



Broadcasting Decision CRTC 2008-368

Ottawa, 23 December 2008

Stingray Digital Group Inc.

Across Canada

Application 2008-0082-2, received 18 January 2008

Public Hearing in Cambridge, Ontario

20 October 2008

Stingray – National pay audio programming undertaking

*The Commission **approves** an application from Stingray Digital Group Inc. for a broadcasting licence to operate a new national pay audio service.*

Introduction

1. The Commission received an application from Stingray Digital Group Inc. (SDG) for a broadcasting licence to operate a national pay audio programming undertaking to be known as Stingray.
2. SDG specializes in digital music products and services. It is a qualified corporation as defined in the *Direction to the CRTC (Ineligibility of Non-Canadians)*, P.C. 1997-486, 8 April 1997, as amended by P.C. 1998-1268, 15 July 1998 and is held by various shareholders, namely Telesystem Ltd. (36.04%), Mr. E. Boyco and Mr. A. Taillefer, together through their holding companies (33.91%), Novacap Technologies III, L.P. (21.18%), and other non-Canadian shareholders (8.87%). SDG is controlled by its board of directors.
3. SDG proposed a service that would initially offer 45 audio channels. The number of audio channels would increase to up to 60 over the licence term, and would include a wide selection of music from a variety of genres. Overall, 45% of the proposed service's audio content would consist of pop, rock, dance and easy listening music (category 2), 20% of oldies music, 10% of instrumental music, 5% of programming directed to children, and 20% of specialty music, including classical, world beat, jazz, blues and opera. In addition to French and English-language music, the applicant proposed to offer third-language content to listeners.
4. The Commission received one comment in connection with this application from the Association québécoise de l'industrie du disque, du spectacle et de la vidéo (ADISQ). In its intervention, ADISQ stated its concerns relating to SDG's application as well as general concerns regarding the Commission's licensing framework for pay audio services. The intervention and reply to the intervention can be found on the Commission's website at www.crtc.gc.ca under "Public Proceedings".

Commission's analysis and determinations

5. After reviewing the application, the intervention and the applicant's reply to the intervention, the Commission is of the view that the primary issues to be considered are the appropriateness of the current licensing framework for pay audio programming undertakings and SDG's proposed contribution to Canadian content development (CCD).

Licensing framework for pay audio programming undertakings

6. The Commission established its licensing framework for pay audio services in Public Notice 1995-218 where it stated that, "given that these services are clearly discretionary in nature, the Commission has determined that a competitive environment is appropriate for pay audio programming undertakings in order that distributors and consumers may have a choice of this type of service". The Commission reiterated this approach in the licence renewal decisions for the pay audio programming services Galaxie and Max Trax, as set out in Broadcasting Decision 2002-391, Broadcasting Decision 2002-392, and recently, in Broadcasting Decision 2007-147, by granting Rogers Broadcasting Limited a broadcasting licence for a new pay audio programming undertaking. In these decisions, the Commission also established a licensing framework for such services applied through a number of conditions of licence.
7. In this regard, with respect to the concerns raised by ADISQ regarding linkage rules and other requirements under the current licensing framework for pay audio services, the Commission notes that it addressed these issues in previous decisions and considers that the current framework remains appropriate.
8. In its intervention, ADISQ also stated that SDG's application does not address the question of representation of emerging artists in its programming. In its reply, SDG argued that none of the other pay audio services have been required to make specific commitments in this regard. Furthermore, SDG stated that its planned CCD contributions to the Galaxie Rising Stars initiative would support emerging artists through scholarships and bursaries.
9. With respect to the issue of emerging artists, the Commission notes that existing pay audio undertakings are currently not required to adhere to specific programming commitments. As a result, the Commission is of the view that SDG should not be required to do so at this time. The Commission reminds interested parties that it is currently reviewing proposed definitions of emerging Canadian artists.

Contributions to Canadian content development

10. With regard to contributions to CCD, the applicant proposed to allocate 4% of the proposed undertaking's annual gross revenues to FACTOR (1%), MUSICACTION (1%) and Galaxie Rising Stars (2%), an initiative directed by pay audio programming undertaking Galaxie, which is owned by the Canadian Broadcasting Corporation.

11. In its intervention, ADISQ expressed concerns over SDG's proposal to devote half of its CCD contributions to the Galaxie Rising Stars initiative, given that SDG and Galaxie have an ongoing business relationship.
12. SDG argued that its proposed contributions to the Galaxie Rising Stars initiative are consistent with Broadcasting Public Notice 2006-158 (the 2006 Commercial Radio Policy). According to the applicant, business arrangements between Galaxie and SDG do not disqualify Galaxie Rising Stars as an eligible third party for CCD purposes, given that the business services provided by SDG to Galaxie do not relate to programming, but instead cover contract administration, order solicitation, marketing and sales. The applicant stated that it has no intention at this time to obtain programming content from Galaxie for any of Stingray's channels.
13. With respect to proposed CCD contributions to the Galaxie Rising Stars initiative, the Commission is satisfied that the proposal is consistent with the definition of eligible initiatives as set out in the 2006 Commercial Radio Policy. The applicant is reminded that, consistent with the 2006 Commercial Radio Policy, all CCD "initiatives must involve direct expenditures, and must be allocated to the support, promotion, training and development of Canadian musical ... talent" at all times. In this regard, the Commission expects that SDG's CCD contributions be incremental to any existing or on-going financial contributions relating to its business arrangements with Galaxie.

Conclusion

14. Based on the foregoing, the Commission **approves** the application by Stingray Digital Group Inc. for a broadcasting licence to operate a national pay audio programming undertaking to be known as Stingray. The terms and **conditions of licence** are set out in the appendix to this decision.

Secretary General

Related documents

- *New national pay audio programming undertaking*, Broadcasting Decision CRTC 2007-147, 22 May 2007
- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006
- *Licence renewal for Galaxie*, Broadcasting Decision CRTC 2002-391, 29 November 2002
- *Licence renewal for Max Trax*, Broadcasting Decision CRTC 2002-392, 29 November 2002

- *Licensing of four new pay audio programming undertakings*, Public Notice CRTC 1995-218, 20 December 1995

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>.

Appendix to Broadcasting Decision CRTC 2008-368

Terms, conditions of licence and expectation

Issuance of the broadcasting licence to operate a national pay audio programming undertaking

Terms

The licence will expire 31 August 2015.

Conditions of licence

1. The licensee shall ensure that a minimum of 35% of the musical selections broadcast each broadcast week on Canadian-produced pay audio channels, considered together, are Canadian.
2. The licensee shall ensure that a maximum of one non-Canadian pay audio channel is packaged or linked with each Canadian-produced pay audio channel. In no case shall subscribers of the pay audio service be offered a package of pay audio channels in which foreign-produced channels predominate. The licensee shall provide the Commission, upon request, with a complete list of all non-Canadian pay audio channels distributed on its service.
3. The licensee shall ensure that a minimum of 25% of all Canadian-produced pay audio channels, other than those consisting entirely of instrumental music or of music entirely in languages other than English or French, devote each broadcast week a minimum of 65% of vocal music selections from category 2, as defined in the *Radio Regulations, 1986*, as amended from time to time, to musical selections in the French language.
4. The licensee shall not broadcast commercial messages.
5. The licensee shall not broadcast spoken word programming, except for purposes of musical selections identification and promotion of the service and in programming directed to children.
6. The licensee shall adhere to the provisions contained in sections 3 and 11 of the *Radio Regulations, 1986*.
7. The licensee shall adhere to the Canadian Association of Broadcasters' *Equitable Portrayal Code*, as amended from time to time and approved by the Commission. The application of the foregoing condition of licence will be suspended as long as the licensee remains a member in good standing of the Canadian Broadcast Standards Council.

8. The licensee shall maintain sequential lists of all recordings played on each pay audio channel with designations for Canadian musical selections and for French-language vocal music. These lists shall be kept by the licensee for a minimum of four weeks and forwarded to the Commission upon request, along with a notarized attestation of the lists' accuracy.
9. The licensee shall not distribute any non-Canadian pay audio channel that includes commercial messages or that includes spoken word programming, except for purposes of musical selections identification and promotion of the service and in programming directed to children.
10. The licensee shall contribute each year a minimum of 4% of the gross annual revenues earned by its pay audio programming undertaking to eligible third parties associated with Canadian content development in the following manner:
 - 1% of gross revenues to be devoted to FACTOR;
 - 1% of gross revenues to be devoted to MUSICACTION; and
 - 2% of gross revenues to be devoted to Galaxie Rising Star, to discover, encourage and promote new Canadian artists.

For the purposes of these conditions, the terms “Canadian”, “commercial message”, “broadcast week” and “Canadian musical selection” shall have the same meaning as that set out in the Radio Regulations, 1986 and “spoken word” shall have the same meaning as that set out in Revised content categories and subcategories for radio, Public Notice CRTC 2000-14, 28 January 2000, as amended from time to time.

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.