



Broadcasting Decision CRTC 2015-282

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References: 2015-84 and 2015-84-1

Ottawa, 25 June 2015

Aboriginal Voices Radio Inc.

Ottawa and Toronto, Ontario; Calgary and Edmonton, Alberta; and Vancouver, British Columbia

Applications 2014-0960-8, 2014-0959-0, 2014-0957-4, 2014-0955-8 and 2014-0956-6, received 22 September 2014

Public hearing in the National Capital Region

13 May 2015

CKAV-FM Toronto, CKAV-FM-2 Vancouver, CKAV-FM-3 Calgary, CKAV-FM-4 Edmonton and CKAV-FM-9 Ottawa – Revocation of licences

*The Commission **revokes** the broadcasting licences for the Type B Native radio stations CKAV-FM Toronto, CKAV-FM-2 Vancouver, CKAV-FM-3 Calgary, CKAV-FM-4 Edmonton and CKAV-FM-9 Ottawa held by Aboriginal Voices Radio Inc. (AVR), effective **25 July 2015**. The licensee must cease broadcasting by no later than the end of the broadcast day on that date.*

The Commission's decision to revoke is based on AVR's repeated and serious non-compliance with its regulatory obligations over four consecutive licence terms, as detailed in the appendix to this decision, as well as the Commission's complete lack of confidence in the licensee's ability to broadcast in compliance with those obligations going forward and therefore meet the unique needs of Aboriginal people.

For the most recent licence term, AVR admitted to the following instances of non-compliance at the 13 May 2015 public hearing:

- *failure to file complete and accurate program logs and logger tapes, as required under sections 8(4) and 8(6) of Radio Regulations, 1986 (the Regulations);*
- *failure to file annual returns for the 2013-2014 broadcast year for its five stations, as required under section 9(2) of the Regulations;*
- *failure to broadcast regular daily local newscasts on each station that include at least five distinct local news stories of direct and particular relevance to the Aboriginal community within the market served (condition of licence 2);*

- *failure to file complete annual updates on the achievement of its business objectives (condition of licence 9); and*
- *failure to file audited financial statements for each of its stations (condition of licence 10).*

The original decisions to license AVR followed a series of competitive processes in 2000 and 2001 and were taken on the basis that its service would serve the public interest and contribute to fulfilling the policy objectives set out in sections 3(1)(d)(iii) and 3(1)(o) of the Broadcasting Act (the Act) to reflect the special place of Aboriginal peoples within Canadian society. In particular, AVR's vision included a commitment to a series of radio stations with local programming serving the needs, interests and concerns of Aboriginal Canadians, particularly those living in urban areas.

However, based on a complete and detailed evidentiary record and fulsome oral hearing, the Commission finds that the Aboriginal community has not been well served by the AVR stations. For example, the Ottawa station has not been broadcasting since Fall 2014 and therefore this market has not been receiving any of the Aboriginal music or spoken word programming that AVR offers. Further, the licensee admitted that it had not been providing the local programming and news it had committed to offer in the other four markets it is licensed to serve.

As a result, the Commission is not convinced that, if renewed, the licensee would operate its stations in a manner that would adequately fulfill its mandate to serve the Aboriginal community.

Future call for applications to serve Canada's urban Aboriginal communities

Existing Aboriginal broadcasters play an essential role in serving the Aboriginal population across the country. Radio services designed to serve the urban Aboriginal communities in Toronto, Vancouver, Calgary, Edmonton and Ottawa could complement these existing services in a way that would contribute to fulfilling the objectives of the Act. Moreover, there is a pressing need to serve the Aboriginal community as a whole given that issues vitally important to Aboriginal Canadians are not fully covered or addressed at all in other, non-Native media. Consequently, and as a priority, the Commission intends to issue a call for applications and hold a hearing to license new services that would fulfill this mandate.

Applications

1. The Commission received applications by Aboriginal Voices Radio Inc. (AVR) to renew the broadcasting licences for the Type B Native radio stations CKAV-FM Toronto, CKAV-FM-2 Vancouver, CKAV-FM-3 Calgary, CKAV-FM-4 Edmonton and CKAV-FM-9 Ottawa, which expire 31 August 2015. AVR proposed to operate its undertakings **under the same terms and conditions as those in effect under the current licences.**

2. In a letter of 6 March 2015, AVR initially requested an exception to the requirement that it operate as a not-for-profit corporation, in accordance with Public Notice 1990-89 (the Native Broadcasting Policy). AVR subsequently withdrew this request at the hearing.
3. On 8 May 2015, AVR filed additional information on the record, outlining its new business plan developed with Bray & Partners Communications (Bray). These documents included its proposed programming strategy in terms of format, target audience, music, news and enriched spoken word programming to be developed for each of AVR's stations, as well as three-year revenue projections and operating budget.

Interventions

4. The Commission received interventions supporting the applications, as well as opposing interventions by the Canadian Association of Aboriginal Broadcasters (CAAB), Torres Media Ottawa Inc. (Torres) and certain individuals. The public record for these applications can be found on the Commission's website at www.crtc.gc.ca or by using the application numbers provided above.
5. The CAAB is a national organization of Aboriginal broadcasters that includes the television broadcaster APTN and Native radio operators with stations and service in urban markets such as Edmonton, Winnipeg, Regina and Saskatoon, as well as in northwestern British Columbia, many smaller centres, and rural and remote communities in the West and Yukon Territory. The CAAB argued that there is no relationship between ownership structures and the ability to generate advertising or other revenue to attract financing and that its members, who operate on a not-for-profit basis, have managed to generate advertising and other revenues in order to provide service to their communities. The CAAB also noted that the markets in which AVR operates represent excellent opportunities for radio services to attract advertising and that AVR had presented no information to support its claim that its not-for-profit status has prevented it from offering a popular service that resonates with audiences and advertisers.
6. Torres opposed AVR's request to operate on a for-profit basis as this would allow AVR to operate as a fully commercial station.

Background

7. AVR was granted the licences being considered for renewal in this decision following a series of competitive processes in 2000 and 2001.¹ AVR's vision included a

¹ See Decisions 2000-204, 2001-314, 2001-172 and 2001-627. Although AVR received authority to launch radio stations in Montréal, Kitchener, Regina and Saskatoon, none of those stations is currently in operation. While the licensee launched stations in Montréal and Kitchener in 2006 and 2007, the broadcasting licences for those stations were revoked in April 2009 at AVR's request. With respect to Regina and Saskatoon, the authorized stations were not launched and AVR allowed the authority to launch those stations to expire.

commitment to a series of radio stations with local programming serving the needs, interests and concerns of Aboriginal Canadians, particularly those living in urban areas. For example, in the application for a station in Edmonton dated 4 September 2002, AVR stated the following:

Programming will reflect the Aboriginal Canadian experience. Newscasts, public affairs programs and telephone talk shows will address the needs and interests and concerns of Indian, Inuit and Métis Canadians, particularly those who live in large urban centres like Edmonton.

The new Aboriginal radio service in Edmonton will feature a regular two to five-minute news package of top Canadian Aboriginal news stories and other international indigenous news. News stories selection will focus on events which impact Canada's urban Aboriginal communities that have been overlooked and under reported by other news sources.

8. AVR was first called to appear before the Commission in October 2006 in relation to the renewal of its Toronto, Vancouver, Calgary and Ottawa stations.² In Broadcasting Decision 2007-121, the Commission found AVR in non-compliance with sections 8(5), 8(6) and 9(2) of the *Radio Regulations, 1986* (the Regulations) regarding the filing of logger tapes and annual returns for its Toronto station. The Commission also expressed concerns with respect to the broadcasting of spoken word programming, local programming, Aboriginal-language programming and vocal music selections. AVR stated that the addition of new team members with relevant expertise (regulatory, technical, managerial, etc.) should aid in its continued progress. AVR was granted a short-term renewal of four years for each of its licences.
9. In May 2010, AVR was again called to appear before the Commission regarding the renewal of its licences. In Broadcasting Decision 2010-615, the Commission found AVR in non-compliance with section 9(2) of the Regulations due to its late filing of its annual returns, as well as with its condition of licence relating to the broadcast of local programming. The Commission expressed concerns about the financial viability of AVR's stations and its ability to fulfill its mandate for the Aboriginal community it is licensed to serve. In response to these concerns, AVR committed to ensuring a local studio presence and local staff in each of the markets it serves. AVR also acknowledged the importance of increasing listening and revenues and filed a set of strategic objectives to achieve these goals after the hearing. To ensure that AVR would operate in a manner consistent with its regulatory obligations and its mandate to serve the Aboriginal community, the Commission took a number of steps, including the following:
 - amending AVR's conditions of licence with respect to local programming and the broadcast of local newscasts to require spoken word material of direct and particular relevance to the community served and regular daily local

² AVR's Edmonton station was not considered at this hearing given that its licence was set to expire on 31 August 2010.

newscasts on each station (i.e. at least five distinct local news stories for each market served by AVR per broadcast day);

- requiring AVR to file a report setting out the details of the implementation of its strategic objectives by 30 September 2011;
- renewing the licences of the stations for a short term (two years); and
- imposing a mandatory order pursuant to section 12(2) of the *Broadcasting Act* (the Act) requiring AVR to comply with section 9(2) of the Regulations.

10. The Commission also put the licensee on notice that future non-compliance could result in additional measures, including short-term renewal, suspension, non-renewal or revocation of the licences.
11. In June 2012, AVR was called to appear before the Commission for a third time with respect to the renewal of the licences for its stations. In Broadcasting Decision 2012-653, the Commission found AVR in non-compliance with its condition of licence requiring it to broadcast daily local newscasts on its stations in Vancouver, Calgary and Edmonton, as well as with its condition of licence requiring it to broadcast structured enriched spoken word programming on its stations in Vancouver and Calgary. AVR was also found not to be offering the quality programming it proposed when first licensed. Finally, the Commission expressed serious concerns about the viability of the five stations given AVR's reliance on funding from Canadian content development (CCD) contributions set to diminish every year and expire after the 2015-2016 broadcast year.
12. To address these issues, the Commission put in place a number of measures, including requiring AVR to file an annual update on the achievement of its business objectives and audited financial statements for each of its radio stations as part of its annual returns to be filed on 30 November of each year. It also reiterated its expectation that AVR maintain a studio presence in each of its five markets.
13. AVR's licences were renewed until 31 August 2015, which the Commission stated would provide AVR with a reasonable amount of time to implement its business plan and improve the quality of its programming prior to the next Commission review. In light of the licensee's repeated non-compliance and many expressions of concern by the Commission over three licence renewals, the Commission stressed that it strongly expected AVR to improve the performance of each of its stations during the new licence term.
14. However, in Broadcasting Notice of Consultation 2015-84, the Commission noted several instances of apparent non-compliance by AVR with the Regulations and its conditions of licence during the current licence term. The Commission also noted that it appeared that the licensee had failed to develop and implement a viable business plan during the current licence term and was not providing the originally proposed quality service, to the detriment of Aboriginal people in Canada's urban centers.

15. The Commission stated its intention to inquire into the following matters, among others, at the 13 May 2015 public hearing: the apparent instances of non-compliance, the stations' funding and the viability of AVR's business plan, as well as its capacity to provide a quality service to the Aboriginal communities in the markets it serves, including station presence and staff levels for each station, local newscasts and spoken word programming. The Commission added that it intended to consider the renewal of AVR's broadcasting licences according to the approach set out in Broadcasting Information Bulletin 2014-608, including the use of any or all of the measures set out at paragraph 7 of that bulletin.
16. Finally, given the nature and the number of instances of apparent non-compliance and other concerns noted above, the Commission stated that it expected the licensee to show cause at the hearing:
- why its licences should not be suspended or revoked pursuant to sections 9 and 24 of the Act; and
 - why, if the licences were renewed:
 - the renewal should not be for a short term; and
 - a mandatory order should not be issued under section 12 of the Act requiring AVR to comply with the Regulations and its conditions of licence.
17. The licensee was advised both in the notice of hearing and at the hearing that the burden rested on it to show cause why its licences should be renewed and why measures, including revocation, non-renewal, suspension and mandatory orders, should not be taken.³

Regulatory framework

18. Pursuant to section 5(1) of the Act, the Commission's mandate is to regulate and supervise all aspects of the Canadian broadcasting system in the public interest.
19. In pursuing this mandate as it relates to radio licensees, the Commission relies on a number of provisions set out in the Regulations, including the following:
- A licensee shall furnish, to the Commission on request, its program log or machine readable record for any day, with a certificate by or on behalf of the licensee attesting to the accuracy of its content – section 8(4);

³ See Broadcasting Notice of Consultation 2015-84 and transcript of 13 May 2015 public hearing (Transcript), para. 33.

- Where...the Commission requests from the licensee a clear and intelligible tape recording or other exact copy of matter broadcast, the licensee shall furnish it to the Commission forthwith – section 8(6);
 - On or before November 30 of each year, a 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 – section 9(2); and
 - At the request of the Commission, a licensee shall respond to any request for information regarding the licensee’s adherence to the conditions of its licence, the Act, these Regulations, industry standards, practices or codes or any other self-regulatory mechanism of the industry – section 9(4)(b).
20. Where it deems it necessary, the Commission may also have recourse to additional measures, as it did when it imposed conditions of licence pursuant to section 9(1)(b) of the Act in Broadcasting Decision 2012-653 requiring AVR to broadcast distinct news stories of direct and particular relevance to the Aboriginal community within the market served (condition 2), as well as file annual updates on the achievement of its business objectives (condition 9) and audited financial statements for each of its stations (condition 10).
21. The Commission considers all decisions in light of the policy objectives set out in the Act, including the following:
- the Canadian broadcasting system should, through its programming and the employment opportunities arising out of its operations, serve the needs and interests, and reflect the circumstances and aspirations, of Canadian men, women and children, including equal rights, the linguistic duality and multicultural and multiracial nature of Canadian society and the special place of aboriginal peoples within that society – section 3(1)(d)(iii); and
- programming that reflects the aboriginal cultures of Canada should be provided within the Canadian broadcasting system as resources become available for the purpose – section 3(1)(o).

Non-compliance over the current licence term

Filing of complete and accurate program logs and logger tapes

22. AVR failed to file program logs and logger tapes for its stations by 18 July 2014, as requested in a letter by Commission staff dated 2 June 2014. After repeated requests, the licensee submitted program logs and logger tapes on 29 September 2014. However, the program logs provided were in a format (Notepad) that was not readily readable. Further, the audio recordings provided for the Ottawa station were from the wrong year (i.e. 2013), and the audio recordings for all other stations were missing parts of the requested broadcast week (25-31 May 2014), as follows: 40 minutes for Toronto, 6 hours for Vancouver, 7 hours for Calgary and 9 hours for Edmonton.

23. AVR admitted that the failure to file complete logs constituted non-compliance and stated that it would file its 2014 Ottawa audio recordings by 31 March 2015, but failed to do so. However, in its written responses, AVR argued that filing the documents late did not constitute non-compliance since neither section 8(4) nor 8(6) establishes a firm deadline for filing these documents and that given its financial capacity it had done so forthwith. AVR also stated that it was unaware that material provided in Notepad was unreadable and that it converted and reformatted the program logs once this was brought to its attention. When questioned on this topic at the hearing, AVR did not contest the facts and stated that it understood the importance of filing proper logs.⁴

Commission's analysis and decisions

24. The submission of logs and logger tapes is a basic and fundamental requirement of all radio stations regardless of the station's location or type. The submission of complete and accurate logs and logger tapes enables the Commission to conduct an analysis of a station's programming to verify compliance with the Regulations and conditions of licence, including, in the case of AVR, its obligations to provide local spoken word programming and local newscasts of direct and particular relevance to the Aboriginal community within the market it is licensed to serve (conditions 1 and 2).

25. The requirement to provide logs and records upon request and forthwith means within the timeframe specified in the request. Although the Regulations do not specify a specific format in which logs are to be submitted, it is a fundamental premise that any record must be readable. In this case, the Notepad format provided a stream of information that was not understandable without significant and time-consuming conversion on the part of Commissions staff. Although AVR stated that it converted the logs, the Commission has no record that this new version was filed with the Commission.

26. In light of the above, the Commission finds the licensee in non-compliance with sections 8(4) and 8(6) of the Regulations for the current licence term.

Filing of annual returns

27. AVR did not file annual returns for its stations for the broadcast year ending 31 August 2014 by the 30 November deadline. Instead, on 1 December 2014, AVR submitted a rough, unaudited financial summary of its five stations.

28. AVR admitted that this constituted non-compliance and initially stated that annual returns would be filed with the Commission by 31 March 2015. At the hearing, AVR stated that annual returns would be submitted within 30 days, but then noted that it had not "put together the financing to do an audit in 30 days on the broadcast year" as

⁴ AVR letter to Commission dated 6 March 2015, answers to questions 9, 10 and 11 and Transcript, paras. 170-185.

opposed to the fiscal year and that it might take longer to convert all systems over to a per station per broadcast year basis.⁵

Commission's analysis and decisions

29. The requirement to file annual returns is clearly indicated in the Regulations. The Regulations also clearly set out the form and required date for the filing of these returns. AVR has been the subject of a mandatory order in a previous licence term because of its failure to file annual returns on time and was therefore fully aware of this requirement and the importance the Commission places on compliance.
30. In light of the above, the Commission finds the licensee in non-compliance with section 9(2) for the 2013-2014 broadcast year.

Responding to a request for information by Commission staff

31. The licensee failed to file its applications for renewal by 29 August 2014 as requested by Commission staff in a letter dated 18 June 2014. Following two requests for extensions (until 12 September and 19 September), AVR submitted its licence renewal applications on 22 September 2014.
32. AVR did not dispute the facts. However, in its written submissions AVR argued that its filing of the application forms on 22 September 2014 did not constitute non-compliance with section 9(4) of the Regulations, stating that this section did not apply to the submission of licence renewal applications.⁶

Commission's analysis and decisions

33. The Commission is charged with the supervision and regulation of the Canadian broadcasting system. As such, to adequately perform its duties, it must at all times be in a position to contact the licensees of the broadcasting undertakings it licenses. Therefore, the inability or unwillingness to respond to the Commission in a timely fashion is cause for serious concern.
34. The timely filing of the renewal applications was necessary to allow the Commission sufficient time to review the licensee's compliance with its regulatory obligations before the expiry of the licences. It was therefore clearly a request made pursuant to section 9(4)(b) of the Regulations.
35. In light of the above, the Commission finds the licensee in non-compliance with section 9(4)(b) of the Regulations for the current licence term.

⁵ Letters from AVR to the Commission dated 6 March 2015 and 31 March 2015, answers to question 17 and Transcript, paras. 201-211.

⁶ AVR letter to the Commission dated 6 March 2015, answer to question 16 and Transcript, paras. 212-218.

Broadcast of distinct local news stories of direct and particular relevance to the Aboriginal community within the market served

36. AVR is required to broadcast regular local newscasts on each station that include at least five distinct local news stories each broadcast day for each market served. Distinct local news stories are defined as “those that incorporate spoken word material of direct and particular relevance to the Aboriginal community within the market served.” In other words, the event discussed in the news story must have occurred in or be directly linked to the station’s market based on the definition of “market” set out in the Regulations, which is the FM 3 mV/m contour or the central area as defined by Numeris (formerly BBM Canada), whichever is smaller.
37. Over the week of 25-31 May 2014 examined by the Commission, AVR failed to broadcast five distinct local news stories per broadcast day for its Toronto station. Specifically, only one newscast was aired on 29 May 2014 (at 10:34 a.m.) and this newscast included only two news stories, one sports story and a brief weather report. AVR admitted that this constituted non-compliance with its condition of licence.⁷ In addition, while five distinct local news stories were broadcast on 27 May 2014, Commission staff who monitored the audio recording were unable to identify any news stories of direct or particular relevance to the Aboriginal community in any of the newscasts.
38. On 6 February 2015, Commission staff sent a letter to AVR requesting that it provide examples of five distinct local news stories for each market served per broadcast day. For each example, AVR was to identify the date and time at which the material was aired and provide a brief description of each story.
39. On 31 March 2015, AVR submitted an attachment itemizing a total of five news stories which it stated were aired on each station each day throughout the week of 25-31 May 2014. However, since no times were indicated in the document, Commission staff could not confirm when the stories aired by comparing them to the audio recordings provided for each station.
40. In their written submission and at the hearing, AVR argued that every news story aired on 27 May 2014 was of direct and particular relevance to the Aboriginal community. This would include sports, weather, traffic or road updates, as well as stories on general political issues such as the health of Rob Ford. It argued that the fact that a given event, news story or information item was not confined in its effect to the Aboriginal people in the community or Aboriginal issues did not mean that it did not fall within the particular interests of the urban Aboriginal community AVR serves. It also submitted that Indigenous people have a cultural inclination to know about the events and peoples around them, have a particular perspective and may be

⁷ Transcript, para. 359.

differentially impacted by events occurring in their community, regardless of whether the story is specific to the Aboriginal community.⁸

41. AVR cautioned that “the Commission ought not to attempt to define what is and what is not relevant to the Aboriginal community as this runs the risk of supporting and perpetuating stereotypes regarding what it means in Canada to identify as an Aboriginal person.” Noting that the Native Broadcasting Policy states that it is the Aboriginal broadcasters themselves who are best qualified to determine and meet the needs of their audiences, AVR submitted that the interpretation of what was or was not relevant to its listeners rested solely with itself.⁹
42. At the hearing, the CAAB was asked if it considered that general news stories about sports, weather or the health of the city’s former mayor constituted “material of direct and particular relevance to the Aboriginal community” as required by AVR’s condition of licence. The CAAB replied that it would not. While its members might include such stories in their newscasts, they would not be considered stories specific to the Aboriginal community as these types of stories are available on other, non-Native stations. Instead, in serving their communities, the CAAB’s members focus on providing stories about topics such as missing and murdered Aboriginal women, the environment and gas pipelines not covered by the mainstream media. Its members may include general sports or weather items to complement these stories or they may do so from an Aboriginal perspective, such as focusing on the achievements of a First Nations player, but they would not consider airing these general stories by themselves as serving the Aboriginal community.¹⁰

Commission’s analysis and decisions

43. Even if one accepts AVR’s position with respect to the interpretation of what constitutes a news story of direct and particular relevance to the Aboriginal community, the licensee did not air five distinct local news stories on 29 May 2014 as required by its condition of licence 2.
44. This condition of licence was imposed and subsequently amended and strengthened specifically to address AVR’s failure to fulfill its commitment to provide news programming that reflected its mandate to serve Canada’s urban Aboriginal communities in a way that distinguished it from commercial radio stations. The Commission acknowledges that news coverage of local, national and international events are of interest to AVR’s Aboriginal listeners and that the way a story is covered or the choice of stories covered can provide a uniquely Aboriginal viewpoint and make these stories of direct and particular relevance to Aboriginal Canadians. However, nothing in AVR’s responses provided concrete evidence that this was the case for the stories aired on 27 May 2014.

⁸ Letters from AVR to Commission dated 6 March 2015 and 31 March 2015, answers to questions 12 and 14 and Transcript, paras. 310-367.

⁹ See footnote 8.

¹⁰ Transcript, paras. 1213-1225.

45. In light of the above, the Commission finds the licensee in non-compliance with its condition of licence relating to the broadcast of daily local newscasts for its Toronto station.

Filing of annual updates on the achievement of AVR's business objectives

46. AVR is required to file an annual update by 30 November of each year setting out how it is achieving its business objectives. The annual update must include specific information, namely a breakdown of advertising and non-advertising revenues, detailed marketing strategies and tactics for each market, copies of market research and a detailed breakdown of all staff (including contractors and sales and marketing staff), their location, responsibilities and compensation.

47. AVR filed annual updates on the achievement of its business objectives by the 30 November deadline for each of the 2012-2013 and 2013-2014 broadcast years. However, the following required information was missing from both annual updates:

- the 2012-2013 annual update did not include compensation figures for staff; and
- the 2013-2014 annual update did not include the location of the majority of the staff.

48. AVR later provided the missing information in its deficiency response dated 31 March 2015. AVR submitted that its actions did not constitute non-compliance, stating that the submissions had substantially complied with the requirement to file annual updates and that failure to provide a complete breakdown of all the information was a case of human error and oversight. However, at the hearing, AVR admitted that filing the information late did not rectify any non-compliance.¹¹

Commission's analysis and decisions

49. The requirement to file annual updates was imposed on AVR as a way for the Commission to monitor its progress towards financial viability and its ability to serve its audience. Information about staffing levels and the location of staff was specifically requested after AVR could not provide this information at the 2012 hearing. This information was critical to evaluating AVR's capacity to serve its local market. All of the required content was important for the Commission to conduct this monitoring.

50. In light of the above, the Commission finds the licensee in non-compliance with its condition of licence 9 relating to the filing of annual updates.

¹¹ Letter from AVR to the Commission dated 31 March 2015, answers to the question entitled "Condition of licence 9" and Transcript, paras. 212-234.

Filing of audited financial statements for each of AVR's stations

51. AVR is required by condition of licence to file audited financial statements with the annual returns submitted in accordance with section 9(2) of the Regulations for each of its radio stations.
52. For the 2012-2013 broadcast year, the licensee filed one set of audited financial statements for the licensee as a whole instead of separate financial statements for each of its five stations. Further, the financial statements were filed for the fiscal year ending 31 March, not the broadcast year ending 31 August.
53. Similarly, for the 2013-2014 broadcast year, the licensee submitted unaudited financial statements for the licensee as a whole instead of separate financial statements for each of its five stations. Once again, the statements reflected the fiscal, not the broadcast year.
54. AVR also filed reviewed (not audited) financial statements as at 31 August 2014 for the licensee as a whole. On 2 April 2015, AVR submitted audited financial statements as at 31 March 2014 for the entity Aboriginal Voices Radio Inc., as well as reviewed financial statements (not audited).
55. AVR admitted that this represented non-compliance with its condition of licence relating to the filing of audited financial statements.¹²

Commission's analysis and decisions

56. This condition of licence was imposed as a direct result of AVR's past non-compliance. At the last licence renewal for the stations, the Commission expressly rejected the argument that obtaining audited financial statements was an inefficient use of AVR's limited resources, finding that it was a necessary obligation given AVR's receipt of CCD funding and the need to monitor its financial viability. The Commission remains of the view that the provision of audited financial statements is essential to its ability to assess the financial viability of the stations.
57. In light of the above, the Commission finds the licensee in non-compliance with its condition of licence 10 relating to the filing of audited financial statements for each of its stations.

Ability of the licensee to meet its regulatory commitments and mandate

Licensee's explanations of the circumstances leading to non-compliance

58. When asked to explain the circumstances surrounding its non-compliance, the licensee stated that the non-compliance was a direct result of its inability to attract meaningful investment and advertising revenues and its resulting lack of staff and

¹² Letter from AVR to the Commission dated 31 March 2015, answers to question 19 and Transcript, paras. 288-298.

resources. In particular, the licensee pointed to the constraints associated with having to operate as a not-for-profit organization pursuant to the Native Radio Policy, the expensive nature of meeting some of its obligations related to news and local programming, the highly competitive markets in which it operates and the necessity to allocate its limited resources to larger questions of long-term viability.

59. Similar explanations were provided by the licensee at each of the previous three renewal hearings. In the last renewal decision, the Commission specifically stated that it was concerned that AVR was not allocating sufficient resources to vital elements such as programming and sales and marketing, adding that it considered that an effective allocation of AVR's limited resources would be critical if it was to overcome its financial challenges.
60. Notwithstanding these admonitions, in the current licence term AVR laid off almost all of its sales and programming staff in 2014. Of the remaining five staff members, four were executives. By its own admission, these remaining staff members were focused on larger questions of financial viability rather than ensuring regulatory compliance.¹³ As a case in point, in explaining how AVR could be unaware that its stations in Edmonton and Calgary had gone off-air, the licensee stated: "We weren't necessarily focused on, you know, monitoring the station every day simply because we did not have the personnel to do that and we were trying to reinvigorate AVR as an operation."¹⁴
61. Moreover, even after entering into its agreement with Bray, the licensee has continued to operate in non-compliance with its regulatory obligations. AVR admitted that it was putting together the software and logs necessary to respond to Commission requests for logs and records, stating that these systems were "for the most part" in place but that the work was not complete.¹⁵ The licensee also admitted that it was not currently airing any news stories because of a lack of staff. AVR's position was that it was in the midst of a transition period and that its focus was on developing and implementing the larger business plan, with the expectation of being in full compliance only by the beginning of the next licence term in September 2015.
62. A responsible licensee would have prioritized compliance with its regulatory obligations, especially given the history of the stations. Instead, AVR's actions demonstrated a cavalier attitude towards compliance with its regulatory obligations. AVR has concentrated its resources and efforts on executive and planning functions to the detriment of its programming and reporting obligations.

AVR's new business plan

63. Given the role that AVR's lack of financial stability has played in its inability to fulfill its mandate to serve the Aboriginal community, the licensee's financial

¹³ Transcript, paras. 105-106.

¹⁴ Transcript, para. 436.

¹⁵ Transcript, paras. 188-197.

viability has been of recurring concern to the Commission, as emphasized in each renewal decision for the stations. The Commission has consistently questioned AVR about its business plan and its ability to obtain revenues from sources other than CCD contributions. The Commission was so concerned about this issue that it specifically imposed obligations on AVR to file regular updates about its business strategies over the two most recent licence terms.

64. In Broadcasting Decision 2012-653, the Commission stated that it considered that a short-term renewal of two years would “provide reasonable time to AVR to implement its business plan and improve the quality of its programming prior to the next Commission’s review of the licensee’s performance and achievements in terms of its business objectives.” By linking the short-term renewal to the implementation of AVR’s business plan and the next review of its performance, the Commission clearly indicated that it was incumbent on the licensee to demonstrate actual implementation of its business objectives and improve the quality of its programming within the specified timeframe.
65. Despite this clear signal, AVR has not shown that it was dealing expeditiously with its urgent financial challenges. For example, in the annual update filed on 2 December 2013, AVR did not submit any concrete marketing strategies, simply stating that its efforts would be focused on generating revenues in the Toronto market. Nor did AVR conduct or commission any market research or studies aside from purchasing a subscription of the BBM report for the Toronto market. Similarly, AVR did not submit any marketing strategies nor any market research or studies for the annual update filed on 1 December 2014, nor with its reply letters of 6 and 31 March 2015, although specifically requested in staff deficiency questions.
66. It is only at the end of the day on 8 May 2015, five days before the hearing, that AVR detailed its strategy to increase revenues in the event of a renewal. The business plan stated that all funding for AVR’s operations would come from advertising revenues. The necessary increase in advertising revenues was predicated on an increase in tuning, which the licensee submitted would be made possible through the implementation of two strategies to improve its position in the radio markets it serves, namely converting to the soft adult contemporary format and offering “advertiser-oriented-content, i.e. content that stands on its own as compelling content and also serves the marketing needs of the clients.”¹⁶
67. While supported by a consulting group with extensive experience, this plan did not include the type and level of detail necessary to convince the Commission of its viability. In particular, the Commission finds that the financial projections filed as part of AVR’s business plan are untenable given AVR’s historical financial performance. Moreover, the projected increase in revenues is dependent on an increase in tuning, but little market research or quantitative evidence was provided to substantiate the projected increase in tuning.

¹⁶ AVR business plan, p. 12.

68. More fundamentally, however, the plan was still a plan. At the hearing, AVR spoke of the types of advertisers it planned to approach, as well as the type of advertising spots (primarily advertiser-oriented content) that it intended to pursue. However, AVR could not provide concrete examples of advertisers who had agreed to purchase advertising time on the stations. In fact, AVR stated that it had not yet put together presentations to approach advertisers because of the uncertainty surrounding its licensing status. In its description of its business plan, AVR consistently used expressions such as “developing,” “being put into place,” “relatively new” and “putting together.”¹⁷
69. AVR stated that the plan had not yet been implemented due to the delay in finalizing its agreement with Bray, which it argued was unavoidable. However, the Commission’s expectations in this regard were clearly articulated in its previous decision issued over 29 months prior to the hearing date. As such, a responsible licensee would have understood that it must be able to demonstrate not only that it had a plan to ensure financial viability and meet the needs of the Aboriginal community, but that this plan was achievable and had in fact been implemented.
70. The Commission is also concerned by the degree of delegation of key programming and advertising roles to Bray by AVR, which is and would remain the licensee. For example, at the hearing, AVR’s CEO was not able to provide an answer as to how many staff AVR currently employs, nor how their work is allocated among the stations, but instead pointed to the panel members from Bray to outline their staffing plans. It appears that the relationship with Bray involves not only the provision of temporary or strategic expertise in hiring and training AVR staff, but instead the actual long-term provision of that staff, leaving little to no expertise with the licensee should the contract be terminated.

Quality of service to the Aboriginal community

71. When it was initially licensed, AVR proposed a Toronto-based national service, broadcasting primarily in the English-language with regular inclusion of Canada’s various Aboriginal languages, as well as some programming in French and Spanish. This service, with its focus on the needs of the Aboriginal communities in the urban markets AVR is licensed to serve, was to contribute to the fulfillment of the policy objectives of the Act. In particular, AVR stated that its programming would serve to reinforce unique Aboriginal cultural identities and languages, as well as provide positive role models for youth and a positive and balanced portrayal of Canada’s Native population. The other AVR stations licensed were to follow the same model and local programming was to be rolled out in the first licence term.
72. However, the reality has been that the Aboriginal community has not been well served by the AVR stations. The Commission acknowledges the work of AVR in broadcasting Aboriginal music and some spoken word programming. However,

¹⁷ For example, see Transcript, paras. 141-144, 190, 193, 197, 269, 364, 370, 384, 593, 757, 764 and 805.

AVR's Ottawa station has not been broadcasting since Fall 2014 and therefore this market has not received even this limited level of service. In the other four markets, AVR admitted that it had not been providing the local programming and news it had committed to offer.¹⁸

73. Moreover, AVR's attitude during this renewal process does not provide the Commission with confidence that the licensee understands or can deliver on its mandate as a Native Type B radio station with a focus on serving the Aboriginal communities in its urban markets. For example, Bray's business plan proposed to remove the word Aboriginal from the branding of the stations and to focus on a soft adult contemporary music format with a target audience aged 35-64 and a female skew. While AVR argued that this format works well with the Aboriginal music and cultural programming it broadcasts, it is telling that its stated target audience is female rather than Aboriginal.
74. The Commission is also concerned about AVR's Toronto-focused approach. Although the business plan does provide for local news and programming staff, AVR has made similar promises regarding local presence in the past, and the concentration of AVR and Bray employees with managerial roles in Toronto suggests a continued Toronto focus. In particular, the Commission's discussions with the licensee at the hearing about its news programming commitments indicate that the licensee continues to interpret its local news mandate in an extremely general way. It continued to focus on the expense of creating new and original news programming, while downplaying the importance such unique programming would have in fulfilling its mandate to serve the urban Aboriginal community.
75. The Commission has in the past attempted to ensure that AVR will fulfill this mandate by imposing increasingly strict and specific conditions, which AVR continues to interpret in a way that does not fit with the spirit of its mandate. Consequently, the Commission is not confident that AVR's news coverage would provide a true alternative to the numerous commercial news options available in these markets, as originally proposed by the licensee.

Conclusion

76. The Commission has reviewed the various measures it may adopt to ensure that broadcasting licensees meet their obligations where it finds that they are in non-compliance, such as mandatory orders and short-term renewal, suspension, non-renewal or revocation of the licence, all of which were set out in Broadcasting Notice of Consultation 2015-84 and discussed with the licensee in staff deficiency questions and at the hearing.
77. The licensee stated at the hearing that it accepted the seriousness of its non-compliance and responsibility for its regulatory obligations. It submitted that a short-term renewal would be appropriate under the circumstances, but that no other

¹⁸ Transcript, paras. 104 -105.

actions were required. It also indicated that it would comply with any mandatory order issued, but that such an order was not necessary because it would comply with its obligations in any event.

78. For its part, the CAAB stated that the loss of Aboriginal radio in many of these communities would be a disappointment and that these communities wanted a service that would provide a voice, support Aboriginal talent and be unique. However, it noted that AVR has not been capable of providing this service in the past and that it likely could not do so in the future.
79. The licensee has already been subject to three short-term renewals, as well as to a mandatory order in a previous licence term. In Broadcasting Decision 2012-653, the Commission explicitly stated that it strongly expected AVR to improve the performance of each of its stations during the new licence term. Despite the fact that the licensee would be up for renewal in only three years, the Commission imposed specific annual reporting requirements to compel the licensee to articulate on a regular basis its implementation of its previous plan.
80. Notwithstanding these strong signals of the seriousness of the situation in the previous renewal decision, the licensee has been found in non-compliance with numerous obligations during its current licence term and admitted to being in continued non-compliance at the time of the hearing.¹⁹
81. Given this non-compliance and the concerns set out above regarding the licensee's attitude and business plan, the Commission has no confidence that the licensee would be able to operate in compliance with its existing or any new regulatory obligations over another licence term. Nor does the Commission have confidence that the licensee would operate its stations in a manner that would adequately fulfill its mandate to serve the Aboriginal community, which was the reason it was chosen among many other possible licensees in previous competitive licensing hearings. These decisions to license AVR were taken on the basis that its service would contribute to the fulfillment of the public interest and the policy objectives set out in sections 3(1)(d)(iii) and 3(1)(o) of the Act to reflect the special place of Aboriginal peoples within Canadian society.
82. AVR could not commit to bringing the stations into compliance before the end of its current licence term. The Commission considers that allowing a licensee to continue to broadcast until the expiry of its current licence term in open non-compliance is contrary to the policy objectives set out in section 3 of the Act.
83. In light of all of the above, the Commission finds that revocation of the licences is the only appropriate measure in this case. The Commission therefore **revokes** the broadcasting licences for the Type B Native radio programming undertakings CKAV-FM Toronto, CKAV-FM-2 Vancouver, CKAV-FM-3 Calgary, CKAV-FM-4

¹⁹ The instances of non-compliance in the previous and current licence terms are summarized in the table appended to this decision.

Edmonton and CKAV-FM-9 Ottawa held by Aboriginal Voices Radio Inc. The revocation is effective **25 July 2015**, and the licensee must cease broadcasting by no later than the end of the broadcast day on that date.

Serving Canada's urban Aboriginal communities

84. Existing Aboriginal broadcasters play an essential role in serving the Aboriginal population across the country by providing news, information and spoken word content together with various music formats that reflect the talents and interests of Aboriginal peoples. For example, the CAAB's members currently serve large portions of British Columbia, Alberta, Saskatchewan, Manitoba and Yukon Territory, including urban areas such as Regina, Winnipeg, Prince Rupert, Whitehorse and Edmonton, as well as many smaller rural and remote communities. While opposing the renewal of AVR's licence for a new term, the CAAB stressed the need for a strong Aboriginal radio service in Vancouver, Calgary, Edmonton, Toronto and Ottawa.
85. As well as affirming that the Canadian broadcasting system should serve the needs and interests and reflect the special place of Aboriginal peoples within Canadian society (sections 3(1)(d)(iii) and 3(1)(o)), the Act states that the system should provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern (section 3(1)(i)(iv)). Issues such as missing Aboriginal women, the Truth and Reconciliation Commission, housing, the environment and land claims are pressing matters of public concern that do not always receive adequate coverage by the mainstream media. Accordingly, Aboriginal broadcasters have a role to play in informing their listeners about these issues.
86. In particular, radio services designed to serve the underserved urban Aboriginal communities in Toronto, Vancouver, Calgary, Edmonton and Ottawa could complement existing Aboriginal services in a way that would contribute to fulfilling the objectives of the Act. Moreover, as indicated above, there is a pressing need to serve the Aboriginal community as a whole given that issues vitally important to Aboriginal Canadians are not fully covered or addressed at all in non-Native media. Consequently, and as a priority, the Commission intends to issue a call for applications and hold a hearing to license new services that would fulfill this mandate.

Secretary General

Related documents

- *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2015-84, 11 March 2015
- *Update on the Commission's approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2014-608, 21 November 2014

- *CKAV-FM Toronto, CKAV-FM-2 Vancouver, CKAV-FM-3 Calgary, CKAV-FM-4 Edmonton and CKAV-FM-9 Ottawa – Licence renewals*, Broadcasting Decision CRTC 2012-653, 29 November 2012
- *CKAV-FM Toronto, CKAV-FM-2 Vancouver, CKAV-FM-3 Calgary, CKAV-FM-4 Edmonton and CKAV-FM-9 Ottawa – Licence renewals and issuance of a mandatory order*, Broadcasting Decision CRTC 2010-614 and Broadcasting Order CRTC 2010-615, 24 August 2010
- *CKAV-FM Toronto, CKAV-FM-2 Vancouver, CKAV-FM-3 Calgary and CKAV-FM-9 Ottawa – Licence renewals*, Broadcasting Decision CRTC 2007-121, 27 April 2007
- *New native FM station to serve the Ottawa-Hull region*, Decision CRTC 2001-627, 4 October 2001
- *Three new radio stations to serve Calgary*, Decision CRTC 2001-172, 12 March 2001
- *New Aboriginal-language radio station to serve Vancouver approved in part*, Decision CRTC 2001-314, 5 June 2001
- *New Type B FM native radio programming undertaking*, Decision CRTC 2000-204, 16 June 2000
- *Native Broadcasting Policy*, Public Notice CRTC 1990-89, 20 September 1990

Appendix to Broadcasting Decision CRTC 2015-282

The following table provides an overall picture of Aboriginal Voices Radio Inc.'s non-compliance with the *Radio Regulations, 1986* (the Regulations) and its conditions of licence during the last four renewal periods. Quoted sections of the Regulations and specific conditions of licence in the table have been abridged. Please refer to this decision and to prior renewal decisions for detailed language regarding these conditions of licence and sections of the Regulations. Each X denotes an instance of non-compliance.

REGULATORY OBLIGATIONS	DECISIONS AND ORDERS			
Section of the <i>Radio Regulations, 1986</i>	2007 RENEWAL (Broadcasting Decision 2007-121) Applicable to AVR stations in Toronto, Vancouver, Calgary and Ottawa only	2010 RENEWAL (Broadcasting Decision 2010-614) (Broadcasting Order 2010-615) Applicable to all five AVR stations	2012 RENEWAL (Broadcasting Decision 2012-653) Applicable to all five AVR stations	2015 REVOCATION (Broadcasting Decision 2015-282) Applicable to all five AVR stations
8(4) relating to the submission of logs upon request				X
8(5) relating to retaining a clear and intelligible tape recording of all matter broadcast	X (for Toronto station)			
8(6) relating to the submission of logger tapes upon request	X (for Toronto station)			X
9(2) relating to submission of annual returns	X (for Toronto station)	X		X (for 2013-2014 broadcast year)
9(4)(b) relating to the Commission's request for information				X
Condition of licence 1 requiring the licensee to devote a minimum of 25% of the broadcast schedule to local programming	Not applicable for this renewal	X Absence of local news, weather, sports and promotion of local activities	Technically in compliance. Concerns regarding quality of local programming. Nominal amount of local news, weather, sports and promotion of	

			local events.	
Condition of licence 2 requiring licensee to broadcast daily newscasts on each station which must include at least five distinct local news stories for each market served by AVR. For the purposes of this condition, “distinct local news stories” are those that incorporate spoken word material of direct and particular relevance to the Aboriginal community within the market served. ¹	Not applicable for this renewal	Technically in compliance. ² One original newscast repeated unaltered several times each day.	X (for Vancouver, Calgary and Edmonton stations)	X (for Toronto station)* <u>29 May 2014</u> One newscast broadcast and included two local news stories. <u>27 May 2014</u> No news stories of direct and particular relevance to the Aboriginal community in any newscast. *Unable to assess other four stations due to incomplete logger tapes.
Condition of licence 3 requires that at least 20 hours be devoted to the broadcast of structured enriched spoken word programming. ³	Non-compliance could not be substantiated with total certainty		X (for Vancouver and Calgary stations)	
Condition of licence 9 relating to the filing of annual updates	Not applicable for this renewal	Not applicable for this renewal	Requirement to submit progress reports imposed as a term, not a condition of licence.	X (required information missing for 2012-2013 and 2013-2014 broadcast years)
Condition of licence 10 relating to the provision of audited financial statements for each station	Not applicable for this renewal	Not applicable for this renewal	Requirement to submit audited financial statements	X (for 2012-2013 and 2013-2014 broadcast years)

¹ In Broadcasting Decision 2010-614, the Commission added the wording “must include at least five distinct local news stories for each market served by AVR” due to concerns regarding the quality of AVR’s local newscasts. In Broadcasting Decision 2012-653, the Commission added the word “Aboriginal” to ensure that AVR understood the Commission’s expectations in terms of distinct local news stories of particular relevance to the communities it serves.

² Condition of licence 2 set out in Broadcasting Decision 2007-121 required only that AVR “broadcast regular daily newscasts.”

³ This condition of licence was modified in Broadcasting Decision 2007-121 to resolve the ambiguity relating to the required amount of spoken word to be broadcast. The Commission added “structured enriched” and provided a definition for the new wording.

			imposed as a term, not a condition of licence.	
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