



Broadcasting Decision CRTC 2012-629

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Ottawa, 16 November 2012

Sirius XM Canada Inc.

Across Canada

Application 2012-0064-1, received 19 January 2012

Public hearing in the National Capital Region

19 June 2012

Sirius Canada and XM Canada – Licence renewal

The Commission renews the authority for the operation of the satellite subscription radio undertakings Sirius Canada and XM Canada through the issuance of a new licence covering both undertakings. This licence will be in effect from 1 December 2012 to 31 August 2018. The terms and conditions of licence applicable to both undertakings are set out in the appendix to this decision.

Introduction

1. The Commission received an application by Sirius XM Canada Inc. (Sirius XM) relating to the broadcasting licences for the satellite subscription radio undertakings Sirius Canada and XM Canada. The licences expire 30 November 2012.¹
2. In Broadcasting Decision 2011-240, the Commission approved a change in effective control of Canadian Satellite Radio Inc. (CSRI) and Sirius Canada Inc. such that Sirius XM now holds the licences for both undertakings. Going forward, Sirius XM proposed to hold a single broadcasting licence for both the Sirius Canada and XM Canada undertakings rather than separate broadcasting licences for each undertaking. These undertakings would continue to operate as distinct services.
3. The Commission received numerous interventions in support of this application. The Commission also received comments on the application from several parties, as well as interventions in opposition from individuals, to which the applicant replied. The public record for this proceeding can be found on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

¹ The licences for these undertakings were administratively renewed from 1 September to 30 November 2012 in Broadcasting Decision 2012-341.

4. After examining the public record for this proceeding in light of applicable regulations and policies, the Commission considers that the issues it must address relate to the following:
 - the proposal to consolidate the licences into a single licence;
 - compliance with existing regulatory obligations, including:
 - the requirements relating to contributions to Canadian talent development (CTD);
 - the requirements for the broadcast of Canadian musical selections;
 - the limit on the broadcast of commercial messages; and
 - the requirement relating to the number of original Canadian-produced channels;
 - obligations to be imposed over the next licence term, including:
 - the emerging artist music requirement;
 - the number of unique Canadian channels offered by Sirius XM;
 - the provision of “best of” packages on the service of the other undertaking;
 - the number of Canadian English-language music channels available on XM Canada;
 - the proposed enhancement of obligations for the CBC Radio 3 service;
 - the appropriate level for future contributions to Canadian content development (CCD) by the licensee;
 - the allocation of CCD contributions; and
 - the eligibility of certain proposed CCD initiatives.

Consolidation of the licences

5. In its application, Sirius XM requested that it be permitted to hold a single broadcasting licence for the Sirius Canada and XM Canada undertakings. Sirius XM stated its intent to streamline and harmonize its services, but indicated that due to technological differences it would continue to offer two distinct services.
6. In light of the fact that the licences for both undertakings are now held by a single, common owner and in light of the intent to streamline and harmonize the services, the

Commission is prepared to accept the request that the two undertakings be permitted to operate under a single licence. However, the Commission notes that, where applicable, the conditions of licence that would have been associated with the individual licences will continue to apply to each undertaking separately and compliance will continue to be assessed for each undertaking.

Compliance with regulatory obligations

Canadian talent development contributions

7. Currently Sirius XM makes contributions to the broadcasting system in accordance with the CTD regime established in Public Notice 1995-196, which requires commercial radio stations to make annual contributions to eligible third-party initiatives to assist in the development of Canadian talent. Under this regime, the Commission established the types of initiatives eligible for CTD funding and clarified that all money going to third parties must be directly connected to the development of Canadian musical and other artistic talent.
8. In Broadcasting Decision 2011-240, the Commission found that the licensees CSRI and Sirius Canada Inc. had not complied with their conditions of licence relating to CTD contributions. Specifically, the Commission found CSRI in non-compliance with its CTD obligations for the 2008-2009 and 2009-2010 broadcast years and Sirius Canada Inc. in non-compliance with its CTD obligations for the broadcast years 2005-2006 to 2009-2010 as regards the scheduling and gross amounts of CTD payments. The Commission directed Sirius Canada Inc. to submit a revised account of its gross revenues and CTD contributions for broadcast years 2005-2006 to 2009-2010 and to make up the shortfalls by 31 August 2011. The eligibility of individual initiatives and expenses were not evaluated for the purposes of the ownership transfer. Rather, the decision indicated that the Commission would further discuss compliance issues and the implications of the non-compliance as part of the licence renewal process.
9. The CTD shortfall for XM Canada resulted from the insufficient contributions by CSRI to CTD initiatives in the 2008-2009 and 2009-2010 broadcast years. The CTD shortfall for Sirius Canada identified in Broadcasting Decision 2011-240 for the 2005-2006 to 2009-2010 broadcast years was due to Sirius Canada Inc.'s failure to include activation and other administrative service charges in the calculation of revenue. The Commission notes that the relevant shortfall amounts identified as part of the merger hearing were fully paid by 31 August 2011.
10. Further analysis of CTD contributions, including the individual initiatives that were funded, was conducted in preparation for the 19 June 2012 hearing. This analysis raised additional concerns regarding the eligibility of certain of the funded initiatives. In particular, in Broadcasting Notice of Consultation 2012-224, the Commission noted that it appeared that CSRI, the former licensee of XM Canada, may have failed to comply with its condition of licence relating to CTD for the 2009-2010 and 2010-2011 broadcast years. The Commission further noted that Sirius Canada Inc.,

the former licensee of Sirius Canada, may have failed to comply with its condition of licence relating to CTD contributions for the 2006-2007 and 2007-2008 broadcast years.

11. The Commission's concerns regarding eligibility relate to issues with the nature of the initiative, the sufficiency of the supporting documentation and the independence of the recipients.
12. In response to questions by Commission staff prior to and following the hearing, Sirius XM submitted arguments and supporting documentation regarding the eligibility of several of the individual contributions identified by the Commission as potentially ineligible. The licensee also acknowledged that some expenses amounting to \$47,189.94 were ineligible and offered to make up the shortfall. Sirius XM further proposed to pay 50% of the shortfall relating to the 2006-2009 period to FACTOR and the other 50% to MUSICACTION.
13. Going forward, the licensee committed to ensuring compliance with its conditions of licence relating to the promotion of Canadian talent during the forthcoming licence term. In this respect, Sirius XM stated that it intended to implement a number of steps, including a review of its third-party initiative approval process, a monthly compliance meeting, the hiring of an additional staff member whose specific functions at the company will include CTD compliance matters and advising any CTD beneficiary that unless it submits its invoice to the licensee by 1 August the funds will be directed to another qualifying initiative.

Commission's analysis and decision

Nature of the initiative or expense

14. Under the CTD regime, the Commission set out the types of initiatives and expenditures that were generally eligible for funding but noted that not all expenses related to a particular initiative were necessarily eligible. For example, a concert sponsored by a licensee is an eligible initiative and costs directly associated with a concert event such as artist fees and contracts for sound technicians are also eligible. However, salaries for station staff to be present at the concert are not considered to be direct out-of-pocket expenditures. Making this distinction between eligible and ineligible expenses serves to prevent situations where licensees could claim any number of expenses as eligible initiatives regardless of whether those expenses truly support the development of Canadian talent.
15. In the present case, the Commission notes that in some instances a portion of the contributions was attributed by the licensee to expenses such as travel costs incurred by the licensee's staff. The Commission considers these types of expenses ineligible as they do not directly support artists and the funds were not direct out-of-pocket expenditures. Rather, the main beneficiaries were Sirius XM staff.
16. Similarly, the Commission considers some expenditures relating to concerts sponsored by Sirius XM, such as "Face the Music Concert" and "Woodlands," to be

ineligible. Such expenses include expenditures for promotional items such as banners and t-shirts. In the present case, Sirius XM did not provide evidence to substantiate how such expenditures serve to promote Canadian musical talent. While such promotional items may add to the overall experience of an initiative such as a concert, the Commission considers that they do not meet the criteria for eligibility under the CTD regime since they do not support the development of Canadian musical talent.

17. Accordingly, the Commission has determined that certain of the expenditures claimed by Sirius XM which fall into these categories are ineligible due to the nature of the expense.

Sufficiency of supporting documentation

18. The Commission notes that it is the responsibility of the licensee to provide, by condition of licence, the necessary documentation to support the eligibility of its contributions and that the Commission's annual report forms explicitly describe what constitutes appropriate documentation. Furthermore, licensees are encouraged to contact Commission staff when in doubt about the required documentation that must accompany their annual returns.
19. In the present case, the Commission has determined that a number of the CTD initiatives to which Sirius XM contributed are ineligible because the documentation provided by Sirius XM was insufficient to substantiate their eligibility. The Commission considers that it provided Sirius XM with numerous opportunities to provide the necessary proof to substantiate the eligibility of these initiatives and that it has failed to do so.

Independence

20. The Commission considers that in order to qualify as third parties, beneficiaries of CTD and CCD contributions must be independent from the licensee. When the board of directors of a CTD or CCD recipient shares members in common with the board of directors of the licensee making the contribution, the independence of the initiative may be called into question. Similarly, when there is a familial relationship between the CTD or CCD recipient and the licensee, this may also call into question the arm's length or independent nature of the contribution. In these cases, the Commission will investigate further whether the contributions are truly being made to independent parties.
21. The Commission notes that it raised concerns with Sirius XM regarding the independence of certain of the initiatives to which it had contributed and whether the recipients constituted third parties. Specifically, the Commission raised concerns regarding the independence of the S'cool Life Fund, a charity founded by Mr. John Bitove, to which CTD contributions were made in the 2009-2010 broadcast year. The Commission notes that two members of CSRI's board of directors also appear to be

on the board of directors of the S'cool Life Fund.² Concerns were also raised regarding CTD payments made in the 2010-2011 broadcast year to Bit of Ride Productions, a company owned by Mr. Bitove's son.

22. In response to these concerns, Sirius XM argued that both recipient organizations are independent of Sirius XM and that it does not control either organization.
23. Although not specific to the radio context, the Commission finds Broadcasting Regulatory Policy 2010-833, which relates to contributions by broadcasting distribution undertakings (BDUs) to Canadian programming, instructive in clarifying the meaning of "independence." In that policy, the Commission clarified that an independent fund is one that is constituted and operated at arm's length from its contributors. The policy also specifies that in order for a fund to qualify as an independent fund, no more than a third of that fund's board members may also be members representing the contributor BDUs and that representatives of contributor BDUs can cast no more than a third of the votes.
24. The Commission notes that aside from its concerns about independence, the two initiatives in question would otherwise qualify as eligible CTD contributions. While it would have been preferable for the contributions to have been made to organizations without such close ties to Sirius XM, based on the evidence the Commission is satisfied that the contributions made to the S'cool Life Fund and Bit of Ride Productions during the previous licence term are eligible CTD contributions. The Commission notes, however, that in the future it expects contributions by Sirius XM to be made to independent initiatives or third parties that are constituted and operated at arm's length from Sirius XM.

Conclusion

25. In light of the foregoing, the Commission finds that the shortfall for the 2006-2007 and 2007-2008 broadcast years amounts to \$34,582, while the shortfall for the 2009-2010 broadcast year is \$66,652 and the shortfall for the 2010-2011 broadcast year is \$53,164. Accordingly, the total shortfall for both the Sirius Canada and XM Canada services amounts to \$154,398.
26. The Commission notes that Sirius XM proposed to pay 50% of the 2006-2009 shortfall to FACTOR and the other 50% to MUSICACTION. The Commission is of the view that this action is also appropriate for the balance of the shortfall. Accordingly, it directs Sirius XM to pay \$77,199 to each of MUSICACTION and FACTOR by no later than 30 days from the date of this decision. A **condition of licence** to this effect is set out in the appendix to this decision.

² CSRI holds 25% of the shares of Canadian Satellite Radio Holdings Inc., which in turn is the sole shareholder of Sirius XM Canada.

27. Finally, as noted in Broadcasting Decision 2011-240, the Commission reminds Sirius XM that only contributions paid on or before 31 August of the year for which the contribution is claimed may be counted for that broadcast year.

Broadcast of Canadian musical selections

28. Under the licensing framework for satellite subscription radio undertakings established in Broadcasting Public Notice 2005-61 (the SSRU licensing framework), satellite subscription radio licensees are required to devote a minimum of 85% of the total musical selections broadcast in a week on all Canadian-produced channels, considered together, to Canadian selections. Further, licensees are required to devote a minimum of 25% of the musical selections broadcast between 6 a.m. and midnight each week on each Canadian music channel to new Canadian musical selections, as well as a minimum of 25% of the musical selections broadcast to Canadian selections by artists who have not had a musical selection that has reached a position on one or more of the charts in the list set out in Circular 445. These requirements are reflected in Sirius Canada and XM Canada's current conditions of licence 2 and 6.
29. By letter dated 19 December 2008, the Commission informed Sirius Canada Inc. that the level of new Canadian musical selections broadcast on the Sirius Canada channel Iceberg during the week of 9 to 15 March 2008 amounted to 24.7% rather than the required 25%. Sirius Canada did not comment on this shortfall.
30. The Commission also notes that a compliance analysis for XM Canada performed during the same week revealed that the undertaking had broadcast only 78% Canadian musical selections over the broadcast week monitored due to the absence of Canadian music on its third-language ATN Asian Radio (ATN) channel. Additionally, as no Canadian music was broadcast on this channel, it would appear that the requirement relating to the broadcast of new Canadian music was also not met.
31. Initially, CSRI argued that the ATN channel was not subject to condition of licence 6 because it was primarily a spoken word channel. However, CSRI eventually agreed that ATN should be considered to be a Canadian music channel given that the channel had aired over 1,700 musical selections in the week monitored.
32. Sirius XM stated that it had since added sufficient Canadian and new Canadian musical selections to the music offered on the ATN channel to enable it to comply with all the requirements set out in conditions of licence 2 and 6. Further, to eliminate any future uncertainty as to what constitutes a music channel, Sirius XM agreed with the Commission's proposal to incorporate the following definition for certain conditions of its licence:
- A “Canadian music channel” shall mean an original Canadian-produced channel on which in any week no less than 50% of its airtime is devoted to the broadcast of material from content categories 2 and 3, as defined in the appendix to *Revised*

content categories and subcategories for radio, Broadcasting Regulatory Policy
CRTC 2010-819, 5 November 2010.

Commission's analysis and decision

33. The Commission notes that the licensee is ultimately responsible for all of the programming it broadcasts and for ensuring that it complies with its conditions of licence at all times.
34. In light of the above, the Commission finds Sirius XM in non-compliance with XM Canada's conditions of licence 2 and 6. The Commission also finds Sirius XM in non-compliance with Sirius Canada's condition of licence 6.
35. To eliminate any future uncertainty regarding the applicability of Sirius XM's conditions of licence as they relate to Canadian music channels, the Commission finds it appropriate to incorporate the above-noted definition of a Canadian music channel for the purposes of the revised **conditions of licence** set out in the appendix to this decision.

Broadcast of commercial messages

36. Sirius Canada and XM Canada's current condition of licence 9 specifies that they shall broadcast no more than six minutes of national commercial messages during any clock hour on any Canadian-produced channel. For purposes of this condition, a "national commercial message" is a commercial message that is purchased at a national rate and receives national distribution on the service.
37. Monitoring of XM Canada's spoken word channels during the week of 9 to 15 March 2008 found that an hour during a Montréal Canadiens hockey game contained 10 minutes and 19 seconds of national commercial messages.
38. XM Canada ceased broadcasting the games upon being notified of the alleged non-compliance. Sirius XM explained that the commercial messages were embedded in the production by the local Montréal station and that the licensee received no benefit from the commercial messages. In order to address the issue, it proposed a revision to the definition of "national commercial message" such that it would refer to messages purchased "from the licensee."
39. The licensee also asked the Commission to affirm that the condition prohibiting original local programming produced by Sirius XM does not apply to local programming produced by others in which advertising was inserted by an arm's-length third party.

Commission's analysis and decision

40. The Commission notes Sirius XM's explanation as to how the commercials came to be broadcast and that it ceased broadcasting the program in question upon being notified of the non-compliance. However, as previously noted, the licensee is

responsible for all of the programming broadcast on its undertaking. Accordingly, the Commission finds Sirius XM in non-compliance with XM Canada's condition of licence 9.

41. In light of the arguments and explanations put forth by Sirius XM, the Commission agrees with the licensee that it would be appropriate to revise the definition of "national commercial message" such that it refers to messages purchased "from the licensee." This will permit Sirius XM to broadcast embedded commercial messages over which it has no control. A revised **condition of licence** to this effect is set out in the appendix to this decision. The Commission considers that this revision makes further clarification unnecessary.

Number of original Canadian-produced channels

42. The SSRU licensing framework requires the distribution of at least eight original Canadian-produced channels on each undertaking. Further, a subscriber may not receive a package of channels where original Canadian-produced channels constitute less than 10% of total channels received. An "original Canadian-produced channel" is defined as "a channel produced in Canada that consists of programming not less than 50% of which is produced and broadcast for the first time on that channel." These requirements are reflected in conditions of licence 1(b) and (d) for both Sirius Canada and XM Canada.
43. The Commission raised concerns as to whether the programming on Sirius Canada's Radio One channel meets the definition of an original Canadian-produced channel. In particular, the Commission questioned the applicant as to whether the Canadian Broadcasting Corporation (CBC) produced any of the programs heard on that channel specifically for the channel or whether the programs were produced for the CBC's terrestrial network and then shifted so that they were broadcast first on Sirius Canada's Radio One channel.
44. In response, Sirius XM acknowledged that certain of the programs in question were longstanding CBC programs but that in order to comply with the conditions of licence, the CBC had elected to broadcast new productions of the programs first on Sirius Canada's Radio One channel. Sirius XM also indicated that subscribers were unhappy with the way the schedules of the CBC's Radio One and La Première Chaîne terrestrial networks were reconfigured by Sirius Canada in an attempt to conform to the definition of an original Canadian-produced channel.
45. In an attempt to address the complaints, Sirius XM asked that the definition of an original Canadian-produced channel not apply to its Radio One and Première Plus channels during the next licence term and that it be permitted to broadcast all of the programs of the CBC's Radio One and La Première Chaîne on satellite at the same time as the programs are broadcast terrestrially. In return for this concession, Sirius XM proposed to increase the amount of original Canadian programming on its other Canadian channels from 50% to 70% by condition of licence.

Commission's analysis and decision

46. The Commission notes the licensee's explanation that it was required to modify the programming schedule of the Radio One terrestrial network in an attempt to conform to the definition of an original Canadian-produced channel. However, the Commission considers that the licensee failed to demonstrate that the programs broadcast on its Radio One channel were produced specifically for that channel rather than the CBC's terrestrial network. Accordingly, the Commission finds Sirius XM in non-compliance with its conditions of licence relating to the distribution of original Canadian-produced channels
47. The Commission also notes the licensee's statements about the concerns of consumers regarding the Radio One and Première Plus channels and is persuaded that many of these subscribers would benefit from the simulcast of the Radio One and La Première Chaîne terrestrial networks on Sirius XM's subscription satellite services. The Commission considers it appropriate to provide the licensee with the flexibility to duplicate as much as possible the schedules of these networks to address the concerns of many of its subscribers. The Commission also considers that the applicant's proposal to increase the amount of original Canadian programming required on all other Canadian channels from 50% to 70% is appropriate under the circumstances.
48. Accordingly, the Commission has adopted the following definition of an "original Canadian-produced channel" for the purposes of the revised **conditions of licence** set out in the appendix to this decision:

An "original Canadian-produced channel" is a channel produced in Canada that consists of programming no less than 70% of which is produced for the channel and broadcast for the first time on that channel. Despite the foregoing, the channels consisting entirely of the programming of the CBC's Radio One and La Première Chaîne shall be considered as being original Canadian-produced channels.

Obligations to be imposed over the next licence term

49. Section 3(1)(f) of the *Broadcasting Act* (the Act) states:

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.

50. In the SSRU licensing framework, the Commission concluded that the inclusion of Canadian services on satellite undertakings that are designed to appeal to an overwhelmingly American consumer base rendered the predominant use of Canadian resources impracticable. Therefore, in licensing such undertakings, the Commission focused on the greatest practicable use of those resources.

Emerging artist music requirement

51. As noted above, licensees of satellite radio undertakings are required to devote a minimum of 25% of the musical selections broadcast to Canadian selections by artists who have not had a musical selection that has reached a position on one or more of the charts in the list set out in Circular 445. In seeking to deepen its commitment to emerging artists, Sirius XM proposed to raise this requirement from 25% to 40%.
52. The Commission considers that the proposed 40% level for the broadcast of music by emerging Canadian artists, as defined in Broadcasting Regulatory Policy 2011-316, represents a positive contribution to the ongoing promotion of new Canadian artists and accordingly accepts the proposal. A revised **condition of licence** to this effect is set out in the appendix to this decision.

Number of unique Canadian channels offered by Sirius XM

53. As a result of the merger of Sirius Canada Inc. and CSRI and the subsequent consolidation of operations, the Commission raised concerns that Sirius XM would dramatically reduce the overall number of unique original Canadian channels that were available across both services when they were competitors. In response, Sirius XM proposed to amend the current condition of licence 1(b) by increasing the number of unique original Canadian-produced channels from 8 to a total of 16 channels to be offered over the separate channel line-ups of each of the two undertakings. Sirius XM further proposed to add a condition of licence requiring it to ensure that no less than 10% of the total unique channels it distributes are original Canadian-produced channels.
54. The Commission notes that the planned revised channel line-ups submitted by the licensee provide for a total of 15 unique Canadian channels to be offered to the basic subscribers to either of the two undertakings, along with approximately 123 unique non-Canadian channels, which amounts to a little over 12% unique Canadian channels. The Commission considers that adopting a condition of licence requiring a minimum percentage of unique original Canadian-produced channels would address concerns about the number of original Canadian-produced channels and the number of unique Canadian channels. This would be consistent with the original licensing of XM Canada and Sirius Canada, which required 10% of the channels offered by each of the new undertakings were unique Canadian-produced channels. Accordingly, the Commission considers it appropriate to impose the following **condition of licence** as proposed by the licensee:

No less than 10% of the total number of unique channels distributed by the licensee shall be original Canadian-produced channels.

55. In light of the above, the Commission further considers that the existing condition of licence 1(b) requiring the distribution of at least eight original Canadian-produced channels and the applicant's proposed amendment to this condition are no longer necessary. Accordingly, the Commission will not reimpose this condition of licence.

"Best of" packages

56. To comply with the Commission's direction in Broadcasting Decision 2011-240 to offer a "best of" package to satellite subscription radio customers that respects the 1:9 ratio of Canadian to non-Canadian channels established in the SSRU licensing framework, Sirius XM indicated that it intended to offer Sirius Canada subscribers nine non-Canadian channels that up until now have been available only to XM Canada subscribers, as well as the Canadian channel NHL Home Ice. For their part, XM Canada subscribers would be offered nine Sirius Canada non-Canadian channels as well as one new Canadian channel, XM Sports Schedules. These packages would be dubbed "Premier" services.
57. At the hearing, the Commission raised concerns with the licensee over the fact that XM Sports Schedules was a new channel that had not yet been launched, had never formed part of the Sirius Canada service and therefore could not logically be considered part of the "best of Sirius" concept. The licensee replied that the discussion about the "best of" concept at the hearing relating to the change in control was devoted to providing the best of the American channels, not the Canadian.
58. The Commission's view is that the "best of" package concept entails the provision of both Canadian and non-Canadian channels that are actually offered by the other undertaking. The Commission is therefore of the view that adding a Canadian channel that is not available on the standard package of the other undertaking is not consistent with the intent of the "best of" concept. The Commission also notes that the public record relating to Broadcasting Decision 2011-240 indicates that Radio One and the XM Canada-produced NHL Home Ice were specifically mentioned by the licensee as possibly being included in these packages. Accordingly, the Commission expects that each of the "best of" or "Premier" packages include Canadian channels that are offered on the standard package of the other undertaking.

Number of Canadian English-language music channels available on XM Canada

59. The Commission notes that XM Canada's current condition of licence 4(a) requires the licensee to distribute a minimum of four French-language original Canadian-produced channels, at least two of which must be comprised predominantly of musical selections. Sirius Canada's current condition of licence 4(a) requires the licensee to distribute a minimum of four French-language original Canadian-produced channels, at least three of which must be comprised predominantly of musical

selections. There is no similar condition of licence requiring the distribution of any Canadian English-language music channels by either Sirius Canada or XM Canada.

60. The Commission notes that during most of the current licence term, XM Canada offered one Canadian English-language music channel, raising that number to two when in Broadcasting Decision 2011-240 the Commission directed the merged entity, by condition of licence, to launch an Aboriginal channel. The Commission also notes that XM Canada's revised channel line-up would continue to offer only two Canadian English-language music channels as part of its 120-channel service offering.
61. Sirius XM opposed the proposal to require it to distribute at least three Canadian French-language and three Canadian English-language music channels on each service, stating that in designing its new channel line-up, it had to navigate carefully between bandwidth limitations, contractual commitments, regulatory obligations and consumer preferences. More specifically, it indicated that to implement such a proposal it would need to replace one of the currently proposed channels on XM Canada with a Canadian English-language music channel, which it submitted would annoy current customers and conflict with contractual commitments. Sirius XM also submitted that it already distributed more than 60 non-Canadian English-language music channels and that therefore emphasizing French-language music channels was a more reasonable option.

Commission's analysis and decision

62. The Commission notes the submissions of CSRI and Sirius Canada Inc. at the original licensing hearing in 2004, when both applicants emphasized the important role that satellite radio could play in showcasing Canadian music and artists in the enormous U.S. market. In contrast to these submissions, the Commission notes that even with the recent addition on each service of the Voices Radio aboriginal channel, which offers primarily English-Canadian music, the exposure of Canadian English-language music is minimal on satellite radio, particularly on XM Canada.
63. With respect to XM Canada's planned channel line-up, the Commission notes that there are a number of channels available that would be new to XM Canada subscribers so that changes to the proposed line-up to include a third Canadian English-language music channel should be possible without inconveniencing XM Canada subscribers. Further, as regards the licensee's statement relating to the proportion of non-Canadian English-language as compared to French-language music channels, the Commission finds that the distribution of non-Canadian English-language music channels is irrelevant to its assessment of whether Sirius Canada and XM Canada are meeting the needs of the Canadian broadcasting system and contributing to that system in accordance with the broadcasting policy set out in the Act.
64. While the Commission recognizes that there may be technological and contractual limitations to which Sirius XM may be subject, the Commission notes the distribution of numerous non-Canadian music channels by the licensee. Further, in light of the

requirement of the Act to ensure that each broadcasting undertaking makes the greatest practicable use of Canadian resources, including music, the Commission finds it appropriate to require XM Canada and Sirius Canada to increase the exposure of Canadian English-language music. The Commission considers that providing the licensee with six months from the date of this decision to make the necessary arrangements to revise its channel line-up in light of the above determinations and promote the new channel packages to its subscribers is sufficient. Accordingly, the Commission replaces XM Canada and Sirius Canada's current condition of licence 4(a) with the following **conditions of licence** 2(a) and 2(b) set out in the appendix to this decision:

- (a) In no case may a subscriber receive a package of channels with fewer than four French-language original Canadian-produced channels.
- (b) Effective 17 May 2013, in no case may a subscriber receive a package of channels with fewer than three French-language and three English-language Canadian music channels.

Enhancement of CBC Radio 3 obligations

- 65. As part of its request to permit the broadcast of the programs of CBC Radio One on satellite at the same time as the programs are broadcast terrestrially, Sirius XM also proposed to enhance its obligations relating to CBC Radio 3. Specifically, it proposed to devote all musical selections on that channel to Canadian selections, as well as no less than 50% of the musical selections between 6 a.m. and midnight to new Canadian musical selections and a minimum of 50% of those new Canadian musical selections to music by emerging artists.
- 66. The Commission considers that any commitment that increases the exposure of Canadian artists is beneficial to the Canadian broadcasting system. However, the Commission notes that an analysis of the programming broadcast on CBC Radio 3 in March 2008 revealed a very high level of Canadian musical selections, as well as levels of new Canadian music and emerging artist selections that exceed Sirius XM's proposed commitments. In light of this fact, the Commission does not consider that the imposition of these requirements as conditions of licence will have an appreciable effect on the use of Canadian resources. Accordingly, while it encourages Sirius XM to continue these programming practices on CBC Radio 3, the Commission will not impose these requirements as conditions of licence.

Appropriate level for future contributions to Canadian content development

- 67. When developing the SSRU licensing framework, the Commission considered the implications of the applications for such services, including the introduction of a very large amount of non-Canadian programming into the Canadian broadcasting system. Therefore, it determined that each satellite radio licensee would be required to contribute each year a minimum of 5% of its gross annual revenues to eligible third

parties associated with CTD and other artistic talent or other initiatives approved by the Commission.

68. In its application, Sirius XM proposed to amend the condition of licence requiring it to contribute a minimum of 5% of gross revenues in each broadcast year to CTD (now CCD) by reducing this level to 0.5%.
69. The licensee pointed out that its current CTD condition of licence obligates it to make payments ten times larger than the basic requirement imposed on terrestrial commercial radio broadcasters, i.e. 0.5%, and that a level of 0.5% of gross revenues would harmonize its obligation with that of those broadcasters. It further noted that while terrestrial licensees in their first licence terms are usually subject to CCD conditions of licence that greatly exceed the basic CCD requirement, as set out in section 15 of the *Radio Regulations, 1986*, when these conditions expire after several years of operation conventional stations usually remain subject only to the basic CCD requirement. In its view, Sirius Canada and XM Canada are in the same position as such conventional stations and for the next licence term Sirius XM should be permitted to assume a CCD contribution rate of 0.5%.
70. After the hearing, Sirius XM revised its initial proposal and proposed a CCD contribution level of 2%. It noted that if this proposal were to be approved it would ensure that the average annual amount of CCD funding over the next licence term would exceed the average annual amount of basic CCD expenditures by over 400 terrestrial radio licensees over the 2006-2010 period.

Commission's analysis and decision

71. In assessing the CCD contribution level, the Commission is mindful of the objective of the Act to ensure that each broadcasting undertaking makes the greatest practicable use of Canadian creative and other resources, as well as the factors assessed in determining the appropriate level when Sirius Canada and XM Canada were initially licensed. It also notes that Sirius Canada and XM Canada were licensed as satellite subscription radio undertakings, not conventional commercial radio stations, and that its monetary contributions to the broadcasting system must be assessed together with its other regulatory obligations to ensure that it continues to make the greatest practicable use of Canadian resources.
72. The Commission notes the licensee's commitment set out above to adhere to a condition of licence increasing the level of Canadian programming required on its original Canadian-produced channels from 50% to 70%. The Commission considers that this commitment constitutes an enhancement to the licensee's current offering as it relates to the use of Canadian resources. The Commission also notes the licensee's commitment to adhere to a condition of licence that would increase the broadcast of music by Canadian emerging artists from 25% to 40% on Canadian music channels. However, the Commission notes that the total number of unique original Canadian channels will be reduced, while the ratio of total Canadian channels offered to individual subscribers will remain unchanged.

73. The Commission further notes the licensee's projected growth in revenues and the corresponding increase in the amount of money to be devoted to CCD. The Commission considers that this increase will ensure vastly enhanced financial support for Canadian content during the next licence term when compared to the first term.
74. In light of these increased revenues and taking into account the other contributions to the Canadian broadcasting system by Sirius XM, the Commission is of the view that it would be appropriate to lower the annual CCD contribution level for Sirius XM from 5% to 4%. Accordingly, in the appendix to this decision, the Commission has set out a **condition of licence** to this effect.

Allocation of CCD contributions

75. Sirius XM is currently permitted to allocate its CTD contributions on a discretionary basis. In the next licence term, Sirius XM will be required to make contributions in accordance with the CCD regime established in Broadcasting Public Notice 2006-158 (the Commercial Radio Policy), as supplemented by the regulatory adjustments made following the publication of Broadcasting Regulatory Policy 2010-499.
76. In order to streamline and maximize the effectiveness of Sirius XM's CCD contributions, the Commission proposed that in the next licence term Sirius XM be required to allocate its CCD contributions using the same percentages as are currently required of terrestrial radio services (i.e. 45% to FACTOR and/or MUSICACTION and 15% to the Community Radio Fund of Canada [CRFC]).
77. Sirius XM opposed this idea, noting that the amounts that would be paid to these organizations would be out-of-scale when compared to the contributions of more than 600 commercial stations to the same. However, subsequent to the hearing, the applicant proposed the following alternative condition of licence:

...no less than \$400,000 will be contributed during each year of the licence term to each of FACTOR and MUSICACTION, no less than \$75,000 will be contributed during each year of the licence term to the Community Radio Fund of Canada, and no less than \$190,000 each year, and no less than \$1,400,000 over seven years, will be contributed to CCD-eligible regional talent (both musical and spoken word).

For the purposes of this condition of licence, "regional talent" is talent in or from parts of Canada located more than 150 kilometres from Toronto, Montréal or Vancouver.

78. According to Sirius XM, the portion regarding the funding of regional talent would reflect satellite radio's substantial presence in many small towns and rural areas.

Commission's analysis and decision

79. The Commission notes Sirius XM's willingness to streamline a portion of its CCD contributions and considers that the use of a percentage allocation would make the

regulation of CCD contributions by satellite radio more consistent with the CCD scheme that applies to terrestrial radio. The Commission further notes that the use of fixed percentages would reduce discretionary contributions and the possibility of non-compliance with respect to overall contributions, simplifying the auditing of compliance by the Commission.

80. The Commission considers that requiring the licensee to allocate no less than 20% of its annual CCD contribution to FACTOR, 10% to MUSICACTION and 5% to the CRFC would diminish the concern raised by the licensee regarding out-of-scale funding to MUSICACTION and the CRFC, all while requiring the licensee to provide substantial funding to key national CCD players. The remainder may be allocated to eligible initiatives, as defined in section 15(1) of the *Radio Regulations, 1986*. Accordingly, a **condition of licence** to this effect is set out in the appendix to this decision.
81. The Commission also notes the licensee's commitment to devote a significant portion of its CCD contributions over the licence term to CCD-eligible initiatives relating to regional talent and considers that the fulfillment of this commitment will help to diversify the Canadian content created.

Eligibility of certain proposed CCD initiatives

82. Under the CCD regime, some of the flexibility regarding the types of initiatives permitted by the former CTD policy no longer applies. Notably, under the CTD regime set out in Public Notice 1995-196, funding to a wide range of performing arts such as comedy was broadly eligible, while under the Commercial Radio Policy eligibility is quite restricted. Specifically, while initiatives designed to produce new spoken word programming are permitted, the Commercial Radio Policy stipulates that such content must be directed to independent parties dedicated to producing spoken word content that would otherwise not be produced for broadcast. As such, to qualify as an eligible CCD contribution, funding to spoken word programming, including comedy, must be incremental to a station's normal programming costs. Furthermore, any station claiming CCD expenditures to develop spoken word programming must not be granted exclusive rights to air material produced as a result of the contributions.
83. In light of the regime change, the Commission noted in its letter of 24 November 2011 regarding the renewal of XM Canada that it appeared that certain initiatives that XM Canada had funded since its commencement of operations, including comedy projects, would no longer be eligible under the CCD regime. In its application, Sirius XM requested that it be permitted to continue to support through CCD contributions a number of initiatives designed to foster Canadian comedic talent and spoken word programming, including contributions to Humber College and local comedy clubs that are used to produce and record live events featuring students and emerging comedic talent aired on Sirius Canada's dedicated comedy channel Laugh Attack. At the hearing, Sirius XM clarified that the performers retained all rights to their

performances and benefitted from the exposure that resulted in being broadcast on Laugh Attack.

84. In addition, in Broadcasting Decisions 2005-246 and 2005-247, the Commission allowed Sirius Canada and XM Canada to allocate CTD monies to the hiring of “coordinators” or “ambassadors” to manage their contributions, coordinate events and promote initiatives. Further to Sirius XM’s renewal application and in light of Sirius XM’s request to reduce its CCD contribution to 0.5%, the Commission raised the issue of whether the ambassadors/coordinators should be maintained.
85. In response, Sirius XM requested that the use of ambassadors or coordinators continue to be permitted during the next licence term. In particular, Sirius XM emphasized that ambassadors would be in charge of managing CCD-related funding. In addition to ensuring that these funds are spent in a manner consistent with the undertakings’ conditions of licence, the ambassador function will include outreach across Canada and coordination with organizations that will receive this funding, as well as the promotion and exposure of artists.

Commission’s analysis and decision

86. With respect to the proposal to devote a portion of the licensee’s discretionary CCD funding to Canadian comedic talent and spoken word programming, the Commission notes that Sirius XM benefits from a relationship with Humber College and comedy clubs in Toronto. The Commission further notes that the licensee provides funding for these events and directly to comedic talent. Sirius XM is then able to broadcast content recorded at the events. The Commission notes that Sirius XM has indicated that performers maintain the rights to the recordings of their performances, consistent with the Commercial Radio Policy, and as such would have the right to make those recordings available to any other broadcaster. The Commission considers that contributions to initiatives as described above are within the spirit of the CCD regime. Accordingly, the Commission finds that such initiatives are eligible for CCD contributions in the next licence term.
87. However, the Commission also notes that during the current licence term, Sirius XM provided funding to the Humber College Comedy Program for the development of new Canadian comedy writers and performers. The Commission reminds the licensee that only funding directed at live comedy performances for broadcast are eligible under the current CCD regime. Thus, while showcases to assist emerging comedy artists may receive CCD funding, contributions to the Humber College Comedy Program are not eligible.
88. As regards the request to continue the “Ambassadors” program, the Commission considers that the complexity and level of Sirius XM’s CCD contributions justify maintaining this program. However, the Commission notes that the annual payments to be made to FACTOR, MUSICACTION and the CRFC discussed above will require minimal effort. The Commission is therefore of the view that the percentage of contributions to be devoted to the “Ambassadors” program should be based solely

on the discretionary portion of the CCD contributions. Further, in order to encourage an efficient use of CCD funds and ensure that a maximum level of the contributions will be directed to eligible initiatives, the Commission considers that no more than 5% of the total annual discretionary CCD contribution should be devoted to this initiative. A **condition of licence** to this effect is set out in the appendix to this decision.

Conclusion

89. In Broadcasting Information Bulletin 2011-347, the Commission announced a revised approach to dealing with non-compliance by radio licensees. The Commission noted in particular that each instance of non-compliance will be evaluated in light of factors such as the quantity, recurrence and seriousness of the non-compliance. The Commission also noted that it will consider the circumstances leading to the non-compliance in question, the licensee's arguments and the measures taken to rectify the situation. The Commission considers that this approach is also appropriate in the present case.
90. In light of the relative magnitude of the licensee's non-compliance as regards its CCD contributions and its willingness to make up the shortfall, as well as the measures taken by the licensee to address its programming-related non-compliance and the fact that this non-compliance was due to the rebroadcasting of third-party programming, the Commission considers that a licence term of six years is appropriate. The Commission also notes its approval of Sirius XM's request that the licences for its two satellite subscription radio undertakings be renewed under a single licence. Accordingly, the Commission **renews** the authority for the operation of the satellite subscription radio undertakings Sirius Canada and XM Canada through the issuance of a new licence covering both undertakings. This licence will be in effect from 1 December 2012 to 31 August 2018. The terms and **conditions of licence** applicable to both undertakings are set out in the appendix to this decision.

Secretary General

Related documents

- *Administrative renewals*, Broadcasting Decision CRTC 2012-341, 22 June 2012
- *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2012-224, 18 April 2012
- *Revised approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2011-347, 26 May 2011
- *Definition of emerging Canadian artists on commercial radio*, Broadcasting Regulatory Policy CRTC 2011-316, 12 May 2011

- *Canadian Satellite Radio Inc. and Sirius Canada Inc. – Change in effective control*, Broadcasting Decision CRTC 2011-240, 11 April 2011
- *Contributions to Canadian programming by broadcasting distribution undertakings*, Broadcasting Regulatory Policy CRTC 2010-833, 9 November 2010
- *Revised content categories and subcategories for radio*, Broadcasting Regulatory Policy CRTC 2010-819, 5 November 2010
- *Campus and community radio policy*, Broadcasting Regulatory Policy CRTC 2010-499, 22 July 2010
- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006
- *Satellite subscription radio undertaking*, Broadcasting Decision CRTC 2005-247, 16 June 2005
- *Satellite subscription radio undertaking*, Broadcasting Decision CRTC 2005-246, 16 June 2005
- *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
- *Changes to the charts used by the Commission to determine what constitutes a hit*, Circular 445, 14 August 2001
- *Contributions by radio stations to Canadian talent development – A new approach*, Public Notice CRTC 1995-196, 17 November 1995

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

Appendix to Broadcasting Decision CRTC 2012-629

Terms, conditions of licence, encouragement and expectations for the satellite subscription radio undertakings Sirius Canada and XM Canada

Terms

The licence will take effect on 1 December 2012 and expire 31 August 2018.

Conditions of licence

1. (a) The licensee shall provide national satellite subscription radio undertakings consisting of original Canadian-produced channels and non-Canadian channels. The licensee is authorized to distribute the services of Sirius XM Radio Inc. in accordance with the conditions of licence set out below.
 - (b) No less than 10% of the total number of unique channels distributed by the licensee shall consist of original Canadian-produced channels.
 - (c) The licensee may distribute, to any Canadian subscriber, a maximum of nine non-Canadian-produced channels for each original Canadian-produced channel that it distributes to that subscriber.
 - (d) In no case may a subscriber receive a package of channels in which original Canadian-produced channels constitute less than 10% of the total channels received by that subscriber.
2. (a) In no case may a subscriber receive a package of channels with fewer than four French-language original Canadian-produced channels.
 - (b) Effective 17 May 2013, in no case may a subscriber receive a package of channels with fewer than three French-language and three English-language Canadian music channels.
 - (c) No less than 25% of the original Canadian-produced channels distributed by each undertaking shall consist of French-language original Canadian-produced channels.
 - (d) The licensee shall distribute an Aboriginal channel. An “Aboriginal channel” is a channel at least 60% of the programming of which in a week consists of audio programming that is directed toward Aboriginal persons and includes original or previously broadcast programming by, about or including Aboriginal persons. This channel may consist partly or wholly of programming from other broadcasters. The Aboriginal channel will be considered an “original Canadian-produced channel” and that channel shall be exempted from the calculation set out in condition of licence 2(c).

3. In respect of each undertaking, the licensee shall devote at least 85% of the total musical selections broadcast in a week on all Canadian-produced channels, considered together, to Canadian selections as defined in section 2.2(2) of the *Radio Regulations, 1986*.
4. In respect of each undertaking, the licensee shall devote at least 85% of the total spoken word programming broadcast in a week on all Canadian-produced channels, considered together, to Canadian spoken word programming.

For purposes of this condition of licence, “Canadian spoken word programming” means programming other than musical selections or commercial messages that is produced in Canada and in which a Canadian is the primary performer or speaker.

5. On each French-language channel, the licensee shall devote each week at least 65% of its vocal musical selections from content category 2, as defined in the appendix to *Revised content categories and subcategories for radio*, Broadcasting Regulatory Policy CRTC 2010-819, 5 November 2010, to musical selections in the French language and schedule them in a reasonable manner throughout each day.
6. Between 6 a.m. and midnight each week, the licensee shall devote at least 25% of the musical selections broadcast on each Canadian music channel to new Canadian musical selections and at least 40% of the musical selections broadcast to Canadian selections by emerging English- and French-language Canadian artists, as defined in paragraphs 5 and 9 of *Definition of emerging Canadian artists on commercial radio*, Broadcasting Regulatory Policy CRTC 2011-316, 12 May 2011, as amended from time to time.

For the purposes of this condition of licence, a “new Canadian musical selection” is a Canadian selection, as defined in section 2.2(2) of the *Radio Regulations, 1986*, that has been released in the 6 months prior to the date that the musical selection is broadcast. The Eastern time zone will be used for purposes of determining compliance with this condition of licence.

7. Except for an Aboriginal channel, the licensee shall not broadcast any original local programming on a Canadian-produced channel.

For the purposes of this condition of licence, “original local programming” means programming produced by the licensee for broadcast on the satellite subscription radio undertaking that targets a particular geographic community and includes but is not limited to commercial messages, news, weather and traffic information.

8. Except for an Aboriginal channel, the licensee shall broadcast no more than six minutes of national commercial messages during any clock hour on any Canadian-produced channel.

For purposes of this condition of licence, a “national commercial message” is a commercial message that is purchased from the licensee at a national rate and receives national distribution on the undertaking.

9. The licensee shall adhere to sections 3, 4, 6, 10.1 (with respect to its terrestrial transmitters) and 11 of the *Radio Regulations, 1986*.
10. 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 is a member in good standing of the Canadian Broadcast Standards Council.
11. The licensee shall adhere to the Canadian Association of Broadcasters’ *Broadcast Code for Advertising to Children*, as amended from time to time and approved by the Commission.
12. The licensee shall pay \$154,398 relating to the outstanding shortfall for contributions to the development and promotion of Canadian talent by no later than 30 days from the date of this decision, as follows:
 - \$77,199 to MUSICACTION; and
 - \$77,199 to FACTOR.
13. (a) During each broadcast year, the licensee shall contribute a minimum of 4% of gross revenues from its satellite subscription radio undertakings reported in its annual returns for the previous broadcast year to eligible initiatives for the development of Canadian content development (CCD).

(b) During each broadcast year of the licence term, the licensee shall allocate its contribution under (a) above as follows:
 - no less than 20% to FACTOR;
 - no less than 10% to MUSICACTION;
 - no less than 5% to the Community Radio Fund of Canada; and
 - the remainder to other eligible initiatives (discretionary contribution).
(c) No more than 5% of the discretionary contribution during any broadcast year shall be devoted to expenses and salaries for CCD coordination staff (i.e. the Ambassador/l’Ambassadeur pour la musique canadienne).

(d) At least 45% of the licensee’s discretionary contribution shall be allocated to initiatives for the development of Canadian French-language content, and no less than 45% shall be allocated to initiatives for the development of Canadian English-language content.

For purposes of this condition of licence, “eligible initiatives” shall have the meaning set out in section 15(1) of the *Radio Regulations, 1986*, as amended from time to time.

14. For each Canadian-produced channel, the licensee shall adhere to the provisions of sections 8(1), (2), (3), (4), (5) and (6) of the *Radio Regulations, 1986*.
15. For any non-Canadian-produced channel that may be identified by the Commission from time to time, the licensee shall adhere to the provisions of sections 8(5) and (6) of the *Radio Regulations, 1986*.
16. (1) For any Canadian-produced channel, the licensee shall at the request of the Commission submit for any period specified by the Commission in its request:
 - (a) the information required by the most recent Station Self-assessment Report form issued by the Commission; and
 - (b) a list of the musical selections in the order in which they are broadcast by the licensee during that period that includes the title and performer of each musical selection and a legend that identifies:
 - (i) any Canadian musical selection, as defined in section 9(1) of the *Radio Regulations, 1986*;
 - (ii) the release date of any Canadian musical selection, as defined in section 9(1) of the *Radio Regulations, 1986*;
 - (iii) any instrumental selection;
 - (iv) any content category 3 musical selection within the meaning of the appendix to *Revised content categories and subcategories for radio*, Broadcasting Regulatory Policy CRTC 2010-819, 5 November 2010, as amended from time to time; and
 - (v) the language of the musical selection, where the musical selection is not an instrumental selection;
 - (vi) those musical selections it categorizes as being by an emerging Canadian artist for the purposes of condition of licence 6; and
 - (vii) for each musical selection categorized as being by an emerging Canadian artist for purposes of condition of licence 6:
 - for English-language musical selections, if a recording by the artist has appeared in one of the charted positions referenced in paragraph 5 of *Definition of emerging Canadian artists on commercial radio*, Broadcasting Regulatory Policy CRTC 2011-316, 12 May 2011, the

title of that recording and the date it first reached the relevant position; and

- for French-language musical selections, if an album by the artist has reached Gold Record status according to SoundScan or has been marketed commercially, the date this status was first reached or the album was released for marketing and the title of the album.

(2) For any non-Canadian produced channel, the licensee shall at the request of the Commission submit for any period specified by the Commission in its request the following information for each musical selection broadcast:

- (i) the name of the artist;
 - (ii) the name of the album from which the musical selection is taken and the number of the track;
 - (iii) the year that the musical selection was released; and
 - (iv) the version of the track, where multiple versions exist.
17. (a) On or before November 30 of each year, the licensee shall submit to the Commission a statement of accounts, on the annual return of broadcasting licensee form, for the year ending on the previous August 31.
- (b) The licensee shall file a report on the fulfilment of its commitments with respect to Canadian content development with each annual return. The report shall set out the initiatives that the licensee has supported and the amount spent on each initiative, as well as the total amounts devoted to initiatives for the development of French-language and English-language content. The report shall also contain the necessary proof to demonstrate that payment was made in the broadcast year and to substantiate the eligibility of the initiatives to which it has directed its discretionary contribution.
18. At the request of the Commission, the licensee shall provide the Commission with a response to any inquiry regarding the licensee's programming, ownership or any other matter within the Commission's jurisdiction that relates to the licensee's undertaking.

Definitions

For the purposes of all the conditions of licence set out above:

- (a) An “original Canadian-produced channel” is a channel produced in Canada that consists of programming no less than 70% of which is produced for the channel and broadcast for the first time on that channel. Despite the foregoing, the two channels consisting entirely of the programming of the CBC’s Radio One and La Première Chaîne shall be considered as being original Canadian-produced channels.

- (b) A “Canadian music channel” shall mean an original Canadian-produced channel on which in any week no less than 50% of its airtime is devoted to the broadcast of material from content categories 2 and 3, as defined in the appendix to *Revised content categories and subcategories for radio*, Broadcasting Regulatory Policy 2010-819, 5 November 2010.
- (c) The terms “commercial message” and “musical selection” shall have the meaning set out in section 2 of the *Radio Regulations, 1986*.
- (d) “Day” means the total number of hours devoted to broadcasting for a period beginning at 12 a.m. and ending at midnight the same day.
- (e) “Week” means seven consecutive days beginning on Sunday.

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.

Expectations

The Commission expects that each of the “best of” or “Premier” packages offered by the licensee include original Canadian-produced channels that are offered on the standard package of the other undertaking.

The Commission expects the licensee to promote the use of Canadian music on its non-Canadian channels.

The Commission expects the licensee to devote all extra satellite bandwidth that might become available to the distribution of additional Canadian-produced channels.

The Commission expects the licensee to reflect the cultural diversity of Canada in all of its programming and encourages it to promote those channels that are targeted to specific cultural groups.