



## Broadcasting Decision CRTC 2016-50

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Reference: Part 1 application posted on 3 July 2015

Ottawa, 10 February 2016

**8384860 Canada Inc.**  
Vancouver, British Columbia

*Application 2015-0688-3*

### **CHLG-FM Vancouver – Licence amendment**

*The Commission **approves in part** an application by 8384860 Canada Inc. (Newcap) to amend the broadcasting licence for its English-language commercial radio station CHLG-FM Vancouver.*

*In light of the Commission's decision to revoke the broadcasting licences of Aboriginal Voices Radio Inc. (AVR) for CKAV-FM Toronto, CKAV-FM-2 Vancouver, CKAV-FM-3 Calgary, CKAV-FM-4 Edmonton and CKAV-FM-9 Ottawa, Newcap requested that the requirement that it allocate 10% of its annual over-and-above Canadian content development (CCD) contribution to AVR be amended so as to allow CHLG-FM to direct this part of its CCD contribution to other eligible parties and initiatives in Vancouver.*

*However, the Federal Court of Appeal (the Court) has since granted AVR leave to appeal the Commission's revocation decision and issued an order permitting AVR to continue to broadcast until the appeal is decided. Accordingly, pending the Court's decision on AVR's appeal, the Commission finds it appropriate to require that Newcap deposit the contributions owed for the 2014-2015 and 2015-2016 broadcast years (amounting to \$183,333) in a separate interest-bearing account by no later than **11 March 2016**. Following the publication of the Court's decision on AVR's appeal, Newcap will be required to file an application **within 90 days** proposing how and to whom the funds in the account at the time should be allocated, with the expectation that the funds will be used for CCD initiatives that support the development of Aboriginal music or programming.*

*This will ensure that the Commission's original intent in requiring that this part of Newcap's CCD contribution be directed to the support of Aboriginal music or programming is achieved.*

### **Introduction**

1. In Broadcasting Decision 2015-282, issued on 25 June 2015, the Commission revoked the broadcasting licences of Aboriginal Voices Radio Inc. (AVR) for its

stations CKAV-FM Toronto, CKAV-FM-2 Vancouver, CKAV-FM-3 Calgary, CKAV-FM-4 Edmonton and CKAV-FM-9 Ottawa, effective 25 July 2015. The revocations followed the Commission's findings of serious and repeated non-compliance on AVR's part with regard to these stations.

2. In light of that decision, 8384860 Canada Inc. (Newcap) filed an application on 26 June 2015 to amend the broadcasting licence for its English-language commercial radio station CHLG-FM Vancouver. Specifically, it requested that the requirement that it allocate 10% of its annual over-and-above Canadian content development (CCD) contribution to AVR (see Broadcasting Decision 2014-427) be amended so as to allow the station to direct this part of its CCD contribution to parties and initiatives in Vancouver fulfilling the definition of eligible initiatives set out in paragraph 108 of Broadcasting Public Notice 2006-158 (the Commercial Radio Policy). The contributions amount to \$100,000 for the 2014-2015 broadcast year and \$83,333 for the 2015-2016 broadcasting year.
3. On 15 July 2015, AVR filed a motion with the Federal Court of Appeal (the Court) for leave to appeal the Commission's revocation decision. On 23 July 2015, the Court granted AVR a stay permitting four of its five stations to continue broadcasting pending a determination on the leave application.
4. On 21 August 2015, the Court granted AVR leave to appeal and issued an order allowing AVR to continue to operate all five of its stations until the appeal was decided, subject to strict compliance with their conditions of licence.
5. In light of the Court's decision, on 25 August 2015, AVR submitted a procedural request to the Commission seeking that Newcap's CCD contribution for the 2014-2015 broadcast year for CHLG-FM be paid to AVR by 31 August 2015, consistent with the licensee's condition of licence to that effect, or that AVR be granted an extension of time to comment on Newcap's application.
6. In a procedural letter dated 27 August 2015, Commission staff set out new timelines providing each party with additional opportunity to comment. In doing so, Commission staff noted that Newcap had filed its application within a reasonable timeframe for the Commission to make a determination before 31 August 2015, but that due to the need for additional comment, the record for the application would not be closed until after that date.
7. AVR submitted an answer to the application. The Commission did not receive any other interventions regarding Newcap's application. The public record for the application can be found on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) or by using the application number provided above.

### **Positions of parties**

8. Newcap explained that the Commission's decision to revoke AVR's licences had made it impossible for it to fulfill its CCD requirement as set out in its condition of

licence, but that it had found alternative eligible CCD initiatives in Vancouver to which it could contribute funds for the 2014-2015 broadcast year.

9. Newcap submitted that its regulatory obligations were towards the Commission, not AVR. In light of the Court's proceedings, Newcap stated that it would prefer that the CCD payment to AVR be suspended until the Court's decision. Newcap added that it wished to be considered compliant with its condition of licence regarding CCD contributions for the 2014-2015 broadcast year and committed to act quickly as soon as payment instructions were provided by the Commission.
10. For its part, AVR took the position that the basis for Newcap's application (namely, that it would not be capable of fulfilling its condition of licence) was no longer valid given the Court's decision to issue an order permitting AVR to continue to broadcast. Specifically, in light of this order, it argued that it was entitled to the same right to carry on as any other broadcaster and that there was no rationale for Newcap to redirect its CCD funding as the appeal would take anywhere from 6 to 12 months.
11. AVR also stated that it had been struggling financially for some time and that it had relied on Newcap's CCD contribution for the 2014-2015 broadcast year. AVR submitted that withholding the contribution would cause it serious damage, could irreparably harm it and would be procedurally unjust.
12. In its final reply, Newcap reiterated its position that its obligation was to the Commission, not AVR, and that therefore AVR's financial struggles were irrelevant. Further, Newcap argued that because the Court's order permitting AVR to continue broadcasting was subject to strict compliance by AVR with its conditions of licence and because it is the Commission that determines compliance, no further CCD payments should be made to AVR without instructions to that effect by the Commission.
13. Finally, Newcap noted that CCD contributions must go to the development of Canadian content and expressed concern that AVR might use such contributions to pay legal expenses for its appeal. Nonetheless, Newcap indicated that it would be open to releasing the funds to AVR provided that the Commission confirmed that these payments would be considered eligible CCD expenditures regardless of their use by AVR.

### **Commission's analysis and decision**

14. The Commission's policy with respect to CCD contributions is set out in the Commercial Radio Policy. The policy clearly emphasizes the key role that such financial contributions by broadcasters are to play in the development and promotion of Canadian talent. Broadcasters are required to direct their contributions to initiatives that lead to the creation and promotion of audio content using Canadian resources. This includes supporting, training and developing Canadian musical and spoken word talent, including journalists. The goal is not only to help develop and advance the

careers of Canadian emerging artists but also to ensure the production of high-quality Canadian music or content for Canadians and people around the world.

15. Newcap's existing condition of licence regarding its annual over-and-above CCD contributions requires that 10% of such contributions be made to AVR. Consistent with the objectives of the *Broadcasting Act*, the intent of this condition of licence was to promote the creation and broadcast of Aboriginal music and programming by supporting an Aboriginal radio service. This policy objective remains foremost in the Commission's considerations. As stated in the decision revoking AVR's licences, there remains a pressing need to serve the Aboriginal community as a whole, given that issues vitally important to Aboriginal Canadians are not fully covered or addressed at all in non-Native media.
16. In the decision in which it revoked AVR's licences, the Commission made findings of fact with respect to serious and repeated non-compliance by AVR with many of its conditions of licence. The submissions made by AVR in the context of the current proceeding provided no specific assurances or evidence that it was operating or could operate its stations in compliance with its conditions of licence or that the CCD funds at issue would contribute to the creation or broadcast of Aboriginal music or programming. As such, the Commission has no reasonable level of confidence that the CCD funds would go towards the support of Aboriginal music or programming.
17. Moreover, while AVR has argued that Newcap's withholding the \$100,000 in CCD funding for the 2014-2015 broadcast year has caused serious harm to AVR's operations, it has not provided any specific evidence or particulars to this effect.
18. However, the Commission acknowledges that the Court has granted leave to appeal the Commission's revocation decision and that AVR is currently permitted to continue to broadcast by order of the Court pending determination of this appeal. Given the unique circumstances of this case, the Commission considers that it would not be appropriate to redirect these funds to another CCD initiative pending the outcome of that appeal.
19. In light of all of the above, the Commission **approves in part** the application by 8384860 Canada Inc. to amend the broadcasting licence for its English-language commercial radio station CHLG-FM Vancouver. Specifically, the Commission replaces condition of licence 5 set out in the appendix to Broadcasting Decision 2014-427 with the following **condition of licence**:

To fulfill its original commitment to Canadian content development (CCD) set out in Appendix 4 to *Licensing of new radio stations to serve the Vancouver radio market*, Broadcasting Decision CRTC 2008-117, 30 May 2008, the licensee shall, in addition to any contributions required under section 15 of the *Radio Regulations, 1986*, as amended from time to time, contribute \$1 million to CCD in the 2014-2015 broadcast year and \$833,333 (pro-rated from the first year of operation) in the 2015-2016 broadcast year.

The licensee shall allocate 20% of these amounts to FACTOR.

**The licensee shall deposit 10% of these amounts (i.e. a total of \$183,333 for the 2014-2015 and 2015-2016 broadcast years) into a separate interest-bearing account by no later than 11 March 2016. These contributions and any accrued interest are to remain in this separate account until the Commission determines, upon application, to which initiatives they should be allocated.**

The remainder of this additional contribution shall be allocated to parties and initiatives fulfilling the definition of eligible initiatives set out in paragraph 108 of Commercial Radio Policy 2006, Broadcasting Public Notice CRTC 2006-158, 15 December 2006.

20. Within **90 days** following the publication of the Court's decision on AVR's appeal (i.e. FCA file A-457-15), the Commission **directs** the licensee to file an application with the Commission proposing how and to whom the CCD funds in the account at the time should be allocated.
21. Irrespective of the outcome of AVR's appeal, the Commission remains of the view that these funds should be used for CCD initiatives that support the development of Aboriginal music or programming, consistent with the Commission's original intent in requiring that this part of Newcap's CCD contribution be directed to the support of Aboriginal music or programming.
22. Finally, the Commission considers that Newcap's amendment application was made in a timely manner and that its decision not to pay the funds allocated to AVR by 31 August 2015 was reasonable under the unique circumstances of this case. Therefore, Newcap will not be considered in non-compliance for failure to make the required CCD contribution during the 2014-2015 broadcast year, provided that it complies with the requirements set out in this decision.

Secretary General

### **Related documents**

- *CKAV-FM Toronto, CKAV-FM-2 Vancouver, CKAV-FM-3 Calgary, CKAV-FM-4 Edmonton and CKAV-FM-9 Ottawa – Revocation of licences*, Broadcasting Decision CRTC 2015-282, 25 June 2015
- *CHLG-FM Vancouver – Licence renewal and amendments*, Broadcasting Decision CRTC 2014-427, 14 August 2014
- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006

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