



Broadcasting Decision CRTC 2009-93

Ottawa, 25 February 2009

Route reference:
Broadcasting Public Notice 2008-105

Diffusion Laval Inc.
Laval, Quebec

Application 2008-1375-0, received 10 October 2008

CFAV Laval – Licence amendment

*The Commission **denies** the application by Diffusion Laval Inc. to amend the broadcasting licence for the French-language commercial AM radio programming undertaking CFAV Laval to delete its condition of licence relating to the promotion of Canadian artists.*

Introduction

1. The Commission received an application by Diffusion Laval Inc. to amend the broadcasting licence for the French-language commercial AM radio programming undertaking CFAV Laval by deleting its condition of licence relating to the promotion of Canadian artists.
2. The licence for this undertaking was granted in Broadcasting Decision 2003-193. In the decision, the Commission imposed a condition of licence requiring the licensee to contribute \$8,000 a year to the promotion of Canadian artists.
3. In Broadcasting Public Notice 2006-158, the Commission set out its revised policy for commercial radio. In the policy, the Commission replaced the old model for the promotion of Canadian artists with a new Canadian content development (CCD) regime. This new regime is based on a commercial radio station's total revenues in the previous broadcast year.
4. Given that the licensee's station has recorded a financial loss, the licensee wishes to adhere immediately to the new CCD regime. This amendment would enable the licensee to make a contribution of \$500 for its final fiscal year (1 September 2008 to 31 August 2009) before the station's licence renewal. The station's licence expires on 31 August 2009.
5. The Commission received an intervention opposing this application from the Association québécoise de l'industrie du disque, du spectacle et de la vidéo (ADISQ). The licensee did not reply to this intervention.

Commission's analysis

6. The Commission considers that the issues raised by this application and intervention are the following:
- Does the licensee's financial situation warrant the deletion of the condition of licence relating to the promotion of Canadian artists before the end of the current licence term?
 - Other issues

Does the licensee's financial situation warrant the deletion of the condition of licence relating to the promotion of Canadian artists before the end of the current licence term?

7. In its intervention, ADISQ stated that the proposed licence amendment would, for the final fiscal year of CFAV's current licence term, decrease the licensee's contribution to the promotion of Canadian artists from \$8,000 to \$500, a significant difference of \$7,500.
8. ADISQ pointed out that the granting of a licence in 2003 to Colette Chabot and Gilles Lajoie, on behalf of a corporation to be incorporated,¹ was the result of a competitive public process (see Broadcasting Decision 2003-193). The licence granted in Broadcasting Decision 2003-193 was to operate CFAV in the Montréal market, more specifically in Laval. ADISQ stated that the licensee's commitment to contribute \$8,000 a year to the promotion of Canadian artists was one of the motivating factors for the Commission's granting a licence to CFAV in 2003. ADISQ also stated that the licensee was in non-compliance with regard to its contributions to the promotion of Canadian artists in certain years of its current licence term. ADISQ was of the view that the Commission should retain the current condition of licence relating to contributions to the promotion of Canadian artists imposed on CFAV until the end of its current licence term, i.e., 31 August 2009.
9. In paragraph 122 of Broadcasting Public Notice 2006-158, the Commission indicated that:
- Stations currently subject to conditions of licence concerning CCD arising from their original licensing will continue to fulfill those commitments until they have been fully discharged.
10. In its approval of an application to transfer effective control from Diffusion Laval Inc. to Placements P Marchand Inc. via a letter of authority dated 19 January 2007,² the Commission indicated to the applicant that it was expected to continue to fulfill its commitment, as set out in Broadcasting Decision CRTC 2003-193, to contribute \$8,000 a year. The Commission also reminded the applicant of its commitment to operate the station under the terms and conditions of its current licence.

¹ The corporation was incorporated under the name Diffusion Laval Inc.

² The letter is available for public examination at the Commission's central and regional offices.

11. With regard to the concerns raised by ADISQ relating to unpaid contributions to the promotion of Canadian artists, the Commission wishes to clarify that the issue will be discussed during the licence renewal process.
12. The Commission notes that the current licensee, despite having been aware of the station's negative financial situation when it obtained effective control, committed to fulfilling the terms and conditions of the current licence, including contributions to the promotion of Canadian artists.

Other issues

13. In its intervention, ADISQ asked that the Commission explain why, at the time of the transfer of station ownership in 2007, the licensee did not pay tangible benefits of 6% of the value of the transaction.
14. When it approved the application to transfer effective control, the Commission was of the view that the station's negative financial situation warranted an exception to its policy on tangible benefits. In its letter of authority, the Commission stated:

[TRANSLATION] The applicant has not proposed any tangible benefits under the *Commercial Radio Policy 1998* (Public Notice CRTC 1998-41) (the Policy), which states that the Commission will not systematically apply its exemption to stations in the first five years of operation. The applicant stated that imposing payment of tangible benefits would only increase the station's debt. The Commission notes the various commitments proposed by the applicant, including a commitment to invest the necessary amount to offset the negative financial situation of CFAV-AM. The Commission also notes the commitments by Mr. Lajoie and the applicant to pay past due amounts since the launch of the station for Canadian talent development (CTD). In light of the proposed commitments and given the station's precarious situation, the Commission considers that an exemption from the Policy would be appropriate. Accordingly, no tangible benefits will be imposed.

Commission's determination

15. The Commission reminds the licensee that commitments to promote Canadian artists are one of the standard criteria against which applications for new licences are assessed and that they form the basis for conditions of licence. The Commission expects applicants to seriously reflect on the costs and practicality of the various types of promotion plans for Canadian artists before finalizing their applications. The Commission considers that changes to such conditions of licence should only be requested in the most exceptional cases. In this case, the Commission considers that the current licensee, in proceeding with the transfer of effective control, was aware of the commitments, terms and conditions of CFAV's licence and was prepared to fulfill those responsibilities. Accordingly, the Commission **denies** the application by Diffusion Laval Inc. to amend the broadcasting licence for the French-language commercial AM radio programming undertaking CFAV Laval to delete its condition of licence relating to the promotion of Canadian artists.

Secretary General

Related documents

- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006
- *Commercial French-language AM radio station in Laval*, Broadcasting Decision CRTC 2003-193, 2 July 2003
- *Commercial Radio Policy 1998*, Broadcasting Public Notice CRTC 1998-41, 30 April 1998

This decision 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>.