



Broadcasting Decision CRTC 2011-696

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Route reference: 2011-190

Ottawa, 10 November 2011

Byrnes Communications Inc.
Woodstock, Ontario

Application 2010-1692-3, received 17 November 2010

CIHR-FM Woodstock – Licence amendment

*The Commission **approves in part** an application by Byrnes Communications Inc. to amend CIHR-FM Woodstock's condition of licence 3 related to Canadian content development. The new condition of licence is set out in the conclusion section of this decision.*

Introduction

1. The Commission received an application by Byrnes Communications Inc. (Byrnes) to amend the broadcasting licence for the English-language commercial radio programming undertaking CIHR-FM Woodstock by changing its condition of licence 3 related to Canadian talent development (CTD). CTD is now referred to as Canadian content development (CCD). The Commission did not receive any interventions in connection with this application.
2. Condition of licence 3, as set in Broadcasting Decision 2005-431 reads as follows:
 - The licensee shall make direct expenditures of at least \$105,000 over seven consecutive years on the development of Canadian talent, as set out in this decision. Upon commencement of operations, this amount shall be distributed over seven consecutive broadcast years as follows:
 - \$400 in each broadcast year to the Foundation to Assist Canadian Talent on Records (FACTOR);
 - \$7,000 in each broadcast year to support the “Woodstock Idol” talent contest;
 - \$1,600 in each broadcast year to support the “FM104 Young Musician’s Award”; and
 - \$6,000 in each broadcast year for scholarships to support music students.
3. The licensee proposed to amend this condition of licence to permit it to make up for CCD expenditure shortfalls incurred as a result of a misunderstanding of its

conditions of licence relating to specific contributions to certain eligible CCD initiatives, and the way the CCD contributions were to be allocated annually.

4. Specifically, Byrnes proposed to replace condition of licence 3 with a condition that would require it:
 - to make direct expenditures on CCD of \$24,053 in the 2010-2011 broadcast year allocated as follows:
 - \$534 to FACTOR;
 - \$9,333 to the “Woodstock Idol” talent contest;
 - \$2,186 to the “FM104 Young Musician’s Award”; and
 - \$12,000 for scholarships to music students.
 - to make direct expenditures on CCD of \$19,000 in the 2011-2012 broadcast year allocated as follows:
 - \$400 to FACTOR;
 - \$7,000 to the “Woodstock Idol” talent contest;
 - \$1,600 to the “FM104 Young Musician’s Award”; and
 - \$10,000 for scholarships to music students.
5. Byrnes further requested flexibility to vary the amounts to be spent on the initiatives set out above. To this end, Byrnes proposed that, if for any reason it were unable to spend the required amount on a particular initiative, it be permitted to direct that contribution to FACTOR during the appropriate broadcast year.
6. Byrnes submitted that the proposed conditions of licence would ensure that the original seven-year CCD total budget of \$105,000 is spent, including previous CCD expenditure shortfalls.

Commission’s analysis and decisions

7. Commission analysis has revealed that the licensee may have failed to comply with its conditions of licence relating to contributions to certain CCD initiatives for the 2005-2006, 2006-2007, 2007-2008 and 2008-2009 broadcast years.
8. As indicated above, Byrnes submitted that the shortfalls were due to a misunderstanding of its conditions of licence relating to specific contributions to certain CCD initiatives and the way the contributions were to be allocated annually. CIHR-FM launched in April 2006, with 4 months remaining in the 2005-2006 broadcast year. In that year, Byrnes did not make any CCD contributions because the three local initiatives to which the contributions were to be directed did not take place between May and August. However, Byrnes put in place a revised plan to reallocate

its 2005-2006 shortfalls and to ensure that \$105,000 is contributed to CCD over the remainder of the licence term.

9. Byrnes also filed its present application so that it could deal with its non-compliance immediately rather than wait until the end of its licence term.
10. The Commission recognizes Byrnes' efforts to deal with its CCD expenditure shortfalls as they relate to the eligible initiatives as set out in its conditions of licence. In Broadcasting Information Bulletin 2011-347, the Commission announced a revised approach to dealing with radio stations found out of compliance. In particular, the Commission noted that each instance of non-compliance would be evaluated in light of such factors as the quantity, recurrence and seriousness of the non-compliance. The Commission also noted that it would consider the circumstances leading to the non-compliance in question, the licensee's arguments and the measures taken to rectify the situation. It is of the view that the non-compliance in this case is related to the way the condition of licence was interpreted by the licensee.
11. As well, over the last few years, the Commission has adopted a new approach to the way in which it sets out conditions of licence related to CCD. Conditions of licence now generally specify only the total annual CCD amount that must be expended, not the specific eligible initiatives that the licensee must support. This approach ensures that the licensee expends the required total amount while providing flexibility as regards spending on individual eligible initiatives. In light of this new approach, Commission analysis has determined the following with respect to Byrnes' compliance with its overall CCD obligations for each broadcast year:

| Broadcast Year | Required Contribution | Contribution Paid | Amount (+/-) |
|--|------------------------------|--------------------------|---------------------|
| 2005-2006 <i>(pro-rated 4 months)</i> | \$5,000 | \$0 | - \$5,000 |
| 2006-2007 | \$15,000 | \$15,975 | +\$975 |
| 2007-2008 | \$15,000 | \$14,506 | - \$494 |
| 2008-2009 | \$15,000 | \$16,590 | +\$1,590 |
| 2009-2010 | \$15,000 | \$16,928 | +\$1,928 |
| Total | \$65,000 | \$63,999 | - \$1,001 |

12. The Commission further notes that CIHR-FM launched on 13 April 2006. When a station launches part way through a broadcast year, the Commission allows the licensee to pro-rate its annual CCD contribution that is over and above that required under the *Radio Regulations, 1986* (over-and-above contribution) for that year. The Commission expects that the remainder of the over-and-above contribution from the first broadcast year be paid in full by the end of its seventh consecutive year of the licence term. In light of this, the Commission notes that, in addition to the \$1,001 shortfall identified in the above table, \$10,000 for the 2005-2006 broadcast year remains to be spent.

13. As set out in Broadcasting Decision 2005-431, the licensee is to make direct expenditures of at least \$105,000 over seven consecutive years on the development of Canadian talent. To date, the licensee has contributed \$63,999. Therefore the total remaining contributions, including the shortfalls noted above, amount to \$41,001.

Conclusion

14. Byrnes' proposal generally reflects the Commission's new approach as well as the commitments that the licensee made when licensed given that it would still be required to maintain its total CCD spending over seven years.
15. The Commission considers that it is appropriate to impose a condition of licence that allows Byrnes to satisfy its total seven-year CCD financial commitment based on the amounts still outstanding. However, it is also of the view that it would be appropriate to provide Byrnes with additional flexibility in the condition of licence concerning the specific initiatives to which it contributes. Given that Byrnes's contributions were imposed during a competitive process and its stated intention is to contribute specific initiatives as detailed in the present application, the Commission expects Byrnes to meet its total commitments to the individual initiatives proposed whenever possible.
16. Accordingly, the Commission **approves in part** the application by Byrnes Communications Inc. to amend the broadcasting licence for the English-language commercial radio programming undertaking CIHR-FM by changing condition of licence 3. The Commission hereby replaces condition of licence 3 with the following:
 - For the 2010-2011 broadcast year, the licensee shall make a contribution of \$22,000 to the promotion and development of Canadian content.
 - For the 2011-2012 broadcast year, the licensee shall make a contribution of \$19,001 to the promotion and development of Canadian content.
17. The Commission recognizes that the application included a proposed payment plan for the 2010-2011 broadcast year, which ended 31 August 2011. Due to the timing of the release of this decision, the Commission grants flexibility in regard to the licensee's CCD payment plans for that year. Accordingly, any CCD shortfalls for the 2010-2011 broadcast year must be paid within 30 days of publication of this decision.
18. The Commission will explore any issues related to non-compliance at the time of licence renewal.

Secretary General

Related documents

- *Revised approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2011-347, 26 May 2011
- *English-language FM radio station in Woodstock*, Broadcasting Decision CRTC 2005-431, 25 August 2005

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