



Broadcasting Decision CRTC 2014-552

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Route reference: Part 1 application posted on 16 May 2014

Ottawa, 27 October 2014

Newcap Inc.

Lloydminster, Alberta

Application 2014-0417-8

CITL-DT and CKSA-DT Lloydminster – Licence amendments

*The Commission **denies** an application by Newcap Inc. to amend a condition of licence applicable to the English-language conventional television stations CITL-DT and CKSA-DT Lloydminster to allow it to average its weekly local programming obligations quarterly throughout the broadcast year. The Commission considers that the amendments would have resulted in a reduction of local programming in Lloydminster in certain periods of the year.*

Background

1. In Broadcasting Regulatory Policy 2009-406, the Commission standardized its approach to local programming by harmonizing the obligations relating to local programming for English-language non-metropolitan and metropolitan markets at 7 and 14 hours per broadcast week, respectively.
2. Standard conditions of licence for conventional television stations are set out in Broadcasting Regulatory Policy 2011-442, which includes conditions of licence relating to the broadcast of local programming.
3. Prior to the release of these policies, licensees of conventional television stations generally only made commitments regarding local programming and had the ability to average these commitments over the broadcast year.
4. As an exception to these conditions of licence, the Commission approved, as part of the 2013 renewal of CITL-DT and CKSA-DT, the flexibility for Newcap to offer 14 hours of local programming on both stations combined. This flexibility was imposed as condition of licence 2 set out in Appendices 12 and 13 to Broadcasting Decision 2013-467.¹

¹ The Commission also granted this exception to Thunder Bay Electronics Limited (Thunder Bay Electronics) for its stations CHFD-DT and CKPR-DT Thunder Bay. Both Newcap and Thunder Bay Electronics operate “twin-stick” stations in their respective markets. A twin-stick operation is one in which two over-the-air television stations are owned by a single licensee and operate in the same market.

Application

5. Newcap filed an application to amend condition of licence 2 to allow the English-language conventional television stations CITL-DT and CKSA-DT to average their weekly local programming obligations quarterly throughout the broadcast year. The amended condition of licence would read as follows (changes in **bold**):
 2. For purposes of compliance with the standard condition of licence 12 and Local Programming Improvement Fund (LPIF) eligibility, the licensee must broadcast at least 14 hours of local programming per week, counted in the aggregate **for our two Lloydminster stations, CKSA-DT and CITL-DT, such weekly commitment to be averaged for each broadcast quarter-year**. The licensee will not be eligible to receive funding from the LPIF if it is not in compliance with this condition of licence.
6. Newcap stated that between CITL-DT and CKSA-DT, it offers a weekly program schedule that includes 15 to 16 hours of local programming per week, which exceeds the minimum of 14 hours per week mandated by its conditions of licence. It added that while it can request amendments to its conditions of licence to be temporarily relieved of its local programming obligations, the requests would be frequent and would create additional burden. In this regard, the licensee indicated that it wishes to be allowed to run alternate or rerun programming in these timeslots on statutory holidays to avoid incurring overtime costs. It added that this request would enable it to deal with network fluctuations caused by special events such as the Olympics.
7. Newcap also indicated that its stations are facing financial hardships, due partly to the winding down of the Local Programming Improvement Fund (LPIF) and the inclusion of The Miracle Channel, CHEK-DT Victoria and CJON-DT St. John's as recipients of the Small Market Local Programming Fund (SMLPF). It noted that while the size of the SMLPF has not changed, the additional recipients have diminished the revenue that it receives from the fund.

Interventions

8. The Commission received an intervention in opposition to the application from the Public Interest Advocacy Centre (PIAC), to which the applicant did not reply. 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.
9. PIAC submitted that it is not appropriate at this time to consider this request since the Commission is currently reviewing Canadian television policy through the "Let's Talk TV" proceeding. It stated that the Commission's determinations in the proceeding could support the long-term viability of local television stations and help resolve some of the applicant's stated challenges without changing regular local

programming requirements. PIAC provided the following arguments in opposition to Newcap's request:

- The Commission has denied similar requests from Bell Media Inc. (Bell) and the Canadian Broadcasting Corporation (CBC), stressing that broadcasters can plan ahead for holiday periods and request temporary relief from local programming obligations relating to special events.
- The only example of a special event provided by Newcap is the Olympics, which occur once every two years; Newcap did not provide further evidence as to how requests for temporary relief would be burdensome.
- Since the financial data provided by Newcap did not include any information on its stations' advertising revenues, total expenses or profit before interest and taxes numbers, it is impossible for interveners to determine the true financial state of the stations mentioned in the application.
- The applicant's stations are affiliates of the CBC and CTV, from which they are able to acquire much of their other programming, and the stations still have access to the SMLPF.
- CKSA-DT and CITL-DT were already granted flexibility regarding their local programming obligations just over one year ago.

Commission's analysis

10. One of the objectives of the broadcasting policy for Canada, as set out in section 3(1)(i)(ii) of the *Broadcasting Act* (the Act), is to ensure that programming provided by the Canadian broadcasting system be drawn from local, regional, national and international sources. As the primary licensed providers of local programming to local communities, conventional television stations play an essential role in fulfilling this objective of the Act.
11. The Commission agrees with PIAC that it has already granted Newcap flexibility in Broadcasting Decision 2013-467 by allowing it to offer 14 hours of local programming on both of its stations combined, as opposed to each station being required to offer at least 7 hours—a requirement pertaining to conventional television stations and set out under condition of licence 12 in the appendix to Broadcasting Regulatory Policy 2011-442.² However, despite PIAC's concern that this is not an appropriate time to consider this request since the Commission is reviewing the Canadian television policy, the Commission considers that it must assess this application based on existing regulations.

² The condition of licence reads as follows: "If the licensee operates in a non-metropolitan television market, the licensee shall broadcast no less than seven hours of Canadian local programming in each broadcast week. The licensee will not be eligible to receive funding from the Local Programming Improvement Fund if it is not in compliance with this condition of licence."

12. In recent years, the Commission has received several requests to amend requirements regarding the measurement of local programming obligations. Bell made a similar request to that effect during its last licence renewal proceeding, proposing that the obligations be measured on an annual rather than a weekly basis. The Commission denied this request in Broadcasting Decision 2011-441, stating that:

“Measuring local programming over the broadcast week permits periodic monitoring and evaluation to verify compliance with local programming obligations, whereas measurements done annually can only be verified at the end of the broadcast year. The Commission further notes that broadcasters can plan ahead for holiday periods and special events, and schedule types of local programming other than live news. Finally, the Commission’s decision to measure local programming over the broadcast week is a reflection of the importance of local programming to Canadian communities. Accordingly, the Commission determines that it is appropriate to continue requiring that local programming obligations be measured over the broadcast week for the immediate future.”

13. After the Commission announced in July 2012 that it would be eliminating the LPIF as of 1 September 2014, Bell filed an application requesting that its weekly local programming obligations be measured quarterly throughout the broadcasting year. The Commission denied this application in Broadcasting Decision 2014-170, stating, in addition to the reasons cited in Broadcasting Decision 2011-441, that approval of the application would invariably result in a reduction in local programming for certain periods of the year. It also stated that broadcasters can request an amendment to their conditions of licence to be temporarily relieved from local programming requirements or other requirements for special events or statutory holidays, as has been done in the past for events such as the London Olympics in 2012.

14. The CBC also filed an application with respect to its English-language conventional television network and stations that would have an effect similar to that of Bell’s proposal. The Commission denied this application in Broadcasting Decision 2014-169, citing its denial of the 2011 Bell application.³

15. With respect to its views on the possibility of requesting temporary relief, it is not clear from Newcap’s application why these requests would be frequent considering that the only special event cited is the Olympics. Additionally, Newcap mentioned requiring alternate programming only on statutory holidays without stating what holidays would be affected and why. Given the preceding, the Commission does not find it appropriate to grant these stations even greater flexibility.

³ However, past exceptions were granted to CBC’s French-language television stations located in English-language markets in Broadcasting Decision 2013-263 and Broadcasting Orders 2013-264 and 2013-265. These were tied specifically to the difficulties associated with the broadcast of local programming and reflection of official language minority communities.

16. Further, the Commission considers that its past statements regarding these denials remain relevant and appropriate in the context of this application, particularly as they emphasize the important role played by local programming in the communities served by television stations.

Conclusion

17. In light of all of the above, the Commission **denies** the application by Newcap Inc. to amend condition of licence 2 set out in Appendices 12 and 13 to Broadcasting Decision 2013-467 to allow the English-language conventional television programming undertakings CITL-DT and CKSA-DT to average their weekly local programming obligations quarterly throughout the broadcast year.

Secretary General

Related documents

- *Proposed amendments to the requirements regarding the measurement of local programming applicable to conventional television stations*, Broadcasting Decision CRTC 2014-170, 9 April 2014
- *Proposed amendment to the requirement regarding the measurement of local programming applicable to the Canadian Broadcasting Corporation's English-language conventional television network and stations*, Broadcasting Decision CRTC 2014-169, 9 April 2014
- *Various independent conventional and community-based television programming undertakings – Licence renewals*, Broadcasting Decision CRTC 2013-467, 30 August 2013
- *Canadian Broadcasting Corporation – Licence renewals*, Broadcasting Decision CRTC 2013-263 and Broadcasting Orders CRTC 2013-264 and 2013-265, 28 May 2013
- *Standard conditions of licence, expectations and encouragements for conventional television stations*, Broadcasting Regulatory Policy CRTC 2011-442, 27 July 2011
- *Group-based licence renewals for English-language television groups – Introductory decision*, Broadcasting Decision CRTC 2011-441, 27 July 2011
- *Policy determinations resulting from the 27 April 2009 public hearing*, Broadcasting Regulatory Policy CRTC 2009-406, 6 July 2009