



Broadcasting Regulatory Policy CRTC 2013-297

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Changes to the administration of the Canadian content development policy for commercial and ethnic radio

The Commission announces changes to the administration of the Canadian content development (CCD) policy for commercial and ethnic radio stations. Specifically, the Commission intends to amend the Radio Regulations, 1986 (the Regulations) to eliminate the requirement that stations with less than \$1,250,000 in revenues make basic CCD contributions. Today, the Commission has issued a notice of consultation calling for comments on the amendments. The change will not become effective and all current CCD requirements will remain in place until the amended Regulations come into effect at the end of the process initiated by that notice.

The Commission considers that this change will reduce the regulatory burden on the smallest stations, while maintaining funding for Canadian music and other creative initiatives through CCD contributions resulting from ownership transfer benefits, over-and-above contributions by newly licensed stations and basic CCD requirements for the largest stations.

The Commission also invites radio broadcasters to make greater use of their ability to seek advance guidance from Commission staff about new CCD initiatives. In addition, the Commission will enhance its web page containing lists of projects that have qualified as eligible for CCD support.

Introduction

1. In the Commercial Radio Policy (Broadcasting Public Notice 2006-158), the Commission set out its policy on Canadian content development (CCD) for commercial radio. CCD is a financial contribution made by broadcasters to a number of initiatives that aid in the development and promotion of Canadian musical and spoken word content for broadcast. Most applicants make specific CCD commitments as part of applications for new licences and as tangible benefits at the time of the transfer of ownership and control of radio programming undertakings. All commercial and ethnic stations are subject to regulations requiring annual CCD payments. The initiatives can be tailored in a flexible manner that is representative of the programming and revenues of particular stations.

2. The Commercial Radio Policy also put in place a broad approach vis-à-vis CCD by:
 - adopting a non-exhaustive list of initiatives eligible for CCD funding;¹
 - requiring that at least 60% of the basic annual CCD contribution be directed to FACTOR or MUSICACTION to ensure the continuity of assured funding to these important national vehicles for the development of a variety of Canadian artists, including new and emerging artists, with the remaining amount to be directed to any eligible CCD initiative at the discretion of the licensee;² and
 - introducing a formula based on revenue to calculate the required basic CCD contribution. Basic CCD contributions do not include CCD contributions made by such stations as a result of ownership transfer benefits or over-and-above contributions by such stations in their first licence terms.
3. However, since the Commercial Radio Policy was adopted, some of the discretionary initiatives that broadcasters have supported have subsequently been found to be ineligible for CCD funding. Moreover, some broadcasters have omitted information in their annual returns that is necessary for the Commission to properly assess the various projects that were funded.
4. In 2011, the regulation governing the basic CCD requirement was modified by the Commission to require stations with revenues over \$1,250,000 to devote 45% of their basic contribution to FACTOR or MUSICACTION and 15% to the Community Radio Fund of Canada.
5. As a result of difficulties in identifying which initiatives are eligible for CCD funding and the omissions in the filing of annual returns, the Commission has been challenged in assessing broadcasters' CCD performance in a timely fashion. Moreover, given that non-compliance is assessed at the time of renewal and that the instances of non-compliance have been numerous, the timely renewal of these licences has been

¹ As set out at paragraph 108 of the Commercial Radio Policy, the list of eligible initiatives includes, in addition to FACTOR and MUSICACTION, the following parties and initiatives:

- national, provincial, and territorial music industry associations;
- 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; and
- 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.

² Ethnic and spoken word stations may devote the FACTOR and MUSICACTION portions of their contributions to eligible initiatives that support the creation of programming appropriate to their formats.

problematic. Also there has been a significant increase in the number of requests made by broadcasters to obtain a formal interpretation of the CCD criteria from Commission staff to allow these stations to properly plan their CCD initiatives.

6. As a result of these challenges, in Broadcasting Notice of Consultation 2011-796, the Commission sought suggestions concerning administrative changes that would reduce or eliminate the difficulties in assessing the eligibility of CCD initiatives and facilitate the filing and auditing of annual return information. Two possible approaches were presented by the Commission at that time:
 - providing stations with the option of redirecting support for individual discretionary CCD projects to designated CCD funds, similar to independent video and new media production funds, that would provide financial support to individual eligible projects; and
 - eliminating the requirement to make basic CCD contributions of at least \$500 per year for stations with less than \$625,000 in revenues.
7. At the same time, the Commission also published Broadcasting Information Bulletin 2011-795, which set out the responsibilities of radio station licensees for the filing of complete annual returns, including the filing of CCD forms.
8. The Commission received a number of interventions in response to Broadcasting Notice of Consultation 2011-796, including comments by music industry organizations, individual broadcasters, alliances of broadcasters and others. A range of proposals was submitted to address the issues, as well as comments on the two approaches suggested by the Commission. The complete record for this proceeding can be found at www.crtc.gc.ca under “Public Proceedings.”

Regulatory framework

9. Section 3(1)(d)(ii) of the *Broadcasting Act* (the Act) specifies that the Canadian broadcasting system should encourage the development of Canadian expression by displaying Canadian talent in entertainment programming. Section 3(1) also states that:
 - (e) each element of the Canadian broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming;
 - (f) 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 these resources.

10. To help fulfill these objectives of the Act, commercial and ethnic stations are required, among other things, to provide airplay for the works of Canadian artists and to make financial contributions to CCD. As stated in the Commercial Radio Policy 2006-158, the Commission considers that well-targeted CCD initiatives allocated to the support, promotion, training and development of Canadian musical and spoken-word talent contribute to increasing the supply of and demand for high-quality Canadian music in a variety of genres, as well as the supply of spoken word material for broadcast.
11. At the same time, section 5(2) of the Act states that the Canadian broadcasting system should be regulated and supervised in a flexible manner that is sensitive to the administrative burden that may be imposed on persons carrying on broadcasting undertakings.

Commission's analysis and decisions

12. With respect to the two proposals made in Broadcasting Notice of Consultation 2011-796, the Commission notes that the vast majority of the interveners opposed the proposal to establish independent CCD funds that would receive and distribute discretionary CCD contributions. These included licensees such as Blackburn Radio Inc. (Blackburn), Evanov Communications Inc. (Evanov), Harvard Broadcasting Inc., MZ Media Inc., Newcap Inc. (Newcap) and My Broadcasting Corporation. The nature of the proposed funds would require the participation of a number of broadcasters to ensure their success in reducing or eliminating the difficulties relating to the eligibility of CCD initiatives. Accordingly, the Commission considers that this proposal has not attracted the support of enough stations to be practical. The Commission has therefore not retained the proposal.
13. However, the majority of interveners supported the proposed elimination of the requirement to make basic CCD contributions of \$500 per year for commercial and ethnic stations with less than \$625,000 in revenues, including most broadcasters, Canadian Music Week and the Canadian Academy of Recording Arts and Sciences/MusiCounts. The Canadian Independent Music Association expressed concern that “grass roots” projects would disappear, while Evanov and Media BemBem Inc. suggested that the problem of support to ineligible projects would be addressed if the basic \$500 CCD obligation were to be entirely directed to FACTOR or MUSICACTION. If implemented, the proposal to eliminate the requirement would reduce the number of stations with basic CCD obligations by about 24%, eliminating the issues discussed above for those stations.³
14. Given the support of the majority of interveners for the proposed elimination of the requirement to make basic CCD contributions for commercial and ethnic stations with less than \$625,000 in revenues, the Commission also examined the implications of eliminating the basic CCD requirement for commercial and ethnic stations with no more than \$1,250,000 in revenues, which represents \$1,000 each year for stations

³ Based on annual return data for the 2011-2012 broadcast year.

with revenues between \$625,000 and \$1,250,000. At present, this change would relieve about 51% of stations of their basic CCD obligations.

15. In considering how this last change would help fulfill the objectives of the Act, the Commission estimates that basic CCD spending during the 2012-2013 broadcast year would have been reduced by roughly \$260,000, based on the revenues reported by stations in their annual returns for the 2011-2012 broadcast year. The Commission estimates that one year's normal growth in overall basic CCD funding would far outweigh this loss. The Commission also notes that \$54 million in total expenditures were made by radio licensees during the 2010-2011 broadcast year as a result of ownership transfer benefits, over-and-above contributions by stations in their first licence terms and the basic CCD requirements, according to the Commission's *Communications Monitoring Report 2012*. In short, the Commission is confident that the system would continue to be well funded.
16. Further, the Commission notes that removing the basic CCD obligation for commercial and ethnic stations with no more than \$1,250,000 in revenues would eliminate the requirement to report on basic CCD spending (i.e. the filing of the CCD form and supporting documentation) in the annual returns of the smallest stations. As indicated in Broadcasting Notice of Consultation 2011-796, the submission of CCD information has often necessitated extra filings when these stations are required to more fully document their compliance with this obligation over several broadcast years. Accordingly, the regulatory burden on the smallest stations would be reduced, in line with section 5(2) of the Act. The Commission also considered the contributions such stations make to the achievement of the objectives of the Act by providing a local voice in the markets they serve.
17. Accordingly, the Commission considers that eliminating the requirement to make basic CCD contributions for stations with no more than \$1,250,000 in revenues would strike a balance between the policy objectives of the Act set out earlier. These stations could continue to contribute to local initiatives on a voluntary basis, while the larger elements of the radio broadcasting system would continue to make basic CCD contributions to independent parties to support the development of Canadian expression and thus would continue to make the maximum use of Canadian creative and other resources. CCD obligations flowing from the transfer of ownership of stations and "over-and-above" contributions for new stations would not be affected by this change.
18. In order to implement these determinations, the Commission is today issuing a notice of consultation calling for comments on amendments to the *Radio Regulations, 1986* (the Regulations) that will have the effect of eliminating the requirement to make basic CCD contributions for stations with no more than \$1,250,000 in revenues. All current CCD requirements will remain in place until the amended Regulations come into effect at the end of that process.

Other matters

19. To help clarify the types of initiatives that qualify for discretionary financial support under the CCD policy, the Commission's website includes an extensive list of examples of eligible initiatives.⁴ The website also includes general advice and information about initiatives eligible or ineligible for support.
20. The British Columbia Association of Broadcasters and an alliance of major radio licensees suggested that the list be updated more often and that more details about eligible and ineligible initiatives be provided. The Commission will adopt this recommendation and strongly encourages broadcasters to consult its website when considering where to allocate their discretionary CCD funds.
21. As mentioned above, Commission staff also responds to broadcasters seeking guidance about the eligibility of their individual discretionary CCD initiatives. It also receives requests for clarification from organizations seeking CCD support from broadcasters. In most cases, more information is required by Commission staff beyond that contained in the initial written proposals, creating delays. Blackburn and Newcap provided suggestions that would streamline this process.
22. To respond to these suggestions, the Commission's website will also include guidelines describing the kind of information that should be provided by broadcasters and recipient organizations seeking advance guidance from Commission staff. The provision of detailed information should expedite the advance guidance process.

Secretary General

Related documents

- *Call for comments on proposed administrative changes relating to the Canadian content development policy for commercial radio*, Broadcasting Notice of Consultation CRTC 2011-796, 20 December 2011
- *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

⁴ <http://www.crtc.gc.ca/eng/general/ccdparties.htm>