



## Broadcasting Decision CRTC 2012-653

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Ottawa, 29 November 2012

### **Aboriginal Voices Radio Inc.**

Vancouver, British Columbia; Calgary and Edmonton, Alberta; and Toronto and Ottawa, Ontario

*Applications 2012-0019-6, 2012-0020-4, 2012-0021-1, 2012-0022-9 and 2012-0017-0, received 25 January 2012*

*Public hearing in the National Capital Region  
19 June 2012*

### **CKAV-FM Toronto, CKAV-FM-2 Vancouver, CKAV-FM-3 Calgary, CKAV-FM-4 Edmonton and CKAV-FM-9 Ottawa – Licence renewals**

*The Commission **renews** the broadcasting licences for the Type B Native radio stations CKAV-FM Toronto, CKAV-FM-2 Vancouver, CKAV-FM-3 Calgary, CKAV-FM-4 Edmonton and CKAV-FM-9 Ottawa, from 1 December 2012 to 31 August 2015. This short-term renewal will enable the Commission to assess at an earlier date the licensee's compliance with the Radio Regulations, 1986 and its conditions of licence.*

### **The applications**

1. The Commission received applications by Aboriginal Voices Radio Inc. (AVR) to renew the broadcasting licences for the Type B Native radio programming undertakings CKAV-FM Toronto, CKAV-FM-2 Vancouver, CKAV-FM-3 Calgary, CKAV-FM-4 Edmonton and CKAV-FM-9 Ottawa, expiring 30 November 2012.<sup>1</sup> The Commission received interventions in support of these applications. The public record for these applications can be found on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Public Proceedings."
2. In its applications, AVR requested that the Commission not re-impose Broadcasting Mandatory Order 2010-615, set out in Appendix 1 to Broadcasting Decision 2010-614, requiring it to submit annual returns. In this regard, the licensee indicated that it has filed its annual returns on time for each of the 2009-2010 and 2010-2011 broadcast years.

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<sup>1</sup> In Broadcasting Decision 2012-341, the Commission administratively renewed the broadcasting licences for these stations from 1 September 2012 to 30 November 2012.

3. AVR also requested the deletion of and amendments to various terms, conditions of licence, expectations and encouragements for the above-noted undertakings, which are set out in Appendix 2 to Broadcasting Decision 2010-614.
4. Finally, the licensee requested that a full seven-year renewal term be granted to the above-noted undertakings, rather than a short renewal term, as stated in Broadcasting Notice of Consultation 2012-224.

## **Background**

5. AVR was granted its first licence for CKAV-FM following a competitive process in June 2000 (see Broadcasting Decision 2000-204). In its application for that station, AVR proposed a diversified programming schedule that would have a higher level of spoken word content than that heard on most commercial radio stations in Toronto and would include a variety of music, open-line programs, round table discussions, spirituality and teachings, language and cultural lessons, as well as new programs from an Aboriginal perspective. AVR's vision included a radio programming network whose stations would also offer local programming serving the needs, interests and concerns of Aboriginal Canadians, particularly those living in urban areas. It was on this basis that the Commission granted AVR additional licences through competitive processes for a number of other markets.<sup>2</sup> Currently, AVR has five stations in operation, in Toronto, Vancouver, Calgary, Edmonton and Ottawa.
6. In Broadcasting Decision 2007-121, the Commission renewed the broadcasting licences for the stations in Toronto, Vancouver, Calgary and Ottawa for a short term, from 1 May 2007 to 31 August 2010, due to non-compliance with section 9(2) of the *Radio Regulations, 1986* (the Regulations), which relates to the submission of annual returns, and with its condition of licence requiring that at least 25% of all programming broadcast during each broadcast week be devoted to spoken word programming. For the Toronto station, the Commission also found AVR in non-compliance with sections 8(5) and 8(6) of the Regulations relating to the filing of complete logger tapes. At that time, the Commission had also expressed concerns regarding the local programming broadcast on AVR's stations and imposed a condition of licence requiring a minimum level of local programming and regular local daily newscasts.
7. In Broadcasting Decision 2010-614, the Commission renewed the broadcasting licences for AVR's radio stations for another short term, from 1 September 2010 to 31 August 2012, due to non-compliance with section 9(2) of the Regulations relating to the submission of annual returns and to AVR's failure to comply with its condition

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<sup>2</sup> Although AVR received authority to launch radio stations in Montréal, Kitchener, Regina and Saskatoon, none of those stations is currently in operation. In regard to Montréal and Kitchener, the authorized stations were launched in 2006 and 2007, respectively; however, in April 2009, the broadcasting licences for those stations were revoked on AVR's request. In regard to Regina and Saskatoon, the authorized stations were not launched and AVR allowed the authority to launch those stations expire.

of licence requiring that at least 25% of its weekly broadcast schedule be devoted to local programming. The Commission also expressed ongoing concerns regarding the quality of programming, including newscasts, live programming and local presence, as well as staff levels, funding, and the continuity of the original proposal made by AVR to the Commission. To address these concerns, the Commission added greater specificity to existing conditions of licence and, in Broadcasting Mandatory Order 2010-615, imposed a mandatory order requiring the licensee to comply at all times with the requirements set out in section 9(2) of the Regulations, which relates to the filing of annual returns.

8. In Broadcasting Notice of Consultation 2012-224, the Commission noted that AVR may have failed to comply, for its stations in Vancouver, Calgary and Edmonton, with the condition of licence relating to the broadcast of daily local newscasts, as well as with its condition of licence relating to the broadcast of structured enriched spoken word programming for its stations in Vancouver and Calgary. The Commission also expressed concerns in regard to the level of local programming broadcast on AVR's radio stations and the minimal amount of local news, weather, sports coverage, and promotion of local events and activities broadcast on its stations.
9. The Commission indicated that it intended to inquire into these matters at the 19 June 2012 public hearing and that it expected the licensee to show cause at that hearing why mandatory orders under section 12 of the *Broadcasting Act* (the Act) requiring the licensee to comply with the Regulations and its conditions of licence should not be issued. In addition, the Commission expected the licensee to show cause as to why the licence should be renewed; if renewed, why the renewal should not be for a short term; and why its licence should not be suspended or revoked pursuant to sections 9 and 24 of the Act.
10. The Commission further stated that it intended to inquire into the operations of AVR as they related to current staff levels of the stations and their duties; the stations' funding, revenues and expenditures; the licensee's management and governance structure; the licensee's overall business plan; the continuity of the original proposed AVR service; and the quality of service that AVR now provides to the five markets for which it is licensed to serve.

### **Commission's analysis and decisions**

11. After examining the public record for these applications in light of applicable regulations and policies, the Commission considers that the issues it must address relate to the following:
  - non-compliance with AVR's conditions of licence relating to the broadcast of daily local newscasts and to the broadcast of structured enriched spoken word programming;
  - the quality of the programming broadcast on AVR's stations;

- the financial viability of AVR's radio stations; and
- various amendments requested by AVR to various terms, conditions of licence, expectations and encouragements for its various stations, as well as to Broadcasting Mandatory Order 2010-615.

### **Non-compliance**

12. As noted above, AVR may have failed to comply, for certain of its stations, with its conditions of licence relating to the broadcast of daily local newscasts and to the broadcast of structured enriched spoken word programming.

### ***Broadcast of daily local newscasts***

13. AVR is required by condition of licence to broadcast daily local newscasts on each station, which must include at least five distinct local news stories for each market served by AVR, per broadcast day. For the purposes of this condition, "distinct local news stories" are those that incorporate spoken word material of direct and particular relevance to the community served.
14. As noted above, during the current two-year licence term, it appears that the licensee may have failed to comply with this condition of licence for its stations in Vancouver, Calgary and Edmonton.
15. The Commission monitored AVR's five stations for the week of Sunday, 25 September 2011 to Saturday, 1 October 2011. At the time that AVR submitted its logs and logger tapes pursuant to the Commission's request, AVR admitted a shortfall in the number of "distinct local news stories" carried on Friday, 30 September 2011 in Edmonton, Calgary and Vancouver. The licensee indicated that it had scripted and recorded the newscasts with the full intention of airing them, but that due to an error in using the computer software to broadcast the newscasts, they did not play.
16. Upon further review, the Commission also disqualified some news stories that were focused on communities outside the market each station was licensed to serve. In its analysis, the Commission examined whether a story was of direct and particular relevance to the community served within the station's market, according to the definition of a "market" in the Regulations (i.e., the FM 3 mV/m contour or the central area as defined by the Bureau of Broadcast Measurement (BBM), whichever is smaller). The result was apparent non-compliance for the following days:
 

Vancouver: Sunday, Tuesday, Wednesday, Thursday, Friday and Saturday  
 Calgary: Sunday, Tuesday, Wednesday, Thursday, Friday and Saturday  
 Edmonton: Sunday, Monday, Tuesday, Thursday, Friday and Saturday
17. AVR argued that the local news stories that it had broadcast were of direct and particular relevance to each community served and that it was unaware of the definition of "market" being applied. In response to the Commission's questions as to why it believed that the excluded stories would qualify as local, AVR replied that

there is no clear definition of what is local in the condition of licence in question. At the hearing, AVR also indicated that it has advised its staff of what the Commission expects in terms of local news stories, and that it now has more staff monitoring the computer system in order to avoid other situations of non-compliance.

18. The Commission notes that a definition of the word “market,” a term used in AVR’s condition of licence, is clearly set out in the Regulations. The Commission also notes that the expression “distinct local news stories” is defined in this condition of licence in reference to the community served, and that this community would be located within the market. Furthermore, even if the disqualified local news stories were not removed, AVR would still be missing stories on 30 September 2011, as it has admitted. Accordingly, the Commission finds AVR to be in non-compliance with its condition of licence relating to the broadcast of daily local newscasts, for its stations in Vancouver, Calgary and Edmonton.
19. In order to ensure AVR’s understanding of what the Commission expects in terms of “distinct local news stories,” the Commission finds it appropriate to amend AVR’s condition of licence as follows (changes in bold):

The licensee shall broadcast regular daily local newscasts on each station, which must include at least five distinct local news stories for each market served by Aboriginal Voices Radio Inc. per broadcast day.

For the purposes of this condition, “distinct local news stories” are those that incorporate spoken word material of direct and particular relevance to the **Aboriginal community within the market** served. **Therefore, the event discussed in the story must occur in or be directly linked to the station’s market according to the definition of a “market” set out in the *Radio Regulations, 1986*, which is the FM 3 mV/m contour or the central area as defined by the Bureau of Broadcast Measurement (BBM), whichever is smaller.**

***Broadcast of structured enriched spoken word programming***

20. AVR is also required by condition of licence to devote a minimum of twenty hours per broadcast week to structured enriched spoken word programming. For the purposes of this condition of licence, “structured enriched spoken word programming” is defined as follows:

spoken word programming of any length and in any language involving some research pertaining to the documentation of current and past events, instruction and information, human interest information, leisure interests, public affairs, cultural programming, storytelling, academic instruction, interviews and the like;

spoken word programming as described above that does not include song intros/outros, surveillance information (such as news reports, weather and public service announcements), impromptu, casual or spontaneous talk by announcers

during music-flow programming, contests, or any programming defined by content categories 2, 3, 4 or 5 as set out in the *Radio Regulations, 1986*; and

spoken word programming as described above and of which the duration shall not include the time devoted to musical selections interspersed with or interrupting such programming.

21. As part of that same condition of licence, AVR is also required to provide, upon the Commission's request, the schedule for a broadcast week of all its structured enriched spoken word programming.
22. During the current two-year licence term, it appears that the licensee may have failed to comply with this condition of licence for its stations in Vancouver and Calgary.
23. At the time that AVR submitted its logs and logger tapes for the week of Sunday, 25 September 2011 to Saturday, 1 October 2011, it acknowledged this shortfall in the accompanying self-assessment and indicated that the unexpected breach of this condition of licence was due to a computer software error.
24. AVR further indicated that its management advised its Board of Directors of the incident, spoke to the licensee's staff, and distributed an internal memo to both its Board of Directors and staff in order to reiterate and re-emphasize the importance of compliance with the stations' conditions of licence. The licensee also indicated that it tripled its on-call staff to independently check for errors during non-office hours and on weekends, so as to minimize the possibility that a software error could slip through. Finally, AVR directed its staff to notify the on-call staff about error messages on their computer screens.
25. In light of the above, the Commission finds AVR in non-compliance with its condition of licence relating to the broadcast of structured enriched spoken word programming for its stations in Vancouver and Calgary. The Commission is satisfied with the measures taken by AVR to address this non-compliance but has concerns as to why staffing levels were not already sufficient to prevent the non-compliance. It encourages the licensee to review its staffing levels closely to confirm that it has sufficient staff to ensure compliance with all of its regulatory obligations.

#### **Quality of the programming broadcast**

26. AVR is also required by condition of licence to devote a minimum of 25% of its weekly broadcast schedule to the broadcast of local programming. Local programming must incorporate spoken word material of direct and particular relevance to the community served. This must include local news, weather, sports coverage, and the promotion of local events and activities. For the purposes of this condition of licence, "local programming" has the same meaning as that set out in Broadcasting Public Notice 2006-158, as amended from time to time.

27. AVR indicated that between 33% and 43% of the programming broadcast on its five stations is local programming, which exceeds the 25% requirement set out in its condition of licence. Nevertheless, the Commission has concerns regarding the quality of that local programming and, consequently, AVR's performance under this condition of licence. Specifically, although AVR identified extensive periods in the logs as local programming, based on the Commission's review of the logger tapes for the week of Sunday, 25 September 2011 to Saturday, 1 October 2011, AVR provided a nominal amount of local news, weather, sports coverage, or promotion of local events and activities (all of which qualifies as newscasts). Specifically, for the Monday to Friday period, it provided only long back-to-back music blocks with the occasional station identification and no announcer presence, and some repeated newscasts. The structured enriched spoken word programming was concentrated on the weekends (Saturday morning and all day Sunday).
28. Given its finding regarding the nominal amount of time devoted to newscasts in the periods identified as local programming, the Commission asked AVR to comment on the possibility that the Commission specify, for the next licence term, that a minimum amount of local news, weather, sports coverage, and promotion of local events and activities be broadcast in the local programming periods. AVR submitted that it met and exceeded the 25% requirement for local programming and stated that it feels it is providing the amount of news that is appropriate for the locations it serves and for the level of resources available. At the 19 June 2012 public hearing, AVR reiterated that it did not want the local programming condition of licence to be as extremely detailed.
29. In addition to the lack of newscasts, the Commission is also concerned that those newscasts that are broadcast are simply repeated throughout the day. Specifically, in its review of the logger tapes for the week of Sunday, 25 September 2011 to Saturday, 1 October 2011, the Commission noted that the same newsbreak is repeated in the morning and then the same newscast is repeated in the afternoon, including the five local news stories (five to ten times per day). In response to questions regarding the quality of its local programming offered in light of the repeated newscasts, AVR indicated that it does refresh its news and stated that its news cycle should be considered a 24-hour news cycle and not a six-hour news cycle. AVR further stated the following: "[W]e are writing news that is relevant to our community for that entire day. Therefore, that's the news we are airing."
30. Further, in response to questions regarding the lengthy periods where only automated station identifications and music were broadcast, with no announcer presence or advertisements, AVR replied that it aspires to increase the level of announcers across all of its music programming, and proposed to do so. AVR requested the deletion of its condition of licence relating to the broadcast of 20 hours of structured enriched spoken word programming in order to reallocate resources, and indicated that it intends to replace that programming with announcer programming through the use of disc jockeys, across its music service.

31. More generally, in regard to the quality of its programming, AVR indicated at the 19 June 2012 public hearing that it had to reallocate intended programming resources to other issues, such as launching the stations and doing new engineering tests, since it did not get the frequencies it requested in a number of cities in which it applied to operate new radio stations. It also indicated that its initial plans, as identified in the Toronto station's application, were predicated on the station being run with hundreds of volunteers. In this regard, AVR's legal counsel indicated that there was "a little bit of optimism about the degree to which volunteers could actually operate a station that eventually would have to have the high-quality professional calibre in order to attract audiences in order to build advertising revenues."
32. AVR further indicated that it is not yet able to broadcast open-line programs, but that it does broadcast live programming, which is much more expensive to produce than pre-recorded programming. It also indicated that it has met the rest of the commitments it had originally made, that it is serving its Aboriginal audience by devoting 15% to 20% of its music programming to "Indigenous musical artists," and that it provides "an extensive amount of programming in various Indigenous languages." AVR further stated that it also has talk shows regarding Aboriginal health as well as a youth talk show, and has cultural leaders explaining and discussing cultural elements on air.
33. In the Commission's view, AVR does not offer the quality programming it originally proposed when first licensed in 2000, and has departed from its originally proposed service. In particular, with the exception of some weekend programming, the programming broadcast by AVR's stations does not necessarily serve to reinforce Aboriginal cultural identities or provide a balanced portrayal of Canada's Aboriginal population, as originally proposed by AVR.
34. In order to address its concerns regarding the licensee's broadcast of local programming, the Commission considers it appropriate to modify the wording of the condition of licence in this regard to specify that the local programming must be of particular relevance to the Aboriginal community within the market served. Accordingly, this condition of licence shall now read as follows (changes in bold):

The licensee shall, for each station, devote a minimum of 25% of its weekly broadcast schedule to the broadcast of local programming. Local programming must incorporate spoken word material of direct and particular relevance to the **Aboriginal community within the market Aboriginal Voices Radio Inc. is licensed to serve**. This must include local news, weather, sports coverage, and the promotion of local events and activities.

For the purposes of this condition, "local programming" shall have the same meaning as that set out in *Commercial Radio Policy, 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006, as amended from time to time.

**Furthermore, "market" shall have the same meaning as that set out in the *Radio Regulations, 1986*, which is the FM 3 mV/m contour or the central area**



**as defined by the Bureau of Broadcast Measurement (BBM), whichever is smaller.**

35. The Commission considers that this modification and the discussions it has had with the licensee on this matter, including a reminder of the importance of broadcasting artist information, sufficiently clarify the expectations of the Commission in regard to the quality of the programming and the frequency of the newscasts provided by AVR. The Commission also notes that the condition of licence relating to the broadcast of daily local newscasts specifies that these newscasts must include at least five distinct local news stories. As such, the onus is on AVR to offer varied quality programming in order to attract listeners and advertisers. The Commission will, therefore, not require AVR to broadcast a specified minimum amount of “local news, weather, sports coverage, and the promotion of local events and activities” during the local programming periods.

#### **Financial viability of the licensee's radio stations**

36. When AVR filed its original application for a Native FM radio station in Toronto, its business plan was premised on extensive fundraising, private loans, advertising, government support, and a cooperative association with Aboriginal Peoples Television Network (APTN). However, in its present applications and at the proceeding, AVR conceded that the majority of its anticipated sources of funding had not come to fruition.
37. Specifically, AVR indicated that it has received little in the way of government grants, it receives no Band Council funding, its cooperative association with APTN never materialized, and it was optimistic in estimating it could attract upwards of 150 volunteers to help run its network of stations. In fact, in its opening presentation at the hearing, AVR itself acknowledged, in reference to its financial challenges, “that AVR is operating five stations on the euphemistic shoestring and competing with 70 other commercial radio stations for listeners in our markets. To put this into perspective, the average commercial station in these markets operates with almost four times more revenues than AVR has for all five of its stations.”
38. In effect, AVR currently relies almost exclusively on the funding it receives from Canadian content development (CCD) contributions directed to it by radio broadcasters to operate its network of stations, all of which are located in some of Canada's largest and most competitive radio markets. Furthermore, AVR currently generates minimal advertising revenues across its network and has shown little improvement in this regard since the last licence renewal for its stations.
39. This lack of revenue diversification is of particular concern to the Commission as the funds AVR receives from CCD contributions, which totalled \$1.7 million for the 2011-2012 broadcast year, are scheduled to decrease significantly to \$753,000 for the 2013-2014 broadcast year, with a subsequent drop to \$528,000 expected for the 2015-2016 broadcast year. All pledged CCD contributions to AVR are then set to expire,

and AVR will be forced to rely on other revenue sources in order to offset its expected decline in CCD-related funding.

40. Going forward, AVR considers advertising to be its primary source of revenues and is of the view that improving advertising revenues remains critical to ensuring the future viability of its network of stations. In light of its failure to attract non-advertising sources of funding, and in order to offset the imminent decrease in revenues from CCD contributions, AVR has had to adopt an aggressive strategy to increase advertising revenues, albeit with limited resources.
41. Although AVR has taken positive steps towards improving the awareness of its stations, particularly in the Toronto market, the Commission nonetheless considers that AVR will be heavily challenged to reach its objective of generating upwards of \$2 million in advertising revenues during the 2016-2017 broadcast year, which is expected to be its first broadcast year without the benefit of CCD-related funding.
42. First and foremost among the challenges AVR is facing is the fact that in order to increase advertising revenues, it will likely have to build listenership across its network, while competing with well-resourced and highly-experienced broadcasters in some of Canada's most competitive radio markets. Furthermore, it will have to do so with limited and declining resources that must be spread across its network of stations, while dealing with an environment of lingering economic uncertainty that has applied downward pressure on advertising spending at both public and private sector organizations.
43. As such, the Commission remains concerned that AVR does not have the necessary resources to operate stations in five of Canada's largest radio markets. In fact, AVR's own actions aimed at increasing awareness and advertising revenues are testament to this, as most initiatives have been directed to improving its performance in the Toronto market alone, seemingly in response to its lack of resources.
44. With little to no improvement in the advertising revenues of AVR's group of stations over the two-year period since the last licence renewal for those stations, and with committed CCD revenues expected to steadily decline until their expiry in 2016, the Commission remains very concerned that AVR will be unable to rapidly ramp up advertising sales to offset the decline in the resources it can dedicate to improving its on-air product, increasing awareness, and ultimately increasing advertising revenues.
45. Notwithstanding the resource challenges faced by AVR, the Commission is also concerned about the manner in which AVR allocates its limited resources across its network of stations. Specifically, in light of its objective of improving the tuning and financial performance of the licensee's stations, the Commission is concerned that AVR is not allocating sufficient resources to vital elements such as programming and sales and marketing, and considers that staffing levels at many of its stations are largely insufficient. The Commission is also concerned that a significant proportion of AVR's total available resources are being allocated to the salaries of a relatively small number of AVR staff. In the Commission's view, an effective allocation of its

limited resources will be critical if AVR is to overcome its financial challenges by improving the quality of its programming, as well as generating sufficient levels of tuning and revenues.

46. The Commission notes that AVR requested the deletion of the requirement relating to the filing of details on its strategic objectives by 30 September 2011, given that it had filed the report as required.
47. While the Commission acknowledges that the existing term has been fulfilled and, therefore, no longer applies, it considers, in light of the above, that it is appropriate to require AVR to file an annual update on the achievement of its business objectives. This report is to be filed on or before 30 November of the broadcast year ending the previous 31 August. A **condition of licence** to this effect is set out in the appendix to this decision. As specified in that condition of licence, the report is to contain the following information:
  - a breakdown of advertising revenues for the current broadcast year as well as projected advertising revenues for each remaining broadcast year of the licence term, for each licensed station;
  - a breakdown of all non-advertising revenues for the current broadcast year as well as projected non-advertising revenues for each remaining broadcast year of the licence term, for each licensed station;
  - a detailed breakdown of marketing strategies and tactics for each market and for each licensed station;
  - copies of market research/awareness studies conducted over the course of the broadcast year; and
  - a detailed breakdown of all staff (including contractors and sales and marketing staff), their location, responsibilities and compensation.
48. In the Commission's view, this report will be instrumental in helping it monitor the progress of AVR toward its business objectives, as well as showing the extent to which AVR can adapt to the decrease in CCD-related revenues and the corresponding impact on its ability to fulfil its mandate. It will also allow the Commission to assess the effectiveness of AVR's allocation of resources, as well as monitor its commitment to improving the financial viability of all stations.
49. Furthermore, in light of its financial challenges and the fact that AVR is using significant amounts of CCD contributions to operate its network of stations, the Commission considers it appropriate to maintain the requirement for AVR to submit annual audited financial statements over the next licence term. A **condition of licence** to this effect is set out in the appendix to this decision.

## **Various deletions and amendments**

50. As noted above, AVR requested the deletion of and amendments to various terms, conditions of licence, expectations and encouragements for its various stations, as well as the deletion of the mandatory order set out in Appendix 1 to Broadcasting Decision 2010-614, for its next licence term. These issues are addressed below.

### ***Amendment to the term relating to audited financial statements***

51. AVR requested that the Commission delete the term requiring it to submit audited financial statements.

52. According to AVR, this requirement entails significant additional costs. It further stated that deleting the term would provide it with the flexibility to devote resources that are currently used to retain professional auditors, and to strengthen and improve its stations' programming.

53. Nevertheless, in light of the financial challenges faced by AVR, and given that it is using significant amounts of CCD contributions to operate its stations, the Commission considers it appropriate to maintain the requirement for AVR to submit annual audited financial statements over the next licence term. This will allow the Commission to validate financial data submitted by AVR in its annual returns, as well as validate the additional data filed by AVR in the annual update on the achievement of business objectives.

### ***Deletion of or amendment to the condition of licence relating to structured enriched spoken word programming***

54. AVR requested, for all of its stations, the deletion of the condition of licence relating to the broadcast of structured enriched spoken word programming. It stated that the direct and indirect costs this condition of licence imposes significantly hinder its ability to achieve its programming objectives. It indicated that it would redirect this resource to increased announcer presence on air. Further, at the hearing, AVR proposed a condition of licence requiring it to broadcast nine hours of spoken word programming rather than structured enriched spoken word programming.

55. AVR also requested, in the event that the Commission does not consider it appropriate to delete the condition of licence relating to structured enriched spoken word programming, that the Commission amend this condition of licence in order to remove the requirement to provide, upon the Commission's request, the schedule for a broadcast week of all the structured enriched spoken word programming. It argued that section 9(4)(b) of the Regulations already sets out that the licensee must provide this information when requested by the Commission.

56. The Commission considers this condition of licence necessary to ensure that the licensee continues to provide distinct cultural, informational and locally relevant programming that reflects the interests and needs of the Aboriginal communities in the markets it is licensed to serve. The Commission also notes that AVR has not

complied with this condition of licence during the current licence term, and that its proposed amendment would result in a reduction of the original commitment made by AVR when it received its first licence to ensure that no less than 25% of the stations' programming consists of spoken word programming. In regard to the proposed amendment, the Commission notes that section 9(4)(b) of the Regulations is very broad in its application. In order to ensure clarity as to what the Commission requires and to ensure that the licensee retains the necessary information at all times to comply with a Commission request for the schedule for a broadcast week of all the structured enriched spoken word programming, the Commission considers it appropriate to maintain this condition of licence as presently set out.

***Amendment to the conditions of licence relating to the language of the spoken word programming and vocal musical selections, in regard to the term "Aboriginal"***

57. AVR requested amendments to the conditions of licence relating to the language of the spoken word programming and vocal musical selections broadcast in order to replace the term "Aboriginal" in the phrase "Canadian Aboriginal language" with "Indigenous."
58. According to AVR, the term "Aboriginal" does not clearly encompass all Indigenous peoples in Canada, since it excludes Indigenous people who may not have "status" yet exist and have unique Indigenous cultures, languages, and traditions. The licensee further argued that "Aboriginal" also excludes Indigenous peoples who may not be party to a Treaty or may not be included under the *Indian Act*. Finally, AVR indicated that the term "Indigenous," as used in the expression "Canadian Indigenous language," encompasses languages of the First Nations, Inuit and Métis, which it indicated is not the case for the term "Aboriginal."
59. The Commission appreciates AVR's concerns in regard to the use of the term "Aboriginal." It notes, however, that the use of the term "Aboriginal" flows from Public Notice 1990-89 (the Native Broadcasting Policy), which in turn relies on the Constitution of Canada for its definition. Given that the Constitution of Canada refers to and defines the "aboriginal peoples of Canada" as including the Indian (i.e., First Nation), Inuit and Métis peoples of Canada, and neither uses the term "Indigenous" nor provides a definition of that term, the Commission considers it appropriate to retain the term "Aboriginal" in the conditions of licence in question at the present time.

***Deletion of the expectation relating to studios***

60. AVR requested that the Commission delete the expectation relating to the building of a studio in Vancouver and to arranging studio access from third parties in Calgary and Edmonton, as it has met this expectation.
61. The Commission acknowledges that the existing expectation has been fulfilled and, therefore, no longer applies. However, the Commission considers it important that AVR maintain a presence in the markets it serves. Accordingly, in order to ensure that AVR maintains studio locations and presence in all of the markets in which it

operates stations, the Commission finds it appropriate to re-impose this expectation. The Commission has modified the wording of this expectation such that it expects AVR to maintain its studio presence in the five markets served by its stations, and expects these studios to be accessible to individuals providing programming on those stations.

***Deletion of the expectation relating to live programming***

62. AVR requested that the Commission delete the expectation that live programming be part of AVR's service, particularly during the morning and afternoon drive periods, by the final year of the current licence term, as it has met this expectation.
63. The Commission continues to consider live programming important as it speaks to the quality of the programming provided by a licensee and ensures that spoken word programming is timely and accessible to the community served. Given that the Commission has set out an expectation that AVR maintain its studio presence in the five markets served by its stations, and that these studios be accessible to individuals providing programming on those stations, the Commission considers it appropriate to delete the expectation relating to the broadcast of live programming. The Commission is of the view that it is in the interest of AVR to provide live programming, including announcer presence, in order to ensure that quality programming is offered to its audience and that it reflects the needs of the community.

***Deletion of the encouragement relating to board members***

64. AVR requested that the Commission delete the encouragement relating to the appointment of a board member with experience in Aboriginal media to help it develop and achieve its strategic objectives. In this regard, the licensee indicated that its board of directors "has always included members with experience in Indigenous media."
65. Given that the Commission's intent is that AVR be successful, and given its view that other Aboriginal broadcasters could provide advice to AVR, the Commission considers it necessary to maintain this encouragement. However, the Commission considers it appropriate to amend the encouragement such that AVR continues to appoint a board member with experience in Aboriginal media. Accordingly, this encouragement shall now read as follows:

The Commission encourages the licensee to continue to appoint a board member with experience in Aboriginal media to help it develop and achieve its strategic objectives.

***Mandatory order relating to annual returns***

66. In Appendix 1 to Broadcasting Decision 2010-614, the Commission set out Broadcasting Mandatory Order 2010-615, which requires AVR to comply at all times with the requirements set out in section 9(2) of the Regulations regarding the filing of annual returns.

67. The Commission notes that AVR has filed the statement of accounts specified in that mandatory order on time in each of the 2009-2010 and 2010-2011 broadcast years. The Commission is satisfied that AVR understands the importance of filing annual returns that are complete and on time, and that AVR will comply going forward. Accordingly, the Commission will not re-impose the mandatory order.

## **Conclusion**

68. In Broadcasting Information Bulletin 2011-347, the Commission announced a revised approach to dealing with radio stations found to be in non-compliance. The Commission noted in particular that each instance of non-compliance will be evaluated in light of factors such as the quantity, recurrence and seriousness of the non-compliance. The Commission also noted that it will consider the circumstances leading to the non-compliance in question, the licensee's arguments, and the measures taken to rectify the situation.

69. Based on the licensee's repetitive non-compliance with its conditions of licence and based on the Commission's concerns regarding the stations' operations, the Commission considers that a short-term renewal period for AVR's stations would be appropriate. Accordingly, the Commission **renews** the broadcasting licences for the Type B Native radio programming undertakings CKAV-FM Toronto, CKAV-FM-2 Vancouver, CKAV-FM-3 Calgary, CKAV-FM-4 Edmonton and CKAV-FM-9 Ottawa, from 1 December 2012 to 31 August 2015 (the end date being three years from the original expiry date of 31 August 2012). This short-term renewal will enable the Commission to assess at an earlier date the licensee's compliance with the Regulations and its conditions of licence. It will also provide reasonable time to AVR to implement its business plan and improve the quality of its programming prior to the next Commission review of the licensee's performance and achievement in terms of its business objectives.

70. The Commission notes that AVR has been in non-compliance with its conditions of licence during three consecutive licence terms, during which the Commission has expressed its concerns regarding the programming and operations of the licensee's stations. The Commission strongly expects AVR to improve the performance of each of its stations during the new licence term.

Secretary General

## **Related documents**

- *Administrative renewals*, Broadcasting Decision CRTC 2012-341, 22 June 2012
- *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2012-224, 18 April 2012, as amended by Broadcasting Notice of Consultation CRTC 2012-224-1, 11 May 2012

- *CKAV-FM Toronto, CKAV-FM-2 Vancouver, CKAV-FM-3 Calgary, CKAV-FM-4 Edmonton and CKAV-FM-9 Ottawa – Licence renewals and Issuance of a mandatory order*, Broadcasting Decision CRTC 2010-614 and Broadcasting Order CRTC 2010-615, 24 August 2012
- *Revised approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2011-347, 26 May 2011
- *CKAV-FM Toronto, CKAV-FM-2 Vancouver, CKAV-FM-3 Calgary and CKAV-FM-9 Ottawa - Licence renewals*, Broadcasting Decision CRTC 2007-121, 27 April 2007
- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006
- *New Type B FM native radio programming undertaking*, Decision CRTC 2000-204, 16 June 2000
- *Native Broadcasting Policy*, Public Notice CRTC 1990-89, 20 September 1990

*\*This decision is to be appended to each licence.*



## **Appendix to Broadcasting Decision CRTC 2012-653**

### **Term, conditions of licence, expectations and encouragements for the Type B Native radio programming undertakings CKAV-FM Toronto, CKAV-FM-2 Vancouver, CKAV-FM-3 Calgary, CKAV-FM-4 Edmonton and CKAV-FM-9 Ottawa**

#### **Term**

The licences will expire 31 August 2015.

#### **Conditions of licence**

1. The licensee shall, for each station, devote a minimum of 25% of its weekly broadcast schedule to the broadcast of local programming. Local programming must incorporate spoken word material of direct and particular relevance to the Aboriginal community within the market Aboriginal Voices Radio Inc. is licensed to serve. This must include local news, weather, sports coverage, and the promotion of local events and activities.

For the purposes of this condition, “local programming” shall have the same meaning as that set out in *Commercial Radio Policy, 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006, as amended from time to time.

Furthermore, “market” shall have the same meaning as that set out in the *Radio Regulations, 1986*, which is the FM 3 mV/m contour or the central area as defined by the Bureau of Broadcast Measurement (BBM), whichever is smaller.

2. The licensee shall broadcast regular daily local newscasts on each station, which must include at least five distinct local news stories for each market served by Aboriginal Voices Radio Inc. per broadcast day.

For the purposes of this condition, “distinct local news stories” are those that incorporate spoken word material of direct and particular relevance to the Aboriginal community within the market served. Therefore, the event discussed in the story must occur in or be directly linked to the station’s market according to the definition of “market” set out in the *Radio Regulations, 1986*, which is the FM 3 mV/m contour or the central area as defined by the Bureau of Broadcast Measurement (BBM), whichever is smaller.

3. The licensee shall, for each station, devote a minimum of twenty hours per broadcast week to structured enriched spoken word programming. For the purposes of this condition of licence, “structured enriched spoken word programming” shall be defined as:

- spoken word programming of any length and in any language involving some research pertaining to the documentation of current and past events,

instruction and information, human interest information, leisure interests, public affairs, cultural programming, storytelling, academic instruction, interviews and the like;

- spoken word programming as described above that does not include song intros/outros, surveillance information (such as news reports, weather and public service announcements), impromptu, casual or spontaneous talk by announcers during music-flow programming, contests, or any programming defined by content categories 2, 3, 4 or 5 as set out in the *Radio Regulations, 1986*; and
- spoken word programming as described above and of which the duration shall not include the time devoted to musical selections interspersed with or interrupting such programming.

The licensee shall provide, upon the Commission's request, the schedule for a broadcast week of all the programming defined above.

4. The licensee shall, for each station, ensure that a minimum of 2% of all spoken word programming broadcast during each broadcast week is in a Canadian Aboriginal language.
5. The licensee shall, for each station, ensure that a minimum of 2% of all vocal musical selections aired during each broadcast week is in a Canadian Aboriginal language.
6. The licensee shall, for each station, ensure that a minimum of 35% of all musical selections from content category 2 (Popular music) aired during each broadcast week are Canadian selections, broadcast in their entirety.
7. The licensee shall adhere to the *Equitable Portrayal Code*, as amended from time to time and approved by the Commission.
8. The licensee shall adhere to the provisions of the Canadian Association of Broadcasters' *Broadcast Code for Advertising to Children*, as amended from time to time and approved by the Commission.
9. The licensee shall, on or before 30 November, file an annual update on the achievement of its business objectives, which includes the information set out below, for the broadcast year ending the previous 31 August:
  - a breakdown of advertising revenues for the current broadcast year as well as projected advertising revenues for each remaining broadcast year of the licence term, for each licensed station;
  - a breakdown of all non-advertising revenues for the current broadcast year as well as projected non-advertising revenues for each remaining broadcast year of the licence term, for each licensed station;

- a detailed breakdown of marketing strategies and tactics for each market and for each licensed station;
- copies of market research/awareness studies conducted over the course of the broadcast year; and
- a detailed breakdown of all staff (including contractors and sales and marketing staff), their location, responsibilities and compensation.

10. The licensee shall submit audited financial statements as part of the annual returns submitted in accordance with section 9(2) of the *Radio Regulations, 1986*, for each of its radio stations.

### **Expectations**

The Commission expects the licensee to maintain its studio presence in the five markets served by its stations, and expects these studios to be accessible to individuals providing programming on those stations.

### **Encouragements**

The Commission encourages the licensee to continue to appoint a board member with experience in Aboriginal media to help it develop and achieve its strategic objectives.

In accordance with *Implementation of an employment equity policy*, Public Notice CRTC 1992-59, 1 September 1992, the Commission encourages the licensee to consider employment equity issues in its hiring practices and in all other aspects of its management of human resources.