



Broadcasting Decision CRTC 2012-661

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Ottawa, 4 December 2012

Neepawa Access Community T.V. (ACTV) Inc.
Neepawa, Manitoba

Application 2012-0755-6

Eligibility of CH5248 Neepawa for the Small Market Local Production Fund

*The Commission **denies** an application to recognize CH5248 Neepawa as a small-market, independently owned television station eligible for support from the Small Market Local Production Fund.*

The application

1. The Commission received an application by Neepawa Access Community T.V. (ACTV) Inc. (NAC TV) requesting that CH5248 Neepawa be recognized as a small-market, independently owned television station eligible for support from the Small Market Local Production Fund (the Fund) established pursuant to Broadcasting Public Notices 2003-37 and 2003-38.¹
2. The applicant stated that CH5248 Neepawa met the following eligibility criteria identified in the above notices:
 - the station must be independently owned (i.e. not owned by one of the larger ownership groups identified in Broadcasting Public Notice 2003-37);
 - the station must be available over the air;
 - the station must serve a market with a population of fewer than 300,000; and
 - the station must provide local programming.
3. In support of its application, NAC TV stated that should it be eligible to receive support from the Fund it would commit to utilizing the additional funds to produce local programming on a regional scale, develop a series of interview programs on local affairs, including towns within a 40-mile radius, and purchase a van for this

¹ This fund is also known as the Small Market Local Programming Fund or the DTH Fund.

purpose, as well as developing cultural programs and continuing to develop existing programs such as “Celebrating Seniors” and “Heroes and Heroines.”

4. The applicant also noted that two broadcasting distribution undertakings (BDUs), namely the direct-to-home (DTH) BDU Bell TV and the terrestrial BDU operated by MTS Allstream Inc. (MTS), were proposing to distribute its signal. NAC TV stated that it was operating at a deficit each year and that much of its equipment was in need of replacement. Specifically, it indicated that a \$14,000 upgrade of its system would be necessary in order to accept the distribution proposals of Bell TV and MTS.

Interventions and applicant’s reply

5. The Commission received interventions in support of the application by members of the local community, as well as the Canadian Association of Community Television Users and Stations. The Commission also received an opposing intervention from the Coalition of Small Market Independent Television Stations (the SMITS Coalition). The public record for this application is available on the Commission’s website at www.crtc.gc.ca under “Public Proceedings.”
6. The opposing intervenor submitted that NAC TV’s circumstances did not correspond to the underlying rationale for access to the Fund. Specifically, the SMITS Coalition noted that NAC TV does not broadcast programming that is duplicated by DTH-distributed undertakings and submitted that there was therefore no devaluation of its programming rights and no reduction in advertising revenues attributable to such programming. The intervenor also stated that NAC TV had provided no evidence that there had been any decline in its advertising revenues and submitted that NAC TV did not rely to a significant degree on advertising revenues in any case, given that it is a community television broadcaster that is funded by Westman Media Cooperative Ltd. (Westman) and various other sources of funding.
7. The SMITS Coalition further noted that the purpose of the Fund is to support the provision of local programming in the local markets served by its recipient stations, whereas the applicant is proposing to use such funding for regional programming and wider distribution of its service via Bell TV and MTS. According to the opposing intervenor, there is no evidence that access to the Fund is required by NAC TV to sustain its local community service to its local market, Neepawa.
8. Finally, the SMITS Coalition submitted that if the Commission were to approve the application, it would set a very dangerous precedent, opening the door to dozens of similar applications by other community television licensees across Canada, which could significantly dilute the funding for local conventional television.
9. In reply, NAC TV stated that, like conventional broadcasters, community broadcasters are expected to survive on advertising. In this respect, it indicated that it had lost its previous large advertisers because advertising contracts and strategies were now negotiated nationally with national distributors and networks. According to NAC TV, the widespread availability of DTH and its station’s small market have

resulted in the loss of 5% of its total budget over the last decade. It also indicated that it was not funded by Westman, but rather had a contract with Westman to carry its signal.

10. NAC TV further noted that it is currently the only over-the-air television station in rural Manitoba. It added that with the demise of CKX-TV Brandon, it had been pushed into the role of a conventional station and was being asked to cover rural events in Manitoba well outside its original licensed area. It further submitted that due to the closing of Canadian Broadcasting Corporation towers across rural Manitoba, rural Manitobans were left with few options except DTH services.
11. Finally, with respect to the SMITS Coalition's submission that several other similar applications would follow if the current application were approved, NAC TV noted that there are only nine over-the-air community television licence holders in Canada.

Commission's analysis and decision

12. The Commission notes that the station operated by NAC TV is an independently owned, over-the-air station unaffiliated with any of the larger ownership groups identified in Broadcasting Public Notice 2003-37 and that this station serves a market with a total population of fewer than 300,000. Although it is licensed as a low-power community-based television station and despite some differences in the policies and regulations that apply to its service, it is functionally similar to conventional stations in most respects. Further, although NAC TV is not required to submit program logs, it would appear that most, if not all, of its programming is locally produced.
13. Accordingly, based solely on the eligibility requirements identified in Broadcasting Public Notices 2003-37 and 2003-38, NAC TV could be considered eligible to receive funding from the Fund. In the Commission's view, however, such a decision would be inconsistent with the underlying rationale for the Fund set out in Public Notice 2003-37, which was to address the negative impact on small-market independent stations when distant signals offering the same or similar programming are distributed in their markets by DTH BDUs. The Fund was established to provide support for the production of local programming to ensure that these small-market stations could meet their local programming requirements, particularly where, in such circumstances, these stations could not benefit from simultaneous substitution. Similarly, in Broadcasting Decision 2012-285 relating to the religious station CJIL-TV Lethbridge, the Commission noted that although CJIL-TV is limited to advertising religious products and services, it faces competition from other religious programming services for advertising dollars and audiences as a result of DTH distribution. The Commission therefore recognized that there had clearly been some impact on the station and its ability to produce local programming as a result of the distribution of out-of-market stations by DTH BDUs and that accordingly its eligibility was consistent with the purpose of the Fund.
14. In the case of NAC TV, the Commission notes that the station does not broadcast any programming that is duplicated by programming services distributed in its market by

DTH BDUs. It therefore does not lose advertising revenue as a result of any possible shared programming. Further, the Commission notes that NAC TV has indicated that additional funding from the Fund would not be used to support local programming but rather to upgrade its facilities and provide more regional programming. Accordingly, in the Commission's view, the current application is inconsistent with the rationale for the Fund.

15. In addition, the Commission notes that approval of the current application could result in similar applications from the other community-based television stations across Canada. Whereas the Commission found in Broadcasting Decision 2012-285 that the eligibility of CJIL-TV to the Fund would not have a material impact on other Fund recipients, the Commission considers that the addition of the remaining community-based stations to the list of recipients would certainly have a material impact on other Fund recipients and thus on the effectiveness of the Fund in fulfilling its objectives.
16. In light of all of the above, the Commission **denies** the application by Neepawa Access Community T.V. (ACTV) Inc. requesting that CH5248 Neepawa be recognized as a small-market, independently owned television station eligible for support from the Small Market Local Production Fund.

Secretary General

Related documents

- *Eligibility of CJIL-TV Lethbridge to the Small Market Local Production Fund*, Broadcasting Decision CRTC 2012-285, 10 May 2012
- *Contributions to Canadian programming by broadcasting distribution undertakings*, Broadcasting Public Notice CRTC 2003-38, 16 July 2003
- *Direct-to-home (DTH) broadcasting distribution undertakings – simultaneous and non-simultaneous program deletion and the carriage of local television signals in smaller markets*, Broadcasting Public Notice CRTC 2003-37, 16 July 2003