



Broadcasting Decision CRTC 2006-38

Ottawa, 10 February 2006

SIRIUS Canada Inc.
Across Canada

*Application 2005-1068-7
Broadcasting Public Notice CRTC 2005-94
30 September 2005*

Satellite subscription radio undertaking – Licence amendment

*The Commission **approves** an application by SIRIUS Canada Inc. to amend the licence for its satellite subscription radio undertaking by changing its conditions of licence to increase requirements with respect to Canadian and French-language programming.*

Background

1. In *Satellite subscription radio undertaking*, Broadcasting Decision CRTC 2005-247, 16 June 2005 (Decision 2005-247), the Commission approved an application by SIRIUS Canada Inc. (Sirius Canada) for a broadcasting licence to carry on a satellite subscription radio undertaking.
2. The Commission imposed conditions of licence on Sirius Canada stipulating, among other things, that the licensee must provide a minimum of eight original Canadian-produced channels at the beginning of operations, and that it may distribute, to any Canadian subscriber, a maximum of nine non-Canadian-produced channels for each original Canadian-produced channel that it distributes. A minimum of 85% of the musical selections broadcast on all Canadian-produced channels, considered together, must be Canadian selections.
3. As well, the Commission required, by condition of licence, that Sirius Canada distribute a minimum of three French-language original Canadian-produced channels at the beginning of operations and, at any time, not less than 25% of the original Canadian-produced channels offered by the undertaking must be French-language channels. A minimum of 65% of all category 2 (popular music) vocal musical selections broadcast on each French-language channel must be French-language selections.
4. In addition, the Commission required Sirius Canada, by condition of licence, to contribute, during each broadcast year, a minimum of 5% of its gross revenues to Canadian talent development (CTD), to be divided equally between initiatives for the development of Canadian English-language talent and initiatives for the development of Canadian French-language talent.

5. Decision 2005-247, as well as a decision approving an application by Canadian Satellite Radio Inc. (CSR) for a licence to carry on a satellite subscription radio undertaking,¹ was appealed to the Governor in Council by several parties. These parties generally argued that the number of Canadian and French-language channels that would be offered by the satellite subscription radio undertakings was insufficient, and that the decisions therefore derogated from the attainment of the objectives of the broadcasting policy for Canada set out in section 3(1) of the *Broadcasting Act* (the Act).
6. On 7 September 2005, Sirius Canada filed the application that is the subject of this decision. The application, which is discussed in more detail below, proposed increased commitments with respect to Canadian and French-language programming. CSR submitted a similar application on 6 September 2005.
7. On 9 September 2005, the Government of Canada issued its decision on the appeals.² The decision stated that the Governor in Council was not satisfied that Decisions 2005-246 and 2005-247 derogated from the attainment of the objectives of the broadcasting policy set out in section 3(1) of the Act. The Governor in Council therefore declined to set aside or refer those decisions back to the Commission for reconsideration and hearing.

The application

8. The licensee proposed that the Commission amend Sirius Canada's conditions of licence to reflect increased commitments with respect to Canadian and French-language programming. Specifically, Sirius Canada proposed to increase from three to four the minimum number of Canadian French-language channels that would be offered upon launch. The licensee further indicated that at least three of the four French-language channels would be music channels. In addition, Sirius Canada indicated that, if during the 36 months following the launch of the service, the number of subscribers were to exceed the projections set out in the original licence application by 25%, it would either add two more Canadian channels or increase from 5% to 6% the percentage of annual gross revenues that would be applied to CTD. Sirius Canada also indicated that it would participate in Canada's Public Safety and Emergency Preparedness initiative.

Interventions

9. The Commission received interventions in support of the Sirius Canada application from two individuals and from the Canadian Society for the Performing Arts. Interventions commenting on the application were filed by the Canadian Recording Industry Association, Friends of Canadian Broadcasting (Friends), the Canadian Independent Record Production Association, the Society of Composers, Authors and Music Publishers of Canada (SOCAN), Association québécoise de l'industrie du disque, du spectacle et de la vidéo, Union des artistes, Association des producteurs de films et de télévision du Québec, Le Bloc Québécois and, in a joint intervention, the National Campus and

¹ *Satellite subscription radio undertaking*, Broadcasting Decision CRTC 2005-246, 16 June 2005

² P.C. 2005-136, 9 September 2005

Community Radio Association Inc., l'Alliance des radios communautaires du Canada et l'Association des radiodiffuseurs communautaires du Québec (the community radio associations).

10. Those commenting on the application expressed concern that Sirius Canada's proposal provided no guarantee that the number of Canadian channels offered by the undertaking would increase, but provided only that the proportion of Canadian channels that would be French-language channels would increase. Parties also noted that commitments to add Canadian channels or to increase CTD commitments would be contingent on the service exceeding its initial subscriber projections by 25% and expressed concern that this target was unattainable.
11. Parties also reiterated concerns expressed in the proceeding leading to the licensing of the satellite subscription radio undertakings and in the appeal of Decision 2005-247, that the service would not fulfil the objective of section 3(1)(f) of the Act, which provides that:

... each broadcasting undertaking shall make maximum use, and in no case, less than predominant use, of Canadian creative and other resources in the creation and presentation of programming, unless the nature of the service provided by the undertaking, such as specialized content or format or the use of languages other than French and English, renders that use impracticable, in which case the undertaking shall make the greatest practicable use of those resources;
12. Le Bloc Québécois submitted that the Commission should impose higher levels of Canadian content on Sirius Canada, and that the service should respect the levels of French-language and Canadian content outlined in *Commercial Radio Policy 1998*, Public Notice CRTC 1998-41, 30 April 1998. SOCAN, supported by Friends, recommended that the proposed conditions of licence be amended to require Sirius Canada to firmly commit to increasing the number of Canadian channels with the objective of attaining a Canadian content ratio in the 45% to 50% range, or require Sirius Canada to establish through credible and transparent evidence that the maximum use of Canadian content is impracticable. SOCAN further recommended that Sirius Canada be required to appear before the Commission no later than 1 January 2009 to review the licensee's compliance with Canadian content requirements.
13. The community radio associations considered that Sirius Canada's commitments to support CTD should be amended to reflect greater support for the community radio sector. To this end, they recommended that Sirius Canada be required to allocate 20% of all its CTD commitments into the stewardship of the community radio associations which would then be spent by the funding body established by those associations to strengthen the community radio sector.

Sirius Canada's reply

14. In reply to interventions, Sirius Canada indicated that it would, in fact, be launching its service with 10 Canadian channels. It explained that, at the time it submitted its application, its negotiations for bandwidth to accommodate the two additional Canadian channels had not yet been completed, so it had to propose an alternative approach related to additional expenditures on CTD.
15. Sirius Canada noted that it had voluntarily come forward with commitments that exceeded those imposed by the Commission and that the Governor in Council had found acceptable, and that it was not prepared to make commitments beyond those set out in the current application.
16. With respect to the allocation of its funding commitments for CTD, Sirius Canada indicated that it had not yet formalized its plan concerning how this money would be allocated, and that it would bear in mind the comments of interveners when making this decision.

Commission's analysis and determinations

17. In *Introduction to Broadcasting Decisions CRTC 2005-246 to 2005-248: Licensing of new satellite and terrestrial subscription radio undertakings*, Broadcasting Public Notice CRTC 2005-61, 16 June 2005 (Public Notice 2005-61), the Commission set out a licensing framework for satellite subscription radio undertakings. The Commission considered that licensing the undertaking proposed by Sirius Canada in accordance with that framework would contribute to the fulfilment of the broadcasting policy for Canada set out in section 3(1) of the Act. In Decision 2005-247, the Commission imposed conditions of licence on Sirius Canada reflecting the licensing framework set out in Public Notice 2005-61.
18. The Commission considers that approval of the current application would be in the public interest in that it represents an increase in the licensee's requirements for French-language programming and Canadian programming. It does not consider it appropriate to impose higher levels, as was suggested by some parties. The Commission therefore **approves** the application by SIRIUS Canada Inc.
19. Condition of licence 4(a), as set out in Decision 2005-247, is revised to read as follows:

The licensee shall distribute a minimum of four French-language original Canadian-produced channels. At least three of these channels shall be comprised predominantly of musical selections.
20. With respect to the licensee's proposal to increase the number of channels offered or to increase spending on CTD if the number of subscribers exceeds projections by 25% or more, the Commission notes the Sirius Canada undertaking began operations on 1 December 2005. It further notes that, in material filed with the Commission on 4 November 2004, Sirius Canada projected 20,152 subscribers at the end of year 1 of

operations, 94,476 subscribers at the end of year 2, and 221,527 subscribers at the end of year 3. The Commission considers that Sirius Canada is to meet its proposed increased commitments if it exceeds the projected number of subscribers by 25% or more at the end of any of the first three years of its operations.

21. The licence will therefore be subject to the following additional **condition 7.1**:

If the number of subscribers exceeds 25,190 on 30 November 2006, 118,095 on 30 November 2007, or 276,909 on 30 November 2008, the licensee shall, in place of the minimum requirements set out in conditions of licence 1(b) and 7(a), either:

- distribute a minimum of 10 original Canadian-produced channels: or
- during each corresponding broadcast year, contribute a minimum of 6% of gross revenues derived from its satellite subscription radio undertaking to eligible third parties connected to the development of Canadian musical and other artistic talent or other initiatives approved by the Commission. For the purposes of this condition of licence, “eligible third parties” shall have the definition set out in *Contributions by radio stations to Canadian talent development – A new approach*, Public Notice CRTC 1995-196, 17 November 1995, as amended from time to time by the Commission.

For the purpose of this condition of licence, the term “original Canadian-produced channels” has the same meaning as set out in conditions of licence 1 and 4. The term “broadcast year” shall have the meaning set out in section 1 of the *Broadcasting Distribution Regulations*.

22. While the Commission notes that Sirius Canada decided to launch its service with 10 Canadian-produced channels, including 5 French-language channels, the alternative provisions in condition of licence 7.1 will become mandatory if the subscriber targets are exceeded on the dates indicated.
23. The Commission does not consider that it is appropriate to impose requirements with respect to the division of the licensee’s CTD expenditures as was suggested by the community radio associations, given that the Commission set out no requirements in this regard in Decision 2005-247. The Commission notes, however, the licensee’s statement that it would bear in mind the comments of interveners when making decisions concerning the allocation of CTD funding.

24. The Commission further notes the licensee's commitment to participate in Canada's Public Safety and Emergency Preparedness initiative.

Secretary General

This decision is to be appended to the licence. It is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>