



Broadcasting Decision CRTC 2013-739

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Ottawa, 20 December 2013

0859291 B.C. Ltd.

Across Canada

Application 2013-1140-7

Eligibility of CHEK-DT Victoria for the Small Market Local Production Fund

*The Commission **approves** an application for CHEK-DT Victoria to be recognized 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 0859291 B.C. Ltd. requesting that CHEK-DT Victoria, British Columbia, be recognized as a small-market independently owned television station eligible for support from the Small Market Local Production Fund (the SMLPF) established pursuant to Broadcasting Public Notices 2003-37 and 2003-38.
2. The applicant stated that CHEK-DT met the following eligibility criteria:
 - 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; and
 - the station must provide local programming.
3. The eligibility criteria further specify that the station must serve a market with a population of fewer than 300,000. The licensee indicated that while the Victoria Central Market Area (CMA) has a population of 340,000, slightly exceeding the threshold, the market is served by two stations thereby increasing its competitiveness.
4. The licensee further submitted that all other stations that receive funding from the SMLPF operate in single station markets and are not subject to the competitive pressures that CHEK-DT faces. CHEK-DT competes in the Victoria market with CIVI-DT, which the Commission licensed in 2001. While the licensee acknowledged that CIVI-DT has always operated at a loss, it submitted that multiple ownership

changes culminating with the purchase of CTV Inc. by BCE and the subsequent addition of Astral Media's properties had ensured CIVI-DT's survival and affected CHEK-DT's ability to compete in the Victoria market.

Interventions and the applicant's replies

5. The Commission received an intervention in support of the application by Cedarwood Productions, an independent video production company in Victoria. Cedarwood Productions submitted that CHEK-DT provides strong support for local programming and considered that approval of the application would help sustain local television in Victoria. The Commission also received interventions opposing the application by The Coalition of Small Market Independent Television Stations (the Coalition) and Miracle Channel Association (Miracle Channel). Miracle Channel operates CJIL-TV Lethbridge. The Coalition requested an opportunity to respond to additional information provided by the licensee in its reply to interventions. The Commission granted this request and the response has been placed on the public file. The complete record for this application is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."
6. Both opposing interventions were from parties that currently receive funding from the SMLPF. These interveners were of the view that the application should be denied because the Victoria Central Market Area (CMA) exceeds 300,000, whereas the Commission's criteria provide that a qualifying station must serve a market with a population of fewer than 300,000. The Miracle Channel argued that accepting the applicant's argument would open the door for all independent broadcasters to receive funding from the SMLPF. The Coalition submitted that the rationale for the creation of the SMLPF would be fundamentally changed if stations serving markets larger than 300,000 were to qualify for funding, and that allowing CHEK-DT to benefit from the SMLPF would amount to a fundamental change in policy. The Coalition further argued that CHEK-DT's financial issues are related more to the competitive state of the market in which it operates than the impact of direct-to-home (DTH) distribution of stations.
7. With respect to market size, the applicant replied that, because Victoria was served by two stations, it would be appropriate to conclude that CHEK-DT serves half the population of the Victoria CMA, which would total 170,000 people. The Coalition disagreed with this approach, submitting that it would constitute a fundamental change in the Commission's policy.
8. The applicant also addressed the Coalition's submission that CHEK-DT's financial issues are related to the impact of DTH services in its market rather than the competitive environment in which the station operates. The applicant stated that, while it had brought the impact of CIVI-DT to the Commission's attention, CHEK-DT is also affected by the importation of distant signals by DTH services. These services provide programming that is the same as, or similar to, that which CHEK-DT offers in Victoria. Moreover, the applicant noted that the Commission acknowledged clearly in Broadcasting Public Notice 2003-37 that DTH services

affect independently owned stations such as CHEK-DT. The applicant also argued that it may be more adversely affected by audience fragmentation and duplication of programming than other independent stations. This is because it owns only one television station and must therefore pay more to purchase programming rights and lacks any economy of scale, unlike many of the other independent operators that obtain funding from the SMLPF, which generally operate two or more stations.

Commission's analysis and decisions

9. The Commission notes that CHEK-DT clearly meets three of the four criteria to qualify as a small-market independently owned television station eligible for support from the SMLPF. It is independently owned, available over-the-air, and provides local programming.
10. The SMLPF was created specifically to offset the impact of DTH services in small markets and not to offset any other competitive pressures that may be faced by independent operators. In that regard, the Commission agrees with the Coalition and finds that CHEK-DT's arguments with respect to the impact of CIVI-DT in the Victoria market is of no relevance in this matter. However, the Commission acknowledges the arguments made by CHEK-DT in respect of the impact of DTH services in the Victoria market and finds that CHEK-DT could be admissible to receive funding from the SMLPF on that basis.
11. In Broadcasting Public Notice 2003-37, the Commission did not set out a strict definition of the term "market" for the purpose of determining eligibility to receive funding from the SMLPF. A market may be determined by various measures depending on the issue at hand and the policy being applied. A variety of views as to how the market in question should be defined were suggested by the applicant and interveners in the present proceeding. The Commission is of the view that, in this case, using the population of the CMA served by the station, i.e. 340,000 people, is the most appropriate measure.
12. Applying this measure, CHEK-DT does not meet the fourth criterion given that the market that CHEK-DT serves exceeds the 300,000. While stating that the Victoria market, as defined by its CMA, includes approximately 340,000 people, the applicant has suggested that CHEK-DT might be viewed as a station that serves 170,000 people since there are two stations in the market. The Commission, however, agrees with the Coalition that adopting such an approach would mark a significant change to the Commission's normal practice and would effectively and fundamentally revise the SMLPF policy. Therefore, the Commission finds that, to be admissible to receive funding from the SMLPF, CHEK-DT would require an exception to the policy as it currently stands.

Is an exception warranted?

13. The SMLPF was created to help preserve independent broadcasting voices and to protect their ability to operate in an environment characterized by increased:

- penetration of distant signals obtained through DTH subscription;
 - industry ownership consolidation of broadcasting services;
 - availability of diverse programming on specialty services; and
 - migration of viewing from over-the-air stations to other programming sources.
14. The Commission considers that CKEK-DT suffers from the pressures noted above in the same way as other independent television stations that benefit from the SMLPF. While the Commission is not generally disposed to grant exceptions to the criteria set out in its policy, the Commission notes that the size of the Victoria CMA does not greatly exceed the maximum of 300,000 set out in the Commission's criteria.
15. The Commission is therefore of the view that approval of the application on an exceptional basis would assist in the maintenance, on-going development and production of Canadian programming, including local programming that reflects the community, for an independently owned television station that faces significant challenges.
16. In light of all of the above, the Commission **approves** the application by 0859291 B.C. Ltd. for CHEK-DT Victoria to be recognized as a small-market independently owned television station eligible for support from the Small Market Local Production Fund.

Secretary General

Related documents

- *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
- *Religious broadcasting policy*, Public Notice CRTC 1993-78, 3 June 1993