



Broadcasting Decision CRTC 2011-129

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Route reference: 2010-539

Ottawa, 25 February 2011

Newcap Inc.
Ottawa, Ontario

Application 2010-0729-5, received 29 April 2010

CILV-FM Ottawa – Licence amendment

*The Commission **approves in part** the application by Newcap Inc. to amend CILV-FM's condition of licence 3 related to Canadian content development. The new condition of licence is set out in the conclusion section of this decision.*

Introduction

1. The Commission received an application by Newcap Inc. (Newcap) to amend the broadcasting licence of the English-language commercial radio programming undertaking CILV-FM Ottawa by amending its condition of licence 3 related to Canadian talent development. Canadian talent development is now known as Canadian content development (CCD).
2. The condition of licence currently reads as follows:
 3. The licensee shall make direct expenditures of at least \$6.3 million over seven consecutive years on the development and promotion of Canadian talent. Upon commencement of operation, this amount shall be distributed over seven consecutive broadcast years as follows:
 - \$300,000 in each broadcast year to the Radio Starmaker Fund;
 - \$50,000 in each broadcast year to the Nepean School of Music to support its annual summer music skills clinic and to develop an intensive year-long training program for selected students who wish to form a band; and
 - \$550,000 in each broadcast year to support three local bands, at least one of which will be an alternative rock band, chosen by a panel of judges and to provide sustained support for the band of the year (referred to, in this decision as “the local band initiative”).
3. Newcap requested flexibility to vary the specified amounts to be spent on individual initiatives by up to 20% per year so long as the required total amount is spent over seven consecutive broadcast years. In this regard, Newcap made a

commitment to spend all CCD funds required under the condition of licence by 31 August 2013.

4. Newcap stated that it found it very difficult to time the expenditures on its local band initiative so that it could spend the correct amount during each broadcast year. It noted that the timing of its CCD expenditures was dependent on factors outside of its control, such as the coaching, touring and recording schedules of the artists involved.
5. The Commission received interventions in support of this application. The complete record of this proceeding is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Commission's analysis and determinations

6. The Commission notes that Newcap did not fulfil the annual spending requirements for its local band initiative in 2006 and 2007. The total shortfall for those two years was \$442,224. While the Commission's general practice is to deny applications for licence amendments when a licensee is found in non-compliance, it is of the view that the non-compliance in this case is related to the way the condition of licence is structured and not the result of bad faith on the part of Newcap.
7. As well, over the last few years, the Commission has adopted a new approach to the way in which it sets out conditions of licence related to CCD. Conditions of licence now generally specify only the total annual CCD amount that must be expended, not the specific third parties that the licensee must support. This approach ensures that the licensee expends the required total amount while providing flexibility as regards spending on individual initiatives.
8. Newcap's proposal generally reflects the Commission's new approach as well as the commitments that the licensee made when licensed in that it would still be required to maintain its total CCD spending over seven years as well as the total amount that must be devoted to local band initiative. However, the Commission considers that Newcap's proposal to vary spending on this initiative up to 20% poses difficulties with respect to auditing and measuring compliance.
9. Accordingly the Commission considers that it would be more appropriate to impose a condition of licence that requires Newcap to make a total annual contribution to eligible initiatives that would allow it to satisfy its total commitment to CCD, based on the amount still remaining to fulfil this commitment.
10. Given that Newcap's contributions were imposed during a competitive process and its stated intention is to contribute to specific initiatives as originally imposed by condition of licence, the above-noted condition of licence would be accompanied by an expectation the Newcap meet its total commitments to individual initiatives, thus providing the licensee with a measure of flexibility.

Conclusion

11. In light of the above, the Commission **approves in part** the application by Newcap Inc. to amend CILV-FM's condition of licence 3 related to Canadian content development. The Commission hereby replaces condition of licence 3 with the following:

For the 2010-2011 and 2011-2012 broadcast years, the licensee shall make an annual contribution of \$900,000 to the promotion and development of Canadian content.

12. The Commission further expects the licensee to fulfil its total funding commitments to the specific initiatives identified in *CILV-FM Ottawa – Licence amendment*, Broadcasting Decision CRTC 2006-180, 3 May 2006, including its total \$442,224 CCD shortfall incurred as a result of its CCD shortfalls related to its local band initiative incurred in 2006 and 2007.
13. The Commission will explore any issues related to non-compliance at the time of licence renewal.

Secretary General