. As noted in Public Notice CRTC 1991-90, information on complaints about sex-role portrayal that relate to the activities of private broadcasters that are dealt with by the CBSC will be reported to the Commission on an annual basis. All annual and semi-annual reports will be placed on the public file.

The Commission will continue to expect the CBC and the CAB to review their respective guidelines on sex-role portrayal on a regular basis to ensure that they continue to respond to changing public concerns, and to submit changes to their guidelines for approval by the Commission. The Commission notes that the CAF is currently reviewing its guidelines and encourages the Foundation to periodically undertake such reviews in the future.

The Commission will investigate establishing a process to flag potential gender portrayal problems in alcohol commercials submitted to it for pre-clearance. Such a process would be similar to that undertaken by the CAF in respect of commercials submitted to it for pre-clearance.

[§284-14]

The Commission will continue to impose a condition of licence requiring adherence to the CAB's sex-role portrayal guidelines, or, in the case of the CBC, to the Corporation's guidelines. The condition will continue to be applied to all radio stations that originate 42 or more hours of programming per week and to radio networks where the licensee distributes a total of 7 or more hours of network programming per week. However, it should be noted that the condition of licence will be applied to *all television stations and networks* that originate programming, and to *pay television and specialty programming undertakings*. In cases where a licensee applies and demonstrates that it has been a member in good standing of the CBSC for at least six months, the Commission will be prepared to suspend the application of the condition of licence as long as the licensee remains a member in good standing of the Council.

[§284-15]

The Commission will continue to monitor industry progress through its assessment of the activities of the industry associations and the CBSC, as well as through its analysis of the semi-annual reports on complaints. It also encourages each industry sector to assess its own progress. The Commission will continue to report to the public on a regular basis through its annual reports and public notices.

The Commission has published today Public Notice CRTC 1992-59 entitled "Implementation of an Employment Equity Policy", which sets out its policy on employment equity for the broadcasting industry. [NOTE: See below at §285.] Under the policy, the Commission will expect licensees and prospective licensees, at the time of licence renewal or upon application for a new licence or for the transfer of ownership or control of a broadcasting undertaking, to be prepared to address with respect to such qualitative measures as training and development measures aimed at members of the designated groups.

In order to address concerns about the under-representation of women and members of other designated groups in on-air positions, the Commission will require licensees to provide for equitable employment in on-air positions, such as reporters, hosts, announcers and voice-overs in licensee-produced programming and advertising. The Commission will consult with the industry and with representatives of the designated groups to determine which "on-air" job categories should be included in the goals set out in each licensee's employment equity plans.

The Commission will continue to expect all radio and television licensees to increase their efforts to eliminate sex-role stereotyping and to adhere to the approved industry guidelines at all times. The Commission acknowledges the large number of thoughtful comments received and wishes to express its appreciation to all those who participated in this review.

[§285-1]

[CANADIAN RADIO-TELEVISION AND
TELECOMMUNICATIONS COMMISSION]

Implementation of an Employment Equity Policy

[§285-2]

[Public Notice CRTC 1992-59, September 1, 1992.]

[§285-3]

The purpose of this public notice is to inform broadcasters and the public of the Commission's plans to introduce an employment equity policy, which will form part of the general supervision it exercises over licensees, in particular at the time of licence issuance and renewal, but also upon consideration of applications for authority to transfer ownership or control of broadcasting undertakings.

[§285-4]

I. *LEGISLATIVE FRAMEWORK*

The federal government's overall strategy for eliminating systemic barriers to employment and guaranteeing the full participation of disadvantaged groups in the work force is set out in the *Employment Equity Act* (EEA) of 1986. The act is administered by the Department of Employment and Immigration, also knows as Employment and Immigration Canada (EIC). The purpose of the EEA is:

> to achieve equality in the work place so that no person shall be denied employment opportunities or benefits for reasons unrelated to ability and, in the fulfilment of that goal, to correct the conditions of disadvantage in employment experienced by women, aboriginal peoples, persons with disabilities and persons who are, because of their race or colour, in a visible minority in Canada by giving effect to the principle that employment equity means more than treating persons in the same way but also requires special measures and the accommodation of differences (section 2). The definitions of the four groups designated under the EEA, namely women, aboriginal peoples, persons with disabilities and members of visible minorities, are set out in the *Employment Equity Regulations, 1986*.

[§285-5]

The EEA requires employers under federal jurisdiction with one hundred or more employees, including broadcasters and cable distributors, to provide information on the representation of members of the designated groups in their organizations. Employers are

permitted to include in their statistics only those individuals who have identified themselves as members of a designated group. This practice of voluntary self-identification is designed to protect an individual's privacy.

The information collected must be included in an *annual report* prepared in accordance with the regulations. These reports, which are filed with the Minister of EIC, are made available to the public and are used to assess progress made towards achieving employment equity. The Minister submits an annual report to Parliament; the report assesses employers' results in aggregate and contains a chapter which sets out some of the qualitative measures undertaken by employers in support of the numerical objectives.

[§285-6]

In addition, subsection 5(1) of the EEA stipulates that an employer shall prepare an *employment equity plan* setting out "the goals that the employer intends to achieve in implementing employment equity in the year or years to which the plan relates" as well as "the timetable for the implementation of those goals". These plans should include:

* Numerical objectives to increase where necessary, representation by occupational group for each of the four designated groups, within established time frames;
* Remedies and procedures that address the specific issues that have been identified, such as strategies to achieve objectives through special recruitment or training programs;
* Strategies to create a supportive equity environment, e.g., training for supervisors in relation to a variety of cultural backgrounds;
* Assignment of clear responsibility and accountability for each activity;
* A focus which is broad enough to include responsibilities for all the "stake holders" in the organization, i.e., middle managers, personnel specialists, employees, unions, the CEO, etc;
* An outline of monitoring and evaluation procedures to be used.

[§285-7]

The employer is required to retain a copy of the plan for at least three years after the last year for which the plan was prepared. The EEA, however, contains no provision requiring the employer to submit its employment equity plan to the Minister of EIC.

The Employment Equity Branch of EIC identifies employers subject to the EEA and informs them of their legislative obligations. In addition to its role in interpreting the provisions of the Act and regulations, the Branch offers employers technical advice and information to help them develop and implement employment equity programs.

[§285-8]

The CRTC's mandate was originally enunciated in the 1968 *Broadcasting Act*, which extended to the CRTC full powers to regulate and supervise the Canadian broadcasting system in the public interest, including the authority to issue, renew, amend, suspend and revoke licences. Under the new Broadcasting Act, which came into force on 4 June 1991, the Commission was given the additional responsibility of ensuring that the industry, through its programming and the employment opportunities arising out of its operations,

reflects the specific characteristics of Canadian society. Pursuant to subparagraph 3(1)(d)(iii) of the Act:

> the Canadian broadcasting system should [...] through its programming and the employment opportunities arising out of its operations, serve the needs and interests, and reflect the circumstances and aspirations of Canadian men, women and children, including equal rights, the linguistic duality and multicultural and multiracial nature of Canadian society and the special place of aboriginal peoples within that society.

In the exercise of its duties, the Commission endeavours to regulate the industry, taking into account the circumstances specific to each licensee. In view of potential problems in the application of the Commission's new mandate relating to employment equity, Commission staff met with the staff of EIC's Employment Equity Branch to identify what has been done, what remains to be done, and what appropriate action can be taken to avoid duplication and overlapping.

[§285-9]

Pursuant to this process, and in responding to its new mandate, the Commission has developed an employment equity policy which is intended to avoid duplication of reporting. The Commission considers that the effectiveness of its policy will reside in the CRTC's ability, through the licensing process, to ensure the public accountability of broadcasting licensees in this area.

It should be noted that the communications sector, as defined by EIC, encompasses not just the broadcasting industry, but the telecommunications industry as well, including such companies as Bell Canada, British Columbia Telephone Company and Unitel Communications Inc., which are regulated by the CRTC. While such companies are thus subject to the requirements of the EEA, they are not subject to the employment equity policy set out in the *Broadcasting Act*.

[§285-10]

II. *THE EMPLOYMENT EQUITY ACT REVIEW PROCESS*

On 30 October 1991 the Special Committee of the House of Commons on the Review of the Employment Equity Act (Special Committee) was set up to initiate the review process required under section 13(1) of the Act.

The CRTC appeared before this parliamentary committee in March 1992. In its brief, the Commission expressed support for the principles of employment equity, but identified two concerns of a practical nature, namely a lack of resources required to conduct an annual audit of the industry with respect to employment equity, and the risk of overregulating the broadcasting industry.

In particular, the Commission pointed out that, over the last ten years, its staff has decreased from more than 500 employees to just over 400. During the same period, the Commission's regulatory workload with respect to telecommunications nearly doubled following the Supreme Court's ruling in the AGT case that telecommunications regulation under federal jurisdiction extended further than had been exercised before that case.

The Commission also noted that there are some differences in the way in which the CRTC and EIC approach the "communications" sector with respect to employment equity. EIC examines corporate entities while the Commission regulates at the level of

the licensee. Several individual licensees may fall under the direct or indirect ownership of a single parent company. The Commission, however, has no jurisdiction over the parent company of these individual licensees.

The Commission indicated that it interprets its role in accordance with the concept of employment equity formulated by EIC, namely within the context of very specific goals, accompanied by reporting deadlines.

After considering the views presented by 45 witnesses, as well as those contained in 58 other briefs from individuals who did not appear before it, the Special Committee tabled its report, A Matter of Fairness, in May of 1992. The federal government is currently examining the recommendations contained in the report.

[§285-11]

III. *OVERVIEW OF EMPLOYMENT EQUITY WITHIN THE BROADCASTING INDUSTRY*

Fully aware of the value of an effective human resources strategy, the broadcasting industry has introduced a series of employment equity initiatives in recent years.

For example, since 1986, the Canadian Broadcasting Corporation's Employment Equity Office has been helping managers develop staffing and promotion measures for women, aboriginal peoples, the disabled and visible minorities. One of these measures, the HELP Fund established in 1989, provides funding for local projects that prepare members of the designated groups for work at the CBC. Assistance is generally provided for workplace adjustment projects, staff development programs as well as programs to recruit and train candidates who are members of designated groups.

The CBC also has an Office of Equitable Portrayal in Programming (formerly the Office of Portrayal of Women). This office develops and implements staff awareness action plans and strategies. It also co-ordinates studies on programming content for equitable portrayal of designated groups and disseminates the results. Through this office, the CBC is responsible for follow-up on complaints regarding representation on the air of the designated groups. Moreover, it is required to submit an annual report to the CRTC on its activities with respect to equitable representation of women in programming, as well as semi-annual reports on complaints received in this regard and the corrective action taken by the CBC (Public Notice CRTC 1986-351).

The televised program "Disability Network" is another constructive example of promoting equality on the air. Produced by the CBC and the Centre for Independent Living in Toronto, Inc., this weekly program is aired on both the main service and on Newsworld and deals with topical subjects related to various disabilities. The program's social impact is enhanced by the fact that it is produced and hosted by disabled persons.

[§285-12]

For its part, the Canadian Association of Broadcasters (CAB) launched a human resources strategic plan for the private broadcasting industry in October 1991. Six objectives were identified to maximize personnel productivity and improve current operational practices. One of these objectives encourages the industry to "take the initiative to develop a pro-active approach to the employment-related provisions of the

new *Broadcasting Act*, in co-operation with the CRTC and the CEIC (Canada Employment and Immigration Commission)".

The CAB and the Canadian Cable Television Association (CCTA), together with representatives of unions and educational institutions, are participating in an EIC study on human resources in the broadcasting industry. The CRTC plans to examine closely the industry's conclusions in developing its own employment equity strategy. Despite the efforts made by broadcasters regarding employment equity, the Commission notes that much remains to be done to eliminate systemic barriers to employment and to guarantee the full participation of the designated groups in the broadcasting industry.

The Commission also notes that EIC, in its 1991 Annual Report, reported a "decline in employment opportunities" for the workforce covered under the EEA, but that "nevertheless, there were indications of improvement for each of the designated groups".

For example, according to the data gathered by EIC with respect to the communications sector (which, as noted earlier, includes both the telecommunications and the broadcasting industries), the representation of women was 41.21% in 1990, an increase of approximately 1% over the previous year. However, the hiring of women in full-time positions was concentrated in two occupational groups: "clerical workers" and "middle managers". Conversely, there was a very low proportion of women in non-traditional jobs, notably those requiring a mastery of technical skills (semi-professionals, technicians, skilled crafts and trade workers, etc.) or leadership skills (senior managers).

[§285-13]

The employment profile of aboriginal peoples in the communications sector indicated an under-representation of this group (0.73% in 1990) compared to their representation in the Canadian labour force in 1986 (2.1%). The analysis of full-time hiring of aboriginal women revealed a high occupational concentration in the clerical category.

There was a slight decrease (less than 0.2%) in the hiring of disabled persons on a full-time basis in the communications sector; however, there were modest increases in three of the twelve occupational groups assessed by EIC. The analysis of full-time positions held by disabled women revealed that approximately 80% working in all sectors (banking, transportation, communications and other industry sectors) are employed in the "clerical workers" category.

Hiring of members of visible minorities in the communications sector also increased in five of the twelve occupational groups, although their share of promotions decreased slightly, from 6.1% to 5.96% in 1990. The data concerning women in this group by occupational category also revealed a high degree of occupational concentration.

[§285-14]

In summary, the employment profile of members of the designated groups in the communications sector continues to be characterized by underrepresentation, high occupational concentration in clerical jobs and wage disparity.

According to the Employment Equity Branch at EIC, these findings can be explained by a number of factors. Firstly, employees in all sectors, including communications, were (and continue to be) hard hit by the recession, thereby limiting implementation of some

aspects of employment equity programs, particularly recruitment. This contraction of the Canadian economy has forced many broadcasters to freeze hiring, lay off staff, offer early retirement plans and even shut down stations.

Furthermore, some broadcasters informed EIC that there was a general shortage of qualified candidates, particularly among members of the designated groups. The data collected by EIC from post-secondary educational institutions confirm that the enrolment of members of some designated groups in the disciplines providing communications training remains low. It is unclear, however, whether this low enrolment is simply reflective of a perception among members of such groups that the likelihood of their gaining employment within the industry is limited.

Finally, employers informed EIC that more time is needed before a noticeable change in the composition of their work force can be seen and for employment equity measures to have some effect.

[§285-15]

IV. *IMPLEMENTATION OF AN EMPLOYMENT EQUITY POLICY*

In order to fulfil its new mandate, the Commission set up an internal task force in January 1992 to examine how it should proceed in developing an employment equity policy within the limits of its current resources.

Realizing that the size of the undertaking is a major factor in an employer's ability to change its workforce, the Commission conducted a preliminary analysis of the breakdown of licensees by workforce size in 1990.

This study, based on 1990 Commission statistics, revealed that 113 of a total of 862 *licensees* in the private sector (radio, television, cable, pay TV and specialty services) had 100 or more employees. This small group of licensees accounted for 66% of all employees in the private broadcasting industry. This figure does not include the more than 12,000 employees of the CBC, which also falls under the EEA.

[§285-16]

Public Accountability

The evidence cited above clearly points to the need for more effective and affirmative action on the part of the broadcasting industry in the area of employment equity, and to the need for a practical system of public accountability. The Commission has given considerable thought to the question of how best to promote and foster such action, and how best to assess a licensee's achievements in this area.

In its deliberations, the Commission examined whether the overall process would be assisted by requiring licensees to file their employment equity plans for public examination. It notes, however, that employment equity plans cannot be "static" planning tools. Rather, their strategic effectiveness depends upon an ongoing process of review by employers to ensure that they take into account economic and operational requirements, for example the need to downsize during periods of recession. As with any business plan, the effectiveness of employment equity plans can also depend strongly upon substantial portions of the information remaining confidential, particularly with respect to such economic and operational requirements.

The Commission notes the conclusion reached in this regard by the Special Committee of Parliament which recommended that employment equity plans not be made subject to public review by EIC. In light of the above, and taking into account certain reservations expressed by the Canadian Association of Broadcasters on this matter, the Commission has also decided that broadcasting licensees will not be required to file their employment equity plans.

[§285-17]

By and large, the Commission considers that a sustained and consistent effort devoted to educating and increasing broadcasters' awareness of employment equity matters will be the most productive approach in the medium to long term. Nevertheless, the Commission intends to be thorough and persistent in supervising the implementation by its licensees of the equitable employment practices that will be necessary to bring about meaningful change.

The Commission will therefore review such practices closely with licensees and prospective licensees, in the context of applications for licence renewal, for a new licence, or for authority to transfer ownership or control. In addition, applicants should be prepared to describe qualitative initiatives undertaken or planned, concerning such matters as: hiring goals; training and development measures designed to assist members of the four designated groups; steps to raise management awareness; practices for disseminating information regarding employment opportunities; and adjustments in the workplace to accommodate the specific needs and characteristics of the designated groups (e.g. the provision of flexible work schedules, day-care services and the like).

Recent CRTC Decisions: See Decision CRTC 92-829, December 23, 1992 (Shaw acquisition of Cablecasting) and Decision CRTC 93-37, January 29, 1993 (CHUM acquisition of CKLW and CKLW-FM). Both involved transfers of control and in both cases the CRTC stated that it was not satisfied with the acquiring company's efforts in employment equity matters. The Commission directed the acquiring companies to develop and implement an effective plan of action to ensure that adequate employment equity practices were followed on a corporate wide basis. The CRTC stated that it would review progress at the time of licence renewals.

[§285-18]

The Commission acknowledges, however, that it may be difficult for small undertakings, particularly cable and radio undertakings with fewer than 25 employees, to implement exhaustive employment equity programs. Nevertheless, licensees of such small undertakings are encouraged to consider employment equity issues in their hiring practices.

Applicants having 100 or more employees, and who are thus subject to regulation under the EEA, will also be expected to address the "grades" they have been given by EIC in its annual reports, representing an assessment of their performance with respect to several equity indicators compared to other employers in the communications sector.

In Public Notice CRTC 1992-58 entitled "1992 Policy on Gender Portrayal", released today [NOTE: set out above at §284], the Commission identified various areas of radio and television programming and advertising in which broadcasters should increase their efforts to ensure equitable representation of women and men. Two of these deal directly

with employment equity, namely: 1) on-air staff; and 2) voice-overs in commercials and programs produced by stations and networks. While performance in these areas will also be examined with licensees, the Commission intends to meet with representatives of the designated groups and industry partners to determine which "on-air" job categories should be included in the goals set out in each licensee's employment equity plans.

The Commission also notes that all complaints and interventions from the public regarding the application of subparagraph 3(1)(d)(iii) of the Broadcasting Act will be dealt with according to the usual procedure, regardless of the size of the licensee concerned.

In the event of amendments to the EEA, the Commission will review its employment equity policy to make any necessary changes.

The Commission is confident that the guidelines set out in this notice will encourage the emergence of a labour force representative of all four designated groups, and that this policy will assist in ensuring their equitable treatment.

[§287-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

A Review of the CRTC's Regulations and Policies for Radio

[§287-2]

[Public Notice CRTC 1992-72, November 2, 1992]

[§287-3]

A. Background

In March 1992, in response to a request by the Canadian Association of Broadcasters (CAB), the Minister of Communications established the *Radio Action Plan Consultative Group*. The group's mandate was to report within three months on its recommendations addressing the short-term economic plight of private radio and on its assessment of the longer-term future of the entire radio industry.

The consultative group issued its report on 17 June 1992. The report, entitled *Today's Crisis In The Private Radio Industry and Tomorrow's Opportunities For Canadian Radio*, included a number of recommendations for changes to the Commission's radio regulations and policies.

On the same date, the Commission announced the creation of an internal task force led by its Vice-Chairman of Broadcasting, Fernand Bélisle. The purpose of the task force was to conduct a ninety-day review of the various CRTC regulations, policies and procedures governing radio, taking into account the recommendations of the consultative group, but excluding five matters that were deemed to fall outside the review, since they were already the subject of separate public processes. These matters were:

- **review of religious broadcasting policy**

- **criteria for exempting certain radio operators from the requirement that they hold broadcasting licences**
- **review of the MAPL system used to qualify recordings as "Canadian"**
- **development of a general policy for low-power radio**
- **review of the benefits test used to assess applications for authority to purchase existing broadcasting undertakings**

[NOTE: Each of the foregoing matters was dealt with later in 1993: see in particular, the documents at §297, §156, §157, §158, §290, §299 and §293.]

As part of its review, the task force consulted a number of organizations involved in the radio and music industries. These included the CAB, the Canadian Broadcasting Corporation, The National Campus and Community Radio Association, l'Alliance des radios communautaires du Canada, l'Association des radiodiffuseurs communautaires du Québec, MUSICACTION, l'Association québécoise de l'industrie du disque, du spectacle et de la vidéo, the Canadian Independent Record Production Association, the Canadian Recording Industry Association, La Société professionnelle des auteurs et des compositeurs du Québec, the Society of Composers, Authors and Music Publishers of Canada, and l'Union des artistes.

[§287-4]

This notice describes those recommendations of the task force that have now been adopted and put into place by the Commission pursuant to the review. In general, these changes are those that the Commission and the radio industry have agreed will assist the industry overcome its current problems, without compromising the Commission's fundamental policy objectives. The notice also touches on various areas where no changes were recommended or adopted, either because of concerns regarding the impact of such change on policy objectives or because no changes were sought by the industry. In addition, the notice contains a discussion of certain other areas of proposed policy or regulatory change which, in the Commission's view require further public discussion.

[§287-5]

B. Guiding Principles

The Commission reviewed its regulations, policies and procedures for radio taking into account the policy objectives set out in the *Broadcasting Act*, in particular the following principal goals:

- **Radio programming should be predominantly Canadian**
- **Radio should provide a varied and comprehensive menu of services from which listeners may choose**
- **Radio programming should be of high standard**
- **Radio should continue to provide a strong, vibrant service to local communities.**

In its review, the Commission also took into account several other key considerations. The first of these is the concern regarding the financial difficulties faced by many in the radio industry. As noted in the consultative group's report, private radio experienced an unprecedented after-tax loss of $41 million in 1991. Moreover, the report estimated that almost 60% of private radio stations were unprofitable in that year. The Commission has

attempted to develop a regulatory structure that will allow broadcasters as much flexibility as possible in responding to the financial difficulties they now face, insofar as these difficulties relate to regulation.

The Commission also examined measures to consolidate and streamline its policies and regulations without compromising either the objectives of the *Broadcasting Act* or the principle enunciated in *An FM Policy for the Nineties* (Public Notice CRTC 1990-111), that certain elements of diversity can best be achieved through competition and market forces. The overall strategy has been to develop a simplified, efficient regulatory structure that responds to the requirements of the *Broadcasting Act* without unduly hindering licensees in their operations. [NOTE: For the text of *An FM Policy for the Nineties*, see above at §263.]

[§287-6]

C. New Regulatory and Policy Initiatives

Understandably, despite the broad mandate of the task force, representatives of the radio and music industries who were consulted during the review tended to focus their comments on those areas of policy and regulation that they perceived as having the greatest impact on their respective industries. A discussion of these areas of concern, and the Commission's determination with respect to each, is set out below.

[§287-7]

1. Commercial Radio

The measures described in this section apply principally to private commercial radio stations. Specific measures relating to community and campus radio follow.

[§287-8]

a) Diversity of Voices

To ensure that a diversity of broadcast voices is available in each community, the Commission's ownership policy generally precludes an individual licensee from owning more than one AM and one FM station per market in the same official language. The CAB requested that this restriction be reviewed, arguing that ownership of multiple AM and FM stations in a market could permit stations to operate more efficiently and allow some marginal operations to survive.

As a general rule, the Commission is not convinced that the economic and administrative efficiencies of multiple ownership outweigh the associated disadvantages of reduced diversity of voices, particularly in the area of local news and information programming.

Thus, other than in exceptional circumstances considered on a case-by-case basis, the Commission will maintain its general policy of allowing an individual licensee to own no more than one AM and one FM station in the same official language in a market.

[§287-9]

b) Musical Diversity

(i) Hits

There was general agreement among the parties consulted that the current policy applied to English-language FM stations which restricts the use of hits to less than 50% of all musical selections broadcast each week should not be changed at this time. The Commission agrees that this is an important mechanism for furthering diversity, and that it helps provide exposure for new artists and offers a measure of protection to music-oriented AM stations whose program formats are based on playing "hits".

The Commission will therefore maintain its policy of requiring that the level of hits broadcast by commercial English-language FM stations be less than 50% of all musical selections broadcast each week.

However, in accordance with its policy document entitled *Guidelines for Assessing Applications For Programming Flexibility From Licensees of Radio Stations in Border Markets and Small Markets (Public Notice CRTC 1992-3)*, [NOTE: set out above at §276], the Commission will continue to consider applications for flexibility regarding the level of hits from stations in markets meeting the stated criteria.

[§287-10]

(ii) Formats

During the consultations, no concerns were expressed about the current format structure: Group I (Pop, Rock and Dance), Group II (Country) and Group III (Specialty). The Commission considers that these three formats serve to ensure that a variety of radio services is available to listeners.

The Commission will therefore maintain its current format system for commercial FM stations.

[§287-11]

(iii) Vocal/Instrumental Ratio

As part of the 1990 FM review, the Commission indicated that it would be willing to approve applications by licensees of Easy Listening stations to reduce their level of instrumentals to 35%, provided that they programmed a Canadian content level of at least 20%. Licensees with commitments to an instrumental level of at least 50% were allowed a minimum Canadian content level of 15%.

The Commission's 1990 policy decision to permit a reduction in the level of instrumentals to 35% was taken, in part, in recognition of the limited availability of instrumental selections of a type generally called Easy Listening. The Commission assumed, however, that Easy Listening stations would continue to present a blend of instrumental selections and complementary vocal selections so that a reasonably consistent Easy Listening sound would be maintained throughout the broadcast day.

The Commission is concerned that a few Easy Listening stations with commitments to broadcast instrumental levels of between 35% and 50% have begun to broadcast the vast majority of their instrumental selections in the evening hours, with the result that the musical sound of these stations during the daytime hours is very similar to the sound of full-time rock-oriented stations. The Commission considers that this practice reduces the availability of musical diversity during prime listening periods and is unfair to listeners seeking a station with consistent Easy Listening programming.

[§287-12]

The Commission therefore adopts a policy whereby instrumental selections on Easy Listening stations (those with instrumental levels of 35% or more) must be reasonably distributed throughout the broadcast day and week.

The criteria used to determine reasonable distribution by stations with instrumental levels between 35% and 50% will be the same as those used for Canadian content. They are as follows:

- **at least 25% of musical selections broadcast between 6 a.m. and 7 p.m. Monday through Friday must be instrumentals**
- **the Commission will expect a reasonably even distribution of instrumental selections throughout these dayparts and throughout the broadcast week**
- **the Commission will expect a significant presence of instrumental selections in high audience periods -- these traditionally being the morning and afternoon drive periods.**

The Commission will monitor the distribution of instrumentals by these Easy Listening stations to ensure that these criteria are being observed.

[§287-13]

(iv) Maximum Repeat Factor and Distinct Selections

The CAB asked the Commission to remove its policy limitation respecting the number of times a non-Canadian musical selection may be repeated (currently 18 times per week), as well as its requirement that FM stations ensure that a minimum of 850 distinct musical selections is played each week. These requirements apply to English-language FM stations only. Representatives of the music and recording industries consulted expressed no objection to these changes.

The Commission has considered the CAB's request and is satisfied that this proposal regarding the maximum repeat factor and the number of distinct selections will provide FM stations an extra measure of flexibility in adjusting their programming. The Commission also notes that a distinction in music programming on AM and FM stations will be maintained through the continued limitation on the use of hits by FM stations.

The Commission therefore removes the present policy requirements with respect to the number of repeats and distinct musical selections broadcast by commercial English-language FM stations. Licensees wishing to delete their current Promise of Performance commitments may apply to do so in accordance with the process set out in Section D of this document.

[§287-14]

(v) French-language Vocal Music

During the consultations, no changes were suggested to the policy stipulating that at least 65% of the category 2 vocal music selections broadcast by French-language stations be in the French language. The Commission, however, considers it appropriate that this important requirement, which applies to all French-language stations, should be incorporated in the *Radio Regulations, 1986* (the regulations) rather than applied at the level of the Promise of Performance.

The Commission will therefore move to amend the regulations to include the requirement that stations operating in the French language ensure that at least 65% of category 2 vocal selections broadcast each week be in the French language. The proposed amendment will be the subject of a subsequent public notice.

[NOTE: This was implemented in subsection 2(5) of the *Radio Regulations, 1986*, in SOR/93-517, as noted at §135-35a above.]

Recent CRTC Decisions: For two cases where a breach of the minimum 65% requirement (and logger type violations) resulted in short term licence renewals, re Decision CRTC 93-164, May 20, 1993; and Decision CRTC 93-194, June 8, 1993. *Cf.* Decision CRTC 89-748, September 26, 1989.

[§287-15]

c) Advertising, News, Spoken Word and Local Programming

The amount of advertising broadcast on FM stations is limited to a maximum of 15% of the broadcast week. The Commission notes that, when limits on advertising on AM stations were removed in 1986, the amount of advertising did not increase to unacceptable levels.

The Commission therefore considers that the same flexibility might reasonably be extended to FM stations. The Commission, however, will withhold its final decision on this aspect of its policy pending resolution of the issues discussed below relating to local programming on FM stations.

[NOTE: In Public Notice CRTC 1993-38, below at §292-12, the Commission adopted this proposal and stated that it would no longer impose limits on the level of advertising broadcast by commercial FM stations.]

[§287-16]

Although there are no minimum regulatory requirements for local programming on FM stations, licensees do specify minimum commitments for such programming in their Promises of Performance. Under the current regulations, FM stations must ensure that at least 15% of all programming broadcast each week is spoken word. As part of this 15%, FM stations must also ensure, through their Promises of Performance, that at least three hours of news is broadcast each week.

The CAB requested that FM licensees be allowed to program the levels of news and spoken word that they consider appropriate. The CAB also proposed that there be no limits on the use of network or syndicated programming by radio stations.

The Commission has given careful consideration to the CAB's proposals in this area. The Commission accepts that the level of spoken word and news might vary depending on a station's format, and that additional flexibility in these two areas may thus be warranted. At the same time, the Commission's primary concern is to ensure that radio stations, in their programming, continue to provide an effective local service to their communities. The Commission notes in this regard that the result of the CAB's proposals, unless modified, would effectively be to free FM licensees from their individual commitments to local programming and allow them to broadcast nothing but network or syndicated material.

[§287-17]

In light of the above, the Commission requests comments on the proposal to replace the current regulation with respect to the amount of spoken word programming, and its policy regarding the amount of news, with a single condition of licence requiring that each station (AM and FM) devote at least 1/3 of the broadcast week to local programming. It is proposed that stations not providing this level of local programming would not be permitted to solicit or accept local advertising. This requirement for local programming would not be applied to a station that is providing the only private commercial radio service in a market, since such markets tend to be very small communities capable of supporting the production of only limited amounts of local programming.

The Commission proposes to define local programming as follows:

Local programming includes programming that originates with the station or is produced separately and exclusively for the station. It does not include programming received or rebroadcast from another station either simultaneously or at a later time, or network or syndicated programs that are five minutes or longer in length unless these programs are produced in the local community by arrangement with the station.

In their local programming, stations must include spoken word material of direct and particular relevance to the communities they serve, such as local news, weather and sports, and the promotion of local events and activities.

[§287-18]

[NOTE: The Commission later adopted the above proposals in Public Notice CRTC 1993-38, as set forth below at §292-8.]

[§287-19]

The definitions of a network program and a syndicated program would remain as set out in the Commission's *Glossary of Radio Terms*. These definitions are as follows:

***Network Program* -- A network program is characterized by the presence of at least one of the following criteria:**

i) Reserved Time Agreement -- A program is a network program if the broadcaster, as a condition of the acquisition of the program, is required to broadcast the program at a specified time or within specified time frames. The agreement to schedule the program may be a formal, written agreement or an informal, unwritten agreement. Reserved time may exist whether the programming is distributed live, by tape, or is taped-delayed.

ii) Simultaneous Distribution of Live Programs -- A program is a network program if the program involves the presentation of a live event, such as a sports event or a live concert, which is received and broadcast by the station simultaneously. In cases of tape delay, a program is considered to be live unless the time delay is equal to the duration of the actual program or one hour, whichever is less. A program is not considered to be a network program if the station and the program producer/distributor are owned by the same licensee.

Syndicated program **-- An acquired program is considered to be a syndicated program when it is produced by an entity other than the station but there is no requirement for the broadcaster to schedule it at a specified time or within a specified time frame and when the program does not involve the simultaneous reception and broadcast of a live event.**

[§287-20]

d) Simulcasting

Under the regulations, simulcasting between commonly owned AM and FM stations in the same market is generally limited to the time period between midnight and 6 a.m. The CAB argued that elimination of limits on simulcasting could produce economies that would enable some marginal stations to survive. The Commission, however, is not convinced that increased simulcasting is an effective use of publicly-owned frequencies and wishes to discourage such simulcasting from becoming a common industry practice.

The Commission has therefore decided to retain the current regulation with respect to simulcasting. It will, however, remain willing to consider applications for limited simulcasting on a case-by-case basis.

[§287-21]

e) Canadian Creative and Other Resources

(i) Canadian Content

During the consultations, no concerns were expressed regarding the levels of Canadian music required of AM and FM stations. The Commission notes that the Canadian content levels were raised significantly in 1990 for most FM stations.

The Commission has therefore decided to maintain the required amounts of Canadian music in categories 2 and 3 at the currently-regulated levels.

[§287-22]

(ii) Canadian Talent Development

During the consultations, the issue of Canadian talent development was discussed extensively. The CAB's point of view can be summarized as follows:

- all private stations serving radio markets that, overall, have experienced negative profitability over the preceding two-year period should be exempt from the requirement to make direct contributions
- the list of acceptable Canadian talent development initiatives, in so far as direct dollar expenditures are concerned, should be expanded to encompass initiatives relating to the development of station staff, including salaries for new employees and students, and the costs of personnel training.

Music industry representatives considered that support for Canadian talent development must remain in place if new Canadian talent is to continue to be recorded and supported by FACTOR and MUSICACTION. They acknowledged that allowing broadcasters to decrease dollar commitments in return for additional on-air support of Canadian artists could be valuable, but strongly urged that dollar commitments not be completely replaced.

[§287-23]

The Commission's philosophy behind Canadian talent development initiatives is set out in the 1990 FM policy:

> The Commission is of the view that the Canadian broadcasting system has an important role to play in the development of Canadian artists, primarily through airplay. It believes that it is equally important to ensure that an adequate supply of Canadian material is available to offer Canadian listeners a diversity of high quality Canadian content on each station and in various musical as well as spoken word categories. While broadcasters are not solely responsible for seeking out and developing Canadian creative talent, it is clearly in their interest to take an active role in this process to ensure that there is a sufficiently large pool of Canadian recorded music as well as other types of Canadian creative material available for broadcast.

The Commission reaffirms its commitment to the objectives underlying its policy with respect to Canadian talent development initiatives. There have been increasing questions, however, regarding what types of initiatives best fulfil the objectives of this policy, as well as the extent to which these initiatives should be of a financial nature. Accordingly, the Commission considers it timely to undertake a review of Canadian talent development, in an attempt to simplify the process and to focus efforts on those types of projects that would be the most effective.

[§287-24]

Without limiting discussion on this matter, the Commission therefore requests public comment on the following questions with regard to Canadian talent development:

1. What criteria should be followed in establishing the appropriate level of support for Canadian talent development by each station?
2. What specific initiatives should the Commission accept as valid, effective Canadian talent initiatives? Should the Commission continue to expect both direct cash commitments and indirect on-air commitments?
3. What would be an appropriate balance between direct cash commitments and indirect on-air commitments? Examples of on-air initiatives having little or no direct cost, but which may constitute valuable contributions to the development of Canadian talent, might be commitments to broadcast greater amounts of programming than might normally be expected, in the following areas:
   - music by new uncharted Canadian artists (those whose selections have not entered the Top 40 of a major trade magazine during the past five years). This music would be over and above the 30% Canadian content level required by regulation
   - Canadian category 3 music
   - live or tape-delayed station-produced concerts of local or regional artists. Canadian music in these programs would be over and above the 30% level of Canadian category 2 music required by regulation
   - interview programming featuring local and regional artists and their music. Again, Canadian music in this programming would be over and above the 30% minimum required by regulation

- station-produced programming showcasing spoken word material such as drama, poetry and comedy featuring Canadian artists
- Canadian syndicated or network programs featuring Canadian artists and music, or spoken word programming such as drama, poetry and comedy featuring Canadian artists.

4. Under what circumstances and to what extent should licensees be allowed to vary the balance between direct cash commitments to Canadian talent development and on-air initiatives?
5. What different types or categories of direct cash commitments should be accepted?
6. What indirect on-air initiatives would promote the development of Canadian talent and should be added to the list included under question 3 above?
7. What equivalent dollar value would be appropriate for each on-air initiative? If to replace direct cash commitments, should a dollar value be established for each such initiative? How should that value be established?
8. Should the value of each on-air initiative vary with a station's revenues? The Commission notes in this regard that stations with higher revenues, usually serve larger markets and have more listeners.

[§287-25]

A summary of the average financial commitments of radio stations within various revenue ranges is attached as an appendix to this notice in order to provide a focus for discussion.

In light of the economic situation of radio at this time, the Commission would be prepared, at the time of licence renewal, to consider proposals by the licensees of unprofitable stations that they meet their obligations through indirect on-air initiatives. The profitability of a station will be measured primarily in terms of its operating income which, in turn, will be defined as income calculated after deduction for depreciation and before deduction for interest, amortization of goodwill and income taxes. Such stations will, however, be expected to maintain a strong commitment to Canadian talent development through indirect on-air initiatives.

The Commission reminds licensees that until completion of this review, it will expect them to adhere to their existing Promise of Performance commitments, and will continue to assess proposals for Canadian talent development using the existing guidelines set out in Public Notice CRTC 1990-111 [NOTE: set out above at §263].

[§287-26]

f) Radio Market Criteria

In its *Radio Market Policy* (Public Notice CRTC 1991-74), the Commission stated that it was generally unwilling to introduce new radio stations into unprofitable markets, or markets where a radio station has been in operation for less than a year. The Commission considers that this policy is essential to ensure a healthy radio industry. It notes that none of those consulted by the task force was of the view that this policy should be changed.

The Commission will therefore maintain its radio market policy set out in Public Notice CRTC 1991-74. [NOTE: set out above at §274.]

[§287-27]

g) Licensing Process

The Commission, aware of the need for timely decisions, routinely monitors the length of time taken to process applications and strives to avoid delays. The task force review has identified two areas in which the processing of applications can be greatly expedited or eliminated. These are discussed below.

[§287-28]

(i) Transfers of Control (Shares)

Over the years, broadcasters have frequently stressed that it is essential that the Commission process applications for transfers of ownership or control of undertakings in the shortest time possible. Such transfers generally occur either through the transfer of assets or the transfer of shares.

Transfers of control of undertakings through purchases of assets entail the issuance of new licences. The *Broadcasting Act* requires that applications for new licences be considered at public hearings, with a full opportunity for the public to comment. Those applications for authority to transfer control through the transfer of shares do not necessitate the issuance of new licences.

Until now, the Commission has generally ruled on the latter applications following their gazetting as part of public notices or as items on the agendas of public hearings. The Commission notes that many of these share transfer applications do not raise any issues requiring further discussion and could easily be approved administratively. In the majority of cases, very few interventions are received and these are rarely in opposition. In light of the non-contentious nature of most of these applications and the limited public interventions they generate, the Commission considers that such applications could be processed administratively.

[§287-29]

In general, the Commission will therefore use the administrative process to deal with applications for authority to transfer control of radio undertakings through share transfers in cases where the application:

- **entails no unresolved areas of concern;**
- **includes no matters in need of further discussion; and**
- **involves a purchase price per radio station or network of under $7 million**

In the case of each such transfer of control, the Commission will inform the public of its administrative approval by issuing a public notice.

[§287-30]

(ii) Applications To Change Antenna Site and Studio Location

Currently, the Commission routinely approves most applications by radio stations to change their studio location or antenna site. The Commission is no longer convinced that prior approval for a change in studio location within the authorized service area should be necessary in most instances; in those cases where a concern exists that a change in studio location could impinge upon a licensee's ability to provide programming of

particular relevance to the community it has been licensed to serve, the Commission will require, by condition of licence, that studios be maintained in specific communities.

Similarly, in the Commission's view, there is little or no purpose served by requiring licensees to submit applications to change transmitter site. Any concerns arising from such an amendment relate solely to the changes it may create in the size of the area covered by the station's signal; these concerns are, and will continue to be addressed, by the Commission through its consideration of applications to change technical contours. In cases where the proposed changes in technical contours are minor in nature and raise no concerns, the Commission will generally be prepared to process such applications administratively.

[§287-31]

In general, the Commission will therefore be prepared to eliminate the requirement for approval of changes to antenna sites and studio locations. Licensees wishing to take advantage of this change may apply using the procedure outlined in Section D of this document. Consideration will be given to amending other licences at licence renewal time, upon application.

The Commission reminds licensees that they must still obtain the prior approval of the Department of Communications for amendments to their Broadcasting Certificates. This will ensure that the protection criteria regarding interference to other stations are respected and, in the case of FM stations, that there is no unacceptable interference with aeronautical NAV/COM services.

[§287-32]

2. *Community Radio*

During the consultations, representatives of community radio raised, as a primary concern, the 25% spoken word target that the Commission has set for Type B community stations. While agreeing that community stations should do more spoken word than commercial stations, they noted that the 25% level is difficult to achieve, given that most programming broadcast in the evening hours is produced by volunteers. The Commission considers that requiring a 25% level of spoken word between 6 a.m. and 6 p.m. only, would respond to the concerns of community broadcasters, while continuing to ensure that these stations broadcast an adequate level of spoken word programming.

The Commission therefore amends its community radio policy [NOTE: set out above at §281-14] **by stipulating that, henceforth, the 25% target for spoken word programming will apply to the time periods of 6 a.m. to 6 p.m. only. The Commission notes that very few licence amendments will be necessary to implement this change.**

[§287-33]

3. *Campus Radio*

Representatives of campus stations raised two areas of concern during the consultations, these being the advertising restrictions currently applied by the Commission to campus radio, and the role prescribed for campus/community stations in the Commission's policy. These matters are discussed below.

[§287-34]

a) Advertising Restrictions

Currently, campus stations may broadcast up to 4 minutes per hour of restricted advertising. The definition of restricted advertising refers to simple statements of sponsorship and generally restricts such announcements to informational material about program sponsors -- no comparative or competitive references may be included.

Campus station representatives noted that the average campus/community station obtains only $23,000 in advertising revenues per year and that the sector is experiencing financial difficulties. The issue is particularly critical at this time because some interest has been expressed in the placement of limited amounts of national advertising on campus stations for events such as university sports. The current restrictions make this virtually impossible.

On the other hand, the Commission has a long-standing concern that the introduction of extensive conventional advertising on campus stations could cause them to depart from the alternative programming they now broadcast and move toward programming aimed at attracting larger audiences. There was also a concern that student governments and organizations might cut back on funding, thus obliging campus stations to sell more advertising. In light of these concerns, the Commission considers that a cautious approach continues to be warranted.

At the same time, it believes that some additional flexibility may be possible.

[§287-35]

The Commission therefore calls for public comment on the advisability of revising its advertising policy for campus stations as follows:

Campus stations will be permitted to broadcast a maximum of 504 minutes of advertising per week with a maximum of four minutes in any one hour.

A maximum of 126 minutes of advertising per week may be broadcast without any restrictions on the content of the messages beyond those established in the *Broadcasting Act*, radio regulations, conditions of licence and other applicable legislation.

The remainder of advertising broadcast must conform to the following definition: The Commission will permit simple statements of sponsorship that identify the sponsors of a program or of the station. Such statements may incorporate the names of the sponsor, the business address, hours of business and a brief general description of the types of services or products that the sponsor provides, including the price, name and brand name of the product. Such statements must not contain references to convenience, durability or desirability or contain other comparative or competitive references.

Campus stations will be expected to identify on their program logs which advertising messages have been exempted from restrictions on content, and which meet the definition of restricted advertising set out above.

[NOTE: The Commission later adopted the above proposal in Public Notice CRTC 1993-38, set out below at §292-16.]

[§287-36]

b) Role of Campus/Community Stations

Representatives of campus/community stations requested that the mandate for campus/community stations set out in the Commission's policy be amended to mention specifically "programming serving the needs of socially, culturally, politically and economically disadvantaged groups within the community" as a type of alternative programming that such stations may provide. They argued that this change would serve to recognize the cultural contribution campus stations make. The Commission is aware that many campus/community stations provide such programming and agrees that it represents a valuable component in the programming schedules of such stations.

[§287-37]

Accordingly, the statement concerning the role of campus/community stations, as set out on page 28 in the *Policy for Community and Campus Radio* (Public Notice CRTC 1992-38) [NOTE: set out above at §281-33] **is hereby amended to read as follows:**

Campus/community: The primary role of these stations is to provide alternative programming such as music, especially Canadian music, not generally heard on commercial stations (including traditional and special-interest music as well as styles of popular music seldom broadcast), in-depth spoken word programming, programming targeted to specialized groups within the community, *and programming serving the needs of socially, culturally, politically and economically disadvantaged groups within the community*. Although students play an important role in programming, campus/community stations may also provide access to members of the community at large. Such stations also provide training in radio production to volunteers.

[§287-38]

D. Implementation of Changes to Conditions of Licence and Promises of Performance

A number of changes set out in this document require applications to amend Promises of Performance or conditions of licence. These include deletion of the requirement to apply for changes to transmitter site or studio location, as well as elimination of requirements for commercial FM stations with respect to maximum repeat factor and distinct musical selections. The Commission recognizes that some stations may wish to take advantage of these changes as soon as possible.

To facilitate this process, the Commission has attached to this notice a form indicating the various types of changes set out above. Licensees wishing to apply to amend their licences to take advantage of the changes are asked to complete the attached form and return it to the Commission by ***30 November 1992***.

This will allow the Commission to gazette all completed applications together and thus expedite the process of dealing with the amendments.

[§287-39]

E. Call For Comments

[NOTE: The deadline for comments, as later extended, was March 31, 1993.]

[§287-40]

Appendix

EXAMINATION OF AVERAGE CANADIAN TALENT DEVELOPMENT CONTRIBUTIONS BASED ON TOTAL REVENUES

[NOTE: This appendix is omitted.]

[§287-41]

APPLICATION FOR AMENDMENTS CONCERNING A (RADIO) PROGRAMMING UNDERTAKING

[NOTE: This appendix is omitted.]

[§288-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Proposed Amendments to the Cable Television Regulations, 1986

[§288-2]

[Public Notice CRTC 1992-86, December 21, 1992.]

[§288-3]

In Public Notice CRTC 1991-59 dated 5 June 1991 the Commission announced its new community channel policy, to replace that which had been in place for the previous 15 years. [NOTE: See above at §269.] The new policy was the result of a review process initiated in 1990, and reflects changes in a number of key areas, including financial support, sponsorship advertising, and content, all designed to strengthen the mechanisms by which the community channel serves the objectives of the Broadcasting Act, and to ensure that community programming remains a vital and important component of the broadcasting system.

The Commission wishes to reiterate that citizen participation remains the cornerstone of the community channel. It therefore requires that access to the community channel be free and open and insists that access should not, under any circumstances, depend on the availability of a sponsor, or other forms of financial support.

This notice sets out the Commission's proposals for amendments to certain sections and subsections of the *Cable Television Regulations, 1986* (the regulations), such changes being necessary in order to accommodate and give effect to the new policy governing the operation of the community channel.

[§288-4]

ADVERTISING

In 1986, the Commission introduced a number of measures relating to advertising on the community channel which allowed limited forms of sponsorship and contra

advertising. These measures were clarified in Circular No. 348, *Sponsorship Messages on the Community Channel* dated 27 July 1988. [NOTE: set out above at §241.]

On a number of occasions the Commission has expressed its concerns with regard to the influence of commercial activities on programming orientation, and on licensees' community channel access policies. The Commission has been concerned that cable licensees, who already have a reliable revenue base, not be permitted to draw advertising revenues in competition with conventional broadcasters.

As stated in Public Notice CRTC 1991-59, the Commission will retain its current restrictions on sponsorship and contra advertising. However, the Commission does propose to amend the regulations to permit the mention of the address and telephone number of sponsors in contra and sponsorship messages.

The Commission reiterates its expectation that all revenues generated from advertising activities be reinvested in the operation of the community channel.

[§288-5]

To ensure that licensees are in compliance with the community channel policy, particularly with respect to advertising, citizen access and the overall orientation of the community channel, the Commission proposes to amend the regulations to require licensees to retain an audiovisual (as opposed to audio or audiovisual) recording of all their programming for four weeks from the date of distribution, and to require Class 1 and Class 2 licensees with 2,000 or more subscribers to submit such an audiovisual recording to the Commission upon request. In this regard, the Commission notes that cable licensees generally supported the retention of an audiovisual recording of all their programming for a 28-day period.

In addition, the Commission proposes to amend subsection 14(1) of the regulations to include requirements for the logging of the time of commencement of each commercial message, its duration and the name of the sponsor, as well as the time of commencement of each alphanumeric service and its duration. This will allow the Commission to monitor the time allocated to sponsorship activity and local bulletin board messages.

In a subsequent section of this notice, the Commission outlines specific amendments for cable systems with less than 2,000 subscribers.

[§288-6]

SHARING THE COMMUNITY CHANNEL WITH COMPLEMENTARY PROGRAMMING

Currently, Class 2 licensees are permitted by the regulations to distribute complementary programming on the community channel (as described in Public Notice CRTC 1985-151). [NOTE: set out above at §216.] The distribution of such programs is not currently authorized on Class 1 undertakings as they fall outside of the existing definition of community programming. In the Commission's view, the exhibition of a limited amount of government and public service information material, as well as the carriage of the Question Period portions of provincial or territorial proceedings, would be in the public interest.

The Commission therefore proposes to amend the regulations to authorize the distribution, by Class 1 licensees, of government and public service information material,

as well as the provincial or territorial Question Period proceedings on the community channel.

Licensees will be expected to adhere to the principle that local community programs be given scheduling priority. In keeping with the Commission's policy of free and open access, licensees must not require financial payment in exchange for the distribution of program material.

[§288-7]

SMALL CLASS 2 SYSTEMS

In keeping with its objective of reducing the regulatory burden on small undertakings, the Commission proposes to amend the regulations to remove the requirement that licensees of Class 2 systems with fewer than 2,000 subscribers provide community programming on the community channel. In such instances, these licensees will be expected to provide, as a minimum, a local alphanumeric service, which could include both classified advertising and public announcements.

As an incentive to encourage these licensees to maintain a degree of local community programming service, the Commission proposes to amend the regulations to permit Class 2 licensees with fewer than 2,000 subscribers, and Part III licensees in unserved communities, to air up to 12 minutes of commercial messages during each clock hour of community programming.

The Commission proposes to further amend the regulations to define an "unserved community" as one having no local AM or FM radio station or television station.

The Commission notes that, while the regulations define AM and FM radio stations as being only those that originate programming (as distinct from those that rebroadcast programming), the same distinction is not made in the case of television stations. Accordingly, in communities that would otherwise fall within the proposed definition of "unserved", but which are served by the signal of a local television station that rebroadcasts programming, cable licensees will be required to apply for permission to distribute local advertising on the community channel. The Commission hereby advises that it will, as a general rule, be favourably disposed to approve such applications.

[§288-8]

OTHER MATTERS

For the purpose of uniformity, the Commission intends to amend the regulations to include the four general provisions respecting "programming content" that are found in the Commission's radio, television, pay television and specialty services regulations.

[NOTE: Comments were due February 2, 1993. The text of the proposed amendments to the regulations is set out in italic type in the consolidation of the *Cable Television Regulations, 1986*, above at §133.]

[§289-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Increased Flexibility with Regard to Canadian Program Expenditures by Canadian Television Stations

[§289-2]

[Public Notice CRTC 1992-89, December 23, 1992. See also *Overview: Local Television for the 1990's*, Public Notice CRTC 1989-27, April 6, 1989 at §256-13 above, and *The Reporting of Canadian Programming Expenditures*, Public Notice 1993-93, June 22, 1993, at §300 below.]

[§289-3]

In Public Notice CRTC 1992-28 dated 8 April 1992, the Commission announced revisions to the formula regarding Canadian program expenditures by private, English-language television stations. [NOTE: see above at §279.]

The formula requires an annual minimum level of Canadian program expenditure, based on each station's financial performance as measured by its total advertising revenues in previous years.

The revisions to the formula were introduced by the Commission following its consideration of various suggestions for modifications put forward by Global Communications Limited (Global) and by the Canadian Association of Broadcasters at the public hearing of Global's application for the licence renewal of CIII-TV in November 1991 (see Decision CRTC 92-220).

The revisions gave licensees the flexibility to underspend with respect to Canadian programming in the 1991/92 broadcast year, and in any subsequent year of the licence term other than the final year, by an amount not greater than 5% of the minimum amount required to be spent on the basis of the formula for that year. However, the amount by which a licensee may underspend in any given year must be added to the amount required to be spent, by condition of licence or by expectation, in the following year.

As of the 1991/92 broadcast year, licensees who overspend were permitted to credit such over-expenditures in future years of the current licence term.

[§289-4]

Following the issuance of Public Notice CRTC 1992-28, the Commission received a request from Sunwapta Broadcasting Ltd., licensee of CFRN-TV Edmonton, that it be permitted to credit an overexpenditure occurring before the 1991/92 broadcast year towards its Canadian programming expenditure requirements in a later year or years of its licence term. In Decision CRTC 92-828 issued today, the Commission has approved a similar request by CFCF Inc., licensee of CFCF-TV Montréal, permitting it to claim retroactive credit with respect to an overexpenditure occurring in the 1989/90 broadcast

year. The Commission approved a further request by CFCF Inc., allowing the licensee to make retroactive use of the 5% flexibility provision with respect to underspending that occurred prior to the 1991/92 broadcast year.

[§289-5]

The Commission is convinced that these requests for additional flexibility do not prejudice attainment of the policy objectives underlying the Canadian programming expenditure formula. It will therefore permit all licensees whose Canadian programming expenditures are governed by conditions of licence or by expectation to credit an overexpenditure occurring before the 1991/92 broadcast year towards their Canadian programming expenditure requirements in a subsequent year or years of the same licence term.

Similarly, with respect to underspending on Canadian programming in any given year, the Commission will permit licensees to apply the 5% flexibility provision retroactively to the beginning of their current licence terms. Specifically, in year one and in any subsequent year of the licence term other than the final year, the Commission will permit a licensee to underspend on Canadian programming by an amount representing no more than 5% of the minimum amount otherwise established for that year by condition of licence or expectation. If a licensee utilizes this flexibility to underspend in a given year, the amount by which that licensee has underspent must be added to the amount required to be spent, by condition of licence or expectation, in the following year.

[§289-6]

In Decision CRTC 92-220 granting Global the renewal of its licence for CIII-TV, the Commission imposed a condition of licence regarding Canadian programming expenditures that permitted Global to base its expenditures on the two-year average change in advertising revenues, rather than the three-year averaging mechanism established in the conditions of licence applied to most other licensees. This measure was intended to enable the licensee to respond more quickly to declines in revenues.

In Decision CRTC 92-828 of today's date, the Commission has offered CFCF Inc. the choice of either operating in accordance with the current condition of licence concerning Canadian programming expenditures which encompasses a three-year averaging mechanism, or of operating in accordance with a new condition of licence proposed by the Commission which would require it to meet its annual requirements for Canadian programming, calculated on the basis of year-to-year changes in advertising revenues. The Commission took into consideration the financial difficulties facing the licensee, in particular the sudden and precipitous drop of more than 10% in advertising revenues experienced by CFCF Inc. in the 1990/91 broadcast year.

[§289-7]

The Commission hereby announces that the option of calculating the annual required level of Canadian program expenditures on the basis of the year-to-year change in advertising revenues may, upon application prior to the expiry of the current term, be extended to other licensees in circumstances similar to those of CFCF Inc. (specifically, those licensees experiencing a 10% or greater drop in advertising revenues in a single

year). Alternatively, such licensees may apply for licence amendments authorizing them to calculate their Canadian programming expenditures on the basis of the two-year average change in advertising revenues.

The Commission emphasizes, however, that, whichever method of calculation is adopted, it must be applied throughout the entire licence term.

[§289-8]

As noted in Public Notice CRTC 1992-28, licensees are still required to spend on Canadian programming, over the full licence term, the sum of the minimum amounts required for each year of the licence term.

The Commission is satisfied that this approach offers licensees flexibility without compromising achievement of the objectives of the Canadian program expenditure formula.

[§290-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Changes to the Content Requirements for Canadian Music on Radio

[§290-2]

[Public Notice CRTC 1993-5, January 29, 1993.]

[§290-3]

In Public Notice CRTC 1992-93 dated 30 April 1992, the Commission announced that it was undertaking a review of the content requirements for Canadian music on radio. This review followed an invitation extended by the Commission in the Fall of 1991 to representatives of the principal sectors of the Canadian music industry for their views as to the continuing usefulness of the Canadian content regulation for radio, and for their suggestions as to possible changes, including changes to the MAPL system. MAPL is the term used by the industry in reference to the Commission's regulatory criteria for qualifying musical selections as being Canadian. Currently, with certain exceptions, selections qualify as Canadian content provided they meet two of the following four conditions:

- **Music** - the music must be composed by a Canadian.
- **Artist** - the music or lyrics must be principally performed by a Canadian.
- **Production** - the musical selection consists of a live performance that is,
  (i) recorded wholly in Canada, or
  (ii) performed wholly in Canada and broadcast live in Canada.
- **Lyrics** - the lyrics must be written by a Canadian.

[NOTE: For the current text of the regulations, see subsection 2.2(2) of the *Radio Regulations, 1986*, above at §135-33.]

[§290-4]

In response to the Commission's invitation a task force was formed, consisting of representatives of the Canadian Country Music Association (CCMA), the Canadian Independent Record Production Association (CIRPA), the Canadian Music Publishers Association (CMPA), the Canadian Recording Industry Association (CRIA), the Canadian performing rights organization (SOCAN), and the Songwriters' Association of Canada. This task force, representing the views of the Anglophone sector of the industry, reported on 14 January 1992 that:

1. The existing flexibility and simplicity of the MAPL system should be retained. It has delivered specific, clear benefits to all participants in the Canadian music and broadcast industries.
2. In order to recognize the increased amount of collaboration between songwriters in the creation of songs, the existing regulation should be modified so that where a song is co-written by a Canadian and a non-Canadian, [and] where the Canadian songwriter is credited with at least fifty percent of the composer's share respecting the music and at least fifty percent of the writer's share respecting the lyrics, that song should qualify for one of the two required 'points'.

Three Francophone music organizations -- the Association québecoise de l'industrie du disque, du spectacle et de la vidéo (ADISQ), the Société professionelle des auteurs, compositeurs québecois (SPACQ), and the Union des Artistes (UDA) -- also agreed in principle with the recommendations of the task force.

[§290-5]

In Public Notice CRTC 1992-32, the Commission submitted for public comment the task force proposal, together with other proposals for changes to the Canadian content regulation it had received over time. In response, the Commission received 62 submissions.

In its review, the Commission set itself the following goals: to keep the Canadian content regulation as simple and flexible as possible, to keep the MAPL system as verifiable and self-regulating as possible, and to maintain an appropriate balance between the interests of the affected sectors.

A large number of the submissions expressed support for the task force proposal. In light of these submissions, the Commission has determined that the benefits of the task force proposal, that a "joint credit" be granted in respect of collaborations between a Canadian composer-lyricist, outweigh any disadvantages. The Commission will announce a proposed amendment to the *Radio Regulations, 1986* (the regulations) accordingly, in a future public notice.

[NOTE: The amendment was eventually enacted in SOR/93-517, in effect November 4, 1993. See above at §135-33 for the relevant text. As noted in Public Notice CRTC 1993-173, December 8, 1993, the new definition "with respect to Canadian music allows one "point" where, in a case involving collaboration between a Canadian composer and lyricist and one who is non-Canadian, the Canadian is credited, according to a recognized performing rights society, with at least 50% of the contribution to the combined composer and lyricist collaboration. (This amendment differs slightly from that originally proposed by the Commission which would have

allowed the point for such collaboration only in a case where the Canadian composer and lyricist is credited with a contribution of at least 50% in respect of each of the music and the lyrics.)]

This amendment would affect only those musical selections that were recorded or performed live on or after 1 September 1991.

[§290-6]

Some submissions proposed that a selection having a performing artist who is Canadian be given a double credit under the regulation, while others suggested that such a selection should automatically qualify as Canadian. Still others argued that it should be mandatory that the performing artist of a selection be Canadian in order for that selection to qualify. Some argued that the role of the composer and lyricist should be given greater emphasis. Others suggested that the definition of a "Canadian" be amended to require only Canadian residency rather than citizenship or immigrant status. Still others proposed that new elements, such as copyright ownership, publishing company, record company, or producer be factored into the accreditation system.

Proposals were also received that addressed the overall number of qualifying elements, and the number of these elements that should be met to qualify a selection as Canadian.

With respect to the level of Canadian content, some argued for an increase in the current 30% level of category 2 music, while one advocated a reduction.

Some preferred retention of the status quo, while others advocated the abolition of the Canadian content regulation altogether. Still others proposed the creation of a more complex system of points or credits instead of the present system based on a percentage of musical selections.

Several submissions referred specifically to category 3 music: some proposed that the Canadian content requirement be raised to 30% from the present 10%, and argued that the composer and lyricist functions be given a double credit. On the other hand, one submission proposed that, in the case of recordings of classical music, a double credit be given to the performing artist function, and suggested, as an alternative, that in the case of category 3 selections, the Commission allow a half or full credit for performing artists.

[§290-7]

One submission proposed that the Commission implement a sliding-scale requirement for Canadian content based on the era of the music played, in consideration of the fact that there is little recorded Canadian music available from the years before 1956. While the Commission is sympathetic to this argument insofar as it related to music in category 2, it has decided not to amend the regulations in this regard. Instead, it will be prepared to give favourable consideration to applications by the licensees of networks or stations for amendments to their conditions of licence where:

- in those periods of category 2 music consisting *exclusively* of music composed before 1956, the Canadian content level is not less than 2% on a weekly basis;
- in those periods of category 2 music consisting of 90% or more, but not exclusively, of music composed before 1956, the Canadian content level is not less than 10% on a weekly basis.

[§290-8]

Network operators should be prepared to respond to Commission requests for information concerning their Canadian content and the date of composition of the selections broadcast.

In the case of stations wishing to affiliate with networks whose music services match either of the above criteria, the licensees of such stations may apply to the Commission for an amendment to their conditions of licence to relieve them of their current Canadian content obligations for any period during which they carry the network programming; or they may choose to make up the shortfall in their Canadian content during their other hours of broadcast. In all other respects the affiliated stations will continue in law to be responsible for the content of the network programming. When affiliated stations are requested by the Commission to submit the information concerning their broadcasting of Canadian music, they should identify the period of pre-1956 network or station-originated programming. The onus rests with licensees to ascertain the date of composition of the selections they broadcast if they wish to take advantage of the lower Canadian content requirements.

The Commission has carefully considered all of the other suggestions contained in the submissions and has concluded that the interests of the Canadian music industry, the Canadian broadcasting system, and the Canadian public can best be served by not making any changes other than those specified above.

The Commission, however, proposes to add to the regulations a provision that was included in earlier forms of the regulation, but was deleted from the *Radio Regulations, 1986*. This provision stipulates that, once a musical selection has legitimately qualified as Canadian, it will continue to qualify thereafter. This is of particular importance for Canadian musical selections that qualified before 18 January 1972 on the basis of one criterion.

The Commission will invite comments from the public once the text of the proposed regulatory changes has been vetted by the Privy Council Office.

[NOTE: The amendment was eventually enacted in SOR/93-517, in effect November 4, 1993. See above at §135-33 for the relevant text.]

[§292-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Policies for Local Programming on Commercial Radio Stations and Advertising on Campus Stations

[§292-2]

[Public Notice CRTC 1993-38, April 19, 1993.]

[§292-3]

In Public Notice CRTC 1992-72 [NOTE: set out above at §287], the Commission called for comments on four items flowing from its 90-day review of regulations, policies and procedures for radio.

These items were:

- a proposal to delete the present requirements relating to levels of news and spoken word on FM stations;
- a proposal to introduce, in place of the above-noted requirements, a new local programming requirement for licensees of commercial radio stations, both AM and FM, should they intend to solicit or accept local advertising;
- a proposal to allow campus radio stations to broadcast limited amounts of conventional advertising; and
- a general review of CRTC policies with respect to Canadian talent development.

The Commission also indicated that limits on the amount of advertising broadcast by commercial FM station should be eliminated, but that it would withhold its final determination on the matter until issues related to the development of a local programming policy were resolved.

Subsequently, in Public Notice CRTC 1993-16, an extension was granted to 14 May 1993 for comments related to Canadian talent development. Canadian talent development will therefore be addressed in a later public notice.

[§292-4]

LOCAL PROGRAMMING AND SPOKEN WORD

The Commission's Proposal

In Public Notice CRTC 1992-72, the Commission called for comments on a proposal to delete the current regulation requiring commercial FM stations to devote at least 15% of programming to spoken word and the policy requirement that commercial FM stations must broadcast at least three hours of news per week. The Commission proposed to replace these requirement with a single condition of licence, applicable to all commercial AM and FM licensees serving competitive markets and who propose to solicit or accept local advertising, requiring each to devote at least one-third of the broadcast week to local programming.

A definition of local programming was also proposed for comment.

[§292-5]

Comments Received

[NOTE: A summary of comments is omitted.]

[§292-6]

The Commission's Decision

During the Commission's 90-day review of its regulations and policies for radio, the broadcasting industry requested that the Commission no longer regulate the level of spoken word and news broadcast by FM stations. The industry considered that such flexibility would allow stations to provide a mix of music and spoken word programming that would be appropriate for their individual formats. The Commission acknowledges

the concerns expressed by certain parties about deleting these requirements; it notes, however, that many AM stations, although not regulated in these areas, program higher levels of spoken word and news than the minimum levels required of FM stations. This can only be due to the fact that licensees find these higher levels to be appropriate for the formats they have chosen.

With respect to local programming, the Commission is of the view that radio stations must continue to provide programming that addresses the needs of the communities they serve. Subparagraph 3(1)(*i*)(ii) of the *Broadcasting Act* states that programming provided by the Canadian broadcasting system should "be drawn from *local*, regional, national and international sources" emphasis added). The radio industry has historically been the sector of the broadcasting system that has provided the lion's share of programming addressing local issues and concerns. As well, in many communities not served by local daily newspapers or television stations, local radio stations are the only daily source of local news, information, and emergency messages.

FM stations already make minimum commitments with respect to "Station Production" in their Promises of Performance. Station production is generally considered by the Commission to be anything other than network or syndicated programming -- a definition that is virtually the same as that proposed for local programming. Most, if not all, FM stations in competitive markets currently broadcast levels of local programming well above the one-third level, and would therefore have no adjustment to make under the proposed policy.

[§292-7]

In the Commission's view, AM stations must continue to provide programming of relevance to the communities they serve. However, it acknowledges concerns expressed in the comments received about the financial difficulties faced by many AM licensees and the opposition expressed regarding any requirement for a minimum level of local programming on AM stations. The Commission also notes the opportunities represented by new radio networks to supplement local programming periods while still allowing the insertion of information for local communities. While encouraging local programming on AM stations, **the Commission has therefore decided not to tie these stations to any minimum level.**

[§292-8]

In light of the above, the Commission adopts the following policies with respect to news, spoken word and local programming on commercial FM and AM stations.

- **All policy requirements respecting levels on news and spoken word are eliminated for commercial FM stations. Licensees of such stations may now apply to delete their commitments in these areas from their Promises of Performance.**
- **Commercial FM stations in markets served by more than one private commercial station must devote at least one-third of the broadcast week to Local Programming. [NOTE: for Local Programming Policy for FM Radio - Definition of a Single-Station Market, Public Notice CRTC 1993-121, August 17, 1993, the CRTC defined a "single-station market" and set out all FM stations currently falling within that definition and then excluded from this policy.]**

Radio licensees in competitive markets wishing to reduce their level of local programming below the one-third level will generally be expected to assume a condition of licence stipulating that they not solicit or accept local advertising. Applications for exceptions to this policy will be considered on a case-by-case basis. Commitments for "Station Production" in current Promises of Performance will be taken as commitments for Local Programming for purposes of this policy.

- **At the time of licence renewal, AM licensees will be asked to indicate the level of local programming they will provide and how they will ensure that spoken word of direct and particular relevance to the communities they serve is included in their programming. The Commission will retain the option of imposing on AM licensees conditions of licence with respect to local programming on a case-by-case basis, where necessary.**

[§292-9]

In a separate notice issued today (Public Notice CRTC 1993-39), the Commission has published a proposed amendment to the *Radio Regulations, 1986* that would delete the requirement for a minimum level of spoken word. [NOTE: This amendment is incorporated by SOR/93-358, effective June 21, 1993.]

The Commission, in a later notice, intends to call for public comment on a proposed amendment to the existing logging requirements, the effect of which would be to provide licensees the opportunity to indicate periods of local programming on their logs. [NOTE: This amendment was enacted in SOR/93-517, in effect November 4, 1993. For the text, see above at §135-75.]

[§292-10]

DEFINITION OF LOCAL PROGRAMMING

One broadcaster raised concerns regarding the definition of local programming proposed by the Commission. It considered that the definition should make it clear that the programming originated by stations that are heads of networks is counted a local programming for the originating station even though the programming is also fed to the network. It also suggested that the definition be enlarged to take into account interactive programs (such as open line programs), regional contributions to network programming, and efforts to regionalize programming.

The Commission agrees that the definition of local programming should permit originating stations to claim as local, programming they produce and feed to a network. It considers, however, that further changes to the definition to include interactive programs would make the definition too complex and difficult to monitor. It also considers that its decision not to apply a local programming requirement to AM stations should alleviate most concerns in this regard.

[§292-11]

Accordingly, for purposes of this policy, local programming is defined as follows: Local programming includes programming that originates with the station or is produced separately and exclusively for the station. It does not include

programming received from another station and rebroadcast either simultaneously or at a later time; nor does it include network or syndicated programming that is five minutes or longer unless it is produced either by the station or in the local community by arrangement with the station.

In their local programming, licensees must include spoken word material of direct and particular relevance to the community serviced, such as local news, weather and sports, and the promotion of local events and activities.

For the purpose of clarification, a list of examples of programs that would qualify as local programming under this definition as well as a list of others that would not so qualify are included as *Appendix A*.

[§292-12]

ADVERTISING LEVELS ON COMMERCIAL STATIONS

All broadcasters who submitted comments on the matter of advertising levels supported the removal of limits on the amount of advertising on FM stations. According to these parties, competitive forces and the tendency of audiences to tune away from stations broadcasting too much advertising would ensure that the number of commercials broadcast remains at acceptable levels. However, two individuals opposed any move that could lead to a possible increase in the amount of advertising broadcast.

The Commission notes that, when the limits on advertising on AM stations were removed in 1985, the amount of advertising did not increase to unacceptable levels. the Commission considers that competition within the radio industry, audience sensitivity to the amount of advertising and the reluctance of advertisers to have their message lost in a cluster of other commercial messages, will combine to limit the amount of advertising aired on FM stations as well. It therefore views the level of advertising broadcast as being another area in which flexibility can be extended to commercial FM stations.

The Commission will therefore no longer impose limits on the level of advertising broadcast by commercial FM stations. Licensees of such stations may now apply to delete their commitments in this area from their Promises of Performance.

[§292-13]

ADVERTISING ON CAMPUS RADIO

The Commission's Proposal

In Public Notice CRTC 1992-72, the Commission requested comments regarding its proposal to amend the policy on advertising for campus radio stations to allow them to broadcast up to 504 minutes of advertising per broadcast week, with a maximum of four minutes in any one hour. Of the weekly total of 504 minutes, a maximum of 126 minutes of conventional advertising would be permitted. All remaining advertising would have to conform to the definition of restricted advertising.

[§292-14]

Comments Received

[NOTE: A summary of comments is omitted.]

[§292-15]

The Commission's Decision

The comments received indicate clearly that support for the proposal is not unanimous. The Commission appreciates the position of the CAB, which is concerned that a more flexible policy would diminish commercial station revenues and adversely affect the financial health of the broadcasting industry as a whole. The Commission is also aware of the unique situation in markets where campus radio stations co-exist with community stations, and is thus sensitive to the concerns of ARCQ and MCQ regarding the proposed policy amendment. However, following an analysis of all relevant factors, the Commission considers that NCRA's requests are reasonable and justifiable. It is confident that the amendment will enable campus stations to somewhat increase their revenues without having a negative impact on commercial radio revenues. The Commission does not accept the suggestion of ARCQ and MCQ that access to conventional advertising be granted only to campus stations not in competition with community stations. It should be borne in mind that community radio stations have significant advantages over campus stations with respect to programming and advertising because the regulations governing their operations are more flexible than those applicable to campus stations. Therefore, community stations should be able to withstand any impact this policy amendment may have on their advertising revenues.

[§292-16]

Accordingly, the Commission adopts the proposed amendment to the policy on advertising for campus radio stations as follows:

- **Campus stations will be permitted to broadcast up to 504 minutes of advertising per broadcast week, with a maximum of four minutes in any one hour.**
- **Of the weekly total of 504 minutes, a maximum of 126 minutes of conventional advertising will be permitted.**
- **All other advertising broadcast must conform to the following definitions:**

  The Commission will permit simple statements of sponsorship that identify the sponsors of a program or of the station. Such statements may incorporate the names of the sponsor, the business address, hours of business and a brief general description of services or products that the sponsor provides, including price, name and brand name of the product. Such statements must not contain references to convenience, durability and desirability or contain other comparative or competitive references.

  Campus stations will be expected to identify in their program logs which advertising messages are exempted from the content restrictions and which conform to the definition of restricted advertising set out above.

Licensees of campus stations may now apply for amendments to their conditions of licence respecting advertising.

[§292-17]

OTHER MATTERS

Easy Listening Stations

The CAB has expressed concern to the Commission about the policy set out in Public Notice CRTC 1992-72 stipulating that instrumental selections on easy listening stations (those with commitments to broadcast a level of instrumental selections of 35% of higher) must be reasonably distributed throughout the broadcast day. While acknowledging the CAB's concerns, the Commission considers that such reasonable distribution is necessary to ensure that Easy Listening stations provide a distinct service to their communities, and therefore reaffirms its policy in this area.

[§292-18]

Implementation of Changes to Conditions of License and Promises of Performance

In order to implement certain of the changes set out in this document, licensees will be required to submit applications to amend their Promises of performance or conditions of licence. These changes include deletion of commitments with respect to levels of news, spoken word and advertising for commercial FM stations and changes to the conditions of licence relating to advertising on campus stations.

[NOTE: Procedural steps are omitted.]

Licensees are reminded that they must fulfill all commitments set out in their Promises of Performance until changes to these conditions are approved.

[§292-19]

Appendix A

EXAMPLES OF PROGRAMMING THAT QUALIFIES AS "LOCAL PROGRAMMING"

Type of Programming	Reason for Qualification
station-produced newscast, sportscast etc.	originates with the station
disc-jockey program using a local announcer and assembled in the station studios	originates with the station
disc-jockey program using a voice-tracked announcer and assembled in station studios	originates with the station
brokered program produced in the community for the station's use only	produced in the local community by arrangement with the station
program produced outside the station studios but produced for and broadcast exclusively on the station	produced separately and exclusively for the station
newscast or feature, less than 5 minutes in length, received from a network or syndicator	network or syndicated material less than 5 minutes in length
program is produced by and broadcast on a station, and is also fed to a network (qualifies as local programming only for the originating station)	originates with the station

[§292-20]

EXAMPLES OF PROGRAMMING THAT DOES NOT QUALIFY AS "LOCAL PROGRAMMING"

Type of Programming	Reason for Disqualification
syndicated or network program over 5 minutes in length	specifically excluded by the definition
disc-jockey program received from another station or satellite	does not originate with the station
programming received by satellite, with pauses for local inserts	only the local inserts originate with the station and qualify as local programming; the satellite material is not produced separately and exclusively for the station

[§293-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Application of the Benefits Test at the Time of Transfers of Ownership or Control of Broadcasting Undertakings

[§293-2]

[Public Notice CRTC 1993-68, May 26, 1993.]

[§293-3]

On 15 June 1992 the Commission issued Public Notice CRTC 1992-42 entitled "Assessment of the Impact of the Benefits Test Applied at the Time of Transfers of Ownership or Control of Broadcasting Undertakings". As stated in the notice, "because the Canadian broadcasting system makes use of frequencies that are public property, the Commission has a responsibility to ensure that the best possible use is made of those frequencies at the time of licensing, licence renewal, and transfers of ownership or control".

The Commission concluded in the notice that, "for the time being, ... in the absence of a competitive process, application of the benefits test remains the best method of ensuring that applications for transfer of control or ownership are the best possible proposals under the circumstances, and are beneficial to the public served by the undertakings and to the Canadian broadcasting system as a whole".

The Commission further stated that it "... considers that some adjustments to the application of the benefits test may be appropriate. In addition, the differences between each of the broadcasting sectors, including the economic situation that has prevailed in the radio industry over the past six years ..., and in particular the downturn of the past two years, may justify a tailoring of some of the considerations to the particular situation of each sector".

The Commission invited public comment on five specific questions and on other matters relating to the application of the benefits test. Twenty-eight submissions were received.

This notice presents a summary of the comments received and the Commission's determination with respect to issues concerning the application of the benefits test.

[§293-4]

1. SUMMARY OF COMMENTS

[NOTE: The summary of comments is omitted.]

[§293-5]

2. *THE COMMISSION'S DETERMINATION WITH RESPECT TO THE APPLICATION OF THE BENEFITS TEST*

i. *The Benefits Policy*

The Commission's policy concerning benefits is set out in Public Notice CRTC 1989-109 entitled "Elements Assessed by the Commission in Considering Applications for the Transfer of Ownership or Control of Broadcasting Undertakings". [NOTE: See §258.] Under this policy:

> an applicant is expected to propose a specific package of significant and unequivocal benefits that will yield measurable improvements to the communities served by the broadcasting undertaking and to the Canadian broadcasting system. The Commission must be satisfied that the proposed benefits package is commensurate with the size and nature of the transaction and takes into account the responsibilities to be assumed, the characteristics and viability of the broadcasting undertakings in question and the scale of programming, management, financial and technical resources available to the purchaser.

The Commission assesses each application on its own merits and does not use any benchmark or formula with respect to the type or amount of benefits proposed.

Only those initiatives that would not be realized without approval of the proposed transfer are viewed as benefits. In order to be accepted as a benefit, the proposed expenditure must be incremental. Expenditures that would normally be considered ongoing normal responsibilities of the existing licensee will not be accepted as benefits unless that licensee, because of financial circumstances, could not implement the initiative or reasonably planned to delay such an improvement beyond the time frame proposed by the purchaser.

Commitments by prospective purchasers to assume existing obligations of licensees are not generally accepted as benefits, except where continuation of the service itself is in doubt. Moreover, the Commission does not generally accept as a benefit any proposed initiative that is dependent upon approval of a separate application yet to be considered by the Commission.

[§293-6]

a) *Tangible Benefits*

Tangible benefits generally fall into three broad categories: operating expenditures, such as in the areas of additional staff or programming improvements; capital expenditures for technical improvements; and grants and contributions to Canadian talent or program development funds.

The Commission considers that publishing a comprehensive list of acceptable benefits would be limiting, as many benefits that are accepted are tied to the particular circumstances of a transaction or a market. On the other hand, the Commission considers that it would be useful to include an updated list of the types of benefits that it generally accepts, as well as those it normally does not accept, as tangible benefits. This is provided in the appendix to this notice.

The Commission agrees with the comments regarding the importance of research and development, particularly in this time of rapid technological change. **Accordingly, the**

Commission will generally consider research and development initiatives as acceptable tangible benefits for radio, television and cable undertakings provided that applicants demonstrate that the areas covered by such initiatives will be of benefit to the public they serve and/or to the industry or the broadcasting system as a whole.

[§293-7]

With respect to the comments regarding operating and capital expenditures, the Commission notes that, for such expenditures to be considered as tangible benefits, applicants must demonstrate that these costs would not be incurred in the ordinary course of business and that the public will benefit from their implementation. Similarly, initiatives to improve service that result in a direct benefit to cable subscribers constitute tangible benefits, provided the related expenditures are not recovered by way of increases to subscriber fees.

The Commission notes with respect to cable that it will also accept as benefits certain "normal course" capital expenditures identified in subsection 18(5) of the *Cable Television Regulations, 1986* in cases where the applicant waives its right to submit fee increase applications for these items pursuant to subsection 18(6) of the regulations. Such expenditures would also be excluded from subsection 18(8) fee increase applications.

The Commission wishes to further clarify its expectations with respect to proposed benefits relating to specific projects whose associated capital expenditures would otherwise qualify for rate increase applications under subsection 18(6). In proposing such a benefit, the applicant must clearly indicate whether the specified dollar amount is the maximum for that project or whether the proposed benefit includes a commitment on the part of the applicant to absorb any additional amount that may be required to complete the project.

[§293-8]

b) Intangible Benefits

Intangible benefits such as the experience and resources of the purchaser, local ownership, entry of new players and the promise to maintain or improve a struggling service, may be as significant as tangible benefits and, in some cases, of primary importance, in the approval of transactions. Nevertheless, the Commission is of the view that designating certain intangible benefits that would consistently take precedence over tangible benefits may compromise its ability to assess the best possible proposal given the specific circumstances of each transfer application.

Accordingly, the Commission will maintain its case-by-case approach, assessing each application on its merits and taking into account both the tangible and intangible benefits proposed. The Commission may accept a package consisting solely of intangible benefits in cases where the survival of the service is at stake and in cases that meet other criteria set out in this notice.

[§293-9]

c) Local and System-Wide Benefits

The Commission considers local benefits to be very important. At the same time, it recognizes the value of investing in system-wide benefits, such as research and development, particularly in light of the rapid pace of change in the broadcasting and cable environments. **The Commission will therefore continue to assess proposals regarding local and system-wide benefits on a case-by-case basis, taking the particular circumstances of the application into account.**

ii. Exemptions

[§293-10]

a) Radio

The question of forgoing benefits for undertakings in financial difficulties is primarily a radio issue because of the generally poor economic situation, that has prevailed in the industry in recent years. In spite of this economic situation, the Commission is of the opinion that it would be inappropriate to relieve radio licensees of current benefits commitments, as suggested by the CAB, as the decisions to approve the transactions have been based, in part, on the tangible benefits proposed.

With respect to future transactions, the Commission is willing to provide more flexibility with respect to benefits requirements in view of the economic situation of the radio industry. **Accordingly, the Commission will forego benefits requirements for unprofitable radio undertakings. The Commission will measure profitability according to the average profit before interest and taxes (PBIT) of the undertaking over the three years preceding the filing date of the application. The Commission will not systematically apply this exemption to stations in the first five years of operation. In cases where an applicant is applying to acquire a group of stations, all or some of which fall below this threshold, the Commission will consider profitability on an aggregate basis.**

In response to those suggestions that the Commission not apply a benefits test to radio stations in small markets, the Commission maintains its position that public benefits flowing from ownership transfers should apply equally to all communities regardless of size. It notes, however, that the criteria set out above will result in the exemption from benefits requirements of unprofitable radio stations in small markets.

Recent CRTC Decision: For a case in which the CRTC approved a radio transfer with no tangible benefits because the station had been unprofitable for the three preceding years, see Decision CRTC 93-691, November 30, 1993.

[§293-11]

b) Television

One of the submissions proposed that the Commission require benefits only for transactions involving television undertakings with a PBIT of 25% or more. The Commission notes that the majority of television undertakings have a PBIT of less than 25%, and that this proposal would therefore exclude the requirement for benefits in most transactions.

The CAB also suggested that the Commission use criteria similar to those in the Radio Market Policy to determine if a purchaser should be exempted from the need to put

forward a package of tangible benefits. The Commission, however, considers that, in the case of television, it would not be appropriate to establish a threshold because of the nature, size and economic situation of the industry.

Accordingly, the Commission will continue to assess benefits for television undertakings on a case-by-case basis in relation to, among other elements, the size and nature of the transaction, the viability of the broadcasting undertaking in question and the resources of the purchaser.

[§293-12]

c) Cable

With respect to cable transfer transactions, the Commission will adopt a threshold whereby undertakings with fewer than 2,000 subscribers will be exempted from benefits requirements. The Commission notes that such a threshold would currently apply to 368 Class 2 and 1124 Part III undertakings serving approximately 7% of all cable subscribers.

In cases where an applicant is applying to acquire a group of cable systems, all or some of which fall below this threshold, the Commission will consider the number of subscribers on an aggregate basis.

The Commission notes the suggestion received that the size of the transaction be used as a threshold for radio, television and cable undertakings. Although the value of a transaction generally reflects the financial condition of the undertaking, the Commission considers that other indicators, such as the profitability of the undertaking in the case of radio and the number of subscribers in the case of cable, are more appropriate criteria for the purpose of establishing thresholds. Moreover, it may be difficult to break down the total value of a transaction involving more than one undertaking in order to determine a separate value for each undertaking involved.

iii. Other Concerns

[§293-13]

a) Licensing Process

As noted above, a number of submissions raised concerns regarding the length of time taken to process applications for transfer of control or ownership.

The Commission has already implemented procedures to accelerate the process for dealing with applications for authority to transfer the ownership or control of radio undertakings. Moreover, as outlined in Public Notice CRTC 1992-72, entitled "A Review of the CRTC's Regulations and Policies for Radio" [NOTE: see above at §287], the Commission has taken measures to streamline further the process to deal with share transfer applications. The Commission has recently implemented similar measures to streamline procedures for share transfer applications involving cable undertakings.

Specifically, the Commission will generally use the administrative process to deal with applications for authority to transfer control of radio and cable undertakings through share transfers in the following cases:

- in the case of radio, where the application entails no unresolved areas of concern, includes no matters in need of further discussion, and involves a purchase price per radio station or network of under $7 million.

- in the case of cable, where the application entails no unresolved areas of concern, includes no matters in need of further discussion, and involves the transfer of control of a *single* system serving less than 6,000 subscribers or the transfer of control of a *group* of system serving less than 15,000 subscribers in total.

In the case of such transfers of control, the Commission will inform the public of its administrative approval by issuing a public notice.

The Commission notes that transfers of control of undertakings through purchases of assets entail the issuance of new licences. The *Broadcasting Act* requires that applications for new licences be considered at public hearings. Those applications for authority to transfer control through the transfer of shares do not necessitate the issuance of new licences.

[§293-14]

b) Pre-hearing Consultation

With respect to the CAB's proposal that the Commission adopt a pre-hearing consultative process, the Commission notes that a prospective purchaser may meet with staff before an application is gazetted to discuss its application in the context of the Commission's general requirements and expectations. However, any discussion about the perceived acceptability of a specific proposed benefits package would be inappropriate.

[§293-15]

c) Amendments to a Benefits Package

With respect to the CAB's comments that the Commission should be flexible in entertaining amendments to a benefits package after approval, the Commission notes that it has, in the past, accepted proposals to redirect and reschedule benefits in cases where unforeseen circumstances prevented a benefit from being carried out as planned. The Commission will continue to consider such requests on a case-by-case basis.

[§293-16]

d) Requirements Regarding Proposed Initiatives Not Accepted As Benefits

The CAB also raised a concern about the requirement to carry out expenditures that are proposed, but not accepted by the Commission, as benefits.

Some of the initiatives proposed by an applicant as benefits may be rejected because they are considered a cost of doing business or because they are not incremental to the commitments of the existing licensee. Other initiatives may not qualify because they are of limited benefit to the broadcasting system or the public. Nevertheless, the Commission has generally required that such initiatives be implemented because they constitute part of the transfer application considered via a public process.

On the other hand, the Commission recognizes that resources an applicant has proposed to allocate to a particular benefit that is subsequently rejected may, in many instances, be more productive if directed elsewhere, such as towards strengthening the operation in question. **Accordingly, with respect to proposed expenditures that are not accepted by the Commission as tangible benefits, the Commission will require that expenditures be carried out only in relation to initiatives that are not accepted**

as benefits because they are a cost of doing business or are not incremental to commitments of the existing licensee. These will be identified in the decisions issued.

[§293-17]

e) Unfulfilled Benefits

The Commission currently expects the purchaser of an undertaking to fulfil any benefits commitments that the current licensee of the undertaking has not fulfilled. The Commission considers that benefits commitments are part of the obligations of a licensee and should be implemented regardless of ownership changes. **The Commission will therefore maintain its practice of questioning the prospective purchaser in a transaction on its intentions with respect to the seller's unfulfilled benefits commitments. The Commission notes that commitments to carry out such unfulfilled benefits are not considered to be benefits on the part of the purchaser.**

[§293-18]

Appendix

Initiatives Generally Accepted as Tangible Benefits

Following are some of the types of initiatives that the Commission generally accepts as tangible benefits. It should be noted that the initiatives described are provided as examples, and are not intended to be binding or exhaustive.

[§293-19]

a) Operating Expenditures

- *Staff and Administration*

The Commission accepts the hiring of additional staff as a tangible benefit in cases where such hiring directly relates to a specific incremental enhancement of a radio, television or cable broadcasting operation, such as the production of new programming.

The Commission also generally accepts expenditures related to achieving standards for cable operations exceeding those expressed in the Cable Television Customer Service Standards.

[§293-20]

- *Programming*

The Commission accepts programming expenditures for radio, television and cable as long as the programming is new or enhances that offered by the existing licensee. Examples of such initiatives include:

- the production and development of new programming for television, particularly in "under-represented" categories; and productions involving the independent production sector
- co-operative television productions
- new or improved news and public affairs radio and television programming
- the production of specific, new, locally-produced radio and television programs
- the development of pilots for television

- the production of community programming, where the expenditure is clearly identifiable as incremental to the 5% spending benchmark for cable as set out in Public Notice CRTC 1991-59, entitled "Community Channel Policy"
- contributions to program development funds and program production funds for television.

[§293-21]

b) Canadian Talent Development

The Commission generally accepts as a tangible benefit for radio undertakings any direct Canadian talent development initiative as listed in Public Notice CRTC 1990-111, entitled "An FM Policy for the Nineties", as amended from time to time by the Commission.

§293-22]

c) Grants and Contributions

The Commission generally accepts as a tangible benefit, contributions to organizations involved in the production of canadian programming or the promotion and development of Canadian talent. Examples of such organizations include MusicAction, FACTOR, the Alberta Music Project and the Alberta Recording Industry Association for radio; fellowships for independent producers to attend the Banff Television Festival, the Canadian Centre for Advanced Film Studies, the Performing Arts Fund for Television, and the Alliance for Children and Television (formerly Children's Broadcast Institute) for television. Scholarships in broadcasting or broadcast-related fields also constitute tangible benefits.

Examples of grants that are acceptable as tangible benefits would include grants to local artistic organizations whose works are related to the broadcasting system, as well as contributions, over and above annual membership fees, to organizations such as Canadian Women in Radio and Television (CWRT).

[§293-23]

d) Research and Development

The Commission considers research and development projects as acceptable tangible benefits for radio, television and cable undertakings if applicants demonstrate that the areas covered by such projects will be of benefit to the public they serve and/or to the industry or the broadcasting system as a whole.

[§293-24]

e) Capital Expenditures

The Commission accepts as tangible benefits capital expenditures for technical improvements, provided they are incremental (that is, over and above normal capital expenditures).

Examples of capital expenditures that the Commission generally accepts as tangible benefits include those for:

- purchase, lease or upgrade of items such as satellite, microwave or captioning equipment for television; and news mobiles for radio and television;

- additional production or broadcast studios directly related to new or enhanced programs for radio and television
- technical upgrades when not part of a separate approval process for radio and television.

[§293-25]

Initiatives Not Accepted as Tangible Benefits

Examples of initiatives and expenditures that the Commission does not normally accept as tangible benefits include:

- costs related to employment practices that are not directly related to increased or improved programming, such as training programs and employee benefits plans
- hiring of additional staff not related to additional or enhanced programming
- memberships in industry associations
- maintenance of existing Canadian talent development commitments
- purchase of compact disks, cassettes, etc.
- acquisition of syndicated programs for radio
- marketing and audience surveys
- expenditures related to meeting standards expressed in the Cable Television Customer Service Standards
- free air-time for the promotion of Canadian talent on radio.

Recent CRTC Decisions: Accepted tangible benefits have included: benefits proposed by the vendor three years earlier, together with incremental Canadian talent development (Decision CRTC 93-22, January 22, 1993); funding for new Canadian programming that is incremental to annual expenditures already required by expectation or condition of licence (Decision CRTC 91-80, February 6, 1991, Decision CRTC 91-804, October 18, 1991, Decision CRTC 89-766, September 28, 1989); incremental news services (Decision CRTC 90-1073, October 22, 1993); contributions to FACTOR (Decision CRTC 91-280, May 9, 1991); an additional community channel (Decision CRTC 91-312, May 17, 1991); replacement of towers, antennae and transmitters where the expenditure appears to be beyond the resources of the present licensee (Decision CRTC 90-1003, September 27, 1990); expenditures to broadcast Canadian band music (ibid); expenditures for a new non-profit foundation to support, through grants and bursaries, contemporary artistic endeavours in music, theatre, dance, etc. (Decision CRTC 90-1069, October 17, 1990); extensions of cable service within the authorized service area, the addition of new channels, a link between the head end and local council chambers, a new mobile van and a five year salary for a full time community programming co-ordinator (Decision CRTC 89-598, August 25, 1989); a scholarship for a broadcasting student (Decision CRTC 89-639, August 30, 1989); and expenditures for a music reference service and video tapes dealing with CRTC policies and regulations (Decision CRTC 89-766, September 28, 1989).

The CRTC has also agreed to allow the redirection of certain monetary benefits proposed in an earlier transfer of control application. However, the Commission's approach is to ensure that the benefits to the community served and the Canadian broadcasting system under the new initiatives at least equal those under the original proposal. See Decision CRTC 91-625, August 22, 1991, in which a switch from expenditures on facilities and production of a live program, to a new Canadian talent project involving instrumental cover versions of popular music, was allowed. But see also Decision CRTC 92-597, August 19, 1992 in which the CRTC allowed the applicant to redirect committed funds away from Canadian programming in favour of capital expenditures.

Rejected tangible benefits have included: insubstantial amounts allocated to Canadian talent development co-ordination involving minimum staff preparation and organization (Decision 93-210, June 10, 1993); currently outstanding commitments, and amounts not incremental to commitments already made by the vendor regarding Canadian talent development (Decision CRTC 93-690, November 30, 1993 and Decision CRTC 93-569, September 2, 1993 - but see Decision CRTC 93-22, January 22, 1993); plans for

a computerized newsroom and rebuilding of FM stations (Decision CRTC 93-570, September 2, 1993); radio network links to provide regional/provincial news and sports reports which do not increase the quantity of news and sports provided (Decision CRTC 91-635, August 26, 1991); implementation of a computerized music system (ibid); expenditures to provide layout/printing support for charitable and non-profit organizations, as this is not broadcast related (Decision CRTC 91-280, May 9, 1991); purchase of a vehicle (Decision CRTC 91-317, May 17, 1991); implementation of a computerized news department and contributions to Operation Red Nose (Decision CRTC 91-354, May 30, 1991); expenditures allocated mainly for on-air promotion of Canadian talent (Decision CRTC 90-1003, September 27, 1990); and extension of a cable system capacity by two channels, salary of a part-time programming assistant, operating costs of a new mobile studio, equipment related to discretionary services and a computerized accounting system (Decision CRTC 89-598, August 25, 1989).

[§294-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Structural Public Hearing

[§294-2]

[Public Notice CRTC 1993-74, June 3, 1993. The amendments to the *Cable Television Regulations, 1986* proposed in this policy document were issued for public comment in Public Notice CRTC 1993-137, October 7, 1993, and implemented in SOR/94-133, as noted in Public Notice CRTC 1994-7, February 3, 1994. References are included below to these latter documents where they added any changes or comments.]

[§294-3]

I. INTRODUCTION

At a public hearing commencing 1 March 1993 in the National Capital Region, the Commission undertook a review of the evolving communications environment, and its impact on the existing and future structure of the Canadian broadcasting system. As part of this important proceeding, know as the "structural hearing", the Commission considered comments from the public on a number of issues set out in CRTC - Notice of Public Hearing 1992-13, dated 3 September 1992, and on several related matters. Issues considered by the Commission included the distribution, packaging and carriage of programming services by cable television undertakings; the role and potential impact of other distribution technologies including direct-to-home (DTH) satellite services and multipoint distribution systems (MDS); financial support for Canadian programming; criteria for licensing and authorizing new broadcasting undertakings and other video services; and cable industry proposals for changes related to the regulation of cable fees including, among other things, fee increases related to capital expenditures for the purpose of financing the implementation of digital technology and universal addressability....

[§294-4]

II. OBJECTIVES

In keeping with its mandate as set out in the *Broadcasting Act* (the *Act*), the Commission must be mindful of the impact of technological change on the Canadian broadcasting system, particularly with respect to distribution costs, the emergence of new services, changing patterns of consumer demand, and most importantly, the collective impact of these factors on Canadian programming. The Commission must also take into account the competitive pressure on the system resulting from non-Canadian distribution systems and programming services.

In CRTC - Notice of Public Hearing 1992-13, the Commission identified a number of objectives for the regulatory framework for the Canadian broadcasting system:

1. provide Canadians with a wide range of general interest and special interest programming to choose from that is both accessible and affordable;
2. ensure that the Canadian broadcasting system remains strong and financially viable;
3. ensure that Canadian services have fair and equitable opportunity to become established in the system, without unduly limiting access to similar or comparable non-Canadian services;
4. ensure that Canadians have access to Canadian services that may be deemed "essential" or "vital"; and
5. be streamlined and limited to those regulatory elements to those regulatory elements necessary to achieve the objectives of the *Act*, and be flexible and responsive to technological developments and other changes in the broadcasting environment.

[§294-5]

III. THE FUTURE COMMUNICATION ENVIRONMENT

In arriving at the policies and proposed regulatory changes that follow, the Commission has been guided by a conceptual framework for the future communications environment that respects the Commission's obligations to achieve the policy objectives of the *Act*, reflects the Commission's objectives for the regulatory framework, and takes full account of the discussion at the structural hearing.

There was a clear consensus among participants at the public hearing that the communications environment now emerging will largely be in place by the year 2000. Movement towards this new environment is being driven primarily by three intersecting environmental forces: changing technology, increasing competition and what has been escribed as the "new consumer".

The most significant technological factor is the digital revolution. Digital technology has given birth to "digital video compression" (DVC), a technology that, for existing television formats, will simultaneously permit an increase in channel capacity and reduce transmission costs per channel. It will also enable the introduction of high definition television systems.

Clearly, the development of DVC will fundamentally transform the operational and competitive conditions for both programmers and distributors. The changing economics of program delivery will give birth to new programming services and concepts, including niche programming services. DVC can be applied to cable, over-the-air broadcasting, satellite and MDS transmission.

For the cable industry, DVC technology has become inextricably linked to strategies for implementing addressability on a universal basis. DVC has served to promote an industry-wide technological approach that will accelerate the implementation of addressability. Both technologies will be housed in a common electronic device that will be connected to the television set. As digital technology evolves and matures, other configurations can be expected to emerge, such as television sets with built-in decompression and addressability functions. These developments should contribute to significantly reducing the costs of DVC- and addressability-related equipment.

Addressable technology will provide greater choice and customization of services to subscribers. This expansion in programming choice and packaging flexibility, the advent of new multichannel distribution systems and new services, taken in combination, are serving to produce a new consumer environment and consciousness. In effect, they will transform the captive subscriber into the discriminating consumer.

In the face of technological advances and rapid change within the communications environment, traditional forms of regulation may become increasingly ineffective in sheltering the Canadian broadcasting system from expanding competition from non-Canadian service providers.

The Commission is convinced that, in the new communications environment, any attempt to impose protectionist measures as a means to safeguard the Canadian broadcasting system would only prove counterproductive and impracticable. Accordingly, the Commission's focus will be on providing aggressive encouragement to the production and distribution of more and better Canadian programming.

For cable television, the Commission's regulatory focus will be at the level of the basic cable service, in keeping with traditional and fundamental concerns for subscriber affordability and access to priority services.

The Commission expects that the following features will characterize the emerging communications environment:

- The health of the system will rely increasingly on each of its components taking measures and supporting initiatives that foster strong Canadian programming and distribution technologies;
- Regulatory requirements and obligations will be reduced for both programmers and distributors;
- Canadian programming undertakings and consumers will have increasing access to multiple distribution technologies;
- Canadian programming services and distribution systems will face increasing competition from non-Canadian services and systems;
- In an environment characterized by expanded choice, particularly in an à la carte or transactional environment, Canadian programming undertakings will increasingly rely on the strength and distinctiveness of their programming and their marketing strategies to attract audiences and thereby ensure their viability; and
- Canadian programmers and distributors will have to cooperate in arriving at mutually advantageous terms for the distribution of services, without undue reliance on regulation.

[§294-6]

IV. THE TRANSITION PERIOD

In approaching the future communications environment, the Commission agrees with the view expressed by many participants at the hearing that the system is currently in a "transition" period. The transition, primarily technology-driven, will see the industry delivery of broadcast services move from an analog mode, featuring limited channel capacity and one-way transmission, to a primarily digital mode that will feature a significant expansion in channel capacity, two-way transmission, universal addressability and greater customization of service. This technology will facilitate the development of a variety of transactional services, including PPV and other à la carte services.

The Commission expects that cable systems will deploy digital technology in an evolutionary fashion, beginning with discretionary programming services and gradually applying it to basic service programming, as the necessary electronic terminal equipment is rolled out to all subscribers. This hardware will consist of an "addressable digital decoder" (the box) necessary to decode and decompress the digital signals.

Pay and PPV services are currently delivered in an encrypted form, requiring a set-top decoder device. Other discretionary services are distributed in unencrypted, analog form and marketed on a "negative option" basis. The Commission expects that, during the transition period, use of these unencrypted tiers will continue on a declining basis through to the end of the decade.

The Commission is committed to ensuring that Canadians continue to have maximum access to Canadian programming services, and that they are served by the most efficient distribution technology. In this regard, the traditional delivery technologies of over-the-air broadcasting services and cable will face increasing competitive challenges from new and emerging distribution systems, including MDS, satellite services, telephone carriers and other communication services.

Under the current regulatory framework, cable penetration in Canada has grown to almost 80% of all households. For the time being, the Commission considers that cable distribution remains the most effective and efficient distribution technology. The Commission, however, recognizes the potential of these other distribution technologies to contribute to achievement of the objectives of the *Act*.

With respect to the delivery of broadband video services by telephone carriers, the Commission acknowledges that new distribution technologies provide a basis for such services to be delivered over their local distribution networks. Accordingly, the Commission encourages the cable and telephone carriers to explore opportunities for cooperative ventures for the shared use of network infrastructures where such ventures would increase the efficiency, reach and delivery of services to Canadians in all regions of the country.

With respect to MDS technology, the Commission considers that, in most instances, the appropriate role for MDS should be to complement cable television by providing multichannel television services over the air to areas not served by cable television. It further considers that the regulation of MDS should generally parallel the regulation of cable television, while taking the differences in the technology into account. In Public Notice CRTC 1993-76, issued today [NOTE: see below at §296], the Commission has set out its regulatory policy for MDS systems.

With respect to foreign DBS service providers that may wish to entre the Canadian market, the Commission has determined that it would in certain circumstances have jurisdiction over them under subsection 4(2) of the *Act*. A DBS service provider whose signal is receivable in Canada could be found to be carrying on a broadcasting undertaking in Canada in whole or in part where, for example, it has some or all of the following characteristics:

- it acquires program rights for Canada;
- it solicits subscribers in Canada;
- it activates and deactivates the decoders of Canadian subscribers.

The Commission will apply the appropriate enforcement tools to assert its jurisdiction over these undertakings should they enter the Canadian market without making contributions to the Canadian system as required of all broadcasting undertakings under the *Act*. In the case of U.S. DBS, as discussed at [§294-24] of this document, the Commission has determined that where a non-Canadian satellite programming service authorized for cable distribution in Canada is also distributed in Canada by a DBS operator not authorized by the Commission, the service may be removed from the lists of Eligible Satellite Services. The enforcement actions described above are directed at the broadcasting undertakings, and not at the individual DTH subscriber. In this regard, the Commission affirms the right of individuals to receive directly satellite-delivered programming for which they have paid any required subscription fees.

[§294-7]

V. UNIVERSAL ADDRESSABILITY - A PUBLIC POLICY OBJECTIVE

The Commission has determined that the implementation of addressability on a universal basis for the provision of broadcasting services to Canadians is a significant public policy objective.

The implementation of universal addressability will allow all cable households to be served and identified individually, and will permit greater flexibility in packaging program services, thereby providing greater choice and customization of service. It should also contribute to a more affordable basic service to the extent that it provides a greater incentive for specialty programming services with an authorized wholesale rate to migrate from basic cable service to discretionary tiers. Indeed, the Commission expects that universal addressability will make possible the wider exposure of discretionary programming services at lower prices, and will also provide greater opportunities for new niche services to develop and become financially successful.

Compared to the cost of expanding the transmission bandwidth, DVC represents a more economical method of significantly increasing the channel capacity of cable systems. Thus the Commission considers DVC to be an integral component of the cable plant for the provision of both basic and discretionary services. As noted earlier respecting the cable industry, addressability and DVC are linked since capability for both will be housed in a common set top box. DVC and addressability will thus be interdependent.

Universal addressability will also contribute to the modernization of the communications infrastructure, by providing Canadians with advanced services and contributing to our future competitiveness in the global marketplace.

[§294-8]

Ensuring Canadian Choices

In establishing public policy for the Canadian broadcasting system, the Commission must strive for a balance between the sometimes conflicting objectives of supporting the presence of Canadian programming, and responding to the consumer's desire for choice, consistent with the prevailing social, economic and communications environment. Throughout the structural proceeding, the Commission has sought to reconcile these two legitimate concerns.

The Commission is fully aware that the expanded consumer choice inherent in the future communications environment will not be without risk to the Canadian broadcasting system. In an environment that provides and enhances consumer choice, subscribers are likely to support discretionary Canadian programming services only if those services only if those services have the marketing, budgets and, most importantly, program quality comparable to that of non-Canadian services. In the relatively limited Canadian market, both English-language and French-language programming services may suffer if this risk translates into reduced subscriber penetration. Accordingly, in this proceeding, the Commission has attempted to focus on developing policies that will support strong Canadian programming and, at the same time, ensure that the Canadian distribution system is technologically competitive.

Indeed, the Commission recognizes that the two major elements of the system - program production and program distribution - must increasingly work in tandem to maximize the strength and vitality of the Canadian broadcasting system, and to increase the attractiveness of Canadian programming to audiences, particularly in an era of increasing choice and competition. Neither of these two elements can serve the Canadian broadcasting system successfully in isolation from the other.

Accordingly, the Commission is introducing a package of policy and regulatory changes designed to bring the program production and program distribution industries into closer and more effective co-operation with each other. The package includes intended changes supported by the majority of Commissioners, to the capital expenditure cable fee increase mechanism that will provide incentives leading to the creation of a new fund for Canadian programming. The package also provides for financial support to implement universal addressability.

In addition, in this document and in other related public notices issued today, the Commission announces policy changes and intended areas of regulatory change with respect to: cable distribution and linkage of services; access of programming services to cable; the carriage of distant Canadian broadcast signals and U.S. border stations; small cable system carriage and fee deregulation, the latter of which is supported by the majority of Commissioners; program repeat channels; criteria for licensing and authorizing new services; and MDS and home satellite delivery. The Commission has also announced a call for pay, specialty and PPV applications, as set out in Public Notice CRTC 1993-77 of today's date.

The Commission will soon issue for public comment proposed amendments to the *Cable Television Regulations, 1986* (the regulations) as required to bring into effect the changes discussed in this and other related notices issued today. [NOTE: The

amendments were later issued in SOR/94-133, effective January 25, 1994, and are incorporated into the *Cable Television Regulations, 1986,* above at §133.]

[§294-9]

VI. FUNDING OF CANADIAN TELEVISION PROGRAMMING

An increasing challenge facing the Canadian broadcasting system and the Commission in an era of expanding viewer choice will be to ensure that Canadian information, ideas, values and creativity are given maximum exposure on our television screens. The Commission emphasizes that consistent with section 3 of the *Act*, not only must the Commission see to it that there are Canadian undertakings in operation, it must also ensure that those undertakings are distributing a diverse range of quality Canadian programming that is attractive to Canadian viewers.

It is only by providing distinctive, indigenous programming with which Canadians can identify that Canadian programming undertakings will be distinguishable amidst the vast number of programming choices that new technological developments will make possible.

At the hearing, a number of environmental and structural obstacles to the funding of Canadian program production were discussed.

Canada's small domestic market continues to make it difficult to finance the creation of competitive Canadian programs. Whereas U.S. producers can recover the majority of their production costs through domestic licence fees, the licence fees earned in Canada by most Canadian program producers represent only a fraction of their total production costs. Many Canadian producers thus rely on tax credit programs and public and private funding services to finance their productions. In most cases, however, producers are still left with funding shortfalls and must look to offshore markets to make up the difference through foreign investment and/or pre-sales. While greater access to foreign funding may result in the ability to produce more programming, it has been argued that this may also lead to increased pressure to alter the content of a program to appeal to foreign markets, while potentially rendering the programming unrecognizable as Canadian.

Most parties in this proceeding agreed that more money needs to be raised within Canada for the production of Canadian programming to serve Canadian audiences if such programming is to compete in the multi-channel universe. Two principal funding mechanisms were proposed to achieve this end. These are discussed below.

[§294-10]

[NOTE: A summary of the submission of the CAB to the effect that television station should receive compensation from cable operations for the carriage of local signals and a summary of the CCTA submission proposing contributions from certain of its members to support this funding, is omitted.]

[§294-11]

The Commission's Position

The Commission has carefully considered the opinions expressed by the parties on the CAB proposal. The Commission is satisfied that its jurisdiction to require each element of the broadcasting system to contribute to Canadian programming is clear, and that the nature, extent and mechanism of that contribution is entirely within its discretion. However, the Commission is of the view that explicit recognition of a right to

compensation for the retransmission of local signals is essentially a copyright issue and would most appropriately be dealt with by bodies other than itself.

The CAB and the CCTA agreed that new initiatives for funding Canadian programming are essential to ensure that Canadian programs remain available and attractive to Canadians. Although the Commission rejects the CAB compensation for carriage proposal, it considers that additional financial support for the production of Canadian programming is essential. While the CCTA proposal for a Canadian programming production fund has merit, the Commission agrees with many parties at the hearing that the cable fund proposed by the CCTA would not generate the amount of funds necessary to ensure significant support for Canadian programming.

Accordingly, the Commission, by majority vote, intends to make certain changes to its cable rate regulation mechanisms, the purpose of which is to provide significant financial support for Canadian programming. Specifically, the Commission intends to link contributions by cable licensees to a production fund to the capital expenditure (CAPEX) component of the cable fee structure.

This mechanism, described in more detail in the following section of this notice, would generate a significantly higher level of funding than the amount that would have been available under the CCTA proposal. The Commission estimates that the proposed mechanism will generate approximately $300 million over the first five years of the fund.

The Commission considers that this fund will be effective in increasing the amount of attractive Canadian programming available to Canadians. This should be particularly beneficial to conventional broadcasters, in consideration of their major role in exhibiting Canadian programming. There are many aspects of the fund that have yet to be determined, including the nature of the organization that would oversee the new fund, access criteria, and the allocation of monies. In a public notice to be issued shortly, the Commission intends to address these matters in greater detail and seek further public comment.

[NOTE: Following the receipt of comments, the Commission issued a policy statement with respect to this matter in *The Production Fund*, Public Notice CRTC 1994-10, February 10, 1994, set out below at §305.]

[§294-12]

VII. *FINANCING UNIVERSAL ADDRESSABILITY AND ADDITIONAL CANADIAN PROGRAMMING*

a) Current Monthly Fee Mechanisms...

b) CCTA Proposal...

[NOTE: These portions of the public notice, containing a discussion of the then-current subsections 18(2), (6) and (8) of the *Cable Television Regulations, 1986* and the specifics of CCTA's proposed funding of universal addressability, are omitted.]

[§294-13]

c) The Commission's Position

The Commission has carefully assessed the CCTA's proposals for regulatory change to the cable fee increase mechanisms, along with the financial information on which the proposals were based. The Commission has determined that certain regulatory changes

are necessary to ensure that the cable industry is in a position to implement in a timely fashion.

Moreover, based on the significant advantages to the system that will flow from the implementation of addressability, including a greater choice of services, new interactive services, and more affordable basic cable fees, the Commission considers it reasonable and appropriate that basic cable subscribers should bear a portion of the capital costs of implementing DVC and universal addressability.

Based upon the foregoing, and given the need to expand the financial support for Canadian programming, the Commission intends to implement for Class 1 System, a new regulatory regime for subsections 18(2) and 18(8) and, by majority vote, 18(6) of the regulations. The required amendments to the regulations to effect this regime will be issued shortly for public comment. For information purposes, the Commission has included as an appendix to this notice a first draft of some of the proposed amendments to section 18.

[§294-14]

[NOTE: The first draft is omitted here. The Commission later issued consequential amendments to the *Cable Television Regulations, 1986* in SOR/94-133, which came into effect on Jan.25, 1994. These are incorporated into the regulations set out at §133 above.]

[§294-15]

d) Modifications to Subsection 18(6)

In the interest of ensuring that the benefits to the system of DVC and universal addressability are achieved in a timely fashion, and in recognition of the evolving communications environment, the Commission proposes to allow a portion of DVC and addressability-related capital expenditures to be eligible for the purposes of subsection 18(6) fee increases, Specifically, the Commission intends to amend the regulations to allow a portion of the cost of an assessable digital decoder box, up to a maximum of $150 per household, as an eligible expenditure for the purposes of calculating subsection 18(6) fee increases.

As provided for within that subsection, this would allow operations to recover a maximum of 50% of this amount, up to $75 per household, over five years.

In addition, for the purpose of subsection 18(6) rate increases, the Commission intends to amend the regulations to establish a separate 3% cap on increase to the base portion of the basic monthly fee respecting capital expenditures related to the box. [NOTE: See §133-113 above.]

In Public Notice CRTC 1990-53 [NOTE: above at §261], the Commission determined that individual capital expenditure increases would be terminated five years after the date they were implemented. The Commission has decided to maintain this "sunset" provision in the regulations. However, in consideration of the need to provide additional funding for the production of Canadian programming, the Commission, by majority vote, intends to suspend implementation of the reductions required by the "sunset" provision for those licensees who contribute 50% of the amount by which the basic monthly fee would otherwise be reduced to a new fund for Canadian programming. Thus, for the initial five-year period, contributions to the fund will be generated by revenues currently included in the existing basic monthly fee.

As noted earlier, the Commission estimates that this proposed mechanism will provide approximately $300 million over five years for the production of new Canadian programming, as opposed to the $100 million proposed by the cable industry. This mechanism will apply to future capital expenditures as a means to ensure that funding for Canadian programming will be ongoing, rather than for a limited number of years as proposed by the cable industry. Also, as noted earlier, a subsequent public notice will be issued, calling for comments in the operational and organizational details of the fund.

The Commission considers that this regulatory approach recognised that strong, unique and attractive Canadian programming is essential to anchor and support the Canadian broadcasting system in an era of increasing competition, fragmentation and choice.

With respect to making new plant extensions eligible for the subsection 18(6) fee increases, the Commission determined in Public Notice CRTC 1990-53 that new plant expenditures, would no longer be considered as eligible expenditures, given that new plant extensions generate new revenues. The Commission has not been persuaded that any change to this policy is required.

[§294-16]

e) Changes regarding Subsections 18(2) and 18(8) Increases

In light of the above proposal that a portion of the cost of the box be allowed as an eligible expenditure for the purpose of subsection 18(6) rate increases, and considering that the proposal to suspend the implementation of the sunset reductions will result in the value of the sunset continuing to form part of the basic monthly fee for those licensees who contribute to a Canadian program fund, the Commission has determined that further modifications to other subscriber fee increase mechanism are justified.

Firstly, the Commission intends to eliminate the partial indexing provision of subsection 18(2). This decision reflects the Commission's continuing concern for ensuring subscriber affordability of the basic cable service and of the priority signals distributed on it. This change will eliminate fee increases that may not necessarily be justified by increased costs incurred by the cable operator.

Also, the Commission considers it appropriate to revise the applicability of subsection 18(8) in specific cases to take into account the fact that, while revenues gained from the operation of the basic service will decline as a proportion of total revenues, future cable revenues will increasingly be derived from discretionary programming services and non-programming services, including the potential provision of data and information services. Accordingly, the Commission considers the licensees should generally need to rely less on the subsection 18(8) fee increase mechanism.

In assessing subsection 18(8) applications, the Commission intends to make its assessment in a more prospective than retrospective manner. Moreover, the Commission considers that, in assessing subsection 18(8) fee increase applications, it will need to take into account all of the revenues and expenses related to the total operations of the undertaking. In keeping with this change, the Commission considers that the existing 23% profitability benchmark for the provision of basic cable service is no longer appropriate, and it is eliminated, effective immediately.

[NOTE: On October 21, 1993, the CRTC announced revised guidelines for filings by cable licensees pursuant to subsection 18(8) in *New Assessment Guidelines for Fee Increases Under Subsection 18(8) of the Cable Television Regulations, 1986,* Public Notice CRTC 1993-146, set out below at §300.]

The Commission will include addressability-related capital expenditures for the box in the basic service asset base, for the purpose of assessing applications for the subsection 18(8) fee increases. At the same time, the Commission will take into account the efficiency of the licensee, and the projected results of future years rather that historical results.

The cable industry's proposal to deregulate the fees of small cable system is addressed later in the document.

[§294-17]

f) Common Industry DVC Standard

The Commission agrees with the views expressed by the majority of participants in this proceeding that the adoption by all Canadian programmers and distributors of a common DVC standard, including conditional access, would be beneficial to the Canadian broadcasting system.

Benefits would include lower costs of terminal equipment through economies of scale, and the seamless flow-through of compressed and encrypted programming from distributors to subscribers, thereby reducing costs to cable licensees, especially those operating small cable systems, and ultimately reducing costs to their subscribers.

As stated earlier, the Commission intends to amend the regulations to make DVC and addressability-related expenditures for the box eligible for the purpose of subsection 18(6) fee increase. The Commission wishes to consider further whether the applicability of this mechanism should be conditional on the cable industry adopting a common DVC standard. All Canadian programmers and distributors are encouraged to participate in the process of selecting a common DVC standard.

[NOTE: In *Amendments to the Cable Television Regulations, 1986,* Public Notice CRTC 1994-7, February 3, 1994, the Commission stated that it had decided not to make such eligibility conditional on the adoption of a common DVC standard. Its comments were as follows:

Under the new definition of the term "capital expenditures" contained in the proposed amendments to the regulations, certain DVC and addressability-related expenditures by cable licensees would become eligible for the purposes of subsection 18(6) fee increase applications. In particular, a portion of the cost of an addressable, digital decoder installed in each cable household could be recovered through such fee increases. As indicated in Public Notice CRTC 1993-137, the Commission has sought comments on whether the applicability of this mechanism should be conditional on the cable industry adopting a common DVC standard.

All of those who commented on this issue agreed that the adoption of a common DVC standard for the Canadian broadcasting system would be desirable, and many stated that subsection 18(6) fee increases for digital decoders should be tied to adherence to common standard. There was significant support for the work of Advanced Broadcasting systems of Canada Inc. (ABSOC) in establishing a broad-based DVC solution. The CCTA and various cable licensees expressed concern, however, that a formal standards-setting process may cause inordinate delays in the rollout of DVC technology and in the development of universal addressability. They further noted that many of the decisions affecting technical protocols are beyond the control of the Canadian industry and that there are several outstanding issues for which no imminent resolution is foreseen.

While the Commission agrees that the adoption by all Canadian programmers and distributors of a common DVC standard would be beneficial to the Canadian broadcasting system, it notes that considerable progress has been achieved in standardization and cross licensing of technology in the U.S., and that there continues to be broad participation in the ABSOC process by major Canadian players.

On balance, the Commission is satisfied that there are sufficient incentives for the cable industry, and for the broadcasting industry as a whole, to reach a broad-based agreement leading to a high degree of

commonality in both the satellite and cable-distribution links. It has therefore concluded that the eligibility of a portion of the cost of the digital, addressable decoder for the purpose of subsection 18(6) fee increases need not be conditional on the cable industry adopting a common DVC standard.]

[§294-18]

g) Ownership of the Addressable Digital Decoder Box

Based on the objective of implementing addressability on a universal basis, the cable fee regulations would allow cable operators to recover a portion of the costs of deploying one box per household. However, consistent with the Commission's desire to make ownership of terminal equipment available to the public, the Commission considers that cable subscribers should not be precluded from purchasing or leasing additional boxes, either from the cable operator, or in the consumer electronics marketplace.

[NOTE: For the earlier CRTC policy on ownership of pay decoders, see above at §210.]

[§294-19]

h) Privacy Issues

The universal development of digital terminal equipment will provide the cable industry with the ability to obtain valuable information regarding subscribers' viewing patterns, tastes and preferences. This capability gives rise to a number of issues concerning subscriber privacy.

The Commission believes strongly that addressable technology should not be used to collect, use or disclose viewing and other information in a manner that infringes on the privacy of subscribers. In this regard, the Commission notes that the Department of Communications has recently established privacy principles for the telecommunications industry and considers that these principles are also relevant to the cable industry. The Commission invites the CCTA to assess these principles with a view to their adoption by the cable industry.

[§294-20]

VIII. CABLE CARRIAGE ISSUES

a) Distribution of Specialty Programming Services

A major issue discussed at the hearing was whether certain existing licensed specialty services should continue to be distributed as part of the basic service or should be required to be distributed on a discretionary basis.

Currently, in Francophone markets, all French-language speciality services (Canal Famille, Météomédia, Réseau des Sport, MusiquePlus, and TV5), and in Anglophone markets, four of the English-language specialty services (CBC Newsworld, Weather Now, Vision and YTV) are authorized for cable distribution in an "optional-to-basic" basis. That is, they are not priority signals requiring mandatory carriage, but, if a cable operator elects to carry these services, they must be carried as part of the basic service. In addition, other specialty services, such as TSN and MuchMusic, have a different carriage status whereby they may be distributed, in Anglophone markets, either as part of the basic service, or with the consent of the service provider, on a discretionary basis.

The Commission considers that the dual carriage status granted to TSN and MuchMusic appears to have provided desirable marketing flexibility to both the cable

industry and to the specialty service providers in Anglophone markets. These two services have generally been distributed as part of high penetration unencrypted discretionary tiers offered on a negative option basis.

The Commission has decided to authorize dual status for all existing English- and French-language speciality services that are licensed on an optional-to-basic basis. By dual status, the Commission means that, when distributed by a cable undertaking in accordance with access provisions discussed later in this notice, these services must be distributed on the basic service unless the specialty service licensee consents to distribution on a discretionary basis. Chinavision, Telelatino and Cathay, as third-language services, will continue to be distributed as discretionary services only, and will not be eligible for basic carriage.

The Commission considers that extending the concept of dual carriage status to all existing English and French-language specialty services will offer cable operators and programmers greater flexibility in packaging services in ways that best suit their specific markets. The Commission notes, however, that, in the near future, dual status may not result in the same degree of discretionary distribution of specialty services in Francophone markets as it has in Anglophone markets, due to the inherent differences in those two markets, in particular, the linguistic and cultural character of the Francophone market and its more limited size. The Commission acknowledges in this regard the stated position of French-language program service providers that they would continue to opt for basic distribution.

With regard to any new Canadian English- or French-language specialty services that may be licensed in the future, the Commission will generally be prepared to accord dual carriage status to such services, unless the nature of a particular service is such that it would be more appropriately distributed on a discretionary basis only.

In the case any single or limited point-of-view religious specialty programming services, the Commissions's policy set out in Public Notice CRTC 1993-78 [NOTE: below at §297] of today's date, and supported by the majority of Commissioners, specifies that such services may be distributed on a discretionary basis only, subject to specific restrictions with respect to packaging and linkage with other services, as described in that notice.

In deciding, as a general rule, to provide dual carriage status for both existing and new Canadian specialty services, the Commission has taken into account the future communications environment discussed earlier in this document. The Commission is confident that specialty service providers will be able to negotiate satisfactory terms for carriage on a discretionary basis. The Commission encourages open and fair-minded negotiations permitting the creation of discretionary packages that take into account the revenue needs of Canadian programming services, the interests of an efficient distribution system, the interests of subscribers and, in particular, the need to maximize subscriber choice while ensuring the affordability of basic cable service.

[§296-21]

b) Access

Access to cable distribution by Canadian programming services was a central issue at the hearing, and was raised by both service providers and cable operators. In Public

Notice CRTC 1987-260 dated 30 November 1987 [NOTE: set out above at §235], which accompanied decisions licensing new Canadian specialty and pay services, the Commission stated:

> Since they provide in fact the primary vehicle for the exhibition of television programming in Canada, cable licensees have a responsibility to ensure that Canadian services are provided fair and equitable access to their cable systems. This responsibility is as significant in respect of cable television's ability to contribute to meeting the objectives of the *Broadcasting Act* as the Canadian content requirements are in respect of radio and television licensees.

Representatives of cable industry expressed a general willingness to distribute all licensed Canadian services, subject to the CCTA's existing access guidelines, which are administered by the Cable Television Standards Council.

The existing guidelines state that, as a general principle, access by program providers to available channel capacity will be provided by the cable industry. Such access, however, depends upon the characteristics of the individual market served, particularly in the following areas:

- the willingness of subscribers to support, and to continue to support the service (s);
- the linguistic and ethnic characteristics of the licensed area;
- the relevance of the service to the licensed area;
- the terms of the contractual arrangements associated with the carriage of the service (s); and
- the availability of the signal at the cable licensee's local headend.

The guidelines also call upon cable television licensees to make reasonable efforts to market and promote these services.

At the public hearing, the Commission asked the CCTA if it would be willing to put forward its guidelines for public comment and, ultimately, to make the guidelines subject to commission acceptance. In answer to this question, the CCTA stated:

> ...as far as the Association is concerned, we would have no difficulty at all in having the guidelines put to the public process. Before that happens, I think they ought to be reviewed and, to the extent that there are concerns expressed, perhaps the access guidelines should be redrafted and whatever we all agree are adequate or reasonable access guidelines would then go through the same process as the Customer Service Standards.

[§294-22]

The Commission's Position

The Commission considers that the cable industry's general commitment to distribute all licensed Canadian services is critical to cable's central role as the primary program distributor in the Canadian broadcasting system, and is central to maintaining the Canadian character of the system. Accordingly, the Commission considers it appropriate that the CCTA, on behalf of the cable industry, initiate a public process to review the existing CCTA guidelines, and to submit them to the Commission for acceptance as soon as possible. Once accepted, the guidelines should be administered by the Cable Television Standards Council.

The Commission considers that the spirit of the guidelines should, to the maximum possible extent, respect the fact that it should be subscribers, who, by their choices, determine the popularity and success of individual programming services. The viability of a service should not be determined by the carriage decision of the cable operator. Thus, the Commission considers that the guidelines must reflect the fundamental principle that cable operators must distribute all English-language services in Anglophone markets, and all French-language services in Francophone markets. In regards to the distribution of English-language services in Francophone markets and the distribution of French-language services in Anglophone markets, the Commission has, and continues to, encourage cable licensees to distribute these services.

The Commission also requires the CCTA to ensure that the public process, and the revised guidelines that flow from it, address the following matters:

- access policies for traditional programming services (conventional, specialty, pay, and PPV) and repeat and multiplexed services;
- the priority of programming services over non-programming services;
- access to cable by providers of emerging "multi-media" and nontraditional services, including computer-generated information services and games;
- channel placement;
- tier placement and packaging; and
- resolution of disputes regarding the application or interpretation of the access guidelines.

In addition, the Commission will develop a mediation procedure to address potential disputes between programming and distribution undertakings. The Commission notes that this measure will require the enactment of a new regulation pursuant to paragraph 10(1)(*h*) of the *Act*.

[NOTE: For the text of the *CCTA Access Commitment*, as filed with the CRTC on March 11, 1994, see above at §183. For the mediation provisions of the *Cable Television Regulations, 1986*, which came into force on January 25, 1994, see above at §133-140.]

[§294-23]

c) Distribution and Linkage Requirements

The Commission's distribution and linkage requirements, currently applicable to all Class 1 and Class 2 cable licensees, are set out in Public Notice CRTC 1987-261 dated 30 November 1987, which is incorporated by reference into the regulations.

The following revisions to the distribution and linkage requirements discussed below take into consideration the best interests of the Canadian broadcasting system in the future communications environment and, in particular, seek to ensure the maximum practicable distribution of existing and new Canadian specialty services.

1. The current 2:1 linkage ratio, whereby up to two non-Canadian satellite services from Section A of the list of Part II Eligible Satellite Services may be distributed in a package with each discretionary Canadian specialty service, will be changed to a 1:1 ratio. That is, only one non-Canadian satellite service from the Part II list may be linked with each Canadian specialty service distributed in the same discretionary tier or package. The Commission intends this revision to take effect no later than 1 January 1995.

In conjunction with the enhanced packaging flexibility provided by extending dual carriage status to all existing specialty services, the 1:1 ratio will provide cable operations with an incentive to package existing and new Canadian specialty services on high penetration discretionary tiers, where the programming service consents to such discretionary distribution. As stated earlier, in negotiating carriage status, licensees of discretionary program services should be mindful of subscriber demands for both greater choice and affordability of services. The Commission notes that this change may increase the exposure of Canadian ethnic specialty services on cable systems, to the extent that they are distributed by cable operators as linkage partners to non-Canadian satellite services.

2. The current 8-channel limit that applies to the distribution of non-Canadian satellite services will be eliminated. The Commission considers that this limit will be unnecessary following introduction of the new 1:1 linkage ratio adopted in relation to specialty services, given the continued application of the overall preponderance rule. The elimination of the 8-channel limit will also enable Canadian pay television service providers to make better use of the 5:1 linkage ratio that they are currently accorded. This 5:1 linkage ratio for pay television will remain unchanged.

   The Commission intends the deletion of the 8-channel limit to take effect no later than 1 January 1995, or earlier, should the cable operator adopt the new 1:1 linkage ratio before 1 January 1995.

These revised distribution and linkage rules are set out in Public Notice CRTC 1993-75 [NOTE: set out below at §295], issued today. The Commission notes that the rules for single or limited point-of-view religious services are also set out in this public notice. These rules will take effect when the regulations are amended to incorporate them by reference.

[NOTE: The rules came into effect on January 25, 1994, with the enactment of SOR/94-133. See above at §133-80.]

[§294-24]

d) Lists of Eligible Satellite Services

It is the current policy of the Commission not to authorize for cable carriage non-Canadian satellite services that are deemed to be either totally or partially competitive with Canadian pay or specialty services. In cases where a Canadian service is licensed in a format competitive to that of an authorized non-Canadian satellite service, or where a non-Canadian service becomes competitive, by virtue of a change in its own format or by a change in format of a Canadian specialty or pay service, the authority for the cable carriage of the non-Canadian service could be terminated.

As a modification to this policy, the Commission has decided that, where a non-Canadian service on the Part II list becomes partially competitive with a Canadian specialty or pay service, the Commission may, on a case-by-case basis, place the service on Section "B" of the Part II list, for linkage exclusively with Canadian pay television services, rather than delete it entirely from the Part II list.

In addition, the Commission has decided, as suggested by the Canadian Association of Small Cable Operators (CASCO), that where a non-Canadian satellite service is distributed by a DBS operator not authorized by the Commission, the service may be

removed from the lists of Eligible Satellite Services. Furthermore, where a non-Canadian satellite service not currently on the lists of Eligible Satellite Services is distributed in Canada by a DBS operator not authorized by the Commission, that service will not be considered for inclusion on the lists.

The Commission emphasizes that in considering the possible addition of any non-Canadian service to the lists, it will expect the service provider to have obtained the necessary distribution rights for the programming it distributes in Canada. Similarly, it expects existing non-Canadian service providers to have obtained Canadian rights. The Commission may require service providers to demonstrate that they have obtained these rights.

[NOTE: For the current lists, see *Revised Lists of Eligible Satellite Services*, Public Notice CRTC 1994-22, March 9, 1994, set out below at §307.]

[§294-25]

e) Carriage of Distant Canadian Signals

The distribution of distant Canadian signals on high penetration discretionary tiers was another issue discussed at the hearing.

At present, distribution on a discretionary basis is permitted without the need for prior Commission authorization. The intent of the existing distant signals policy, as set out in Public Notice CRTC 1985-61 [NOTE: set out above at §214], is to promote the increased availability of Canadian programming, but only to the extent that the ability of local broadcasters to attract revenues and maintain local programming commitments are not unduly affected. Significant changes have occurred in the Canadian broadcasting system since the introduction of that policy statement in 1985, including the appearance of high penetration discretionary tiers following the widespread introduction of negative option marketing techniques.

The Commission has determined that, henceforth, the distribution of distant Canadian signals by Class 1 licensees, and by Class 2 licensees with 2,000 or more subscribers, will require an application by the cable licensee for prior Commission approval in all cases. This change will provide local broadcasters and other interested parties with an opportunity to intervene prior to the addition of new distant Canadian signals on cable distribution systems.

Part III licensees, and Class 2 licensees with fewer than 2,000 subscribers, will be permitted to distribute distant Canadian signals contained on the list of Part III Eligible Satellite Services without the need to obtain prior Commission approval.

In assessing applications for the cable distribution of distant Canadian signals, whether on basic service or on a discretionary basis, the Commission will be guided by the following criteria as originally set forth in Public Notice CRTC 1985-61: [NOTE: These are set out above at §214-11, paras. (a) through (f).]

The Commission intends to undertake in the near future the necessary process to amend the regulations to require applications for prior approval of the carriage of distant Canadian signals. [NOTE: These changes were made in SOR/94-133, in effect Jan.25, 1994, which are incorporated into the Regulations set out above at §133] In addition, the Commission will soon amend the list of Part II Eligible Satellite Services to delete the distant Canadian television signals currently on that list. [NOTE: This was done with a

revision to the lists issued on July 13, 1993. For the current Part II list, issued on March 9, 1994, see below at §307.] Until this process is complete, the Commission expects cable operators to refrain from adding new distant Canadian signals without making application to the Commission and without having obtained the Commission's prior approval.

[§294-26]

f) Distribution of U.S. Border Television Stations

The regulations permit cable systems to distribute all U.S. television signals generally available over the air to the majority of the population in the franchise area, with the exception of signals that are duplicates of U.S. network services already being distributed.

In addition, the regulations specifically restrict the distribution of non-Canadian over-the-air television stations that began operation after 1 January 1985. In Public Notice CRTC 1986-182 dated 1 August 1986 [NOTE: set out above at §219], the Commission stated that licensees wishing to distribute such signals must apply for authorization on a case-by-case basis. The restriction was introduced in order to address the concerns of Canadian broadcasters regarding the potential financial harm caused by new U.S. television stations located near the Canadian border, where it was apparent that their target audience included viewers in nearby Canadian cities.

With respect to network duplicates, the Commission's general practice has been to authorize additional commercial and non-commercial network duplicates, either for basic or discretionary carriage, only where there was no net increase in the number of U.S. signals distributed on cable. With respect to post-1985 U.S. stations, the Commission has authorized carriage where it has determined that the station would not materially compete with Canadian stations for revenues or otherwise affect existing broadcasters in the area.

The Commission has noted a demand by subscribers across the country for cable distribution of certain border stations. After discussing this issue with interested parties at the hearing, the Commission has decided to revise its policy with respect to those post-1985 independent stations, and duplicate PBS network stations that are receivable over the air at a cable operator's local headend.

With regard to post-1985 independent stations, the Commission will generally authorize the distribution in encrypted form on discretionary pay television tiers (subject to the 5:1 linkage rule), the signals of post-1985 independent stations received over the air at the local headend. Applications for the distribution of such stations as part of the basic service, or on a high penetration, unencrypted discretionary tier will only be approved if the Commission determines that the U.S. station does not materially compete for Canadian advertising dollars.

With regard to the distribution of PBS duplicates received over the air at the local headend, the Commission will generally be prepared to authorize distribution of such stations, either on basic service or as part of discretionary tiers, in provinces where there is no provincial educational broadcasters. In provinces served by a provincial educational broadcaster, the Commission will generally be prepared to authorize such carriage on a discretionary basis only. However, where there is no net increase in the number of U.S.

signals distributed on basic service (i.e., where carriage of an existing U.S. signal is dropped) the Commission will generally give favourable consideration to the distribution of a PBS duplicate as part of the basic service.

It should be noted that cable licensees will still be required, in all cases, to submit applications for the carriage of any additional U.S. border station, and all such applications will be subject to a public process. The Commission notes that these measures will require an amendment to the regulations.

[NOTE: In Public Notice CRTC 1993-137, October 7, 1993, the CRTC announced that these changes would not require any regulatory amendment.]

Recent CRTC Decisions: For cases relating to the carriage of additional PBS stations as discretionary tiers, see Decisions CRTC 93-81, February 26, 1993 (denied); 92-461, July 9, 1992 (denied).

For cases relating to carriage of additional PBS stations on the basic service, see Decisions 92-756, October 30, 1992 (approved); 92-455 to 459, July 9, 1992 (approved); 92-460, July 9, 1992 (denied); 91-858, November 29, 1991 (approved); and 90-794, August 23, 1990 (denied).

In Decision CRTC 92-685, September 8, 1992, the CRTC allowed duplicate carriage of NBC/ABC/CBS on the basic service in recognition of the past that other cable systems in the area had been distributing duplicate U.S. signals received off-air for several years.

[§294-27]

g) Priority of Programming Services

The Commission intends to amend the regulations to include its longstanding policy requirement that cable operators give priority to the distribution of programming services over non-programming services.

[NOTE: In *Amendments to the Cable Television Regulations, 1986*, Public Notice CRTC 1994-7, February 3, 1994, the Commission announced that it had decided not to incorporate this provision in the regulations. Its comments on this point were as follows:

While most interveners supported the general intent of the proposal, others expressed some concern with the amendment as drafted. Of the latter group, several argued that the proposed regulation could lead to the removal of certain foreign or exempt programming services from cable carriage on systems with limited channel capacity, to the great dissatisfaction of subscribers who have become accustomed to, and enjoy, such services.

The Commission acknowledges that the proposed amendments to the priority distribution rules contained in subsections 11(3) and 26(3), as drafted, could be interpreted as effectively establishing a "must carry" status for the services of licensed programming undertakings regardless of geographic factors, language or other considerations. For example, cable licensees serving Anglophone markets could be required to distribute the French-language and third-language services of all licensed programming undertakings, regardless of the linguistic or ethnic make-up of their market. Similarly, licensees serving Francophone markets could be required to distribute the English-language services of all licensed programming undertakings, even if this required the deletion of other authorized programming services.

Finally, if priority is given to the services of licensed programming undertakings, cable licensees could be required, depending on the channel capacity of individual systems, to drop a number of exempt and foreign programming services that subscribers may have grown accustomed to and expect to receive.

The Commission reiterates its long standing policy requirement that cable operators must give priority to the distribution of programming services over non-programming services. Given the effectiveness of this policy in the past, and taking into account the new regulation for the mediation and resolution of disputes and the proposed revisions to the CCTA's Access Guidelines, the Commission has decided to give further consideration as to whether it is appropriate or necessary to enshrine this policy in the regulations. Accordingly, the Commission will not adopt the proposed subsections 11(3) and 26(3) of the regulations at this time.]

[§294-28]

h) Billing Clarity

The matter of billing clarity respecting the marketing of discretionary services, particularly services marketed through negative option techniques, was the subject of some discussion at the hearing. Discussion centred on the difficulty experienced by many subscribers in comprehending their options with respect to receiving certain discretionary programming services as part of their cable service.

As discussed at the hearing, the Commission insists that cable operators ensure through appropriate notification procedures that their subscribers are made aware of all service options available to them, the costs of each service or segment of service, and the actions that they must take to make their choices known to the cable operator.

The Commission, therefore, requires that cable licensees clearly identify, in plain and easily-understood language, those services that are part of the basic service and those that are discretionary services, the fee for each service or package of services, and the actions a subscriber need take to subscribe to or discontinue the services. This information should be provided to all subscribers, once yearly, at a minimum, using billing inserts or appropriate notification practices. For those subscribers who pay for their subscriptions through automatic bank withdrawals, or in advance, the Commission expects operators to establish appropriate notification practices to inform subscribers of their options. In providing this information, cable operators should avoid the use of marketing terms such as "Full Cable Service" "Extended Basic Service" and "Extended Basic Tier" as such terms are easily confused with the basic service, and may leave subscribers unaware that these are discretionary services that they need not take.

In this regard, the Commission has reviewed the CCTA's "Guidelines Respecting the Marketing of the Extended Tier". It notes that this document, in describing subscriber notice requirements, uses such wording as "suggested" or "should". The Commission expects the CCTA to revise this and similar guidelines by removing such voluntary wording and by replacing such terms with imperative terminology, such as "must" or "required", to ensure that cable subscribers are clearly informed of all options available to them. Moreover, the Commission considers it appropriate that the CCTA, on behalf of the cable industry, incorporate the revised guidelines into its existing Customer Services Standards, and submit the proposed revisions to the same public process and procedures as for the CCTA access guidelines, as discussed earlier.

[NOTE: For the text of the proposed guidelines, which were submitted by the CCTA to the Commission for approval on February 7, 1994, see above at §177, Part VI.1.]

[§294-29]

i) Small System Deregulation

Following Public Notice CRTC 1990-53 dated 15 May 1990 [NOTE: set out above at §261], the Commission amended the regulations to deregulate the fees of all Class 2 systems serving fewer than 2,000 subscribers. This decision was intended to decrease the costs to small cable operators associated with rate regulation, as such costs are ultimately borne by subscribers.

At the hearing, the CCTA proposed that fee deregulation be extended to all cable systems with fewer than 7,500 subscribers. In addition, CASCO proposed that small cable systems be categorized as "small systems" (fewer than 6,000 subscribers) or "very

small systems" (fewer than 1,000 subscribers), with separate carriage and fee regulatory frameworks for each category.

The Commission notes that there have been very few complaints from subscribers of systems already fee deregulated, and considers that it is timely and appropriate to extend fee deregulation to additional small systems. Therefore, the Commission, by majority vote, intends to deregulate the fees of Class 2 systems serving between 2,000 and 5,999 subscribers.

At the same time, in order to provide a mechanism to safeguard the interests of subscribers, the Commission, by majority vote, intends to amend the regulations to allow for the review and possible variance by the Commission of changes to the basic monthly fee of such systems upon receipt of written complaints from 10% or more of subscribers. For information purposes, a proposed amendment, in draft form, to subsection 18(1) to implement this mechanism is included in the appendix to this notice.

[NOTE: This is omitted. The Commission approved consequential amendments to the *Cable Television Regulations, 1986*, in SOR/94-133, which became effective on Jan.25, 1994: see above at §133-98.]

The Commission expects licensees of fee deregulated systems to clearly inform their subscribers of this new approach.

With respect to the distribution of programming services, the Commission has decided to streamline and simplify its regulatory requirements for small Class 2 systems with fewer than 2,000 subscribers by making them subject to carriage rules largely similar to those for Part III licensees. In particular, the distribution rules will not apply to such systems. However, a requirement to adhere to section 23 of the regulations, which currently applies to Part III licensees only, will not be imposed on Class 2 systems with fewer than 2,000 subscribers.

[NOTE: The Commission approved consequential amendments to the *Cable Television Regulations, 1986*, in SOR/94-133, which became effective on Jan.25, 1994: see above at §133-134. In doing so, the Commission made one minor alteration, namely, to introduce a reference date of August 31, 1993 to section 24(1) of the Regulations. By way of explanation, the Commission made the following comment in Public Notice CRTC 1994-7, February 3, 1994:

In Public Notice CRTC 1993-137, the Commission proposed that the distribution requirements stipulated in Part II of the regulations would no longer apply to Class 2 systems with fewer than 2,000 subscribers. Instead, such systems would be subject to the same distribution requirements applicable to Part III systems, except for those requirements stipulated in section 23 of the cable regulations.

The Commission has decided to implement this proposal, but with one minor alteration. Specifically, the Commission has introduced to the regulations a reference date of 31 August 1993; the subscriber count on the later of that date or the date a licence was first issued will determine if a given Class 2 system will be subject to the Part II or Part III carriage requirements.

The Commission notes that, at licence renewal time, and on a case-by-case basis, it would still be able to determine what distribution rules should apply if a particular Class 2 system subject to Part III of the regulations grows in size beyond the 2,000 subscriber threshold.]

[§294-30]

j) Program Repeat Channel for Conventional and Specialty Television

A number of parties addressed the issue of multiplexing and repeat channels. For example, the CCTA in its second round submission, suggested that DVC would enable cable operators to expand their channel capacity, thereby creating opportunities for distribution of alternative programming schedules.

At the hearing, the Commission discussed this matter with the CAB, the Canadian Broadcasting Corporation (CBC), private television broadcasters and representatives of producers' associations. TéléMétropole Inc. (TM) was also questioned about its multichannel interactive programming experiment, known as TVA+, which Vidéotron Ltée has offered to Videoway subscribers since November 1992. Several Quebec radio and television licensees raised their concerns regarding this issue, primarily because of the potential impact on their revenue bases.

The Commission has assessed the various points of view on the desirability of repeat channels, and has decided to permit the creation and distribution of program repeat channels by broadcasters, subject to the following requirements.

The Commission has decided that a program repeat channel may be comprised of repeats of programs already aired on a licensed programming undertaking within the previous seven (7) days. Control over the programming must remain at all times with the programming undertaking. The advertising segments should be those contained in the programs originally telecast on the main service, or if not appropriate, may be deleted or replaced by promotions of Canadian programs or by unpaid public service announcements. The Canadian content of program repeat channels must meet the requirement imposed on the main service. The general nature of the programming format used on repeat channels and on the main service must be the same.

The Commission will require the filing of licence amendment applications by the licensees of local television stations and speciality services that intend to provide programming for repeat channels as defined above, so that interested parties may have an opportunity to intervene. Decisions will be rendered on a case-by-case basis.

Insofar as the potential impact of repeat channels has not been measured at this stage, the Commission will proceed with a public process to consider applications by licensees to employ such channels.

Any undertaking that does not adhere to this framework will be considered to be a separate programming undertaking for which a licence is required.

In the case of TVA+, should TM continue its interactive television experiment after 31 August 1993, the Commission expects that TM would adhere to the framework set out above.

[§294-31]

i) Cable Distribution of Repeat Channels

The Commission intends to amend subsection 10(1) of the regulations to permit cable licensees to distribute programming authorized for distribution on repeat channels.

[NOTE: For the consequential amendment to the *Cable Television Regulations, 1986* implementing this proposal, see above at §133-79. In *Amendments to the Cable Television Regulations, 1986*, Public Notice CRTC 1994-7, February 3, 1994, the Commission added the following comments:

Proposed paragraph 10(1)(*j*) of the regulations would permit cable licensees to distribute programming authorized for distribution on repeat channels. The Commission has decided to adopt this amendment as proposed.

The Commission has taken note, however, of a proposal by the Canadian Association of Broadcasters and CanWest Global Communications Corp. that the operator of a program repeat channels should be permitted to request simultaneous substitution against identical programming on a foreign or distant station.

The Commission acknowledges that this proposal may have certain merit inasmuch as it would allow increased flexibility for those offering repeat channels to take advantage of simultaneous substitution without

constraints on the scheduling of programs within their main services. Nevertheless, the Commission considers that this proposal goes beyond the scope of the current proposed amendments and has therefore decided that it would be inappropriate to pursue the matter at this time.

However, should licensees of programming undertakings and of distribution undertakings, together, put forward a more detailed proposal in this regard that takes into account the various potential concerns that might arise from its implementation, the Commission would be prepared to revisit this matter in the future.]

Regarding the multiplexing of pay television services, the Commission has decided that no special authorizations to do so need be obtained by licensees of such services, so long as the original conditions of the licence are being met.

Program repeat channels and multiplex services may not be used for the purposes of linkage. Program repeat channels and multiplex services can be tiered up (from basic to discretionary or from a high penetration, unencrypted discretionary tier to a lower penetration, encrypted discretionary tier), but can never be tiered down. For example, a multiplexed channel of a discretionary movie service may not be distributed on a discretionary tier, program repeat channels and multiplex channels may not used for linkage with foreign satellite services.

[§294-32]

ii) Program Logs

The Commission will require that program repeat channels and the multiplexing of pay television services maintain programming logs. Specific requirements concerning the content, filing, and format of these logs will be decided on a case-by-case basis.

[§294-33]

k) Preponderance

The existing preponderance rule, which requires all Class 1 and Class 2 licensees to offer a greater number of channels devoted to Canadian programming services than to non-Canadian programming services, will be expanded in its application to encompass all cable licensees except those Part III licensees that utilize 12 channels or fewer for the distribution of programming services. As is currently the case, the preponderance rule will apply at the overall system level, and will take into account those programming services offered as part of discretionary tiers.

Special programming channels will continue to be counted for preponderance purposes. Multiplex programming channels, repeat channels and non programming services will not be counted. Each licensed PPV service will be counted as a single channel.

A regulatory amendment will be proposed shortly by the Commission which would give effect to these revisions to the preponderance requirement. [NOTE: For the consequential amendment to the *Cable Television Regulations, 1986,* which became effective on Jan.25, 1994, see above at §133-82.]

[§294-34]

II. Canadian DTH Services

As the use of satellite technology increases, particularly through the application of digital technology, the Commission considers that DTH delivery of programming services will play a greater role in the Canadian broadcasting system.

At the public hearing, the Commission discussed with various parties a number of ideas and developments that could work to alleviate certain concerns and structural impediments regarding distribution and reception of Canadian programming by means of DTH technology.

The most important development was the commitment of industry players, including programming service providers, to work towards adopting a common Canadian DVC standard that would include a conditional access standard.

As discussed earlier, the Commission strongly supports the industry-wide adoption of a DVC standard that would include a conditional access standard for authorizing reception by individual subscribers. This would facilitate the widest availability of Canadian programming to Canadian households by overcoming the technological incompatibility that currently exists between the types of encryption technology employed by certain Canadian programming services.

[§294-35]

[NOTE: References to the positions of various parties are omitted.]

[§294-36]

The Commission is encouraged that both programmers and distributors have demonstrated a renewed interest in providing Canadian services to the Canadian DTH delivery of Canadian services to be an important vehicle for providing programming services to Canadians. The Commission considers that the emergence of a strong Canadian DTH industry may provide a degree of price competition to services delivered within Canada by other distribution technologies, and will form an effective part of the overall response by the Canadian broadcasting system to non-Canadian DBS services.

[§294-37]

X. Criteria for Licensing New Services

In Public Notice CRTC 1993-77, the Commission has issued a call for applications for licences to carry on new Canadian specialty, pay television and PPV programming undertakings, and has set out the specific criteria under which such new undertakings will be licensed. [NOTE: The text of the call is omitted. Hearings to decide upon applications filed by September 15, 1993 were heard commencing on February 14, 1994.]

[§294-38]

[NOTE: The dissenting opinion of Commissioners Colville, Oda and Gordon objecting to the elimination of the subscriber rate reduction (sunset) provision for capital expenditures (CAPEX) is omitted, as well as the dissenting opinion of Commissioner Colville objecting to the policy of deregulating the rates for Class 2 cable systems between 2,000 and 6,000 subscribers.]

[§295-1]

[CANADIAN RADIO-TELEVISION AND
TELECOMMUNICATIONS COMMISSION]

Distribution and Linkage Requirements

[§295-2]

[Public Notice CRTC 1993-75, June 3, 1993. Effective January 25, 1994, this document replaced *Distribution and Linkage Requirements*, Public Notice CRTC 1987-261, November 30, 1987.]

[§295-3]

1. *General*

This public notice sets out the rules governing the distribution of programming services by cable licensees holding a Class 1 licence, or a Class 2 licence for a system with 2,000 or more subscribers.

In addition, the notice outlines requirements concerning the linkage of programming services distributed on a discretionary basis. The provisions set forth in this public notice will replace those set out in Public Notice CRTC 1987-261 dated 30 November 1987 when the pertinent amendment to subsection 10(2) of the *Cable Television Regulations, 1986* comes into effect. [NOTE: The revision to subsection 10(2) came into effect on January 25, 1994: see SOR/94-133, noted above at §133-80.]

These provisions govern distribution of the following programming services as part of the basic service and/or as discretionary services:

a) any pay television service, the originator of which is licensed to provide the service to all or any part of the authorized service area of the cable distribution undertaking,

b) any specialty service, the originator of which is licensed to provide the service to all or any part of the authorized service area of the cable distribution undertaking, and

c) any satellite service as set out in the list of Part II Eligible Satellite Services, [NOTE: for the most recent version, see below at §307] or any foreign religious satellite service as may be set out in a future list of eligible foreign religious services.

[§295-4]

2. *Rules Regarding the Distribution of Programming Services*

2.1 Where a cable licensee (licensee) elects to distribute any of the following specialty programming services, the licensee is required to distribute that service as part of the basic service, unless the originator of that service consents in writing to its distribution as a discretionary service:

a) CBC Newsworld

b) Vision

c) YTV
d) MuchMusic
e) TSN
f) Canal Famille
g) MétéoMédia/Weather Now
h) MusiquePlus
i) Réseau des Sports
j) TV5
k) Any other specialty programming service that is designated by the Commission for distribution as part of the basic service, unless the originator of that service consents in writing to its distribution as a discretionary service.

2.2 Except as otherwise provided pursuant to a condition of its licence, where a licensee elects to distribute any of the following programming services, the licensee is required to distribute that service as a discretionary service:
a) any pay television service,
b) any satellite service as set out in the list of Part II Eligible Satellite Services, or any foreign religious satellite service as may be set out in a future list of eligible foreign religious services.
c) Chinavision
d) Cathay
e) Telelatino
f) any single or limited point-of-view religious specialty service
g) any other specialty programming services that are designated by the Commission for carriage on a discretionary basis only.

2.3 A licensee may carry U.S. independent and duplicate network television signals authorized for distribution on a discretionary basis pursuant to the *Cable Television Regulations, 1986* or to a condition of its licence, provided the core 3+1 U.S.-originated services remain as part of the basic service.

2.4 Where a licensee is authorized pursuant to section 10 of the *Cable Television Regulations, 1986* or to a condition of its licence to distribute, on a discretionary basis, U.S. independent or duplicate network television stations, each such service must be distributed on a separate channel.

[§295-5]

3. ***Linkage Requirements with Respect to Programming Services Distributed as Discretionary Services***

3.1 The foreign satellite services specified in the list of Part II Eligible Satellite Services may only be offered in a package with Canadian pay television and/or Canadian specialty services other than Canadian single or limited point-of-view religious pay and specialty services, and all must be distributed as discretionary services, subject to the following linkage requirements:
a) each Canadian pay television service other than a single or limited point-of-view religious pay service, may be offered in a package with no more than five channels containing any of the foreign-originated services specified in either Section A or Section B of the list of Part II Eligible Satellite Services;

b) until 31 December 1994, each Canadian specialty service, other than a single or limited point-of-view religious specialty service, distributed on a discretionary basis, may be offered in a package with no more than two channels containing any of the foreign-originated services specified in Section A of the list of Part II Eligible Satellite Services;

c) commencing 1 January 1995, each Canadian specialty service, other than a single or limited point-of-view religious specialty service, distributed on a discretionary basis, may be offered in a package with no more than one channel containing any of the foreign-originated services specified in Section A of the list of Part II Eligible Satellite Services;

d) a licensee may use any of the channels containing foreign-originated services referred to in paragraphs (a) (b) and (c) for the distribution of U.S. independent or duplicate network television signals authorized for distribution pursuant to section 10 of the *Cable Television Regulations, 1986* or to a condition of the licensee's licence;

e) a licensee is not permitted to offer a tier containing only non-Canadian services;

f) a licensee is not permitted to link services on the list of Part II Eligible Satellite Services with a Canadian specialty service distributed on the basic service; and

g) prior to 1 January 1995, a licensee may only devote a maximum of eight channels of its undertaking to the distribution of foreign-originated services specified in the list of Part II Eligible Satellite Services, unless the licensee elects to distribute each Canadian specialty service, other than a single or limited point-of-view religious specialty service, distributed on a discretionary basis, in a package with no more than one channel containing any of the foreign-originated services specified in Section A of the list of Part II Eligible Satellite Services.

3.2 Each Canadian single or limited point-of-view religious pay and specialty service may be offered in a package only with other Canadian single or limited point-of-view religious pay and specialty services, and with any foreign religious satellite services as may be set out in a future list of eligible foreign religious satellite services, and all services must be distributed as discretionary services, subject to the following linkage requirements:

a) each Canadian single or limited point-of-view religious pay service may be offered in a package with no more than 5 channels containing any of the foreign religious satellite services.

b) each Canadian single or limited point-of-view religious specialty service may be offered in a package with no more than one channel containing any of the foreign religious satellite services.

c) a licensee is not permitted to offer a tier containing only foreign religious satellite services.

[§296-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Regulatory Policy for Multipoint Distribution Systems (MDS)

[§296-2]

[Public Notice CRTC 1993-76, June 3, 1993. This policy effectively replaced the MDS policy originally enunciated in Public Notice CRTC 1987-254, November 26, 1987, which had been put on hold in Decision CRTC 92-369, June 18, 1992, pending further consideration.]

[§296-3]

[NOTE: The procedural background leading to this policy statement is omitted.]

[§296-4]

REGULATORY POLICY

1. The Role of MDS

The Commission considers that an appropriate role for MDS, at this time, is to provide a board range of television services, on a subscription basis, to households in areas not served by cable television undertakings; and that the regulation of MDS, while taking into account the differences between the two technologies, should generally parallel that of cable television.

The following regulatory guidelines pertain specifically to MDS systems operating as radiocommunication distribution undertakings.

[§296-5]

2. Technical Operations

MDS systems should make effective use of the frequencies they occupy and provide the greatest coverage possible in the circumstances. In determining the extent to which proposed systems conform to this criterion, the Commission will take into account the potential of the market, the resources available to the applicant, and factors affecting signal transmission such as local topography.

MDS-based undertakings may also make use of VHF and UHF television and FM radio frequencies on a low-power, unprotected basis.

MDS licensees may use DVC to increase the signal carriage capacity of their systems.

Licensees of MDS systems should provide to their subscribers receiver-decoder units to permit the tuning of MDS, and other television signals received off-air, with equal ease.

[§296-6]

3. Signal Carriage

a) Permissible Signals

MDS subscribers should have access to a broad range of television and radio services. The Commission, therefore, will generally be prepared to authorize the carriage, in encrypted mode, of the same services authorized for distribution by cable television undertakings.

The Commission expects that most MDS operations will transmit exclusively in the encrypted mode. Applications for non-encrypted transmission will be considered on a case-by-case basis in rural and remote areas not served by a "local" commercial television station, taking into account as well, the impact that the proposed MDS undertaking could have on other broadcasting undertakings in the area.

[§296-7]

b) Preponderance of Canadian Services

Licensees should distribute more Canadian than non-Canadian television services, and these services should be counted in the same manner as they are for cable distribution undertakings.

[§296-8]

c) Extension of Television Services

MDS should contribute to the extension of Canadian television services.

In particular, licensees should distribute the services of the Canadian Broadcasting Corporation (CBC) and the appropriate provincial educational broadcasting authority received by satellite or other means, unless the same or similar services are available to the public through "local" television stations.

MDS systems should, to the extent feasible, distribute the signals of "regional" or "extra-regional" television stations where no local signals of the same network are available. They should also distribute the signals of "local" television stations in cases where the MDS signal contour extends significantly beyond the Grade A contour of the "local" station.

For this purpose, a station is normally considered "local" if the MDS transmitter site is located within the station's Grade A signal contour, and "regional" if the MDS transmitter site is between its Grade A and B contours. Similarly, a station is "extra-regional" if the MDS transmitter site is located within 32 km of the station's Grade B contour.

[§296-9]

d) Community Programming

MDS operations with 2,000 or more subscribers should distribute community programming.

[§296-10]

e) Distribution and Linkage

MDS systems with 2,000 or more subscribers should be operated in accordance with the distribution and linkage rules applicable to cable television undertakings.

[§296-11]

4. Simultaneous Program Substitution

MDS systems should provide simultaneous program substitution services to television stations in the following circumstances:

- The MDS system has 6,000 or more subscribers and the program substitution has been requested n writing by the licensee or a "local" or "regional" television station; or
- The MDS system receives signals subject to simultaneous substitution directly from a cable undertaking.

[§296-12]

5. Subscriber Fees

Subscription fees for MDS systems with 6,000 or more subscribers will be regulated by condition of licence. Generally, systems with fewer than 6,000 subscribers will not be subject to fee regulation. However, to provide a mechanism to safeguard the interests of subscribers, the Commission will, by condition of licence, allow for the review and possible variance of the fee of an MDS licensee having 2,000 or more but less than 6,000 subscribers upon receipt of written complaints from 10% or more of its subscribers. This provision is similar to that proposed by the Commission with respect to small cable systems having 2,000 or more but less than 6,000 subscribers, as set out in Public Notice CRTC 1993-74 issued today. [NOTE: See above at §294.] Also, the Commission considers that installation fees should not exceed the one time costs reasonably incurred by the licensee in performing an installation.

MDS licensees may sell or lease receiving equipment to subscribers and require security deposits prior to the provision of service on reasonable terms and conditions.

[§296-13]

6. Service Area, Market Impact, and Financial Viability

MDS systems should not jeopardize the financial viability of neighbouring subscription-based systems. Moreover, the viability of MDS undertakings should not depend upon the provision of service to households located within the authorized service area of any licensed cable distribution undertaking, or within the principal market area of any licensed MDS or STV (subscription television) system. Accordingly, MDS licensees may provide service to households located in any area, except where prohibited by a condition of licence imposed at the time of licensing.

Applicants for a new licence should demonstrate that the viability of the proposed operation is based on service to households enclosed by the undertaking's principal market area, that being the area enclosed by the undertaking's approved signal contour. Households outside this contour are normally considered a secondary market.

MDS licensees should not solicit or accept subscribers within the authorized service areas of cable undertakings or within the approved signal contours of STV or other MDS systems without the prior written concurrence of the licensees concerned or the prior written approval of the Commission.

Further, MDS licensees should ensure that any services distributed in the non-encrypted mode, and that are also distributed by a neighbouring cable television

undertaking as optional signals under the *Cable Television Regulations, 1986* cannot, to the satisfaction of the Commission, be received by the public within the authorized service area of the cable television undertaking. As well, licensees should ensure that any signals they transmit other than "local" signals and those of the CBC or a provincial educational broadcaster cannot be received within the approved signal contours of neighbouring MDS or STV undertakings.

[§296-14]

7. Joint MDS/Cable Television Operations

MDS technology may be used by a cable television licensee to extend service to households beyond the authorized cable service area. In such cases the undertakings will be licensed separately, and applicants will be expected to demonstrate that the viability of their proposed MDS operations is based upon the provision of service to households outside of the cable undertaking's authorized service area.

Furthermore, while licensees of joint MDS/cable operations may provide MDS service to households within the authorized cable service area, the technical operation should be designed to optimize reception in the territory beyond the cable undertaking's boundaries. In addition, applicants should assure the Commission that licensing the MDS operation will not unduly hamper the future extension of cable service or delay the provision of cable service to households within the existing service area.

While joint cable/MDS operations may share technical and other facilities, licensees should ensure that neither operation directly subsidizes the other.

[§297-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Religious Broadcasting Policy

[§297-2]

[CRTC Public Notice 1993-78, June 3, 1993.]

[§297-3]

[NOTE: The procedural background leading to this policy statement is omitted]

[§297-4]

The Commission's policy on religious broadcasting is based upon the requirements of Section 3 to the *Broadcasting Act* (the *Act*), which states that the programming provided by the Canadian broadcasting system should provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern. The Commission has taken the view that the most appropriate and effective way to achieve the objectives of the *Act* is to require that the programming of each individual licensee be balanced.

In its 1983 policy statement, the Commission determined that, since undertakings dedicated exclusively to the views of a particular religion, denomination or sect would, by their very nature, be predisposed toward one particular point of view, they would be unlikely to satisfy the requirement to provide balance in their programming. As a consequence, the Commission maintained its policy of not licensing new AM, FM or TV undertakings for the purpose of providing a religious programming service.

In its 1983 notice, The Commission nevertheless expressed the view that the introduction of a new, broadly-based network programming service devoted to serving the varied religious practices and beliefs of Canadians would be consistent with the increasing trend toward the delivery of specialized programming by satellite. The Commission also stated that, given adequate safeguards, such a service could satisfy the requirements set out in section 3 of the *Act*. As a result, the Commission issued a call for applications for a licence to carry on a satellite-to-cable, religious programming service to serve the varied religious practices and beliefs of Canadians on a national, interfaith basis.

Subsequently, in Decision CRTC 87-900 dated 30 November 1987, the Commission approved an application by Canadian Interfaith Network (Vision TV).

[§297-5]

II. The 1992 Public Hearing

In Notice of Public Hearing CRTC 1992-8, the Commission identified three broad issues that it wished to address at the 19 October 1992 hearing:

1. the general matter of balance with respect to programming on matters of public concern;
2. the particular issue of an appropriate licensing policy for religious broadcasting; and
3. the matter of religious programming on conventional radio and television stations.

During the two weeks of hearings, the Commission explored these issues as well as the relationship between religious broadcasting policy and fundamental social principles.

[§297-6]

[NOTE: the positions of various parties is omitted.]

[§297-7]

III. A RELIGIOUS BROADCASTING POLICY

A. Policy Principles

The Commission's new approach to its religious broadcasting policy is based upon the following principles:

[§297-8]

1. Recognition of Alternative Values

In developing its approach to religious broadcasting, the Commission sought to be responsive, not only to technological advances, but also to the daily realities facing many Canadians in an increasingly complex society, particularly residents of communities where suicide, alcoholism and loneliness are wide-spread. The Commission heard

eloquent and convincing testimony that religious programming can provide a valuable service to those in such circumstances.

The Commission has also sought to be responsive to the expressed desire of many that greater provision be made for the exposure of Canadian religious music and for support of a Canadian religious music industry.

Some parties spoke of their desire that the Canadian broadcasting system provide services with values distinctly different from those they see expressed through the programming now available to Canadian audiences.

In this respect, the Commission notes that it has supported the availability of many Canadian radio and television services providing alternatives to mainstream, commercial programming. Nevertheless, the commission is persuaded by the argument that religious values, in particular, plat an important role in the lives of many Canadians. Since these values are communicated increasingly through radio and television, the Commission considers that those religious groups who choose to use the Canadian broadcasting system to reach their congregations should not be discouraged.

The Commission's objective is to meet the legitimate needs and interests of those who wish to receive various kinds of religious programming, without diminishing the integrity and strength of the Canadian broadcasting system. In seeking to achieve this goal, the Commission has taken into consideration the fact that religious broadcasting has the power to provide spiritual comfort. At the same time, the Commission is acutely aware of instances where this power has been abused. While the Commission is of the view that a more flexible approach to the licensing of religious programming services is warranted, it also considers that this flexibility must be accompanied by rigorous guidelines on ethics to assist broadcasters of religious programming and to guard against egregious intolerance and exploitation.

Accordingly, the Commission considers that any religious organization or foundation using the Canadian broadcasting system to solicit funds should be a charity, and should be registered as such with Revenues Canada in accordance with the *Income Tax Act*. Registered charitable organizations or foundations must, among other requirements, make available an annual public information return describing the charity's purpose and activities and setting out financial details regarding receipts and disbursements.

[§297-9]

2. The Importance of Balance

It remains a principal tenet of the Canadian broadcasting system that licensees should provide balance on matters of public concern. Simply stated, the Commission's balance policy seeks to ensure that a reasonably consistent viewer or listener will be exposed to a spectrum of differing views on issues of public concern within a reasonable period of time. Freedom of expression has always been a fundamental consideration under this policy. Such freedom includes both the right to speak and the right to be informed. The *Act* declares that the airwaves are public property, and that the programming of the Canadian broadcasting system is a public service. Accordingly, it is reasonable to give preference, as the *Act* does, to the right of the audience to be informed about differing views on matters of public concern. Correspondingly, those who choose to express their views should be able to do so in a tolerant and welcoming environment.

The challenge faced by the Commission is how to reconcile this important policy, one of proven effectiveness, with the equally important values and needs expressed by the majority of those participating in this proceeding. In the Commission's view, these two goals are not irreconcilable.

In order to avoid interference with freedom of expression, the Commission has permitted broadcasters the greatest flexibility possible to determine which issues are of public concern and how balance can best be achieved. While a token expression of alternate points of view is not acceptable, the provision of equal time has never been required. In addition, the Commission does not prevent broadcasters from airing their personal points of view or beliefs on any subject, as long as the balance requirement is met in the overall programming of each licensee.

As previously stated in Public Notice CRTC 1983-112, the Commission acknowledges that there remains a "degree of controversy frequently associated with religious practices and beliefs". Accordingly, the Commission will continue to view religious matters to be of public concern. Those who broadcast religious programming have an obligation to offer differing views on matters of general public concern and, at the same time, must expose the audience to different points of view on religion itself.

In its 1983 policy, the Commission stated that it would be unlikely that a single-faith religious broadcaster would be able to achieve the latter obligation. The Commission therefore suggested a national, multifaith model that, through its ownership and participation structure, would foster balance and diversity among the different religious faiths in modern Canadian society. At the local level, the Commission considers that it may not be realistic in every case to expect broadcasters to implement such a model. It considers that local religious broadcasters can work within the existing flexibility guidelines of the current balance policy in order to keep their audiences informed of differing perspectives on issues of importance, including religion itself, while addressing the particular needs of the communities they serve.

[§297-10]

3. Greater Flexibility For Discretionary Services

The Commission, by majority vote, has determined that the time is appropriate to extend even greater flexibility to licensees who wish to provide religious television services in a discretionary basis to subscribers of distribution undertakings. The two weeks of public hearings in the National Capital Region and in Winnipeg generated discussion about whether technologies such as digital compression and universal addressability are likely to challenge conventional perceptions of the scarcity of frequencies and role of broadcasting in society, Many of those who submitted comments were of the view that the expanded range of programming and more personalized selection that these technologies might offer the consumer will continue the trend to narrowcast or niche programming services paid for directly by the subscriber. Some parties speculated that such an environment of choice may eventually afford the Commission more flexibility in determining the most appropriate means of fulfilling the objectives of the *Act* with respect to balance.

In Public Notice CRTC 1993-74 [§296] of today's date concerning the future structure of the Canadian broadcasting system, the Commission recognizes that, the evolution of

digital technology, coupled with universal addressability, will increasingly permit the availability of programming services aimed at very specific audiences and offered on an "à la carte" basis. The Commission, by majority vote, has therefore determined that it will not be necessary for licensees of religious undertakings to provide balance in their programming, as defined by the Commission's policy, provided that these services are distributed on cable **on a discretionary basis**, and adhere to very specific restrictions regarding their packaging their packaging and linkage. Such an approach would make single or limited point-of-view religious services available only to those who wish to pay an additional fee for them and, at the same time, ensure that more widely available services continue to provide viewers with differing views on matters of public concern.

[§297-11]

B. Licensing Policy for Broadcasting Undertakings Devoted to Religious Programming

Having reviewed the submissions received in response to Public Notice CRTC 1992-8 and having set out its basic policy principles, the Commission announces the following policy for the licensing of broadcasting undertakings devoted to religious programming.

[§297-12]

1. Definitions

For the purposes of its licensing policy, the Commission will maintain the definition of **religious** set out in Public Notice CRTC 1983-112, namely "anything directly relating to, inspired by, or arising from an individual's relationship to divinity, including related moral or ethical issues". Accordingly, a **religious program** will continue to be defined as "one which deals with a religious theme, including programs that examine or expound religious practices and beliefs or present a religious ceremony, service or other similar event". With respect to radio, this definition of **religious program** will be interpreted as including block programs with musical selections. It will not include religious music programs in which the spoken word content is non-religious.

While the Commission's policy does not draw distinctions between a religious programming undertaking and a conventional programming undertaking, it will expect applicants proposing a television programming undertaking designed to meet the religious and spiritual needs of its audience to propose a service that is devoted entirely to religious programming. Further, the Commission will require applicants wishing to air non-religious programming as part of a proposed service to demonstrate why such programming is necessary and that it will not unduly affect other television licensees operating in the same market.

Applicants seeking licences to carry on mew commercial radio undertakings to provide religious programming will be subject to the *Radio Market Policy* set out in Public Notice CRTC 1991-74 dated 23 July 1991 [NOTE: Set out above at §274].

The Commission also expects all radio and television licensees who broadcast religious programming to adhere to the guidelines on ethics set out in this public notice. The Commission may require such licensees to adhere to these guidelines by condition of licence.

[§297-13]

2. Over-the-Air, Balanced, Religious Services

Licensees whose **over-the-air** radio and television services are devoted to religious programming should be guided by the criteria set out below.

a) Balance

Generally speaking, a broadcaster who fulfils the following criteria should satisfy the balance requirement:

(i) Broadcasters must deal with matters of public concern in their programming and do so in a balanced fashion. Not all programming need be balanced, only relating to matters of public concern. The Commission considers religious matters to be of public concern.

(ii) Broadcasters should, in the first instance, determine for themselves when an issue is important enough to merit full discussion presenting a wide range of opinions, in what manner the differing views should be presented, and who should present them.

iii) In general, a broadcaster need not provide balance in each program or series of programs, but rather in the overall programming offered by the undertaking, over a reasonably period of time.

iv) To attain balance, a broadcaster need not necessarily give equal time to each point of view. Rather, the Commission expects that a variety of points of view will be made available in the programming offered by the undertaking to a reasonable consistent viewer or listener, over a reasonable period of time.

In Public Notice CRTC 1988-161 dated 29 September 1988 [NOTE: above at §247] and entitled "Balance in Programming on Community Access Media", the Commission noted a number of mechanisms that would assist licensees in achieving balance. Among these were the scheduling of periods for viewer or listener reactions, providing access to complaints, searching out alternative points of view, and producing or acquiring programming to satisfy the balance requirement.

Applicants seeking licences to carry on new radio or television undertakings to provide religious programming should be prepared to demonstrate to the Commission how they intend to ensure balance.

b) Ownership and Management

Under the new policy, the Commission will no longer expect an applicant seeking a licence to carry a new over-the-air radio or television undertaking for the broadcast of religious programming to have a multifaith ownership and management structure. The Commission will, however, require an applicant to demonstrate that the programming it proposes to provide will adequately meet the needs of the community it serves. In some cases, this may mean providing multifaith programming.

c) Other Requirements

All over-the-air radio and television undertakings devoted to religious programming will be subject to the requirements set out in the *Radio Regulations, 1986*, and the *Television Regulations, 1987*, respectively, including the requirements regarding Canadian content. The Commission considers that sufficient Canadian resources exist to produce attractive Canadian religious programming, including recorded music. Moreover, it is

important to note that the purpose of Canadian content requirements is not to deny Canadians access to foreign programming, but to ensure that Canadians have available to them services that are predominantly Canadian in character and reflective of Canadian society.

Any applicant seeking a licence for an undertaking to offer a television service devoted to religious programming will also be required to file a detailed programming plan outlining the religious programming it proposes to offer. If the plan is accepted, the Commission will usually require adherence to it as a condition of license.

In the case of radio, the Commission may require an applicant, by condition of licence, to provide the amount of religious programming it has proposed.

[§297-14]

3. Foreign Religious Services

Many parties expressed their desire to rebroadcast American religious services over the air in Canada. While the Commission acknowledges the support that exists for these services in certain communities, section 3 of the *Act* clearly states that each element of the Canadian broadcasting system "shall contribute in an appropriate manner to the creation and presentation of Canadian programming" and "shall make maximum use, and in no case less than predominant use, of Canadian creative and other resources in the creation and presentation of programming". The Commission therefore will maintain its policy of not licensing undertakings for the rebroadcast of non-Canadian radio or television services, religious or otherwise.

[§297-15]

4. Religious Services on Basic Cable

The Commission recognizes the important role played by the existing national, multifaith religious service, particularly through its ability to promote tolerance and cooperation among different religious groups in Canada. The Commission notes in this regard, the strong support for Vision TV expressed by the representatives of both Christian and other churches at the hearing. This service has welcomed all religious groups, speakers and philosophies, and has presented them in a manner that has encouraged and facilitated the discussion and appreciation of all facets of religious experience. In the Commission's view, this type of balanced service should be available to the largest possible number of Canadians.

[§297-16]

5. Discretionary Religious Services

In view of the policy principles expressed above, the Commission, by majority vote, has determined that greater flexibility towards Canadian religious services distributed on a discretionary basis is warranted. Accordingly, the Commission announces its policy that applicants seeking a licence to operate a religious specialty or pay programming undertaking, and who wish to offer programming that espouses a single or limited point of view on matters of public concern, will not be required to adhere to the current balance policy.

Applicants wishing to provide such a service should be guided by the following criteria.

a) Distribution

The Commission considers it imperative that these services be distributed to **viewers on a discretionary basis** and in such a manner that consumers must make a clear, positive choice to pay for and receive them. Consequently, such services should be distributed in an **encrypted** mode.

b) Packaging and Linkage

Single or limited point-of-view discretionary religious services may be packaged **only** with other Canadian religious programming services.

This approach would permit the creation of a tier religious programming services that may be attractive to certain subscribers, while preventing any possibility of other subscribers being obliged to purchase single or limited point-of-view religious services in order to access other types of services. Packaging with other Canadian religious services will be at the discretion of the licensees of the program undertakings concerned.

Canadian religious programming services may **not** be linked with foreign non-religious services. Canadian religious services may be linked with foreign religious services on a 1:1 ratio in the case of a specialty service, and a ratio of 5 foreign to 1 Canadian in the case of a pay service. Linkage is only applicable within the package offering the Canadian religious services. At the appropriate time, the Commission intends to establish a list of eligible foreign religious services to be linked exclusively with Canadian single or limited point-of-view discretionary religious services. Linkage with a foreign religious service will be at the discretion of the licensee of the Canadian programming undertaking.

c) Ownership

Undertakings providing discretionary religious services will not be required to have a multifaith ownership and participation structure.

d) Other Requirements

All discretionary religious television services will be subject to the requirements set out in the *Pay Television Regulations, 1990*, or the *Specialty Services Regulations, 1990*. Canadian content requirements and quantitative limits on advertising for discretionary religious services will be established on a case-by-case basis.

Like over-the-air undertakings that broadcast religious programming, discretionary religious undertakings will be expected to adhere to the Commission's guidelines on ethics for religious programming.

[§297-17]

IV. *GUIDELINES ON ETHICS FOR RELIGIOUS PROGRAMMING*

All licensees who broadcast religious programs will be expected to adhere to the following guidelines on ethics.

The purpose of these guidelines is to serve as an effective guide to program development, production, acquisition and scheduling, and to protect viewers and listeners against intolerance and exploitation, particularly those vulnerable to religious solicitations.

These guidelines recognize and support the freedom and rights of individuals and groups to state their beliefs freely and clearly, and are intended to enable individuals and groups to communicate these beliefs in an appropriate and meaningful manner. The Commission, however, expects that programming of religious nature, like any programming, must demonstrate tolerance, integrity and social responsibility.

These guidelines apply to all Canadian and non-Canadian religious programs broadcast by Canadian licensees.

The Commission expects all licensees to comply with strict provisions regarding the solicitation of funds. In particular, the Commission expects that the wording and tone of any solicitations for funds shall not:

- place an undue responsibility on the viewer or listener to respond to the appeal;
- be alarmist in suggesting that the program may be discontinued in the absence of such a response;
- predict divine consequences of not responding, or exaggerate positive results of responding;
- intimidate the viewer or listener in any way.

The same guidelines apply when printed materials soliciting funds are presented to viewers or listeners.

[§297-18]

Programming Practices

Licensees who broadcast religious programs should ensure that the following practices are observed:

1. No programs shall have the effect of abusing or misrepresenting any individual or group.
2. No group shall be targeted for the purpose of conversion or proselytism.
3. While groups and ministries are free to express their views about activities that they deem to be "sinful", they shall not call into question the human rights or dignity of any individual or group.
4. When programs are planned that deal with or comment on the beliefs, practices, liturgy or behaviour of another religious group, the licensee shall ensure the accuracy and appropriate context of such content.

The Commission may impose the above guidelines on ethics as a condition of licence, particularly if it receives complaints concerning a licensee's religious programs.

[§297-19]

V. *RELIGIOUS PROGRAMMING ON CONVENTIONAL STATIONS*

The Commission will continue to encourage licensees of conventional stations to reflect the religious and spiritual needs of the communities they serve. The concept of local reflection is founded on the principle that the right to use the public airwaves entails a responsibility to those members of the Canadian public resident in a licensee's service area.

[§297-20]

[NOTE: The dissenting opinion of Commissioners Colville, Dawley, Dupras, Gordon, Oda and Scott is not here reproduced.]

[§298-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

The Reporting of Canadian Programming Expenditures

[§298-2]

[Public Notice CRTC 1993-93, June 22, 1993.]

[§298-3]

Background

This Public Notice is to clarify the Commission's position with respect to a number of issues relating to the reporting of Canadian program expenditures, thereby to ensure that all licensees have full understanding of the Commission's definition of eligible Canadian programming expenditures and of its determination as to the appropriateness of certain accounting practices.

As the Commission announced in Public Notice CRTC 1989-27 dated 6 April 1989 [NOTE: set out above at §256], beginning with the 1989/90 broadcast year, most of the English-language private television stations earning more than $10 million per year in advertising revenues and network payments, where applicable, have been required by condition of licence to spend a minimum amount on Canadian programming. This condition of licence is based on an averaging provision linked to the station's financial performance in previous years. Other private English-language television stations whose advertising revenues and network payments are less than $10 million are expected to meet the same Canadian program expenditure requirements.

The formula, whose purpose is to ensure an appropriate level of expenditures on Canadian programs, is designed to minimize any year-to-year fluctuation in Canadian program expenditures resulting from a sharp increase or decrease in advertising revenues by averaging the rate of change of the licensee's revenues over a period of the up to three years.

The Commission subsequently introduce a number of modifications intended to increase the flexibility of the formula. Provisions respecting over and under expenditures during the licence term, and changes to the three-year averaging mechanism, were introduced in the Public Notices CRT 1992-89 [NOTE: above at §279] and CRTC 1992-89 [NOTE: above at §289] dated 8 April and 23 December 1992, respectively.

Last fall, in order to ensure that the formula is being applied in a consistent and equitable manner, the Commission asked those licensees subject to the condition of licence to provide detailed information about their actual Canadian programming expenditures in 1989/90 and 1990/91 and their accounting practices with regard to Canadian programming. In reviewing this information the Commission discovered a number of inconsistencies and interpretation difficulties.

[§298-4]

Reporting Practices

The Commission, in making its determination in this matter, has taken in to account the many different types of ownership structure in the Canadian television industry, ranging from networks to corporate groups to individual stations. It also recognized that broadcasts contribute to quality Canadian programming in a variety of ways: in addition to acquiring Canadian programs from the independent production sector, some produce programming either on their own or with independent producers; others pool resources with other broadcasters to produce co-operative programs. The Commission is concerned that the accounting practices of some licensees result in an overstating of the funds actually being expended on Canadian programming. These accounting practices are discussed below.

[§298-5]

Double Counting

Double counting can occur when the cost of a program is counted by more than one licensee for the purpose of fulfilling Canadian programming expenditure requirements. For example, a licensee may acquire the national broadcast rights for Canadian programs and credit the entire cost against its expenditure requirements. The same licensee can then recover a portion of the cost of the rights purchase by selling the unexploited broadcast rights to the other licensees, who then credit the amount they have paid against their expenditure requirements. Double counting also occurs when a licensee produces or acquires ownership of a program, claims the entire cost of the production against the formula requirement, and then sells the program or broadcast rights to another licensee who claims its cost for the program as a Canadian programming expenditure.

This practice results in a lower level of real expenditure on Canadian programming than is reported by licensees as their expenditures on Canadian programming. The Commission believes that it is important to ensure a level of expenditure on quality Canadian programming in the broadcasting system. At the same time, it does not want to negatively impact on the distribution and exposure of Canadian productions. Nor does it wish to introduce a disincentive to the production of quality Canadian programming which could result if the Commission were to require a licensee to re-invest in Canadian programming all revenues it derives from selling Canadian programming.

Accordingly, given its concerns with respect to double counting, but consistent with the objective of maintaining an incentive to produce and acquire quality programming, the Commission will require that the cost of a production or rights purchase be allocated between two assets: a local station use or broadcast component, which will qualify as an expenditure within the formula; and a non-broadcast resale component, which will not qualify as an expenditure within the formula. This methodology is to be followed regardless of the method used to acquire a program. The Commission notes in this regard that, for the purposes of the allocation, there is no difference between rights purchases, acquired ownership or station produced/co-produced programming.

The Commission expects licensees to make their own business decisions concerning program cost allocations, taking into account the anticipated future revenues to be derived from each component and the licensee's historic successes in sub-licensing rights purchases and selling similar in-house productions. The reasonableness of the allocations made by the licensee will be reviewed periodically by the Commission.

Revenues earned from the syndication or resale of any particular program in amounts greater than the allocation to the non-broadcast or resale component may be treated as syndication income by the licensee. However, the Commission experts licensees to consider the success of earlier programs when determining future allocations between the local component and the resale component.

Where, on the other hand, a production does not garner sufficient syndication revenues to recover the allocation to the resale component, the licensee may count the losses towards fulfilling its expenditure requirement.

In order to recognize the production undertaken by licensees, particularly those operating in smaller markets, and to encourage the distribution of such productions in other markets, the Commission has determined that licensees will not be required to undertake the foregoing allocations for produced or acquired (copyright) programming where the total cost of production of the programming falls below $100,000 for a single production, or $50,000 per episode for a series production (two or more programs produced by the same production company or licensee, having a common theme, situation, or set of characters). Financial recoveries from sale of such productions to related parties, however, are to be deducted from the amounts claimed as expenditures within the formula for station-produced or acquired programs costing less than these amounts. The Commission recognizes that this mechanism may still permit more than one party to claim expenditures related to a program, but is satisfied that this approach will reduce any disincentive to produce Canadian programs of high quality.

[§298-6]

Equity Investment

In reviewing the accounting practices of television licensees, the Commission has noted the there are substantial differences among licensees in their treatment of equity investments under the formula. The Commission considers that, as a general rule, the regulated operations of a broadcast licensee should encompass neither the profits nor the losses that may result from its equity investments in programs. Accordingly, equity investments by television licensees are not to be counted as a Canadian program expenditure for the purposes of the formula.

The Commission however, is aware of the importance of equity investments in the production of Canadian programs, particularly for the independent sector. Therefore, as an incentive for broadcasts to enter into equity arrangements with independent producers, losses on equity investments in productions of Canadian programs with arm's length companies are eligible to be counted towards a licensee's expenditure obligations.

[§298-7]

Telecast vs Not-Telecast

The issues of whether or nor a Canadian program should be telecast on a licensee's facilities in order for the cost of the program to be claimed against the licensee's expenditure requirements was another matter examined by the Commission in its review of the various reporting practices.

It is the Commission's view that, in order for the costs of a program to quality as an eligible expenditure under the formula, the licensee must have purchased a broadcast right or production with the intention of airing the program on the licensee's facilities. If, subsequent to its purchase or production, the program is not broadcast for any reason, a licensee may write-off the program within the formula net of any recoupment such as from completion bonds and/or insurance. For example, a right entitling a broadcaster to multiple airings might also be applicable only for a specific period of time. When this period expires the right lapses and has no further value. Any asset value still attached to the right at that time may be written off as an expenditure within the formula.

[§298-8]

Production Services Sold

Expenses related to contract work undertaken by a licensee to produce a program or commercial for a third party, or to provide assistance to a third party in its production of a program are not eligible Canadian program expenditures under the formula.

This approach is consistent with the Commission's longstanding policy that productions undertaken by a station for a network are not recognized as the station's productions. These productions are completed under contract by the affiliates and the costs of the contract may be counted only by the network as a Canadian program expenditure.

[§298-9]

Loans

Loans by broadcasters to assist in the financing of Canadian productions are not eligible expenses for purposes of the formula.

[§298-10]

Negative Revenues of a Network

In cases where a network incurs losses in any broadcast year and requires its affiliates to cover the losses, affiliates have treated such payments as a deduction in revenues (negative revenues) when calculating the year-to-year percentage increase in revenues for the purpose of the formula. The Commission confirms that the foregoing treatment of negative network payments is an acceptable practice when calculating the percentage change in revenues under the formula.

This practice, however, will only be accepted in cases where a licensee has actually paid the network for its share of the network's losses, or has recorded the amount as payable to the network in its books account.

[§298-11]

Definition of a Canadian Program Expenditure

In order to eliminate any confusion concerning eligible expenses for English-language conventional television licensees, the Commission has appended to this public notice a

definition of "expend on Canadian programming", which is to be followed by licensees when reporting their annual Canadian programming expenditures and which will be used by the Commission in determining compliance by licensees with their conditions of licence or with Commission expectations.

The Commission recognizes that the directives outlined in this public notice will have a significant impact on some licensees, particularly on the larger corporate groups. It considers, however, that clarity in this area is of paramount importance, and that these findings will result in the consistent application of reporting and accounting procedures among all licensees subject to the Canadian programming expenditures formula, whether by condition of licence or as an expectation.

[§298-12]

APPENDIX TO PUBLIC NOTICE CRTC 1993-93

For purposes of the conditions of licence or expectations applied by the Commission with respect to expenditures on Canadian programming by the licensees of English-language private television undertakings, "expend on Canadian programming" means:

a) The amortization charged against an expenditure by the licensee for exhibition rights to a Canadian program when the amortization results from exhibition of the program on the undertaking.

   When an expenditure results in an acquisition of rights for an area greater than that served by the undertaking, the licensee must make a reasonable allocation of the expenditure into an amount in respect of the broadcast area served by the undertaking and an amount in respect of all other areas on the basis of estimated revenues to be derived from all sources.

b) Where an expenditure by the licensee to produce or acquire a Canadian program whose total cost of production exceeds $100,000 for a single program or $50,000 per episode for a series program, the amortization or expense charged against the expenditure as a result of exhibition of the program by the undertaking.

   Where the licensee can reasonably expect to derive revenues from the programming beyond that to be derived from exhibition of the programming on the undertaking, the licensee must make a reasonable allocation of the expenditure into an amount in respect of the broadcast rights for the area served by the undertaking and an amount in respect of the rest of the property on the basis of estimated revenues to be derived from all sources.

c) In situations requiring an allocation of an expenditure for Canadian programming as previously outlined in (a) and (b), the losses incurred, if any, on the sale, syndication, resale, etc. of the Canadian programming, with related party transactions being effected at no more than cost.

d) Where an expenditure by the licensee to produce or acquire a Canadian program, whose total cost of production does not exceed $100,000 for a single program or $50,000 per episode for a series program, the amortization or expense of the net expenditures, net of recoveries from sales to related parties, as a result of the exhibition of the program by the undertaking.

e) Losses on equity investments in productions of Canadian programs with arm's-length companies.
f) Expenditures on script and concept development, excluding overhead costs.
g) Write-downs of Canadian program inventory after recognition of recoupments such as from insurance or completion bonds to bring the inventory to estimated realizable value.

[§299-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

A Licensing Policy for Low-Power Radio Broadcasting

[§299-2]

[Public Notice CRTC 1993-95, June 28, 1993. See also *A Review of CRTC Policies Governing the Use of Low-Power Radio Frequencies*, Public Notice CRTC 1992-21, March 21, 1992, above at §278, for the background to this policy and relevant definitions].

[§299-3]

A. Introduction

In Public Notice CRTC 1992-21, the Commission issued for public comment a series of questions related to the establishment of a priority system for the licensing of low-power radio stations. The questions were designed to elicit comment that would assist the Commission in developing a policy to ensure that low-power frequencies be used for purposes that best fulfil the objectives of the *Broadcasting Act*...

This notice summarizes the responses received to the various questions set out in the public notice, and sets out the Commission's licensing policy for low-power radio broadcasting [Note: Responses are generally omitted here].

The Commission emphasizes that this policy does not apply to those persons operating low-power radio operations that were specifically exempted from licensing [Note: These are found above at §156-§159 inclusive.]

[§299-4]

B. Questions and Responses

In its public notice, the Commission asked three general questions:

Should a system of priorities be devised as part of a licensing policy for lowpower radio?

What should be its elements?

In what order of importance should those elements be ranked?

The public notice then called for comments on five elements that might be included in a priority system. These elements are:

a) availability of frequencies,

b) content of programming,

c) correlation between power and potential audience,
d) duration of service, and
e) availability of alternate means of delivery.

Finally, the Commission posed subsidiary questions relating to the implementation of a priority system, in particular, when to apply such a priority system, whether to issue calls for competing applications, the need for market studies, the use of rebroadcasters, and the need for a Promise of Performance.

[§299-5]

1. The Need For a Priority System

[NOTE: A summary of comments is omitted here.]

[§299-6]

2. The Five Elements:

a) Availability of Frequencies

In the public notice, the Commission asked:

What should be the relative importance in a priority hierarchy of the availability of low-power frequencies in any area?

...

b) Content

With respect to content, the Commission posed the following questions:

What should be the relative importance of content among the elements in a priority hierarchy?

Should the various types of services (conventional, safety, traffic information, etc.) be ranked in order of public necessity and, if so, how?

Which of the various types of undertakings should be allowed to provide commercial content? What types of commercial activity (conventional or sponsorship) should be permitted, and how much? Should there be a provision with respect to certain undertakings to ensure equitable opportunity for advertisers to have their messages broadcast?

...

c) Correlation Between Power and Coverage

The Commission sought answers to the following questions:

What should be the relative importance among the elements in a priority hierarchy of transmitter power or coverage area?

What should be the appropriate power and coverage combination for each type of low-power undertaking?

...

d) Duration of Service

The Commission asked:

What should be the relative importance among the elements in a priority hierarchy of duration of service?

...

e) Availability of Alternate Means of Delivery:

The Commission asked:

What should be the relative importance in a priority hierarchy of the availability of alternative means of delivery?

[§299-7]

C. The Commission's Policy -- Introduction of a Priority System for Licensing Low-Power Radio

The submissions revealed a consensus on the need to establish a priority system as part of a licensing policy. Such a system would give priority to conventional broadcasting services over one-dimensional services, such as those providing tourist information services, and would apply in areas where there is a scarcity of frequencies. The Commission also considers that not-for-profit stations should reasonable be accorded precedence.

The Commission therefore establishes the following priority system for the licensing of low-power radio undertakings. **The priority system will generally be applied in areas that the Commission has previously identified as those where available frequencies are scarce on the basis of the projected FM frequency requirements of the CBC, private commercial, educational, community and campus broadcasters. These areas are *Vancouver/Victoria, Montreal and surrounding area and Southern Ontario.***

When considering competing applications for the use low-power frequencies in these areas where such frequencies are scarce, the Commission will generally give priority to conventional broadcasting services (Priority A) over one-dimensional services (Priority B). Moreover, the Commission will generally attach to the various types of services falling within the two priority groupings a priority that corresponds to their relative ranking within each, as set out below:

[§299-8]

Priority A Services:

1) **Originating conventional not-for-profit radio services (e.g. community, campus and native);**
2) **Originating conventional for-profit radio services (private commercial broadcasters, including ethnic);**
3) **Rebroadcasting transmitters of local stations rebroadcasting within the station's contour;**
4) **Rebroadcasting transmitters of distant signals (the CBC will have priority within this sub-group of Priority A services).**

[§299-9]

Priority B Services:

1) **Not-for-profit public information services (e.g. traffic or weather information services);**
2) **Commercial announcement services.**

The following three factors may also be considered by the Commission in its evaluation of competing applications of the same type for the same low-power frequency.

The Commission realizes, however, that the relative importance of each of these factors may vary depending on the type of service proposed. Such importance will be assessed on a case-by-case basis.

The correlation between power and potential audience: Generally speaking the Commission will consider that the larger the audience served by the undertaking, the higher the priority it should be accorded.

The duration of service: the longer a proposed service is to be on the air (whether on a daily, weekly, monthly or yearly basis), the more valuable it generally will be deemed to be.

The availability of alternate means of delivery: non-conventional services that can be delivered effectively only through use of a broadcasting frequency will generally be considered to have a higher priority than those that can be provided by alternate means, such as through the use of roadside signs or newspapers.

[§299-10]

Subsidiary Issues

1. Application of the Priority System

In its public notice, the Commission asked:

Should a priority system be applied at the time of the licensing decision, at the time of renewal, or at the time the undertaking with the higher priority goes on air?

Only the CAB responded to this question. It considered that it would be neither practicable nor desirable for the Commission to alter the priority status of operations that have already been licensed. It therefore recommended that, once licensed, a station should not have to change frequency or be obliged to cease operation because of the licensing of another undertaking that, under Commission policy, might have had a higher priority.

The Commission agrees. **It will therefore apply the priority system only in assessing new applications competing for use of the same frequency.**

[§299-11]

2. Calls and Market Criteria

The Commission asked the following questions:

Should the Commission issue a call for competing applications in the case of applications for low-power undertakings, and, if not generally, under what circumstances?

Should [the] process and criteria [in Public Notice CRTC 1991-74 §274] be applied to low-power undertakings?

...In light of its policy determination to apply a priority system in assessing competing applications proposing new, low-power radio services, and only in relationship to each other, it will be necessary for the Commission to issue a call upon receipt of any completed application. It further considers that its decision to grant the highest priority to not-for-profit undertakings should alleviate concerns expressed... that these seeking licences to operate such undertakings would otherwise face a disadvantage in competing with commercial broadcasters for low-power frequencies.

The Commission will therefore issue calls for competing applications upon receipt of any and all complete applications for licences to carry on low-power undertakings in areas where frequencies are scarce (as identified above). The receipt of applications proposing a service in areas where frequencies are not scarce will not trigger such a call.

The Commission recognizes the concerns expressed about the impact of new low-power stations on the revenues of commercial radio stations. It notes, however, that the radio market criteria have not been applied to not-for-profit stations in the past, and it does not wish to implement a policy that would unnecessarily inhibit the development of this sector of the radio broadcasting. The Commission is also satisfied that the impact of any new not-for-profit, low-power stations on the revenues of commercial radio stations would be limited.

The Commission will therefore apply the radio market criteria only to new commercial (for-profit) low-power radio undertakings; non-conventional services will be excluded from application of the market criteria.

[§299-12]

3. Rebroadcasters

The Commission asked:

Should the Commission continue to consider applications for the use of low-power transmitters to rebroadcast the programming of existing undertakings? Under what circumstances should it do so, for instance, in cases where technical problems limit cover-age within an undertaking's licensed service area?

The Commission supports the view that rebroadcasters of local services designed to alleviate coverage difficulties should have a higher priority than rebroadcasting transmitters for non-local services, and this has been incorporated into the priority system set out earlier in this document.

[§299-13]

4. Applications for multiple Low-Power Frequencies for Non-Conventional Use

In its policy proposal, the Commission described a situation where one or more applicants might propose to employ several low-power frequencies for non-conventional use, thereby exhausting the frequencies available in a particular area. It then posed the following question:

How could the relative merits of the types of proposals described above be assessed in a priority system?

The CAB addressed this matter and suggested that there should not be a separate process developed for such a situation.

The Commission agrees, and will deal with such applications using the priority system set out earlier. To the extent that the applications have features not contemplated in this notice, the Commission will proceed on a case-by-case basis.

[§299-14]

5. Competitive Non-Conventional Services

In its public notice, the Commission asked:

Should the Commission's licensing policy for low-power radio preclude the licensing of competitive, non-conventional services?

...The Commission appreciates that over-licensing of competitive non-conventional services in areas where frequencies are scarce could lead to congestion of the radio band and hinder the future development of conventional low-power radio services. However, in areas where there is a relative abundance of frequencies, there would seem to be little reason to exclude, out of hand, the possibility of competitive non-conventional services. The Commission further notes that non-conventional services will be given a lower priority than conventional services under the system outlined earlier in this document.

The Commission will therefore consider the licensing of competitive non-conventional commercial services on a case-by-case basis. In areas where there is a scarcity of frequencies, the priority system outlined earlier in this document will be applied.

[§299-15]

6. Use of the Extended AM band

The Commission asked:

To what extent might some of the services currently being contemplated for low-power undertakings be accommodated on the newly extended upper portion of the AM band?

...While noting the position expressed in these submissions, the Commission considers that it is too early to gauge the eventual demand for use of the extended portion of the AM band. It is possible that the extended AM band will represent a better alternative for a conventional broadcaster than use of LPAM or LPFM facilities. **The Commission therefore considers it premature to support the move of some non-conventional services to the extended AM band. It will delay announcement of any determination on this question until an evaluation of the potential impact of such a move is completed.**

[§299-16]

7. Application of the *Radio Regulations, 1986* (the regulations) and/or Promises of Performance

The Commission asked the following questions:

To what extent should the provisions of the regulations be applicable to the various types of low-power programming undertakings?

To what extent should such low-power undertakings be required to comply with a Promise of Performance?

...The Commission considers that the regulations should apply to the licensees of conventional low-power undertakings since they offer programming that is similar to that of higher-power conventional stations. It further considers that it is appropriate to require licensees of conventional low-power FM stations to submit Promises of Performance. In the case of non-conventional services, it might not be appropriate to apply all of the regulations or require Promises of Performance. However, the Commission considers that a condition of licence should be attached to the licences of non-conventional stations to ensure that they do not change their programming and begin to offer services identical or similar to those of conventional licensees, without prior Commission approval.

The Commission will therefore generally require licensees of conventional low-power radio stations to adhere to the regulations, unless otherwise specified by condition of licence, and will require the licensees of conventional low-power FM stations to file Promises of Performance. The question of whether to require adherence to the regulations by the licensees of non-conventional services will be considered on a case-by-case basis. In addition, licensees of non-conventional low-power undertakings will be subject to a condition of licence that defines their programming in such a way as to ensure that they do not change their programming and begin to offer the same services as conventional licensees without Commission approval.

[§300-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Local Programming Policy for FM Radio -- Definition of a Single-Station Market

[§300-2]

[Public Notice CRTC 1993-121, August 17, 1993.]

[§300-3]

In Public Notice CRTC 1992-72 dated 2 November 1992, [NOTE: set out above at §287] the Commission announced the results of its review of the regulations and policies governing radio. In the notice, the Commission also called for comments on a proposal to replace requirements relating to levels of news and spoken word programming on FM stations with a requirement for local programming for licensees of commercial radio stations, both AM and FM, wishing to solicit or accept local advertising.

[§300-4]

In Public Notice CRTC 1993-38 dated 19 April 1993, [NOTE: above at §292-8] the Commission announced the following determination:

> Commercial FM stations in markets served by more than one private commercial station must devote at least one-third of the broadcast week to Local Programming. Radio licensees in competitive [multiple-station] markets wishing to reduce their level of local programming below the one-third level will generally be expected to assume a condition of licence stipulating that they not solicit or accept local advertising. Applications for exceptions to this policy will be considered on a case-by-case basis. Commitments for "Station Production" in current Promises of Performance will be taken as commitments for Local Programming for purposes of this policy.

[§300-5]

Licensees of FM stations in single-station markets are excluded from the provisions of this policy.

For the purpose of this policy, the Commission has arrived at the following definition of "single-station market":

A single-station market is any community that only one commercial FM radio station has been licensed to serve, provided that

1 the 3 mV/m contour of this FM station does not encompass a significant part of a second community that another AM or FM commercial radio station has been licensed to serve and whose population is equal to, or greater than, that of the first community, and

2(a) the community is not situated within the 3 mV/m contour of any other licensed commercial FM station, or

2(b) if so situated, is a community whose distance (centre to centre) from the community served by the other station is 60 kilometres or more.

[§300-6]

On the basis of this definition and the Commission's records, the following FM stations will be excluded from application of the policy and will be permitted to solicit and accept local advertising, irrespective of the amount of local programming they broadcast:

CJLM-FM Joliette, Quebec
CHOX-FM La Pocatière, Quebec
CJLA-FM Lachute, Quebec
CFEL-FM Montmagny, Quebec
CIHO-FM Saint-Hilarion, Quebec
CJSO-FM Sorel, Quebec
CFBG-FM Bracebridge, Ontario
CHPR-FM-1 Hawkesbury, Ontario
CFBK-FM Huntsville, Ontario
CFNO-FM Marathon, Ontario
CKMP-FM Midland, Ontario
CKLP-FM Parry Sound, Ontario
CFDK-FM Pickle Lake, Ontario
CISE-FM Sechelt, British Columbia
CISQ-FM Squamish, British Columbia
CISW-FM Whistler, British Columbia

[§300-7]

Notwithstanding the above definition, the Commission realizes that there may be other factors, such as topography, that would justify consideration of communities as constituting single-station markets. For that reason the Commission will remain willing to consider arguments in support of such a conclusion with respect to any communities that do not appear on the above list.

[§300-8]

The Commission also recognizes that changing circumstances, such as those resulting

from future licensing action or possible station closures, may, by strict interpretation, render the definition of single-station market inapplicable to some of the above communities, or applicable to others. As a general rule, however, once exempted from the policy requirements by the Commission, stations such as those appearing on the above list will continue to be exempt.

[§300-9]

Licensees of all commercial FM stations serving markets other than single-station markets should expect to have the following condition attached to their licence at the time of licence renewal or as a prerequisite of approval of their applications to eliminate their Promise of Performance commitments to minimum levels of station production:

> It is a condition of licence that the licensee refrain from soliciting or accepting local advertising for broadcast during any broadcast week when less than one-third of the programming aired is local. The definition of local programming shall be as set out on page 8 of Public Notice CRTC 1993-38, or as amended from time to time by the Commission.

[§300-10]

While the above relates to FM stations, the Commission indicated in Public Notice CRTC 1993-38 that, at the time of licence renewal, AM licensees will be asked to indicate the level of local programming they will provide and how they will ensure that spoken word of direct and particular relevance to the communities they serve is included in their programming. The Commission will retain the option of imposing on certain AM licensees conditions of licence with respect to local programming where it considers it appropriate to do so.

As stated earlier, commercial FM stations in multiple-station markets may make application to be exempted from this policy.

[§301-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Compliance with the Provisions of the *Radio Regulations, 1986* Relating to Logger Tapes

[§301-2]

[Public Notice CRTC 1993-122, August 19, 1993.]

[§301-3]

Subsections 8(5) and 8(6) of the *Radio Regulations, 1986* (the regulations) requires that all licensees retain, for a period of at least four weeks from the date of broadcast, a clear and intelligible tape recording or other exact copy of all matter broadcast and furnish it to the Commission upon request.

During the 1992-1993 broadcast season, the Commission processed licence renewal applications for the vast majority of community radio stations. Fifteen of the 23 stations that filed renewal applications were unable on at least one occasion to furnish clear and intelligible logger tapes. In addition, five commercial stations and three campus stations were unable to furnish the Commission with logger tapes. However, in most of these cases, the problem was resolved by the time a second request was made by the Commission.

[§301-4]

[NOTE: Details of specific short term licence renewals are omitted.]

[§301-5]

The authority to issue orders under subsection 12(2) of the *Broadcasting Act* (the *Act*) gives the Commission a new means of enforcing conditions of licence and regulations. A licensee who fails to comply with a regulation or condition of licence after an order is filed in the appropriate court may be found in contempt of court and penalized.

[§301-6]

Access by the Commission to complete, clear and intelligible logger tapes is particularly important because it enables the Commission to monitor the programming broadcast by a station for compliance with regulations and conditions of licence, and to investigate complaints by the general public regarding such programming.

[§301-7]

In Public Notice CRTC 1986-268 dated 29 September 1986 and entitled "Provision of Logger Tapes Regulations", the Commission indicated the following:

> Part of the responsibility which a broadcasting licensee undertakes is the responsibility for maintaining tapes, and the investment in adequate taping equipment and back-up equipment is a part of the necessary expense of operating a licensed broadcasting station. The financing of proper taping equipment is not a discretionary expenditure, and if a licensee cannot or will not assume it the licensee is not entitled to operate a broadcasting undertaking.

[§301-8]

To enable the Commission to safeguard the public interest, all licensees are hereby advised that the Commission will continue to monitor closely their compliance in this respect and intends to use every available means to enforce the regulations.

The *Act* provides that any licensee contravening a regulation is subject to enforcement action via a Commission order or through the courts. Continued non-compliance can result in more serious measures, including suspension, non-renewal or revocation of the licence. The Commission intends to apply these measures in the case of licensees who fail to comply with CRTC policies and regulations.

[§302-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

New Assessment Guidelines for Fee Increases Under Subsection 18(8) of the *Cable Television Regulations, 1986*

[§302-2]

[Public Notice CRTC 1993-146, October 21, 1993.]

[§302-3]

The Commission hereby announces the revised guidelines it will use to assess filings by cable licensees, pursuant to subsection 18(8) of the *Cable Television Regulations, 1986* (the regulations), for basic monthly fee increases based on economic need.

[§302-4]

Background

Under subsection 18(8) of the regulations, a cable licensee may propose to increase the base portion of its basic monthly fee for reasons of economic need. Prior to 3 June 1993, the Commission's assessment of such filings was based upon a comparison of a licensee's rate of return on the average net fixed assets (RNFA) used to provide the basic service and any discretionary services distributed in an unencrypted form (i.e. "extended basic" discretionary tiers), against a profitability benchmark of 23%. In its assessment, the Commission averaged a licensee's RNFA over a seven-year period, including the projected RNFA for the broadcast year in which the filing was received, the actual RNFA for each of the preceding five years, and the projected RNFA for the year following that in which the filing was received. Where a licensee's average RNFA was less than 23%, the Commission did not generally disallow the increase.

In Public Notice CRTC 1993-74 dated 3 June 1993, the Commission announced various policy changes flowing from the Structural Public Hearing conducted in March 1993. [NOTE: References from Public Notice CRTC 1993-74, found at §294 above, are omitted.]

In developing new guidelines for its assessment of subsection 18(8) fee increases based on economic need, the Commission has been mindful of the structural changes occurring within the Canadian communications environment, and of the package of regulatory reforms described in Public Notice CRTC 1993-74. The new guidelines are specifically intended to encourage licensees to place more emphasis on increasing the proportion of revenues they derive from discretionary programming services and for non-programming services. Such an approach takes into account the incentives for implementation of universal addressability that the Commission has proposed to introduce through amendments to subsection 18(6) of the regulations (see Public Notices CRTC 1993-137 and 1993-137-1) [§307] and the greatly enhanced ability that licensees will have, through universal addressability, to provide subscribers with service package options. In addition,

the new guidelines address the need to provide a more affordable and cost efficient basic service.

[§302-5]

New Guidelines

Commencing with the 1996 broadcast year, where a licensee proposes to increase the base portion of its basic monthly fee for reasons of economic need, and where, in the broadcast year in which the filing is received and in each of the three following projection years, the licensee's RNFA derived only from the basic service is less than 11.5% *and* where its RNFA derived from the basic service, discretionary programming services (including those distributed in an unencrypted form) and non-programming services, combined, is less than 23%, a filing related to a proposed increase in the basic monthly fee would not generally be disallowed. Subject to the Commission's general policy limiting fee increases pursuant to subsection 18(8) in a given year to 10% of the base portion of the basic monthly fee in effect at the time of filing, the maximum increase that will generally be allowed will be the amount required to raise the RNFA for the basic service in the year of filing to a benchmark of 11.5%.

The Commission would generally disallow any fee increase based on economic need other than in cases such as those described above, or where the licensee is able to demonstrate exceptional circumstances.

The Commission expects that the period of approximately three years leading up to 1 September 1996 will serve as a transition phase, during which time licensees will implement addressability on a universal basis, and introduce new discretionary programming services and non-programming services. These new services will only gradually move towards achieving their full revenue producing potential. Accordingly, the profitability benchmark of 11.5% RNFA for the basic service will also be reached on a gradual basis, phased in as follows:

Year of Filing	**1993/94**	**1994/5**	**1995/6**	**1996/7**
Profitability Benchmark (Percentage of RNFA)	**17.5%**	**15%**	**13.5%**	**11.5%**

For filings received prior to 1 September 1996, the Commission will assess a licensee's economic need based upon its RNFA for the broadcast year in which the application is filed and for the following broadcast year, as projected, against the applicable profitability benchmark.

For example, where a filing is received by the Commission in the 1993/94 broadcast year, where the licensee's projected RNFA for the basic service is less than 17.5% in each of 1993/4 and 1994/5, ***and*** where, in each of those years, its projected RNFA for the basic service, discretionary programming services and non-programming services, combines, is less than 23%, the Commission will generally disallow any increase in excess of that amount necessary to bring the current year's basic service RNFA to 17.5%. All filings will also remain subject to the Commission's policy limiting fee increases in any year to no more than 10% of the base portion of the basic monthly fee.

[§303-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Call for Comments - Home Shopping/ "Infomercial" Services

[§303-2]

[Public Notice CRTC 1993-172, December 8, 1993. For further developments on this matter, see below at §308.]

[§303-3]

Background

[NOTE: This portion of the Public Notice is omitted.]

[§303-4]

Call for Comments

Under subsection 9(4) of the *Broadcasting Act,* the Commission is empowered to exempt from licensing and other requirements, persons carrying on broadcasting undertakings of classes specified by the Commission. The Commission hereby calls for comments regarding whether, and under what circumstances, those proposing to carry on undertakings offering home shopping and/or infomercial services should be exempted from licensing requirements. Following its consideration of the comments received, the Commission will determine whether to issue an exemption order or to schedule such applications for consideration at a future licensing hearing. If required, this hearing would take place in 1994.

[§303-5]

Issues

To assist in its examination, the Commission seeks comments on the following questions.

1. Is the nature of home shopping and/or infomercial programming such that the licensing of persons carrying on undertakings providing these types of services is required in order to ensure that they meet the general principles and objectives set out in section 3 of the *Broadcasting Act,* or should the Commission consider creating an exempt class for such persons, pursuant to subsection 9(4) of the *Broadcasting Act?*
2. If the Commission were to create an exempt class for such persons,
   a) what specific criteria should be established to define the characteristics of such an exempt class?
   b) for the purposes of cable distribution, what priority, if any, should the Commission grant services provided by persons falling within the exempt class?

[§303-6]

[NOTE: Comments were due February 8, 1994.]

[§304-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Additional Clarification Regarding The Reporting of Canadian Programming Expenditures

[§304-2]

[Public Notice CRTC 1993-174, December 10, 1993.]

[§304-3]

On 22 June 1993 the Commission issued Public Notice CRTC 1993-93 [NOTE: set out above at §298] clarifying the Commission's position with respect to a number of issues relating to the relating to the reporting of Canadian programming expenditures by English-language conventional television licensees who are subject to Canadian expenditure requirements, whether by condition of licence or by expectation. The public notice was issued to ensure that all licensees have a clear understanding of the Commission's definition of eligible Canadian programming expenditures and its determination as to the appropriateness of certain accounting practices.

Further to queries raised with Commission staff by the Chief Financial Officers' Committee of the Canadian Association of Broadcasters (CAB), the Commission hereby provides further clarification with respect to the type of losses that will be accepted as eligible expenditures on Canadian programming. This notice also sets out how the Commission intends to assess compliance with expenditure requirements for Canadian programming.

In Public Notice CRTC 1993-93, the Commission stated that, while loans provided by licensees to assist in the financing of a Canadian production do not qualify as acceptable expenditures, losses on equity investments in productions of Canadian programs with arm's-length companies would so qualify.

The CAB representatives pointed out that, in addition to equity investments, licensees may also provide financing for productions set up in the form of debt instruments such as loans or advances. Such arrangements are very similar to equity investments and may result in capital losses.

[§304-4]

The Commission has determined that, while loans will continue to be ineligible, it will accept as a qualifying Canadian programming expenditure *losses of principal on loans* made to arm's-length companies relating to the production of Canadian programs. *Foregone interest or losses of interest revenue on loans,* however, will continue to be ineligible as Canadian programming expenditures.

The Commission is satisfied that this approach is consistent with its position set out in Public Notice CRTC 1993-93, in that the amount of any capital loss by a licensee on an investment in a Canadian production will be considered an eligible Canadian

programming expenditure, regardless of the vehicle used by the licensee to make the investment.

The CAB representatives also addressed how they believed the Commission should assess television licensees' compliance with their Canadian programming expenditure requirements over the current licence term in light of the clarifications regarding the eligibility of program expenditures and the Commission's determination as to the acceptability of certain accounting practices, as described in the June 1993 public notice.

In the CAB's view, Public Notice CRTC 1993-93 constituted a "new policy" and it argued that the clarifications should not be applied retroactively. The CAB stated that it expects some licensees may have included, in the financial projections filed at the time of their last licence renewal, certain Canadian programming expenditures that the Commission, in its June 1993 public notice, stated it considers ineligible.

In its June 1993 notice, the Commission noted that it had discovered "a number of inconsistencies and interpretation difficulties" in reporting actual Canadian programming expenditures and stated that it wished to be satisfied that the Canadian programming expenditures formula was being applied in a consistent and equitable manner. In publishing its clarifications regarding the policy, the Commission recognized:

> ...that the directives outlined in this public notice will have a significant impact on some licensees, particularly on the larger corporate groups. It considers, however, that these findings will result in the consistent application of reporting and accounting procedures among all licensees subject to the Canadian programming expenditures formula, whether by condition of licence or as an expectation.

The Canadian programming expenditure requirements imposed on the licensees of most private, conventional, English-language television undertakings are based upon a formula tied to the figure that each licensee, in its most recent application for licence renewal, projected it would spend on such programming in the first year of its new licence term.

The Commission hereby advises such licensees that they will be provided an opportunity to demonstrate that an adjustment is warranted in their first year projections for Canadian programming expenditures, specifically that provision for expenditures on equity investments had been included in their projections for year one of the current licence term, and that such expenditures were in fact made in that year. Any licensee wishing the Commission to consider an application to amend the terms of its licence to allow for such an adjustment must provide supporting documentation as to the actual amount of the equity investments that were made in the first year.

[§305-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

The Production Fund

[§305-2]

[Public Notice CRTC 1994-10, 10 February 1994.]

[§305-3]

In Pubic Notice CRTC 1993-74 entitled *Structural Public Hearing* [NOTE: set out above at §294], the Commission announced the creation of a new production fund that would provide approximately $300 million over 5 years for the production of new Canadian programming.

The Commission determined that the fund would be financed through an amendment to the *Cable Television Regulations, 1986* (the regulations), specifically through changes to the capital expenditure "sunset" provision contained in subsection 18(6) of the regulations:

> ...in consideration of the need to provide additional funding for the production of Canadian programming, the Commission, by majority vote, intends to suspend implementation of the reductions required by the "sunset" provision for those licensees who contribute 50% of the amount by which the monthly fee would otherwise be reduced to a new fund for Canadian programming.

In Public Notice CRTC 1993-137 dated 7 October 1993, the commission requested comments on proposed changes to the cable regulations which were intended to give affect to this and other policy proposals. Subsequently, in the Public Notice CRTC 1994-7 dated 3 February 1994, the Commission announced its decision on its proposed amendments to the cable regulations, including, inter alia, the adoption of an amendment to subsection 18(6) that gives effect to the suspension of the sunset provision.

Earlier, in Public Notice CRTC 1993-105 dated 15 July 1993, the Commission called for comments as to what would be the most appropriate policies for program eligibility, access, specific funding mechanisms and administration of the production fund. There were 79 comments submitted, including those from interested members of the public, production companies, production associations, private broadcasters, unions, guilds and associations representing artists and craftspeople, funding bodies, public broadcasters, government, educational institutions, associations representing the cable and television industries, artists, and individuals, groups and associations representing such special interests as the disabled, aboriginal and third language communities.

The comments represented a wide range of opinion on each of the issues raised in Public Notice CRTC 1993-105, but most particularly with respect to the questions regarding what would constitute the most appropriate funding mechanism and the criteria for access to the production fund.

Private broadcasters generally considered that the fund should be used to help defray the licence fees paid by themselves to independent producers, so as to reduce the net cost

of acquiring Canadian programs to a level that would be more comparable to prices paid for foreign programs. Some suggested that the production fund could serve to achieve this by rebating private broadcasters up to 30% of their costs of acquiring programs from independent producers.

The independent production community largely held the view that all of the fund's support for independently-produced programs should be in the form of direct grants to the producers themselves. Independent producers did not consider that broadcasters should have access to any part of the fund. This view was also supported by publicly-funded broadcasters.

The cable industry proposed that independent producers and broadcasters should both have access to the fund to support the cost of new production, but went on to suggest that the bulk of this support should flow to independently-produced programs.

The Commission has reviewed all of the submissions, and has reached the following conclusions on the various issues related to the fund's establishment and operation.

[§305-4]

1. Funding Canadian Programming

In announcing its plans for the creation of a fund, the Commission noted that:

> Canada's small domestic market continues to make it difficult to finance the creation of competitive Canadian programs. Whereas U.S. producers can recover the majority of their production costs through domestic license fees, the licence fees earned in Canada by most Canadian program producers represent only a fraction of their total production costs.

The financial disincentives broadcasters face in acquiring Canadian drama, documentaries and children's programs have resulted in a situation in which such programs are particularly under-represented on Canadian television screens. As a general rule, Canadian programs are not more costly to produce than non-Canadian programs. They are, however, more costly for Canadian broadcasters to acquire. Even if a Canadian and a non-Canadian program draw similar audiences and advertising revenues, the margin between the cost of the Canadian program and the revenues it generates tends to be much smaller then the margin for the equally-popular non-Canadian program, and may even result in a net loss for the broadcaster.

The Commission has concluded that the main focus of the production fund should be on facilitating the broadcasting of high quality Canadian programs in under-represented categories in peak viewing periods. To do so, the production fund must support productions which meet these criteria.

High quality programs require adequate financing. While independent producers have long claimed that licence fees in the Canadian market are too low, Canadian broadcasters have been equally insistent that they are financially unable to increase the licence fees that they pay.

Independent producers outside of Quebec generally agreed that some form of grant or equity investment mechanism would be desirable to make up the shortfall in their earnings from licence fees. They acknowledged, however that under Quebec's Tax Credit program, the tax credits of an independent producer in that province would be reduced by the amount of any grant, thus cancelling out its benefit.

With respect to equity investments, the Commission notes that independent producers in the past have frequently expressed the concern that such investments, whether coming from broadcasters or from a fund, can serve to dilute the producers's control over the production. Of further concern to independent producers is that equity investments, unlike licence fees, are repayable in the long term, and thus do not serve to attract additional private investment.

Accordingly, the Commission has determined that increased licence fee would be the most appropriate means of stimulating Canadian production, by serving to maintain and increase the quality of programming and by attracting private investment through increasing the revenue stream generated by Canadian programs. At the same time, the Commission acknowledges that, to be fully effective, the production fund should precipitate benefits to both the producers and the broadcasters. In recognition of the fact that broadcasters often find themselves paying more for Canadian programming than they can hope to earn in advertising sales, the Commission considers that the production fund should cover a portion of the increased licence fees that would be required to trigger its participation.

[§305-5]

2. Fundamental Operating Principles

a) *Eligible Categories of Programs*

Programs that will be eligible for support from the production fund are restricted to drama, music and dance and variety as defined in Appendix A to the *Television Regulations, 1987;* to programs aimed at children aged twelve and under; and, provided they conform to Telefilm Canada's definition, to documentary programs.

Telefilm Canada defines documentaries as:

> ... creative works in which a topic is presented from the author's point of view through an original narrative and visual construction. Eligible documentaries are those which treat a specific topic, and their duration should be at least 30 minutes.
>
> This does *not* include sponsored programs, magazines, talk shows, public affairs, broadcasts (factual programs, often used as inserts and generally intended to be part of an information program or news bulletin, dealing with current events or topics based on journalistic investigation, which may have an editorial bias), or productions that are part of an educational program. (emphasis added)

Programs in the categories of news, reporting and actualities, sports, game shows, and human interest are not eligible for contributions from the production fund.

[§305-6]

b) *Emphasis on Drama*

Not less than 80% of the disbursements from the production fund should be for drama and children's programming, and a maximum of 20% of disbursements may be for documentary, variety and music and dance programming.

[§305-7]

c) *Point Score*

In general, to qualify for financial support from the fund, programs must earn a minimum of 8 points on the scale used by the Commission and by the Canadian Audio-Visual Certification Office (CAVCO) in certifying Canadian productions.

Some argued in their comments that, in addition to the above criteria, there should be special consideration given to programs that feature an identifiably-Canadian protagonist and location and that are based on a Canadian literary work on historical event.

While the Commission does not consider that such additional criteria are necessary, it notes that control and responsibility for decisions relating to the visual production of a program, from beginning to end, resides in the producer function. It is thus essential that the producer, or all individuals fulfilling producer-related functions, be Canadian, subject to such exemptions as are customarily permitted by CAVCO and by the Commission.

Notwithstanding the foregoing, official co-productions and co-ventures with foreign producers may be admissible provided they meet the minimum 8 point requirement noted above.

On the subject of Canadian control, the Commission is concerned that Canadians maintain beneficial ownership in the programs that they produce. Accordingly, the Commission considers that the production fund should not provide fund to foreign controlled productions when considering applications. This would likely be accomplished most effectively through collaboration by the fund's administration with other funding bodies where possible, and/or by examining relevant contracts and other documents related to a production in order to ensure that Canadians have long term beneficial ownership in projects supported by the production fund.

[§305-8]

d) *Peak Viewing Hours*

Financial support from the production fund shall be contingent upon the presence of provisions in the licence agreement that all categories of program other than children's must be broadcast during the peak viewing hours of 7:00 p.m. to 11:00 p.m. Programs targeted to children must be aired when the largest audiences of children are available.

[§305-9]

e) *Closed Captioning*

Financial support from the production fund shall be contingent upon the provision of closed captioning for programs with narrative, dialogue or lyrics in either official language. Since some aboriginal languages do not use the Roman alphabet, captioning is not mandatory for programs in aboriginal languages.

[§305-10]

f) *Canadian Licence Fees*

Disbursements from the fund may only be triggered by a licence fee from a licensed Canadian programming undertaking representing, depending upon the program and as prescribed below, a minimum percentage of the budget for the program. The production fund should permit access to applicants in respect of programs intended for airing by private and public broadcasters.

[§305-11]

g) *Access*

The production fund shall contribute a *minimum* of 67% of disbursements to programs acquired from independent producers, and a *maximum* of 33% of disbursements for programs by producers affiliated with private broadcasters.

However, the production fund may not be used to finance in-house productions of television licensees (productions which are both made and broadcast by the same licensee) or productions by companies affiliated with the CBC and other publicly- funded broadcasters.

[§305-12]

h) *The Mechanism*

The Commission has determined that a licence fee from Canadian program undertakings of not less than 35% of the total budget of a program should be required in order to trigger participation by the fund in drama productions. Other types of under-represented programming must obtain licence fees of not less than 15% of the total budget from Canadian licensees. The Commission is satisfied that, in most cases, such fees would represent an increase in the revenues now earned by independent Canadian producers.

The production fund shall provide payments representing 30% of licence fees. The portion of the licence fee covered by the production fund is to be paid directly to the producer of the program.

For the purpose of meeting their required Canadian program expenditures as expressed either in expectations or conditions attached to their licences, private broadcasters will be permitted to claim full amount of the licence fee, including that portion contributed by the fund, as eligible Canadian program expenditures. The CBC and other publicly-funded broadcasters will *not* be permitted to include the licence fee contribution from the production fund as forming part of their Canadian program expenditures.

[§305-13]

i) *Linguistic and Regional Allocations*

A number of proposals were presented regarding what would constitute an appropriate allocation of disbursements from the fund between programs produced in the two official languages and in Canada's different regions. The Commission considers that, since public policy has generally allotted production funding on the basis of one-third for French-language programs, it should accept this same approach for the fund.

Funds may also be made available for programs in aboriginal languages. While no specific "envelope" is to be set aside for aboriginal programming, funding for such projects, in all eligible categories, may be drawn from the 20 percent of the production fund allocated to categories other than drama or children's programs.

While some argued for regional allocations, the Commission is concerned that the creation of a number of regional envelopes would tend to dilute the production fund's impact. However, the Commission will *expect* the fund's administration to be sensitive to the needs of producers and broadcasters in all regions.

[§305-14]

j) *Other Funding Bodies*

The production fund shall be accessible whether or not productions receive financial assistance from other funding bodies. The participation or lack of participation by other funding bodies should neither serve to qualify nor disqualify an application.

[§305-15]

3. Board of Directors

a) *Nature and Representation of the Board*

The production fund shall be administered by an independent Board made up of representatives from the Canadian production community, the cable industry and Canadian broadcasters in the following numbers:

The Canadian Association of Broadcasters, and the Canadian Cable Television Association shall each appoint three members to the Board.

The Canadian Film and Television Producers Association, and the Association des producteurs de film et de television du Quebec shall collectively appoint three members.

The Association for Tele-education of Canada and the CBC shall each appoint one member. Licensees of the various pay and specialty programming undertakings shall collectively appoint one member.

In naming their representatives to the Board, nominators should bear in mind the need to reflect the linguistic and geographic make-up of Canada.

The Board, at its discretion, may seek representation from other sectors and may increase the size of the Board accordingly.

Nominators should notify the Commission within 90 days of the date of this notice as to those who will be their representatives on the Board.

[§305-16]

b) *Responsibilities of the Board*

The Board should build upon the basic guidelines established by the Commission, and should establish an efficient process to ensure that applications are appraised objectively, without reference to any subjective assessment of the creative merits of individual projects.

[§305-16]

c) *Annual Reports*

The Board shall report annually to the Commission on its activities. The first report should cover the period from 1 January 1995 to 31 August 1995 and should be received before the end of the calendar year.

Thereafter, the Board shall report on activities for the period from 1 September to 31 August.

[§305-17]

d) *Administration Costs*

The Board should endeavour to serve as a model by ensuring that the costs of administering the production fund are kept to a minimum.

[§305-18]

4. Conclusion

The Commission is satisfied that Canada's independent producers and programming undertaking licensees, comprising two of the most essential components of the broadcasting system, will co-operate with a view to realizing the maximum potential benefit of the production fund for Canadian viewers.

[§306-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Proposed Amendment to the Broadcasting Licence Fee Regulations

[§306-2]

[Public Notice CRTC 1994-20, March 2, 1994. The text of the proposed amendments included with this Public Notice are set forth in italics in the *Broadcasting Licence Fee Regulations*, above at §132.]

[§306-3]

In August 1991, the Canadian Association of Broadcasters (CAB) submitted a proposal suggesting that the Commission adjust upwards the level of radio broadcasting undertaking revenue not subject to licence fees. Subsequently, the Minister of Communications established the Radio Action Plan Consultative Group (RAPCG). In June 1992 the RAPCG released its report entitled "Today's Crisis in the Private Radio Industry" which included the following recommendations related to radio licence fees:

> Government should contribute to the survival of local private radio with immediate relief by exempting all stations from payment of CRTC licence fees for a period of three years.
>
> Government should immediately institute a review of its fee schedules aimed a providing private radio with long-term relief on a permanent basis.

On 2 July 1993, the Commission received a submission from the CAB which proposed a three-year moratorium on all private radio licence fees. The Commission does not consider this proposal to be acceptable as it is too broadly targeted and would offer assistance that is not specific to smaller radio licensees. It agrees, however in light of the long-term financial difficulties affecting the radio industry, that some relief should be provided to smaller radio operations.

[§306-4]

Accordingly, the Commission proposes that, effective the return year commencing 1 September 1993, the *Broadcasting Licence Fee Regulations* be amended to raise, from

$500,000 to $2,000,000, the level at which the licensee of a radio broadcasting undertaking would pay a licence fee greater that $25.00 where annual revenues do not exceed $2,000,000. The $500,000 level for radio broadcasting undertakings with revenues over $2,000,000 would be retained. Where a licensee owns both an AM and FM undertaking in a single market, the licensee would continue to pay fees on revenues above the $500,000 level only if the combined revenues of the two licensed undertakings exceed $4,000,000. Attached is the proposed wording of the amendment.

Interested parties wishing to comment on the proposed amendment must send their submissions to the Secretary General, CRTC, Ottawa Ontario, K1A 0N2, by **8 April 1994.** While receipt of submissions will not be acknowledged, they will be considered by the Commission and will form a part of the public record of the proceeding.

[§306-4]

[NOTE: For the text of the proposed amendments, see above at §132-10a and §132-11a.]

[§307-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Revised Lists of Eligible Satellite Services

[§307-2]

[Public Notice CRTC 1994-22, March 9, 1994.]

[§307-3]

Attached to this Public Notice are revised lists of "Part II Eligible Satellite Services" (Part II list), "Part III Eligible Canadian Satellite Services" (Part III Canadian list), and "Part III Eligible Non-Canadian Satellite Services" (Part III Non-Canadian list).

[§307-4]

The Part II list (Appendix A) contains satellite services authorized for distribution by licensees holding a Class 1 licence or a Class 2 licence for an undertaking that has 2,000 or more subscribers. The Part III Canadian and Non-Canadian lists (Appendix B) contain satellite services authorized for distribution by licensees holding Part III licence or licensees holding a Class 2 licence for an undertaking that has fewer than 2,000 subscribers.

[§307-5]

[NOTE: The rest of this notice, dealing with additions to the CANCOM list, is omitted.]

[§307-6]

APPENDIX A

LIST OF PART II ELIGIBLE SATELLITE SERVICES

(Cable Television Regulations, 1986, section 10)

[§307-8]

A) Access Network
Radio Québec
TVOntario
Knowledge Network
Atlantic Television System Ltd. (ASN)
CBC English-language Television Service
CBC French-language Television Service

WDIV Detroit	NBC*†
WTVS Detroit	PBS*†
WJBK-TV Detroit	CBS*
WXYZ-TV Detroit	ABC*

Cable News Network (CNN)
CNN Headline News (CNN-2)
The Nashville Network (TNN)
The Arts and Entertainment Network (A&E)
CNBC/FNN**
The Weather Channel (TWC)
Country Music Television
Cable Satellite Public Affairs Network (C-Span)
The Silent Network
The Learning Channel
Any licensed pay audio programming service

B) WTBS-TV Atlanta
WGN-TV Chicago
WWOR-TV New York City
WPIX-TV New York City
WSBK-TV Boston
KTLA Los Angeles
Black Entertainment Television (BET)
Lifetime Television
Comedy Central

Authorization for the above-noted services is subject to the following:

- when this list of Part II Eligible Satellite Services is replaced by another list of Part II Eligible Satellite Services, the only authorized services will be those contained in the most recent list; accordingly, this list supersedes the list dated *13 July 1993*.
- in the case of CANCOM signals, ASN, the CBC English-and French-language Television Services, U.S. satellite services, and any licensed pay audio programming services, licensees are required to enter into the necessary contractual arrangements for such carriage.

* received via CANCOM

** Pursuant to CRTC Circular Letter No. 377, dated 5 June 1991, licensees are authorized to distribute only the 6:00 a.m. to 7:00 p.m. (ET) Monday to Friday programming component of CNBC/FNN.

*** a pay audio programming service may not be linked to the distribution of any non-Canadian eligible satellite services.

† Licensees may distribute only one CANCOM signal of each U.S. network.

Date of issue:
9 March 1994

[§307-7]

APPENDIX B
LIST OF PART III ELIGIBLE SATELLITE SERVICES
(Cable Television Regulations, 1986, section 24)

Part III Eligible Canadian Satellite Services

Access Network	
Radio Québec	
TVOntario	
Knowledge Network	
Atlantic Television System Ltd. (ASN)	
CBC English-language Television Service	
CBC French-language Television Service	
CHCH-TV Hamilton	Ind*
CFTM-TV Montréal	TVA*
CITV-TV Edmonton	Ind*
CHAN-TV Vancouver	CTV*
CITY-TV Toronto	IND*
WDIV Detroit/WBZ-TV Boston	NBC*†
WTVS Detroit/WGBH-TV Boston	PBS*†
WJBK-TV Detroit	CBS*
WXYZ-TV Detroit	ABC*
Any licensed pay audio programming service	

Part III Eligible Non-Canadian Satellite Services

WTBS-TV Atlanta
WGN-TV Chicago
WOR-TV New York City
WPIX-TV New York City
WSBK-TV Boston
KTLA Los Angeles
Cable News Network (CNN)
CNN Headline News (CNN-2)
The Nashville Network (TNN)
The Arts and Entertainment Network (A&E)
CNBC/FNN**

The Weather Channel (TWC)
Country Music Television
Cable Satellite Public Affairs Network (C-Span)
The Silent Network
The Learning Channel
Black Entertainment Television (BET)
Lifetime Television
Comedy Central

Authorization for the above-noted services is subject to the following:

- when these lists of Part III Eligible Satellite Services are replaced by other lists of Part III Eligible Satellite Services, the only authorized services will be those contained in the most recent lists; accordingly, these lists supersede the list of Part III Eligible Canadian Satellite Services and the list of Part III Eligible Non-Canadian Satellite Services date *13 July 1993*.
- in the case of out-of-province educational services, there should be no objection on the part of the originating service;
- in the case of CANCOM signals, ASN, the CBC English-and French-language Television Services, and any licensed pay audio programming services, licensees are required to enter into the necessary contractual arrangements for such carriage;
- in the case of CFTM-TV and CHAN-TV, a licensee also distributing the signal of a local TVA/CTV affiliate shall delete the duplicate programming from the CANCOM services or substitute the local service(s) when the programming is identical.

* received via CANCOM

** Pursuant to CRTC Circular Letter No. 377, dated 5 June 1991, licensees are authorized to distribute only the 6:00 a.m. to 7:00 p.m. (ET) Monday to Friday programming component of CNBC/FNN.

† Licensees may distribute only one CANCOM signal of each U.S. network.

Date of Issue:
9 March 1994

[§308-1]

[CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION]

Proposed Amendments to the *Television Broadcasting Regulations, 1987;* Revisions to Restrictions on the Permissible Amount of Advertising Material

[§308-2]

[Public Notice CRTC 1994-37, March 29, 1994.]

[§308-3]

In Public Notice CRTC 1993-137 dated 7 October 1993, the Commission proposed amendments to the *Cable Television Regulations, 1986* and to the *Television Broadcasting Regulations, 1987* (the regulations).

In response to its notice, the Commission received 113 submissions from members of the public, from private and public broadcasters and from various broadcasting industry associations. The present public notice, however, examines only those comments addressed to the proposed amendments to section 11 of the television regulations. Comments regarding the proposed amendments to the cable television regulations, and the Commission's disposition with respect thereto, are the subject of a separate notice issued on 3 February 1994 (Public Notice CRTC 1994-7).

The effect of the proposed amendments to section 11 of the television regulations would be to permit a licensee, pursuant to a condition of licence, to broadcast in excess of 12 minutes of advertising material in each clock hour during the broadcast day.

The Commission stated in its October 1993 notice that this amendment should provide licensees with an additional measure of flexibility to operate successfully in the evolving communications environment, and would be consistent with the Commission's objectives, outlined in Public Notice CRTC 1993-74, regarding the regulatory framework for the Canadian broadcasting system.

[§308-4]

Public concern varied regarding the proposed amendments to the television regulations. Many individuals stated that these were already too many commercial interruptions in television programs, while others claimed that advertisements are aired at excessive and annoying audio levels. Some members of the public suggested that the Commission should consider adopting a strategy followed in some European countries, where channels dedicated exclusively to advertising messages are not uncommon.

Representatives of the broadcasting industry submitted comments both for and against the proposed amendments. Most of these comments requested that the Commission maintain the current restriction of 12 minutes of advertising material per hour, since the demand for inventory does not exceed the current supply.

A majority of the members of the Television Board of the Canadian Association of Broadcasters (CAB) expressed concern that an increase in advertising inventory would result in further downward pressure on advertising rates at a time when the television advertising marketplace is relatively flat.

The consensus of the CAB's Radio Board was that the current "fragile economic state" of private radio is directly due to the expansion of television inventory in recent years, and that the proposed amendment would only serve to exacerbate this situation.

Notwithstanding these concerns, there were a number of broadcasters and others associated with the industry who, in their comments, favoured complete deregulation. They argued that, due to cost/return discipline within the industry, advertisers are not always able to pay the high price demanded by television stations for their unsold inventory.

The Association of Canadian Advertisers (ACA) noted that advertisers have worried for many years about the effects of "clutter" on the effectiveness of their messages. On the other hand the Canadian Direct Marketing Association (CDMA) suggested that, in the consumer-driven market, viewers will not tolerate additional advertising clutter on television, especially as viewing options increase.

[§308-5]

In considering the views expressed by those within the television industry, it is important to note that, while most recommended that no increase be permitted in the regulated amount of conventional advertising on television, they also recommended that the Commission extend greater flexibility to television broadcasters by allowing them to air non-traditional forms of advertising, in particular "infomercials", during the broadcast day.

Infomercials are described in the Commission's Circular No. 350 dated 8 August 1988 [NOTE: Set out above at §245] as follows:

> As commonly understood, an "infomercial" is the combining of entertainment and information together with the selling and promoting of goods or services into a virtually indistinguishable whole. An "infomercial" may also involve the promotion of products mentioned in distinct commercial breaks in programming. An "infomercial" therefore resembles a program but, in reality, constitutes a long commercial message for a given product or service. In some cases, programming is provided to television stations complete with advertising breaks. While "infomercials" may address any topic, the programming noted by the Commission is frequently related to the subjects of real estate, financial advice, travel and health.

[§308-6]

Currently, the Commission's regulations limiting the amount of advertising per hour to 12 minutes during the broadcast day effectively restricts the broadcast of infomercials to the hours of between midnight and 6:00 a.m. on Canadian television stations.

The industry's request for the flexibility to air infomercials during the broadcast day is based on their concerns regarding the potential revenues associated with this form of advertising that are currently lost to Canadian television stations and are flowing, by default, to U.S. border stations. The CBA's Television Board and the CDMA estimates that Canadian television stations competing with U.S. border stations are losing between $100 and $125 million in infomercial revenue each year. The CAB's Television Board offered the view that this flow of revenue to U.S. border stations represents a loss to the Canadian broadcasting system and the programming it is able to provide.

The Commission has considered the views of the public and the majority of representations from the broadcasting industry opposing an increase in the permissible amount of advertising material on television. The Commission has also considered the somewhat related issue raised in the other comments supporting the introduction of non-traditional forms of advertising, such as infomercials, during the broadcast day.

In the Commission's view, the implications of allowing television stations to broadcast infomercials warrant further examination. It is advertising revenue alone that ensures the ability of private broadcasters to meet their obligations with respect to Canadian programming under the *Broadcasting Act*. The growth of infomercials outside of Canada is reasonable evidence of their ability to capture specific target audiences, generate sales, and even to inform and entertain. Allowing Canadian broadcasters the flexibility to access the revenue potential of infomercials may improve their ability to compete in the rapidly evolving communications environment, and assist them to meet their obligations to provide high-quality Canadian programming.

[§308-7]

The Commission also considers that the introduction of infomercials during the broadcast day need not prompt concerns regarding the effect of advertising clutter, provided infomercials are clearly identified as such, and scheduled so as not to interrupt the continuity of conventional programming to any greater extent than the interruptions created by the one-fifth of each clock hour that the regulations now permit to be devoted to commercial messages.

Accordingly, under the proposed guidelines set out below, a licensee would be permitted to broadcast infomercials during the broadcast day, and not have them counted as advertising material, provided they are broadcast outside the body of any program. However, whenever such an infomercial shares the same clock hour with programming other than infomercials, the amount of commercial messages permitted within the body of the other programming would be restricted to no more than one-fifth of the number of minutes of the clock hour occupied by the other programming. For example, in the case of a 30 minute infomercial and non-infomercial programming of the same duration broadcast during the same clock hour, the amount of commercial messages permitted within the non-infomercial programming would be restricted to no more that six minutes.

Infomercials that are inserted into a program would be considered as constituting advertising material for the purpose of assessing adherence to the regulations.

Among other things, however, the Commission would wish to be assured that the addition of infomercials during the broadcast day not result in any reduction in the amount of, or expenditures on, Canadian programs developed or broadcast by that licensee. It would also wish to be assured that any additional advertising revenues associated with infomercials results in a corresponding increase in contributions to the financing of Canadian programs.

A licensee would therefore not be permitted to apply the production costs of infomercials against the requirements contained in any condition of licence or expectation respecting its expenditures on Canadian programming or on script and concept development.

[§308-8]

Infomercials would also be logged as having no program nationality. Accordingly, a licensee choosing to broadcast infomercials may be obliged to remove an equivalent amount of non-Canadian programming from its schedule in order to adhere to its regulatory requirements for Canadian programming. Moreover, revenues earned from

the broadcast of infomercials would be included as part of licensee's revenues for the purpose of any Canadian programming expenditure that may apply.

The issues surrounding the inclusion of non-traditional forms of advertising during the broadcast day was not raised in Public Notice CRTC 1993-137. Accordingly, and in view of the potential benefits and concerns associated with this matter, the Commission has decided to invite public comment on the matters discussed herein, including the following proposed guidelines, which might be used to govern the broadcast of infomercials:

[§308-9]

1. An infomercial broadcast outside the body of a program would be logged as having no program nationality, and would not be counted as part of the 12 minutes per clock hour of advertising material currently permitted under section 11 of the regulations.
2. Notwithstanding subsection 4(3) and section 11 of the regulations, whenever an infomercial is broadcast outside the body of a program, but shares the same clock hour with programming other than infomercials, the amount of commercial messages permitted within the body of the other programming in that clock hour would be restricted to no more than one-fifth of the number of minutes of the clock hour occupied by the other programming.
3. An infomercial that is inserted into a program during the broadcast day would be considered as advertising material by the Commission and counted as such for the purpose of assessing adherence to the regulatory maximum of 12 minutes per hour.
4. Revenues derived from the broadcast of infomercials would be included in a licensee's annual revenue total for the purpose of any Canadian programming expenditure formula that may apply.
5. A licensee would not be permitted to apply the production costs of infomercials against any condition of licence or expectation respecting its expenditures on Canadian programming or on script and concept development.
6. An infomercial would be defined using the description outlined in Circular No. 350 dated 8 August 1988.
7. In order to avoid any confusion on the part of the viewer, a licensee would be expected to clearly identify infomercials. The Commission is prepared to consider proposals as to how this might be accomplished. For example, some who offered comment on this matter suggested that infomercials need only be identified as such at the beginning, end and within the body of the infomercial, while others proposed the inclusion of a message in the form of a continuous on-screen crawl identifying the programming as being a commercial message.

[§308-9]

In addition to comments on these proposed guidelines, the Commission requests the views of interested parties as to whether the additional flexibility contemplated under this approach should be extended to licensees of speciality programming undertakings, the licensees of all television programming undertakings (including the CBC and educational

broadcasters), or private television licensees only, or whether the matter should be assessed on a case-by-case basis.

In the case of an infomercial that is aired outside of a program, the Commission also requested comments as to whether any advertising material that is unrelated to the product or service promoted by the infomercial, but that is inserted within it or immediately following its broadcast, should be counted as part of the 12 minutes per hour of advertising material permitted by the regulations. The Commission notes that, under the current definition of an infomercial and of a program, such additional advertising material would be treated as forming part of the infomercial itself, and would not be counted as part of the 12 minutes under the proposed guidelines.

The Commission expects that any authority that might be granted to air such infomercial during the broadcast day would be by condition of licence and notes that such a process would require amendment to the regulations in the manner proposed in Public Notice CRTC 1993-137.

The Commission further notes that broadcasters would have to apply for such a condition of licence, thus allowing for a public process where additional comments on the merits of individual applications might be made.

Parties wishing to comment on the matters raised in this notice must send their submissions to the Secretary General, CRTC Ottawa, Ontario, K1A 0N2 by **13 May 1994**. While receipt of submissions will be acknowledged, they will be considered by the Commission and will form part of the public record of the proceeding.

[§401-1]

Index by Subject Matter

[§401-2]

[NOTE: The following sets out a separate alphabetical index for each document or grouping of documents listed in boldface capitals. To search for a particular topic, look under each of the boldface headings that may be relevant, including the particular regulation that is applicable, and the listings under **CRTC POLICY DOCUMENTS**.]

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