



Broadcasting Decision CRTC 2015-377

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Reference: 2015-199

Ottawa, 17 August 2015

Stingray Digital Group Inc.
Across Canada

Application 2014-0864-1, received 29 August 2014

Stingray Music – Licence renewal and amendment

*The Commission **renews** the broadcasting licence for the national pay audio service Stingray Music (formerly Galaxie) from 1 September 2015 to 31 August 2020. This shortened licence term will allow for an earlier review of the licensee's compliance with the regulatory requirements and its conditions of licence.*

Application

1. Stingray Digital Group Inc. (Stingray) filed an application to renew the broadcasting licence for its national pay audio service Stingray Music (formerly Galaxie), which expires 31 August 2015.
2. Further, Stingray indicated its willingness to allocate a portion of its Canadian content development (CCD) contributions to the Community Radio Fund of Canada (CRFC), consistent with the Commission's determination that commercial radio broadcasters with revenues over \$1.25 million should contribute to this fund (see Broadcasting Regulatory Policy 2010-499). Specifically, Stingray proposed to amend its current condition of licence requiring it to contribute at least 4% of the undertaking's gross annual revenues each year to eligible third parties (1% to FACTOR, 1% to MUSICACTION and 2% to Galaxie Rising Star) so that the 4% CCD contribution be allocated as follows:
 - at least 22.5% to FACTOR;
 - at least 22.5% to MUSICACTION;
 - at least 5% to the CRFC; and
 - the remainder to Galaxie Rising Star to discover, encourage and promote new Canadian artists (discretionary contribution).

Interventions and applicant's reply

3. The Commission received several interventions supporting the application, as well as a comment from the Association québécoise de l'industrie du disque, du spectacle et

de la vidéo (ADISQ). The public record for this proceeding can be found on the Commission's website at www.crtc.gc.ca or by using the application number provided above.

4. In its intervention, ADISQ requested that:
 - Stingray make public an exhaustive description of the service to verify that it was meeting its conditions of licence, including the level of Canadian content broadcast on the service, with details of the calculations for which level is broadcast on which channel;
 - the requirement that at least 25% of the licensee's Canadian-produced pay audio channels (other than those consisting of instrumental music or music in languages other than English or French) devote at least 65% of their popular music selections in each broadcast week to French-language selections be increased for French-language communities across Canada so that 30% of such channels meet the 65% level; and
 - Stingray's required CCD contributions be increased to 5% of its gross annual revenues each year and the portion of CCD contributions to be allocated to the CRFC be taken from the discretionary portion (not the portion directed to MUSICACTION and FACTOR) and equally divided between English- and French-language markets.
5. In reply, Stingray asked that the Commission approve the application as filed, noting the following:
 - the additional reporting requested by ADISQ would be cumbersome and unnecessary as the service is already exceeding its Canadian content requirements and supporting emerging artists;
 - the service has met its French-language requirements; and
 - conventional radio stations only make basic annual CCD contributions if their revenues exceed \$1.25 million and do so at a lesser rate (0.5%). Further, the Stingray service pays higher fees to copyright collectives than other services.

Non-compliance

6. In Broadcasting Notice of Consultation 2015-199, the Commission noted the licensee's apparent non-compliance with its condition of licence relating to CCD contributions for the 2009-2010 to 2012-2013 broadcast years. Following further analysis, the Commission has determined that a portion of the licensee's CCD contributions for the 2009-2010 to 2011-2012 broadcast years were directed to ineligible initiatives.
7. In a letter dated 20 April 2015, Stingray stated that it did not have the ability to submit the documents requested by Commission staff to demonstrate that CCD

initiatives to which it directed contributions were eligible. Stingray remedied the shortfall by contributing the amount to FACTOR and MUSICACTION in equal portions.

8. Stingray indicated that its management had underestimated its reporting obligations with the Commission. It also indicated that it had since hired a regulatory compliance officer and that processes and training had been put in place to ensure full compliance with the regulatory requirements and its conditions of licence.
9. In light of the above, the Commission finds the licensee in non-compliance with its condition of licence relating to CCD contributions for the 2009-2010, 2010-2011 and 2011-2012 broadcast years.

Regulatory measures

10. The Commission's approach to non-compliance is set out in Broadcasting Information Bulletin 2014-608. Under that approach, each instance of non-compliance is evaluated in its context and in light of factors such as the quantity, recurrence and seriousness of the non-compliance. The circumstances, the arguments provided by the licensee and the actions taken to rectify the situation are also considered.
11. The Commission has examined the public record for this application and is satisfied with the licensee's explanations and with the measures it has put in place to address the non-compliance. Given the circumstances surrounding the licensee's non-compliance and the fact that this is the first licence term in which the licensee has been found in non-compliance, the Commission finds it appropriate to renew the licence for a shortened term from 1 September 2015 to 31 August 2020. This will allow for an earlier review of the licensee's compliance with the regulatory requirements and its conditions of licence.

Licence amendment

12. As stated in Broadcasting Information Bulletin 2014-608, when considering applications for licence amendments by licensees found in non-compliance, the Commission will take into account the criteria set out above (i.e., the quantity, recurrence and seriousness of the non-compliance), as well as the relationship between the application for amendment and any instance of non-compliance.
13. The licensee has been found to be operating in non-compliance with its condition of licence relating to CCD contributions for the 2009-2010 to 2011-2012 broadcast years. Normally this would result in a denial of the requested amendment to this condition of licence. However, in this case, the proposed amendment seeks to bring the licensee in line with the Commission's revised policy in Broadcasting Regulatory Policy 2010-499 by requiring that a portion of its CCD contributions be allocated to the CRFC.

14. Given that the non-compliance relates to discretionary CCD contributions, the Commission considers that it would be appropriate to amend the condition of licence so as to require that the contribution to the CRFC be taken from the discretionary portion of the CCD contributions as suggested by ADISQ, and not from the contributions to FACTOR and MUSICACTION as proposed by the licensee. Accordingly, in the appendix to this decision, the Commission has imposed the following **condition of licence**:

The licensee shall contribute each year at least 4% of the gross annual revenues earned by its pay audio service to eligible third parties associated with Canadian content development.

During each broadcast year of the licence term, the licensee shall allocate its above contribution as follows:

- at least 25% to FACTOR;
- at least 25% to MUSICACTION;
- at least 5% to the Community Radio Fund of Canada; and
- the remainder to Galaxie Rising Star to discover, encourage and promote new Canadian artists (discretionary contribution).

15. Finally, with respect to ADISQ's requests that the licence be further amended to increase the licensee's reporting, French-language music and overall CCD requirements, the Commission does not consider that additional obligations are required at this time.

Conclusion

16. In light of all of the above, the Commission **renews** the broadcasting licence for the national pay audio service Stingray Music from 1 September 2015 to 31 August 2020. The licensee shall adhere to the **conditions of licence** set out in the appendix to this decision, as well as the **conditions** set out in the licence for the undertaking.

Secretary General

Related documents

- *Notice of applications received*, Broadcasting Notice of Consultation CRTC 2015-199, 15 May 2015
- *Update on the Commission's approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2014-608, 21 November 2014
- *Campus and community radio policy*, Broadcasting Regulatory Policy CRTC 2010-499, 22 July 2010

**This decision is to be appended to the licence.*

Appendix to Broadcasting Decision CRTC 2015-377

Terms, conditions of licence and encouragement for the national pay audio service Stingray Music

Terms

The licence will expire 31 August 2020.

Conditions of licence

1. The licensee shall ensure that at least 35% of the musical selections broadcast each broadcast week on Canadian-produced pay audio channels, considered together, are Canadian.
2. The licensee shall ensure that a maximum of one non-Canadian pay audio channel is packaged or linked with each Canadian-produced pay audio channel. In no case shall subscribers of the pay audio service be offered a package of pay audio channels in which foreign-produced channels predominate. The licensee shall provide the Commission, upon request, with a complete list of all non-Canadian pay audio channels distributed on its service.
3. The licensee shall ensure that at least 25% of all Canadian-produced pay audio channels (other than those consisting entirely of instrumental music or of music entirely in languages other than English or French) devote each broadcast week at least 65% of vocal music selections from content category 2 (Popular Music), as defined in the *Radio Regulations, 1986*, as amended from time to time, to musical selections in the French language.
4. The licensee shall not broadcast commercial messages.
5. The licensee shall not broadcast spoken word programming, except for purposes of musical selections identification and promotion of the service and in programming directed to children.
6. The licensee shall adhere to the provisions contained in sections 3 and 11 of the *Radio Regulations, 1986*.
7. The licensee shall adhere to the Canadian Association of Broadcasters' *Equitable Portrayal Code*, as amended from time to time and approved by the Commission. The application of the foregoing condition of licence will be suspended as long as the licensee remains a member in good standing of the Canadian Broadcast Standards Council.
8. The licensee shall maintain sequential lists of all recordings played on each pay audio channel with designations for Canadian musical selections and for French-language vocal music. These lists shall be kept by the licensee for at least four weeks and forwarded to the Commission upon request, along with a notarized attestation of the lists' accuracy.

9. The licensee shall not distribute any non-Canadian pay audio channel that includes commercial messages or spoken word programming, except for purposes of musical selections identification and promotion of the service and in programming directed to children.
10. The licensee shall contribute each year at least 4% of the gross annual revenues earned by its pay audio service to eligible third parties associated with Canadian content development.

During each broadcast year of the licence term, the licensee shall allocate its above contribution as follows:

- at least 25% to FACTOR;
- at least 25% to MUSICACTION;
- at least 5% to the Community Radio Fund of Canada; and
- the remainder to Galaxie Rising Star to discover, encourage and promote new Canadian artists (discretionary contribution).

For the purposes of these conditions, the terms “Canadian,” “commercial message,” “broadcast week” and “musical selection” shall have the meanings set out in the *Radio Regulations, 1986*, and “spoken word” shall have the meaning set out in *Revised content categories and subcategories for radio*, Public Notice CRTC 2000-14, 28 January 2000, as amended from time to time.

Encouragement

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.