Broadcasting Decision CRTC 2020-315

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Reference: Part 1 licence renewal application posted on 31 January 2020

Ottawa, 27 August 2020

Stingray Radio Inc.
Lloydminster, Alberta

Public record for these applications: 2019-0770-1 and 2019-0771-8

CITL-DT and CKSA-DT – Licence renewals

*The Commission **renews** the broadcasting licences for the independent English-language conventional television stations CITL-DT and CKSA-DT Lloydminster, Alberta, and CKSA-DT's rebroadcasting transmitter CKSA-TV-2 Bonnyville, from 1 September 2020 to 31 August 2025.*

Application

1. The Commission has the authority, pursuant to section 9(1) of the *Broadcasting Act* (the Act), to issue and renew licences for such terms not exceeding seven years and subject to such conditions related to the circumstances of the licensee as it deems appropriate for the implementation of the broadcasting policy set out in section 3(1) of the Act.

2. On 3 June 2019, the Commission issued Broadcasting Notice of Consultation 2019-192, which listed the television services and stations for which the licences needed to be renewed to continue their operations. In that Notice of Consultation, the Commission requested that licensees of those services and stations submit renewal applications for their broadcasting licenses.

3. In response Stingray Radio Inc. (Stingray) filed applications to renew the broadcasting licences for the independent English-language conventional television stations CITL-DT and CKSA-DT Lloydminster, Alberta and CKSA-DT's rebroadcasting transmitter CKSA-TV-2 Bonnyville, which expire 31 August 2020.

4. CITL-DT and CKSA-DT are a twin-stick operation, that is, they are conventional television stations that are owned by a single licensee and operate in the same market. In addition to programming from common local studios, CITL-DT broadcasts programming from CTV and CKSA-DT broadcasts programming from Global. Stingray Group Inc. acquired CITL-DT and CKSA-DT in a transaction that the Commission approved in Broadcasting Decision 2018-404.

Interventions

5. The Commission received an intervention in regard to the present applications from the Forum for Research and Policy in Communications (FRPC). In its intervention, the FRPC submitted that the Part 1 process used by the Commission for the renewal of the broadcasting licences for independent television stations is not appropriate given that a Part 1 proceeding does not give the public sufficient notice to consider and comment on licence renewal applications for stations in non-compliance. The licensee did not reply to the intervention.

6. The Commission notes, however, that processing licence renewals applications under the Part 1 process is a long-standing practice that was first announced to the public and to the broadcasting industry in Broadcasting Information Bulletin 2015-116. Any party may comment on a Part 1 application and examine the licensee's correspondence with Commission staff regarding non-compliance. Moreover, this approach has served the Commission and the public well, as evidenced by the high level of compliance by licensees of television services.

Commission's analysis and decisions

7. After examining the applications in light of applicable policies and regulations, the Commission considers that the issues it must address relate to the following:

- compliance with closed captioning requirements;
- Canadian programming expenditures;
- local programming;
- exhibition and spending on locally reflective news; and
- described video.

Compliance with closed captioning requirements

8. Among other things, section 3(1) of the Act declares that programming accessible by disabled persons should be provided within the Canadian broadcasting system as resources become available for the purpose (section 3(1)(p)). In accordance with this aspect of the broadcasting policy and pursuant to its authority in section 9(1), the Commission has imposed conditions of licence regarding the provision of closed captioning.

9. Specifically, as set out in Appendix 1 to Broadcasting Regulatory Policy 2016-436, television licensees are required to close caption 100% of the English- and French-language programs during the broadcast day.

10. Based on the Commission's analysis of the program logs filed by the licensee and the results placed on the record of this proceeding, it appears that the level of closed captioning for all programs broadcast on CITL-DT did not meet the required level of 100% for the 2014-2015 and 2015-2016 broadcast years. In the case of

CKSA-DT, it appears that the licensee did not provide closed captioning for all programs in the 2013-2014 and 2014-2015 broadcast years.

11. Stingray indicated the apparent non-compliance was due to an error in its logging software. It stated that the programming had been provided with closed captioning, however, a clerical error in the logs was the cause of the apparent instances of non-compliance. It further indicated that its employees are now adequately trained on the logging software, and that the program director monitors this software to reduce the risk of administrative error.

12. The Commission notes that there have been no issues with the level of closed captioning since the 2015-2016 broadcast year. The Commission is therefore satisfied with the measures and explanations that the licensee has provided and considers that no further action is necessary at this time.

13. In light of the above the Commission is satisfied with the explanation and preventive measures taken by the licensee. It therefore finds CITL-DT in compliance with its closed captioning requirements for the 2014-2015 and 2015-2016 broadcast years, and CKSA-DT in compliance with its closed captioning requirements for the 2013-2014 and 2015-2016 broadcast years.

Canadian programming expenditures

14. Sections 3(1)(e) and 3(1)(s)(i) of the Act declare that each element of the Canadian broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming and that private networks and programming undertakings should, to an extent consistent with the financial and other resources available to them, contribute significantly to the creation and presentation of Canadian programming. In accordance with this aspect of the broadcasting policy and pursuant to its authority in section 9(1), the Commission has imposed conditions of licence requiring programming undertakings to contribute in various ways to the creation of Canadian programming, including imposing Canadian programming expenditure (CPE) requirements.

15. In Broadcasting Regulatory Policy 2015-86, the Commission announced that it would impose CPE requirements on all independent over-the-air television stations and that it would set appropriate CPE levels at the time of licence renewals, based on historical expenditures on Canadian programs.

16. Stingray requested that CITL-DT and CKSA-DT be exempt from CPE requirements. If the Commission were to deny that request, Stingray suggested that the level be 30% of the previous year's combined gross revenues for the two stations.

17. In support of its request for exemption, the licensee cited Broadcasting Regulatory Policy 2015-86. In that policy, the Commission found that CPE requirements were not appropriate for stations operated by RNC MEDIA Inc. (RNC) and Télé Inter-Rives ltée (Télé Inter-Rives) because their respective television stations broadcast

programming from affiliated stations for the entirety of their broadcast days. Stingray argued that CITL-DT and CKSA-DT receive the bulk of their programming from the Global and CTV television networks and therefore the exemption from CPE requirements should also apply to CITL-DT and CKSA-DT, especially since the stations are operating at a net profit loss.

18. The Commission considers that Stingray's situation is different from that of RNC and Télé Inter-Rives, which are small regional companies operating in small markets under difficult conditions. The Commission also notes that a distinction exists between RNC's model (where the stations are affiliates to a large group's network) and Stingray's program supply agreement model (where the stations enter into an agreement under which they agree to broadcast a large group's programming and keep a certain control over the programming that is being provided). Therefore, the Commission is of the view that Stingray's model and financial situation cannot be directly compared to that of RNC and Télé InterRives. Further, it is of the view that Stingray has sufficient resources to make CPE expenditures for its television stations.

19. Based on the above, the Commission **denies** Stingray's request for an exemption from CPE requirements.

20. As for the appropriate level to impose on the stations, the Commission notes that the Stingray stations broadcast programming from television broadcasters that form part of large ownership groups that have CPE requirements of 30%. That level aligns with the one that that Stingray suggested if the Commission were to deny its proposal for a CPE exemption. The Commission further considers that, given the financial difficulties faced by the stations, setting CPE levels based on historical spending would be disadvantageous to them as they would be at a level higher than 30%, which is higher than what is imposed on large ownership groups. In order to set the CPE requirements at an attainable level, the Commission considers a deviation from Broadcasting Regulatory Policy 2015-86, which indicates that CPE requirements are based on historical levels, is appropriate in this case. The Commission finds that a 30% CPE level is appropriate for each of these stations and will impose a condition of licence to this effect. This **condition of licence** is set out in the appendix to this decision.

Improved access by certain under-represented groups to the broadcasting system

21. The broadcasting policy set out in section 3(1) also provides that the Canadian broadcasting system should reflect the linguistic duality of Canada the special place of aboriginal peoples within Canadian society (section 3(1)(d)(iii)).

22. The Commission considers it appropriate to adopt an incentive to encourage the reflection of Indigenous peoples within the broadcasting system. Specifically, for each of their stations, licensees will receive a 50% credit towards their CPE requirements for expenditures on Canadian programming produced by Indigenous producers, up to a maximum (expenses plus credit) of 10% of each licensee's

overall CPE requirement when combined with the credit discussed below regarding official language minority community (OLMC) reflection. Only programming costs counting towards CPE as defined in Public Notice 1993-93 will be considered eligible for the credit.

23. The Commission is also of the view that a similar credit could encourage greater onscreen reflection of OLMCs in the Canadian broadcasting system. Consequently, for each of their stations, the licensees will receive a 25% credit against their CPE requirements for expenditures on Canadian programming produced by OLMC producers, up to a maximum (expenses plus credit) of 10% of each licensee's overall CPE requirement when combined with the credit on Indigenous reflection. Once again, only programming costs counting towards CPE as defined in Public Notice 1993-93 will be considered eligible for the credit. Further, the OLMC producer must be an independent producer as defined by the Commission and (i) if in the province of Quebec, the original language of the production must be English or (ii) if outside of the province of Quebec, the original language of the production must be French.

Local programming

24. Section 3(1) of the Act also requires programming provided by the Canadian broadcasting system to be drawn from local, regional, national and international sources (section 3(1)(i)(ii)) as well as to be reflective of Canadian attitudes, opinions, ideas and values (section 3(1)(d)(ii)), and to serve the needs and interests, and reflect the circumstances and aspirations of all Canadians (section 3(1)(d)(iii)). In accordance with these aspects of the broadcasting policy and pursuant to its authority in section 9(1), the Commission has imposed conditions of licence regarding local programming and locally reflective news on television stations.

25. In Broadcasting Decision 2013-467, when it last renewed the licences for CITL-DT and CKSA-DT, the Commission approved a request for an exception to the stations' condition of licence relating to the broadcast of local programming. This exceptional condition permitted a combined total of 14 hours of local programming per broadcast week on CITL-DT and CKSA-DT rather than the usual seven hours per week for each station. Stingray requested that this authorization be maintained.

26. The Commission considers that this authorization continues to be appropriate in that the total amount of local programming provided to the community would not be reduced while providing the licensee with some flexibility in program scheduling.

27. Accordingly, the Commission **approves** Stingray's request relating to the level of local programming. **Conditions of licence** to this effect are set out in the appendix to this decision. The Commission expects the licensee to ensure that some local programming is broadcast on each station to ensure that viewers will continue to benefit from local programming on both CITL-DT and CKSA-DT.

Exhibition and spending on locally reflective news

28. In Broadcasting Regulatory Policy 2016-224, the Commission stated that all television station licensees would be required to broadcast a minimum level of local news and to allocate a percentage of their previous broadcast year's gross revenues to such programming. The exhibition and expenditure levels would be determined at licence renewal based on historical levels.

29. Stingray proposed to broadcast at least 12 hours of locally reflective news each broadcast week for the two stations combined. It further proposed to devote at least 25% of the previous year's gross revenues to locally reflective news for the two stations combined.

30. Since both stations operate in the same market as a twin-stick operation, the Commission considers that allowing them to share hours and costs for locally reflective news would have a very limited impact on programming offered to viewers. Furthermore, the proposed levels of programming and expenditures are consistent with historical levels, which, for exhibition, is an average of 14 hours per week, and, for expenditures, is roughly 27% of the stations' previous year's gross revenues.

31. The Commission therefore **approves** the licensee's requests. A **condition of licence** to that effect is set out in the appendix to this decision.

Described video

32. Consistent with the broadcasting policy in section 3(1)(p) of the Act and the authority in section 9(1) as set out above, the Commission has imposed conditions of licence regarding the provision of described video (DV).

33. Stingray is currently subject to the following condition of licence for the provision of DV, as per condition of licence 8 set out in Broadcasting Regulatory Policy 2011-442:

> The licensee shall provide described video for all English- and French-language programming that is broadcast during prime time (i.e., from 7 p.m. to 11 p.m.) and that is drawn from program categories 2(b) Long-form documentary, 7 Drama and comedy, 9 Variety, 11(a) General entertainment and human interest and 11(b) Reality television, and/or programming targeting preschool children (0-5 years of age) and children (6-12 years of age).

34. In order to reflect the exception that was granted to Bell Media Inc., Corus Entertainment Inc, and Rogers Media Inc. (Bell, Corus and Rogers), Stingray proposed to amend the condition of licence related to described video to add an exception for U.S programming received without described video fewer than 24 hours prior to air. Such programs would, however, be broadcast with described video for any repeat airings scheduled more than 24 hours from delivery.

35. Stingray noted that the exception for Bell, Corus and Rogers set out in Broadcasting Regulatory Policy 2019-392 was on the basis that they receive a significant amount of U.S. content, which is delivered without embedded DV and close to the time of broadcast, resulting in insufficient time to produce or outsource DV for the programs. Further, Bell, Corus, and Rogers committed to provide a log detailing the receipt date of all U.S. programs received without DV which were broadcast in prime time.

36. Stingray indicated that it obtains all of its primetime programming for CITL-DT and CKSA-DT from Bell and Corus. Stingray therefore considered that it should receive similar flexibility to ensure that CITL-DT and CKSA-DT operate in compliance. It confirmed that it would adhere to the same reporting requirements as Bell and Corus as outlined in Broadcasting Regulatory Policy 2019-392, which would require Stingray to file a progress report with the Commission every six months from the date of its license renewal decision until the next licence renewal.

37. The Commission finds that it is appropriate that CITL-DT and CKSA-DT have the same condition of licence regarding described video as that of Bell and Corus, given that Bell and Corus provide the stations’ prime time programming and that the licensee should adhere to the same expectations regarding the inclusion of a logo and the keeping of logs.

38. The Commission therefore **approves** Stingray’s request. A **condition of licence** to this effect is set out in the appendix to this decision.

Conclusion

39. In light of all of the above, the Commission **renews** the broadcasting licences for the independent English-language conventional television programming undertakings CITL-DT and CKSA-DT Lloydminster, Alberta, and CKSA-DT’s rebroadcasting transmitter CKSA-TV-2 Bonnyville, from 1 September 2020 to 31 August 2025. The terms and **conditions of licence** are set out in the appendix to this decision.

Secretary General

Related documents

- *Amendment proposed by Bell Media Inc., Corus Entertainment Inc. and Rogers Media Inc. to their condition of licence that requires prime time programming to be broadcast with described video*, Broadcasting Regulatory Policy CRTC 2019-392, 3 December 2019

- *Call for licence renewal applications*, Broadcasting Notice of Consultation CRTC 2019-192, 3 June 2019

- *Standard requirements for television stations, discretionary services, and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016

- *Policy framework for local and community television*, Broadcasting Regulatory Policy CRTC 2016-224, 15 June 2016

- *New procedures for licence renewal applications*, Broadcasting Information Bulletin CRTC 2015-116, 31 March 2015

- *Let's talk TV: The way forward – Creating compelling and diverse Canadian programming*, Broadcasting Regulatory Policy CRTC 2015-86, 12 March 2015

- *The reporting of Canadian programming expenses*, Public Notice CRTC 1993-93, 22 June 1993

This decision is to be appended to each licence.

Appendix to Broadcasting Decision CRTC 2020-315

Terms, conditions of licence, expectations and encouragements for the independent English-language conventional television programming undertakings CITL-DT and CKSA-DT Lloydminster, Alberta, and CKSA-DT's transmitter CKSA-TV-2 Bonnyville

Terms

The licence will expire 31 August 2025.

Conditions of licence

1. The licensee shall adhere to the conditions of licence set out in the broadcasting licence for the undertaking, as well as to the standard conditions of licence set out in Appendix 1 to *Standard requirements for television stations, discretionary services, and on-demand services,* Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016, with the exceptions of conditions 6 and 14, which are replaced with the following:

    6. The licensee shall broadcast at least 14 hours of local programming on CITL-DT and CKSA-DT combined.

    14. The licensee shall provide described video for all English- and French-language programming that is broadcast during prime time (i.e., from 7 p.m. to 11 p.m.) and that is drawn from program categories 2(b) Long-form documentary, 7 Drama and comedy, 9 Variety, 11(a) General entertainment and human interest and 11(b) Reality television, and/or programming targeting preschool children (0-5 years of age) and children (6-12 years of age), with the exception of U.S. programming received without described video less than 24 hours prior to air. Such programs will be broadcast with described video for any repeat airings scheduled greater than 24 hours from delivery.

Canadian programming expenditures

2. The licensee shall in each broadcast year devote to the acquisition of or investment in Canadian programming a minimum of 30% of the previous broadcast year's gross revenues of the undertaking.

3. Subject to condition 4, the licensee may claim, in addition to its expenditures on Canadian programming:

    a) a 50% credit against its Canadian programming expenditure requirements for expenditures made on Canadian programming produced by an Indigenous producer and claimed as Canadian programming expenditures during that broadcast year;

b) a 25% credit against its Canadian programming expenditure requirements 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 programing 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 3 until the expenditures made on Canadian programming produced by Indigenous producers and by official language minority community producers, including credits, reach a combined maximum of 10% of the Canadian programming expenditure requirement for the undertaking.

5. In regard to Canadian programming expenditures:

    a) In each broadcast year of the licence term, excluding the final year, the licensee may expend an amount on Canadian programming that is up to 5% less than the minimum required expenditure for that year calculated in accordance with condition of licence 2; in such case the licensee shall expend in the next broadcast year of the licence term, in addition to the minimum required expenditure for that year, the full amount of the previous year's under-expenditure.

    b) In each broadcast year of the licence term, excluding the final year, where the licensee expends an amount for that year on Canadian programming that is greater than the minimum required expenditure, the licensee may deduct that amount from the minimum required expenditure in one or more of the remaining years of the licence term.

    c) Notwithstanding paragraphs (a) and (b) above, during the licence term, the licensee shall expend on Canadian programming, at a minimum, the total of the minimum required expenditures calculated in accordance with condition of licence 2.

Locally reflective news

6. In accordance with *Policy framework for local and community television*, Broadcasting Regulatory Policy CRTC 2016-224, 15 June 2016, the licensee shall devote, in each broadcast year, not less than 25% of the combined previous broadcast year's gross revenues for CITL-DT and CKSA-DT to investments in locally reflective news or on acquisition thereof.

7. In each broadcast year of the licence term, excluding the final year,

    a) the licensee may expend an amount on locally reflective news that is up to 5% less than the minimum required expenditure for that year.

    b) where the licensee expends an amount for that year on locally reflective news that is greater than the minimum required, the licensee may deduct that amount from the minimum required expenditure in one or more of the remaining years of the licence term.

    c) the licensee shall ensure that the station expends on locally reflective news the total of the minimum required expenditures calculated in accordance with condition 6.

8. The licensee shall broadcast at least 12 hours of locally reflective news each broadcast week on CITL-DT and CKSA-DT combined.

For the purposes of these conditions of licence:

“Indigenous producer” means an individual who self-identifies as Indigenous, which includes First Nations, Métis or Inuit, and is a Canadian citizen or resides in Canada, or an independent production company in which at least 51% of the controlling interest is held by one or more individuals who self-identify as Indigenous and are Canadian citizens or reside in Canada. In regard to the definition of “independent production company,” “Canadian” includes a person who self-identifies as Indigenous and resides in Canada, and “Canadian company” includes a production company in which at least 51% of the controlling interest is held by one or more individuals who self-identify as Indigenous and reside in Canada.

“Local programming” means programming produced by either local stations with local personnel or locally-based independent producers, that is of interest to the community or market served (i.e., locally relevant).

“Locally reflective news” means programming that meets the criteria set out in paragraphs 56 to 58 of *Policy framework for local and community television*, Broadcasting Regulatory Policy CRTC 2016-224, 15 June 2016.

“Official language minority community (OLMC) producer” means a company that meets the definition of “independent production company” and that, if operating in the Province of Quebec, produces original English-language programming, or if operating outside of the Province of Quebec, produces original French-language programming.

Clarification for OLMC producer:

To be considered an OLMC producer in Canada, a production company must:

a. if it produces original programs in English, have its head office in Quebec and be owned and operated by a resident of Quebec;

b. if it produces original programs in French, have its head office outside Quebec and be owned and operated by a resident outside of Quebec.

Expectations

The standard expectations applicable to this licensee are set out in Appendix 1 to *Standard requirements for television stations, discretionary services, and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016.

The Commission expects the licensee to ensure that some local programming is broadcast on each station to ensure that viewers will continue to benefit from local programming on both CITL-DT and CKSA-DT.

For programming that is subject to the exception regarding described video set out in condition of licence 1, the Commission expects the licensee to display a logo at the start of the first airing of the program and an audio notification is to be provided indicating that repeat broadcasts will be aired with full described video at a future time.

The Commission expects the licensee to keep logs detailing the receipt date of all U.S. programs received without described video and broadcast in prime time, and to include this information in its next licence renewal application.

Encouragements

The standard encouragements applicable to this licensee are set out in Appendix 1 to *Standard requirements for television stations, discretionary services, and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016.