



Broadcasting Decision CRTC 2009-743

Route reference: 2009-461

Additional references: 2009-461-2, 2009-461-3, 2009-461-4

Ottawa, 2 December 2009

Seabridge Media Inc.
Across Canada

Public Hearing in the National Capital Region
29 October 2009

Revocation of broadcasting licences – SBS Canada, ISC Canada and KBS World

*The Commission **revokes** the broadcasting licences issued to Seabridge Media Inc. for the Category 2 specialty services SBS Canada, ISC Canada and KBS World.*

Introduction

1. Seabridge Media Inc. (Seabridge) is the licensee of three Category 2 specialty programming undertakings serving the Korean community in Canada: SBS Canada (originally known as SBS Canada TV), ISC Canada (originally known as ISC Canada TV) and KBS World (originally known as KBS Canada TV). The Commission authorized the operation of these services in Broadcasting Decisions 2004-417, 2004-418 and 2004-419, respectively.
2. On 14 April 2008, Seabridge filed an application seeking authority to effect a change in its effective control (the transaction) pursuant to section 10(4)(a) of the *Specialty Services Regulations, 1990* (the Regulations). The transaction involved the transfer of all issued and outstanding shares of Seabridge, held by Matt Han (50%), Joon Han (15%), Frank Quo Vadis (25%) and Stanley Wong (10%), to Ho Seong Kim, giving Mr. Kim effective control of the broadcasting undertakings held by Seabridge.
3. The Commission's analysis of the transaction revealed that control had changed hands on 29 January 2008; that is, before Seabridge had filed its 14 April 2008 application. Further, on 29 January 2008, all members of Seabridge's board of directors resigned. Mr. Kim was then named as the sole director. In administrative letter L2008-0126 dated 28 November 2008, the Commission approved the application subject to a condition of approval requiring Seabridge to submit a tangible benefits proposal in the amount of \$59,241 within 30 days of the date of the approval. The Commission also reminded Seabridge that it must comply with the Regulations at all times. The approval was announced to the public in Broadcasting Information Bulletin 2009-82.

4. Seabridge did not comply with the condition of approval within the specified timeframe. Further, several attempts by Commission staff to contact Seabridge were left unanswered.
5. In Broadcasting Notice of Consultation 2009-461, the Commission noted that Seabridge apparently failed to comply with the condition of the approval letter dated 28 November 2008. Accordingly, the Commission stated that Seabridge was in apparent breach of section 10(4)(a) of the Regulations, having changed effective control without valid Commission approval. The Commission further noted that an analysis of the licensee's records had revealed apparent non-compliance with sections 7(2) and 8(1) of the Regulations, which require the submission of program logs and annual returns, respectively.
6. In light of Seabridge's apparent non-compliance with the above-noted sections of the Regulations, the Commission called the licensee to appear at the 29 October Public Hearing (the Public Hearing) to show cause:
 - Why the Commission should not issue a mandatory order pursuant to section 12 of the *Broadcasting Act* (the Act) requiring the licensee of the three services noted above to comply with the Regulations and its conditions of licence; and
 - Why the Commission should not suspend or revoke Seabridge's broadcasting licences pursuant to sections 9 and 24 of the Act.
7. In accordance with the Act, Broadcasting Notice of Consultation 2009-461 was published in the *Canada Gazette* as well as in a number of newspapers of general circulation across Canada. While directed by the Broadcasting Notice of Consultation to appear before the Commission, Seabridge failed to do so. The Commission has received no communication from Seabridge since 6 October 2008. Further, the Commission has been notified by Seabridge's distributors that its services went off air in July 2009.
8. The complete record of this proceeding is available on the Commission's website at www.crtc.gc.ca. The Commission considers that this proceeding raises the following issues:
 - Is Seabridge in compliance with the requirements of sections 10(4)(a), 7(2) and 8(1) of the Regulations?
 - In light of the Commission's finding on the compliance issues set out above, what regulatory action by the Commission is appropriate?

Compliance

9. Documentation supporting the apparent breaches of the Regulations was sent to the licensee in advance of the public hearing. The licensee did not present any evidence contradicting these apparent instances of non-compliance with the Regulations and did not appear at the Public Hearing.

Change in effective control

10. As noted above, the Commission's analysis found that Seabridge's effective control had changed hands prior to the filing of its 14 April 2008 application. As such, the approval that was granted in administrative letter L2008-0126 was intended to bring the licensee into compliance while maintaining the operation of the services. Additionally, the approval was conditional on the submission of a proposal for tangible benefits stemming from the transaction. This proposal was due 30 days following the issuance of administrative letter L2008-0126. As noted above, a proposal was not received by the Commission within the prescribed time period and remains outstanding.
11. The evidentiary record reveals that Commission staff made numerous attempts to contact Seabridge by phone and email regarding the outstanding proposal. On 10 March 2009, Commission staff sent a letter by mail and email, informing Seabridge that failure to respond and comply with the condition of approval contained in administrative letter L2008-0126 may put its approval in jeopardy.
12. On 24 April 2009, a further letter was served by bailiff to Seabridge at the address of its headquarters on file with the Commission. Copies of this letter were sent to all known postal and email addresses on file for Seabridge, including previous regulatory counsel. The letters sent by post were returned to the Commission undelivered. The 24 April 2009 letter reminded the licensee of the conditional nature of the approval granted on 28 November 2008. The letter also served notice upon the licensee that, failing a response, the Commission could take regulatory action to ensure compliance.
13. Seabridge provided no communication to the Commission explaining its failure to submit a proposal for tangible benefits.
14. The Commission considers that the failure to respect the condition of approval contained in administrative letter L2008-0126 renders that approval null and void. As such, the Commission is satisfied that the licensee is in non-compliance with section 10(4)(a) of the Regulations, having changed effective control without obtaining valid Commission approval.

Maintenance of logs and records

15. Section 7(2) of the Regulations states that:

Except as otherwise provided under a condition of its licence, a licensee shall furnish to the Commission, within 30 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 attesting to the accuracy of the contents of the log or record.

16. The Commission received program logs for KBS World for the months of June 2006 to April 2009. Logs for ISC Canada and SBS Canada were never received. Commission staff contacted the licensee by fax on 17 August 2006 and by email on 4 February 2009, 11 March 2009 and 1 May 2009, informing Seabridge that the information was outstanding.
17. While Seabridge responded by email on 4 October 2006, none of the outstanding logs were filed.
18. In light of the above, the Commission is satisfied that the licensee is in non-compliance with section 7(2) of the Regulations.

Submission of annual returns

19. Section 8(1) of the Regulations states that:

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.
20. In a communication dated 7 May 2008, the licensee identified the start dates of KBS World as 30 May 2006, and SBS Canada and ISC Canada as 4 June 2007. Based on these start dates, Seabridge is required to submit annual returns starting with the 2006 broadcast year for KBS World, and annual returns starting with the 2007 broadcast year for SBS Canada and ISC Canada.
21. In a statement filed with the 2006 annual return form, Jun Kim stated that Seabridge only started income producing operation as of October 2006. However, the Commission notes that the program logs submitted for KBS World report advertising material for the months of June to November 2006. The Regulations require that revenues generated before the end of the 2006 broadcast year be reported on the 2006 annual return.
22. Without clarifications and further information from the licensee, the Commission is not satisfied that Seabridge is in non-compliance with section 8(1) of the Regulations, and therefore declines to make a determination on this matter.
23. The Commission notes that, following the conditional approval of its change in effective control, Seabridge relocated its head office and failed to provide the Commission with updated contact information. Thus, in addition to the instances of non-compliance described above, the Commission finds that Seabridge has failed to comply with section 8(2) of the Regulations by not responding to the Commission's requests.

Regulatory action

24. The Commission is gravely concerned with the continued non-compliance that Seabridge has demonstrated. The Commission is also concerned that, despite the fact that it has made all possible entreaties to communicate with Seabridge, no response has been received from the licensee.

25. Given the multiple instances of non-compliance described above, the licensee's continued lack of responsiveness to Commission communications and the fact that the licensee is no longer emitting a signal, the Commission considers that revocation of Seabridge's broadcasting licences is the only appropriate measure in this case. Accordingly, pursuant to sections 9 and 24 of the *Broadcasting Act*, the Commission hereby **revokes** the licences issued to Seabridge Media Inc. pursuant to Broadcasting Decisions 2004-417, 2004-418 and 2004-419.

Secretary General

Related documents

- Broadcasting Notice of Consultation CRTC 2009-461, 30 July 2009
- *Applications processed pursuant to streamlined procedures*, Broadcasting Information Bulletin CRTC 2009-82, 19 February 2009
- *KBS Canada TV – Category 2 specialty service*, Broadcasting Decision CRTC 2004-419, 21 September 2004
- *ISC Canada TV – Category 2 specialty service*, Broadcasting Decision CRTC 2004-418, 21 September 2004
- *SBS Canada TV – Category 2 specialty service*, Broadcasting Decision CRTC 2004-417, 21 September 2004

This decision is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>.