



Broadcasting Notice of Consultation CRTC 2011-796

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Ottawa, 20 December 2011

Call for comments on proposed administrative changes relating to the Canadian content development policy for commercial radio

*The Commission calls for comments on proposed administrative changes to simplify its assessment of the eligibility of Canadian content development (CCD) initiatives and on matters related to the filing of the CCD portions of annual returns. The deadline for comments is **21 February 2012**.*

Introduction

1. In May of both 2010 and 2011, the Commission scheduled public hearings to consider applications for the renewal of commercial radio licences. Several licensees were called to discuss their failure to comply with their regulatory requirements to contribute to Canadian content development (CCD). Largely as a result of the discussions at those hearings, the Commission is today calling for comments on ways to address its policy as it relates to the eligibility of CCD initiatives and the filing of annual returns as they relate to CCD.

Background

2. In Broadcasting Public Notice 2006-158 (the Commercial Radio Policy), the Commission announced modifications to its longstanding Canadian talent development policy for commercial radio. In addition to changing the name of the policy to CCD to reflect a broader approach, the modifications included:
 - adopting a revised non-exhaustive list of initiatives that are eligible for CCD funding;
 - changing the way that CCD funds are allocated between compulsory and discretionary contributions; and
 - introducing a new formula to calculate the size of the payments required under the basic contribution. The formula was subsequently set out in section 15 of the *Radio Regulations, 1986* (the Radio Regulations) and applies to all commercial and ethnic stations.
3. Commercial and ethnic stations are required to support CCD through three mechanisms:
 - the basic contribution required of all stations by the Radio Regulations;

- commitments volunteered by applicants in competitive proceedings considering proposals for new licences; and
 - a requirement to provide tangible benefits totalling 6% of the value of the transaction when there is a transfer of ownership of profitable stations.
4. Regarding the allocation of funds, the Commercial Radio Policy requires commercial stations to provide a portion of their CCD funding to FACTOR or MUSICACTION, whether mandated through ownership transfers, successful applications for new licences, or the aforementioned regulation. Ethnic stations are obliged to support these organizations only through transfers of ownership and the licensing of new stations.
 5. Commercial or ethnic stations undergoing transfers of ownership are also required to dedicate a portion of their CCD funding to support the new Community Radio Fund of Canada (CRFC). As well, the regulation obliges all stations with annual revenues exceeding \$1.25 million to direct a portion of their basic CCD contribution to the CRFC.
 6. The policy provides stations with the discretion to direct the remaining CCD funds to parties and initiatives that are eligible for financial support. The following are the percentages of CCD commitments that can be allocated to discretionary initiatives:
 - 40% of the basic obligation, which generated about \$2.2 million in 2009-2010;
 - 80% of the expenditure commitments associated with successful applications for new licences that go beyond the basic amounts required by the regulation – about \$12.4 million in 2009-2010; and
 - 1% of the value of the transaction in relation to ownership transfers – about \$2.8 million in 2009-2010.
 7. Regarding eligible initiatives, the Commercial Radio Policy states:

All CCD initiatives must involve direct expenditures, and must be allocated to the support, promotion, training and development of Canadian musical and spoken word talent, including journalists.

In addition to FACTOR and MUSICACTION, the Commission considers that the following parties and initiatives are eligible for CCD funding:

- National, provincial, and territorial music industry associations (MIAs).
- Schools and educational institutions that are accredited by provincial authorities. Such contributions must specifically benefit students of music

and journalism, including scholarships and the purchase of musical instruments.

- Initiatives, including talent contests, for the production and promotion of local music and local musical artists, particularly emerging artists.
 - Independent parties dedicated to producing new spoken word content that would otherwise not be produced for broadcast.
 - Audio content initiatives that would further advance the fulfilment of specific objectives of the Canadian broadcasting system as outlined in the *Broadcasting Act* such as a community radio fund, Native radio and other specialized audio broadcasting services dedicated to serving the particular needs and interests of children, Aboriginal peoples, and persons with disabilities.
8. The policy continues: “Licensees will be required to provide details about the CCD projects funded by their stations in their annual returns.”
9. Since the Commercial Radio Policy was adopted, problems have arisen concerning:
- the eligibility of some of the initiatives that broadcasters have supported; and
 - the omission by some broadcasters of important information in their annual returns about the projects that they have funded.
10. Problems with the eligibility of broadcasters’ proposed initiatives have led to sanctions for a number of stations when the Commission has renewed their licences.

Eligible initiatives involving local talent and new spoken word content

11. Most radio stations have used at least some of their discretionary contributions to support local CCD initiatives. The objective of this criterion was to provide broadcasters with the latitude to contribute to a range of projects that could assist local artists. This type of support can also enhance stations’ profiles in their communities.
12. Some have used this flexibility to design new local initiatives rather than donate to pre-existing community events that feature Canadian talent. In either case, broadcasters supporting local artists have often allocated funds to initiatives that do not qualify for CCD contributions.
13. For instance, some licensees have financed projects that are much more strongly oriented to self-promotion than assisting Canadian talent. Station promotion is an important part of the business of broadcasting, and as such is a routine cost of carrying on that business. It should be possible for broadcasters to differentiate CCD projects from station promotions by demonstrating that the CCD projects have been

designed to go well above and beyond promotional activities by keeping the focus on supporting and exposing Canadian talent.

14. Other problems have occurred when stations' budgets for local CCD projects that are eligible for support include costs associated with normal station promotional activities. One example would be the hiring of "street teams" to publicize the station at CCD-funded events. Also, salaries to station staff involved with local events cannot be considered to be direct costs for CCD purposes.
15. In the past five years, CCD funds have rarely been used for the development of spoken word programs. When doing so, stations have had difficulties demonstrating that the programs would not have been produced for broadcast without the CCD money, and that the expenditures would not have ordinarily been included in the stations' programming budget.

CCD information provided in annual returns

16. There are well over 600 commercial and ethnic stations in operation. In recent years, the auditing of annual returns to assess compliance with CCD requirements has been seriously and repeatedly delayed when:
 - stations omit the details needed to assess the eligibility of CCD projects;
 - upon first examination, CCD initiatives don't appear to meet the criteria;
 - licensees fail to provide proof that the claimed payments were made; and
 - stations submit disorganized returns or returns that are incomplete in a variety of ways.
17. These situations necessitate follow-up and clarifying questions from Commission auditing staff.

The result

18. The consequences of mistakes in interpreting the criteria for eligible initiatives and the manner in which many annual returns are filed include:
 - Serious difficulties in assessing broadcasters' CCD performance in a timely fashion.
 - Many instances of alleged non-compliance by broadcasters with their CCD obligations. These trigger extra filings with the Commission and sometimes require appearance by the licensees before the Commission at licence renewal hearings. There are costs of time and resources associated with these alleged breaches for broadcasters and the Commission.

- A steep escalation in the number of interpretations of the CCD criteria sought from Commission staff by stations planning their CCD projects. Broadcasters have understandably become cautious because sanctions for non-compliance have become more common. These questions have workload implications for broadcasters and Commission staff.

Potential solutions

19. The Commission is seeking suggestions concerning administrative changes that would reduce or eliminate the difficulties described above in relation to assessing the eligibility of CCD initiatives and on matters related to the filing of annual returns, while ensuring that broadcasters' CCD contributions meet the spirit and letter of the Commercial Radio Policy. All ideas are welcome, but two possible approaches are presented below to open the discussion.
20. One approach would see the elimination of the regulatory requirement to make CCD contributions for stations earning revenues of less than \$625,000. Based on annual return data from the 2009-2010 broadcast year, about 1.7% of the CCD support generated from the basic requirement would be lost if this approach were adopted. However, 175 stations would be relieved of their basic CCD obligation. Deregulation for the smallest group of stations would reduce the volume of misinterpretations and the number of annual returns to audit for CCD compliance.
21. Another approach, which could be combined with the one set out above, would provide an opportunity for stations to redirect support for individual discretionary CCD projects to CCD funds. These funds could operate like the existing independent production funds that underwrite video and new media projects, or could perhaps operate on a more informal basis. They could function according to the principles and guidelines established in Public Notice 1999-29 dealing with contributions to Canadian programming by broadcasting distribution undertakings, such as those pertaining to the permanence and independence of the funds and the amounts spent on administration. Once the CCD funds received certification from the Commission, they would begin accepting and adjudicating applications from organizations and individuals.
22. Each fund would be required to publish an annual report on its activities and submit it to the Commission. In their annual returns, broadcasters would simply submit proof that their required CCD contributions had been made to FACTOR, MUSICACTION, the CRFC and, if they so chose, to one or more independent CCD funds.
23. Broadcasters could play key roles in the establishment of the funds, either alone or in concert with other broadcasters. For instance, a large broadcaster might decide to direct all of its formerly discretionary money to a fund that it was instrumental in creating. Smaller radio groups in a region or a province might cooperate in the formation and support of a fund dedicated to financing initiatives in that region.

24. The Commission notes that a further public process may be required to implement the approach that is eventually adopted.

Guidance regarding the eligibility of initiatives

25. The current approach to assessing the eligibility of CCD initiatives may or may not be revised. Meanwhile, to help clarify the types of initiatives that would qualify for financial support under the CCD policy, the Commission's website has, since 2007, included an extensive but not exhaustive list of examples of eligible initiatives.

26. Early in 2011 this list was expanded and now the website includes more detailed information about projects that would be eligible or ineligible for support. Broadcasters are strongly encouraged to consult this list when considering where to allocate their discretionary CCD funds.¹

Filing of annual returns

27. The Commission reminds licensees that, in filing their annual returns, CCD initiatives that they have underwritten should be described in detail, including:

- a clear explanation justifying how the project supports Canadian talent, by reference to paragraphs 106 to 112 of the Commercial Radio Policy;
- details concerning the manner in which the financial support was expended; and
- proof of payment by the licensee, which must include a cancelled cheque or a receipt signed by the recipient of the financing.

28. Broadcasters should consult Broadcasting Information Bulletin 2011-795 of today's date for complete instructions regarding the completion and submission of annual returns.

29. Specific instructions are also provided with the CCD forms as part of the annual return that specify the type or nature of the supporting documentation to be provided by the licensee. The supporting documentation requirements vary according to the type of initiative supported, as well as the particular discretionary CCD criterion relevant to the initiative.

Call for comments

30. In light of the discussion above, the Commission seeks comments on ways to reduce the support of ineligible initiatives by stations and of facilitating the filing and auditing of annual return information. Without attempting to limit the range of the ideas to be proposed, the Commission is particularly seeking comments on the approaches that are outlined in paragraphs 19 to 23 above.

¹ <http://www.crtc.gc.ca/eng/general/ccdparties.htm>

31. The deadline for interested persons to file interventions is **21 February 2012**.

Procedure

32. The new *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure*, (the Rules of Procedure), set out, among other things, the rules for the content, format, filing and service of interventions, and the procedure for filing confidential information and requesting its disclosure. Accordingly, the procedure set out below must be read in conjunction with the Rules of Procedure and its accompanying documents, which can be found on the Commission's website under "CRTC Rules of Practice and Procedure." The Commission notes that Rule 26(2) sets out the requirements as to form, content and service of interventions.

33. The Commission invites interventions that address the issues and questions set out above. Parties are reminded that, in accordance with the Rules of Procedure, if a document is to be filed or served by a specific date, the document must be actually received, not merely sent, by that date. A document must be filed with the Commission by 5 p.m. Vancouver time (8 p.m. Ottawa time) on the date it is due. The Commission takes no responsibility for postal delays and will not notify a party whose intervention is received after the deadline date. Late interventions will not be considered by the Commission and will not be made part of the public file.

34. Interventions must be filed by sending them to the Secretary General of the Commission by only one of the following means:

by using the
[\[Intervention/comment/answer form\]](#)

or

by mail to
CRTC, Ottawa, Ontario K1A 0N2

or

by fax at
819-994-0218

35. Submissions longer than five pages should include a summary.

36. Electronic submissions should be in HTML format. Alternatively, Microsoft Word may be used for text and Microsoft Excel for spreadsheets.

37. Each paragraph of the submission should be numbered. In addition, where the intervention is filed by electronic means, the line *****End of document***** should be entered following the last paragraph of the document, as an indication that the document has not been altered during electronic transmission.

Important notice

38. All information that parties provide as part of this public process, except information designated confidential, whether sent by postal mail, facsimile, e-mail or through the Commission's website at www.crtc.gc.ca, becomes part of a publicly accessible file and will be posted on the Commission's website. This information includes personal information, such as full names, e-mail addresses, postal/street addresses, telephone and facsimile numbers, and any other personal information parties provide.
39. The personal information that parties provide will be used and may be disclosed for the purpose for which the information was obtained or compiled by the Commission, or for a use consistent with that purpose.
40. Documents received electronically or otherwise will be put on the Commission's website in their entirety exactly as received, including any personal information contained therein, in the official language and format in which they are received. Documents not received electronically will be available in PDF format.
41. The information that parties provide to the Commission as part of this public process is entered into an unsearchable database dedicated to this specific public process. This database is accessible only from the web page of this particular public process. As a result, a general search of the Commission's website with the help of either its own search engine or a third-party search engine will not provide access to the information that was provided as part of this public process.
42. The Commission encourages parties and interested persons to monitor the record of the proceeding, available on the Commission's website, for additional information that they may find useful when preparing their submissions.

Examination of documents

43. A list of all interventions will also be available on the Commission's website. The list is accessible by selecting "View all proceedings open for comment" from the "Public Proceedings" section of the Commission's website and clicking on the "Interventions/Answers" link associated with this notice.
44. The public may examine public interventions and related documents at the following Commission offices during normal business hours.

Location of Commission offices

Toll-free telephone: 1-877-249-2782
Toll-free TDD: 1-877-909-2782

Les Terrasses de la Chaudière
Central Building
1 Promenade du Portage, Room 206
Gatineau, Quebec

J8X 4B1
Tel.: 819-997-2429
Fax: 819-994-0218

Regional offices

Metropolitan Place
99 Wyse Road
Suite 1410
Dartmouth, Nova Scotia
B3A 4S5
Tel.: 902-426-7997
Fax: 902-426-2721

205 Viger Avenue West
Suite 504
Montréal, Quebec
H2Z 1G2
Tel.: 514-283-6607

55 St. Clair Avenue East
Suite 624
Toronto, Ontario
M4T 1M2
Tel.: 416-952-9096

360 Main Street
Suite 970
Winnipeg, Manitoba
R3C 3Z3
Tel.: 204-983-6306
Fax: 204-983-6317

2220 – 12th Avenue
Suite 620
Regina, Saskatchewan
S4P 0M8
Tel.: 306-780-3422

403 – 4th Avenue South-West
Suite 100
Calgary, Alberta
T2P 3N2
Tel.: 403-292-6660
Fax: 403-292-6686

858 Beatty Street
Suite 290
Vancouver, British Columbia
V6B 1C1
Tel.: 604-666-2111
Fax: 604-666-8322

Secretary General

Related documents

- *Filing annual returns for radio programming undertakings*, Broadcasting Information Bulletin CRTC 2011-795, 20 December 2011
- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006
- *Contributions to Canadian Programming by Broadcasting Distribution Undertakings*, Public Notice CRTC 1999-29, 16 February 1999