



Broadcasting Decision CRTC 2013-157

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Route reference: 2012-678

Ottawa, 27 March 2013

South Asian Broadcasting Corporation Inc.
Vancouver, British Columbia

Application 2011-0161-7, received 28 January 2011

CKYE-FM Vancouver – Licence renewal

*The Commission **renews** the broadcasting licence for the commercial specialty ethnic radio station CKEYE-FM Vancouver from 1 April 2013 to 31 August 2019.*

*Further, the Commission **approves** the licensee's proposal to delete its condition of licence dealing with Canadian talent development. During the next licence term, the licensee will be required to make contributions to Canadian content development as set out in section 15 of the Radio Regulations, 1986.*

Introduction

1. South Asian Broadcasting Corporation (South Asian) filed an application to renew the broadcasting licence for the commercial specialty ethnic radio programming undertaking CKEYE-FM Vancouver, British Columbia, which expires 31 March 2013.¹ The Commission did not receive any interventions in connection with this application.
2. As part of its application, the licensee proposed to delete its condition of licence 7 dealing with Canadian talent development (CTD), as set out in Broadcasting Decision 2005-339, in which the Commission originally approved the licensee's application for a new radio station.
3. In Broadcasting Notice of Consultation 2012-678, the Commission indicated that it would review the licensee's compliance with the *Radio Regulations, 1986* (the Regulations) and its conditions of licence, as indicated in the Commission's clarification letters, which are part of the public file for this proceeding. The Commission also announced that it may also consider the use of regulatory measures, such as a short-term renewal, in accordance with Broadcasting Information Bulletin 2011-347.

¹ The original licence expiry date for this station was 31 August 2011. The broadcasting licence was administratively renewed from 1 September 2011 to 31 March 2013 as a result of Broadcasting Decisions 2011-556, 2012-164 and 2012-456.

Commission's analysis and determinations

4. After examining the application in light of applicable regulations and policies, the Commission considers that the issues to be addressed are the following:
 - compliance and proposals relating to CTD and Canadian content development (CCD) contributions; and
 - compliance with section 9(2) of the Regulations, relating to the filing of annual returns.

Canadian talent development and Canadian content development contributions

5. The current CTD condition of licence for CKYE-FM is as follows: The licensee shall direct a minimum of \$30,000 in each of the first three years of operation to the financial support for Canadian talent development. In each of years four through seven, the licensee shall make direct annual expenditures representing the greater of \$30,000 and 2.5% of total annual revenues derived from the operation of its proposed station in support of Canadian talent development. These amounts shall be distributed as follows:
 - contributions to Foundation to Assist Canadian Talent on Record (FACTOR) and MUSICACTION - \$4,000 each for a total of \$8,000 per year;
 - contribution to the Canadian Association of Ethnic Broadcasters for the maintenance of its catalogue of Canadian ethnic recordings - \$3,000 per year;
 - scholarships for visible minority youth enrolled in the music or the journalism program of the British Columbia Institute of Technology - \$3,000 per year;
 - contributions to the Kalamandir Music Society of BC - \$4,000 per year;
 - contributions to the Surrey India Arts Club - \$4,000 per year;
 - contributions to the Gurdip Arts Academy - \$3,700 per year; and
 - talent search contest - \$4,250 per year.
6. In Broadcasting Public Notice 2006-158, the Commission replaced the expression "Canadian talent development" (CTD) with "Canadian content development (CCD)" and set out a list of eligible CCD initiatives. The CCD regime was later put into effect through changes to the Regulations. Under the CCD regime, licensees are required to adhere to section 15 of the Regulations, but may also propose additional contributions to CCD, which are generally set out in conditions of licence. For the upcoming licence term, the licensee proposed to delete its condition of licence concerning CTD and to make CCD contributions in line with the CCD regime set out in section 15 of the Regulations.

7. The Commission notes that the licensee did not complete all of its CTD/CCD contributions in the year in which they were due. The licensee did not fulfill all of its CTD commitments set out in its current condition of licence during the past licence term. In the 2005-2006 broadcast year, the licensee contributed \$28,622 even though \$30,000 was required. The licensee made up the shortfall in the following broadcast year. Further, a portion of the CTD contribution for the 2008-2009 broadcast year was made after the end of the broadcast year and so it was attributed to the following broadcast year.
8. The licensee explained that technical, operational and legal challenges led to a delay in the launch of the station and resulted in unexpected costs. In light of these problems, the licensee was unsure whether or not the station would operate in the 2005-2006 broadcast year. As a result its original plans for the 2005-2006 broadcast year, including those for CTD, were disrupted. The licensee further explained that the delay in payment for the 2008-2009 broadcast year was due to a delay in staging a talent contest. The licensee indicated that would move up the date of the talent contest by at least five months so that large expenditures are made earlier in the year and invoices related to the talent contest are paid well in advance of the 31 August deadline.
9. Broadcasting Information Bulletin 2009-251 states that CTD/CCD payments must be made in full in the broadcast year in which they are due. As the broadcast year ends on 31 August of each year, any payments received after that date will be considered to have been made in the following broadcast year.
10. The Commission notes that South Asian has cooperated fully with Commission requests and that its CTD/CCD payments, although late on two occasions, were nevertheless made. The Commission further notes that all shortfalls were paid promptly in the subsequent broadcast year. The Commission is satisfied that the licensee has remedied any outstanding shortfalls and therefore finds that CKYE-FM has fulfilled its overall CTD/CCD requirements over the total licence term.

Upcoming licence term

11. Given that the licensee has fulfilled its CTD obligations over the previous licence term, the Commission **approves** its proposal to delete condition of licence 7 dealing with Canadian talent development, as set out in Broadcasting Decision 2005-339. During the new licence term, the licensee will be required to make contributions to CCD as set out in section 15 of the Regulations.

Section 9(2) of the *Radio Regulations, 1986*, relating to the filing of annual returns

12. Pursuant to section 9(2) of the Regulations, licensees must file, by no later than 30 November of each year, their annual returns for the broadcast year ending the previous 31 August. Failure to file these returns, as well as all supporting documentation for contributions to CTD/CCD by the required date, may result in non-compliance.

13. The Commission notes that CKYE-FM's annual return for the 2005-2006 broadcast year was filed on 23 February 2007. The Commission further notes that, for each of the 2007-2008 to 2009-2010 broadcast years, CKYE-FM did not provide the Commission with proof of payment and proof of eligibility for expenditures made toward its CTD/CCD contributions.
14. The licensee stated that, as a new broadcaster, it was unsure of its obligations relating to the filing of annual returns and supporting documentation. However, the licensee has agreed to the deadlines and required documentation related to the filing of annual returns and will ensure that accounting staff scan and send the relevant documents along with the annual return no later than 30 November of each year.
15. The Commission acknowledges the licensee's plan to remain in compliance with its requirement to file complete annual returns and notes that the licensee provided all missing proofs of payment and eligibility in response to further Commission requests. The Commission therefore finds that CKYE-FM has fulfilled its obligations in relation to section 9(2) of the Regulations.

Conclusion

16. In Broadcasting Information Bulletin 2011-347, the Commission announced a revised approach to dealing with radio stations found in non-compliance. The Commission noted in particular that each instance of non-compliance will be evaluated in light of factors such as the quantity, recurrence and seriousness of the non-compliance. The Commission also noted that it will consider the circumstances leading to the non-compliance in question, the licensee's arguments, and the measures taken to rectify the situation. In this case, the Commission is satisfied that the licensee has fulfilled its overall CTD requirements and has put measures in place to ensure that it will file full and complete annual returns in the future.
17. Accordingly, the Commission **renews** the broadcasting licence for the commercial ethnic radio programming undertaking CKYE-FM Vancouver, British Columbia for a full term from 1 April 2013 to 31 August 2019. The term and **conditions of licence** are set out in the appendix to this decision.

Secretary General

Related documents

- *Notice of applications received*, Broadcasting Notice of Consultation CRTC 2012-678, 13 December 2012
- *Various radio programming undertakings – Administrative renewals*, Broadcasting Decision CRTC 2012-456, 28 August 2012
- *Administrative renewals*, Broadcasting Decision CRTC 2012-164, 20 March 2012

- *Administrative renewals*, Broadcasting Decision CRTC 2011-556, 31 August 2011, as corrected by Broadcasting Decisions CRTC 2011-556-1, 23 September 2011; 2011-556-2, 16 December 2011; and 2011-556-3, 5 April 2012
- *Revised approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2011-347, 26 May 2011
- *Clarifications regarding Canadian content development contributions made by commercial radio stations*, Broadcasting Information Bulletin CRTC 2009-251, 5 May 2009
- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006
- *Ethnic FM radio station in Vancouver*, Broadcasting Decision CRTC 2005-339, 21 July 2005

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

Appendix to Broadcasting Decision CRTC 2013-157

Term, conditions of licence and encouragement for the commercial ethnic FM radio programming undertaking CKYE-FM Vancouver, British Columbia

Term

The licence will expire 31 August 2019.

Conditions of licence

1. The licensee shall adhere to the conditions of licence set out in *Conditions of licence for commercial AM and FM radio stations*, Broadcasting Regulatory Policy CRTC 2009-62, 11 February 2009, with the exception of condition of licence 7.
2. The station shall be operated within the Specialty format as defined in *A Review of certain matters concerning radio*, Public Notice CRTC 1995-60, 21 April 1995, and *Revised content categories and subcategories for radio*, Broadcasting Regulatory Policy CRTC 2010-819, 5 November 2010, as amended from time to time.
3. The licensee shall, in each broadcast week, direct programming to a minimum of 15 ethnic groups in a minimum of 15 different languages.
4. Not less than 90% of the programming in each broadcast week shall be ethnic programming, and all of the ethnic programming shall be third-language programming.
5. Not less than 75% of the ethnic programming in each broadcast week shall be in the Punjabi, Hindi and Urdu languages.
6. None of the programming broadcast by the licensee shall be in a Chinese language.

Encouragement

Employment equity

In accordance with *Implementation of an employment equity policy*, Public Notice CRTC 1992-59, 1 September 1992, the Commission encourages the licensee to consider employment equity issues in its hiring practices and in all other aspects of its management of human resources.