



## Broadcasting Decision CRTC 2023-105

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Reference: 2022-248

Ottawa, 17 April 2023

**Stingray Group Inc.**  
Across Canada

*Public record: 2022-0321-4*

*Public hearing in Gatineau, Quebec  
18 November 2022*

### **Stingray HITS – Licensing of a discretionary service**

#### **Summary**

The Commission **approves** an application by Stingray Group Inc. for a broadcasting licence to operate Stingray HITS, a national English-language discretionary service.

#### **Background**

1. Stingray Group Inc. (Stingray) launched Stingray HITS in 2018 as an exempt discretionary service pursuant to Broadcasting Order 2015-88. At the time, the service offered a mix of English- and French-language music video clips with complementary programming elements, such as audience announcements, station branding and identification.
2. In Broadcasting Decision 2020-90, the Commission approved an application by Stingray for a broadcasting licence for Stingray HITS since it exceeded the minimum subscriber threshold of 210,000 for three consecutive months and was therefore no longer eligible to operate pursuant to Broadcasting Order 2015-88. The service was licensed as a national, English-language discretionary service.
3. In Broadcasting Decision 2021-190, the Commission approved an application by Stingray to change the language designation of the service to a French-language service.
4. On 16 July 2021, Stingray launched a distinct, English-language version of the service without registering it as an exempt discretionary service pursuant to Broadcasting Order 2015-88 or applying for a broadcasting licence. Stingray operated the English-language Stingray HITS without proper authority to do so for a period of approximately one year until Commission staff discovered the error.
5. On 20 June 2022, Stingray submitted a form to register the English-language service as an exempt programming undertaking pursuant to Broadcasting Order 2015-88.

Given that the service had already exceeded 210,000 subscribers for more than three consecutive months, it was determined that the service was ineligible to operate under the terms of that broadcasting order and would require a licence.

## **Application**

6. Stingray filed an application for a broadcasting licence to operate Stingray HITS, a national, English-language discretionary service on 23 June 2022. The Commission did not receive any interventions in regard to the present application.
7. The applicant indicated that it would adhere to the standard conditions of licence for discretionary services as well as the expectations and encouragements set out in Appendix 2 to Broadcasting Regulatory Policy 2016-436.
8. The applicant proposed to devote 10% of the previous year's gross annual revenues to the acquisition of or investment in Canadian programming for each year of the licence term.
9. Stingray stated that it had originally failed to file an application for a licence due to a breakdown in communication between various teams. To address these issues, Stingray stated that it has established formal monthly regulatory meetings between department heads. Its department heads will conduct a detailed review of regulatory compliance for each regulated service in each quarter, and it has renamed the French-language Stingray HITS to Stingray POP to avoid confusion.

## **Issues**

10. After examining the record for this application in light of applicable regulations and policies, the Commission considers that it must examine the following issues:
  - broadcasting without a licence or authority pursuant to an exemption order;
  - the harm caused by the non-compliance; and
  - the length of the licence term.

### **Broadcasting without a licence or authority pursuant to an exemption order**

11. In order to broadcast in whole or in part in Canada, a broadcasting undertaking must have a licence from the Commission or operate pursuant to an exemption. In this regard, section 32 of the *Broadcasting Act* (the Act) makes it an offence for any person to carry on a broadcasting undertaking without a licence or without authority pursuant to an exemption.
12. While Stingray neither registered with the Commission prior to commencing operations as set out in Broadcasting Order 2015-88 nor applied for a licence for its service, once it was aware of the non-compliance, Stingray admitted its error and

filed an application for a licence to operate the English-language Stingray HITS, thereby seeking to bring itself into compliance with the Act.

13. In light of the above, the Commission finds that Stingray was broadcasting without a licence or authority to an exemption contrary to the Act. However, the Commission also finds that Stingray has demonstrated a willingness to bring itself into compliance. Accordingly, the Commission is of the view that it would better serve the public interest to license the service and examine other ways to address any harm that may have been caused to the system by having broadcast without a licence for a period of time.

#### **Harm caused by the non-compliance**

14. Operating without a licence or not having registered as required under an exemption order undermines the ability of the Commission to regulate and supervise the broadcasting system as well as the integrity of that system. Although sometimes difficult to quantify, it can also cause harm to the broadcasting system through losses in the contributions to the creation and exhibition of Canadian programs.
15. The Commission considers that Stingray is a seasoned player in the broadcasting industry, having operated both licensed and exempt services. The Commission is concerned that Stingray ought to have known that it was required to have a licence or register pursuant to Broadcasting Order 2015-88. Furthermore, the Commission is concerned that Stingray should have known that it would commence operations with a significant subscriber base given the popularity of the now-named Stingray POP service prior to it being converted to a French-language service.
16. In Broadcasting Regulatory Policy 2015-86, the Commission indicated that all licensed English-language discretionary services will be subject to a minimum Canadian programming expenditures (CPE) requirement of 10% of the service's revenues from the previous broadcast year. In that policy, the Commission also stated that the minimum level of CPE for licensed services would be established on a case-by-case manner based on historical levels for services operating outside of the large ownership groups. Generally, newly licensed independent discretionary services have a CPE requirement of 10%.
17. While Stingray would have had no CPE obligations with respect to its service while broadcasting pursuant to Broadcasting Order 2015-88, as noted above, the service was ineligible to operate under the exemption order due to its number of subscribers. Moreover, Stingray HITS would have been required to make contributions to CPE as a licensed service. Accordingly, the Commission is of the view that depriving the Canadian broadcasting system of these contributions also constitutes a harm that is attributable to Stingray's non-compliance.
18. Where there has been such harm, conditions of licence can be a useful tool through which to remedy the harm. The Commission is of the view that requiring Stingray to expend, by condition of licence, a CPE requirement higher than what it had initially

proposed could be a way to remedy the harm caused during the time in which it operated without a licence.

19. In response to a request for information, Stingray noted that it had assumed that Stingray POP's 10% CPE requirement applied to Stingray HITS. Specifically, Stingray stated that it bundles its music video services and when subscription revenues are earned from these bundled services, the aggregated CPE contribution from the service offering is properly paid. As such, Stingray argued that its CPE contribution has been properly paid during the year it operated without a licence.
20. Moreover, Stingray submitted the number of subscribers, revenues generated, and a CPE amount since Stingray HITS's launch. However, Stingray did not provide conclusive evidence to support its claim that these numbers relate to Stingray HITS rather than Stingray POP or that it contributed to CPE during the 2021-2022 broadcast year for Stingray HITS. Moreover, while financial summaries were filed for the broadcast years ending 31 August 2021 and 2022, it was unclear as to which information related to the service.
21. In response to Commission staff's questions about adhering to a higher CPE requirement as a way of remedying its non-compliance, Stingray stated that a CPE of higher than 10% could be appropriate for a portion of the licence term. Stingray argued that a higher CPE level for the entire licence term would likely not be sustainable in a competitive environment and would affect the viability of Stingray HITS. Accordingly, it proposed an enhanced CPE contribution of 12% for the first three years, followed by a 10% CPE for each remaining year.
22. The Commission notes that setting a CPE requirement at 12% for the entire licence term would roughly yield an incremental CPE that would approximate the amount it would have been required to expend if it had obtained its licence appropriately.
23. Furthermore, the Commission considers that imposing a higher CPE requirement that extends beyond what would not have otherwise been expected of Stingray is inappropriate as it would not take into account the circumstances and the immediate measures undertaken by Stingray to address the situation, as noted above.
24. In light of the above, the Commission finds that there was harm caused to the Canadian broadcasting system by Stingray broadcasting without a licence. The Commission considers that imposing a CPE requirement of 12% for the entire licence term is an appropriate measure to remediate that harm. A **condition of licence** to that effect is set out in the appendix to this decision.

### **Length of the licence term**

25. The imposition of a shorter licence term is another tool that is available to the Commission to address non-compliance or harm caused to the Canadian broadcasting system. Shorter licence terms provide the Commission with a mean to monitor the performance of a licensee and to ensure a return to compliance.

26. In regard to Stingray, the Commission is of the view that the above-noted measures undertaken by Stingray are sufficient to remediate Stingray's non-compliance. Accordingly, the Commission finds that a five-year licence term is appropriate.

## **Conclusion**

27. In light of the above, the Commission **approves** an application by Stingray for a broadcasting licence to operate Stingray HITS, a national English-language discretionary service. The terms and **conditions of licence** are set out in the appendix to this decision.

28. Stingray HITS will be subject to the *Discretionary Services Regulations*.

Secretary General

## **Related documents**

- *Stingray HITS – Licence amendment*, Broadcasting Decision CRTC 2021-190, 2 June 2021
- *Stingray Hits – Licensing of a discretionary service*, Broadcasting Decision CRTC 2020-90, 10 March 2020
- *Standard requirements for television stations, discretionary services, and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016
- *Exemption order respecting discretionary television programming undertakings serving fewer than 200,000 subscribers*, Broadcasting Order CRTC 2015-88, 12 March 2015
- *Let's Talk TV – The way forward – Creating compelling and diverse Canadian programming*, Broadcasting Regulatory Policy CRTC 2015-86, 12 March 2015

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

## Appendix to Broadcasting Decision CRTC 2023-105

### Terms, conditions of licence, expectations and encouragements for the discretionary service Stingray HITS

#### Terms

The licence will expire 31 August 2028.

#### Conditions of licence

1. The licensee shall adhere to the standard conditions of licence for discretionary services set out in Appendix 2 to *Standard requirements for television stations, discretionary services, and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016, as well as to the conditions set out in the broadcasting licence for the undertaking.
2. The licensee shall, in each broadcast year, devote not less than 12% of the previous year's gross annual revenues of the undertaking to the acquisition of or investment in Canadian programming. For the first year of the licence term, the calculation of the 12% shall be based on the previous year's gross annual revenues of the service.
3. Subject to condition of licence 4, the licensee may claim, in addition to its expenditures on Canadian programming:
  - a. a 50% credit against its Canadian programming expenditure requirement for expenditures made on Canadian programming produced by an Indigenous producer and claimed as Canadian programming expenditures during that broadcast year; and
  - b. a 25% credit against its Canadian programming expenditure requirement for expenditures made on Canadian programming produced by an official language minority community producer and claimed as Canadian programming expenditures during that broadcast year. The licensee may claim the credit if:
    - i. the programming is produced in the province of Quebec and the original language of production is English; or
    - ii. the programming is produced outside the province of Quebec and the original language of production is French.
4. The licensee may claim the credits calculated in accordance with condition of licence 3 until the expenditures on Canadian programming produced by Indigenous producers and by official language minority community producers, including the credits, reach a combined maximum of 10% of the undertaking's Canadian programming expenditure requirement.

## **Expectations**

The standard expectations applicable to this licensee are set out in Appendix 2 to *Standard requirements for television stations, discretionary services, and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016.

## **Encouragements**

The standard encouragements applicable to this licensee are set out in Appendix 2 to *Standard requirements for television stations, discretionary services, and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016.