



## Broadcasting Decision CRTC 2015-449

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Reference: 2015-136

Ottawa, 1 October 2015

**Kosiner Venture Capital Inc.**  
Across Canada

*Application 2014-1329-4, received 17 December 2014*  
*Public hearing in the National Capital Region*  
*12 June 2015*

### **New national pay audio programming undertaking**

*The Commission **approves** an application for a broadcasting licence to operate a new national pay audio programming service.*

#### **Application**

1. Kosiner Venture Capital Inc. (Kosiner) filed an application for a broadcasting licence to operate a national pay audio programming service.
2. Kosiner Venture Capital Inc. is wholly owned and controlled by Evan Kosiner.
3. The applicant stated that the programming would consist of at least 45 audio channels offering a wide variety of music formats. It added that it anticipated increasing this number to 60 within two to three years.
4. Kosiner proposed to devote 45% of its programming to popular music selections from various genres, including pop, rock, dance and easy listening, and the remainder to oldies (20%), instrumental music (10%), programming directed to children (5%) and specialty music, including classical music, world beat, jazz, blues and opera (20%). In addition to English- and French-language music, programming in third languages would be offered.

#### **Intervention**

5. The Commission received a comment on the application from the Association québécoise de l'industrie du disque, du spectacle et de la vidéo (ADISQ), to which Kosiner did not reply. The public record for this proceeding can be found on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) or by using the application number provided above.
6. ADISQ submitted that Kosiner had not provided sufficient details concerning its proposed channels (Canadian versus foreign, languages, etc.), as well as the

15 channels it intends to add at a later date. ADISQ asked that the Commission question the applicant regarding its use of foreign channels and that it modify the existing rules to require pay audio services to broadcast solely Canadian-produced channels. In the alternative, it asked that the applicant be required to devote at least 35% of all musical selections broadcast each broadcast week on all its channels (Canadian-produced and foreign) to Canadian selections, rather than 35% of the musical selections broadcast only on Canadian-produced channels.

7. Regarding Canadian content development (CCD) contributions, ADISQ was of the view that audio services should contribute 10% of their revenues to CCD rather than the current 4% level. In the case of a new service such as the proposed service, ADISQ submitted that the 4% level was sufficient in the beginning but should increase at the first renewal of the service. Finally, regarding the distribution of contributions, ADISQ was of the view that the portion allocated to the Community Radio Fund of Canada (CRFC) should be taken from the discretionary amount and that the discretionary amount should be allocated evenly between French- and English-language initiatives.

### **Commission's analysis**

8. In establishing its licensing framework for pay audio programming services in Public Notice 1995-218, the Commission stated that given the discretionary nature of these services, a competitive environment was appropriate in order that distributors and consumers have a choice between services of this type. The Commission reiterated this approach in the licence renewal decisions for the pay audio programming services Galaxie and Max Trax (see Broadcasting Decisions 2002-391 and 2002-392), as well as in Broadcasting Decision 2007-147 granting Rogers Broadcasting Limited a broadcasting licence for a new pay audio programming undertaking. In these decisions, the Commission also established a licensing framework for such services applied through a number of conditions of licence.
9. Stingray Digital Group Inc. (Stingray) was granted a broadcasting licence to operate a national pay audio programming service in Broadcasting Decision 2008-368. Stingray is currently the only broadcaster offering such a service in Canada. Consequently, approval of the current application would introduce a second Canadian player for this type of service.
10. Kosiner had initially proposed to adhere to the same conditions of licence as were applied to Stingray's service in Broadcasting Decision 2008-368. This included the requirement that the licensee contribute each year at least 4% of its gross annual revenues to eligible CCD third parties, to be allocated as follows: 1% to FACTOR, 1% to MUSICACTION and 2% to the Radio Starmaker Fund or Galaxie Rising Star. Following questions by Commission staff, the applicant agreed to modify this proposal in light of the revised policy for campus and community radio (Broadcasting Regulatory Policy 2010-499) by allocating part of its CCD contributions to the CRFC. In renewing the Stingray service in Broadcasting Decision 2015-377, the

Commission amended the condition of licence relating to CCD to include contributions to the CRFC, consistent with that same policy.

11. Kosiner proposed to direct 1% of gross annual revenues to the CRFC. This proposal would still allow for an equal share (1%) to be allocated to FACTOR and MUSICACTION, with the remaining 1% to be allocated to the Radio Starmaker Fund or Galaxie Rising Star to discover, encourage and promote new Canadian artists. In light of the preceding, the Commission has imposed a **condition of licence** to this effect in the appendix to this decision.
12. Finally, with regard to the issues raised by ADISQ, the Commission is of the view that the applicant has provided sufficient information relating to the proposed service and that the application as amended above is consistent with the framework for pay audio services. In establishing that framework in Broadcasting Decisions 2002-391, 2002-392, 2007-147 and 2008-368, the Commission addressed concerns similar to those put forth by ADISQ in this case with respect to linkage rules, Canadian content, CCD, French-language channels and the representation of emerging artists. Accordingly, given the similarity of the proposed service to those other services for which the framework was developed, the Commission is of the view that its existing approach is appropriate in this case.

## Conclusion

13. In light of all of the above, the Commission **approves** the application by Kosiner Venture Capital Inc. for a broadcasting licence to operate a national pay audio programming undertaking. The licensee shall adhere to the **conditions of licence** set out in the appendix to this decision, as well as the **conditions** set out in the licence to be issued for the undertaking.

Secretary General

## Related documents

- *Stingray Music – Licence renewal and amendment*, Broadcasting Decision CRTC 2015-377, 17 August 2015
- *Campus and community radio policy*, Broadcasting Regulatory Policy CRTC 2010-499, 22 July 2010
- *Stingray – National pay audio programming undertaking*, Broadcasting Decision CRTC 2008-368, 23 December 2008
- *New national pay audio programming undertaking*, Broadcasting Decision CRTC 2007-147, 22 May 2007
- *Licence renewal for Max Trax*, Broadcasting Decision CRTC 2002-392, 29 November 2002
- *Licence renewal for Galaxie*, Broadcasting Decision CRTC 2002-391, 29 November 2002

- *Licensing of four new pay audio programming undertakings*, Public Notice CRTC 1995-218, 20 December 1995

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

## **Appendix to Broadcasting Decision CRTC 2015-449**

### **Terms, conditions of licence and encouragement for the national pay audio programming undertaking**

#### **Terms**

The licence will expire 31 August 2022.

#### **Conditions of licence**

1. The licensee shall ensure that at least 35% of the musical selections broadcast each broadcast week on Canadian-produced pay audio channels, considered together, are Canadian.
2. The licensee shall ensure that a maximum of one non-Canadian pay audio channel is packaged or linked with each Canadian-produced pay audio channel. In no case shall subscribers of the pay audio service be offered a package of pay audio channels in which foreign-produced channels predominate. The licensee shall provide the Commission, upon request, with a complete list of all non-Canadian pay audio channels distributed on its service.
3. The licensee shall ensure that at least 25% of all Canadian-produced pay audio channels (other than those consisting entirely of instrumental music or of music entirely in languages other than English or French) devote each broadcast week at least 65% of vocal music selections from content category 2 (Popular Music), as defined in the *Radio Regulations, 1986*, as amended from time to time, to musical selections in the French language.
4. The licensee shall not broadcast commercial messages.
5. The licensee shall not broadcast spoken word programming, except for purposes of musical selection identification and promotion of the service and in programming directed to children.
6. The licensee shall adhere to the provisions contained in sections 3 and 11 of the *Radio Regulations, 1986*.
7. The licensee shall adhere to the Canadian Association of Broadcasters' *Equitable Portrayal Code*, as amended from time to time and approved by the Commission. The application of the foregoing condition of licence will be suspended as long as the licensee remains a member in good standing of the Canadian Broadcast Standards Council.
8. The licensee shall maintain sequential lists of all recordings played on each pay audio channel with designations for Canadian musical selections and for French-language vocal music. These lists shall be kept by the licensee for at least four weeks and forwarded to the Commission upon request, along with a notarized attestation of the lists' accuracy.

9. The licensee shall not distribute any non-Canadian pay audio channel that includes commercial messages or spoken word programming, except for purposes of musical selection identification and promotion of the service and in programming directed to children.
10. The licensee shall contribute each year at least 4% of the gross annual revenues earned by its pay audio programming undertaking to eligible third parties associated with Canadian content development, to be allocated during each broadcast year of the licence term as follows:
  - 1% to FACTOR;
  - 1% to MUSICACTION;
  - 1% to the Community Radio Fund of Canada; and
  - 1% to the Radio Starmaker Fund or Galaxie Rising Star.

For the purposes of these conditions, the terms “Canadian,” “commercial message,” “broadcast week” and “musical selection” shall have the meanings set out in the *Radio Regulations, 1986*, and “spoken word” shall have the meaning set out in *Revised content categories and subcategories for radio*, Broadcasting Regulatory Policy CRTC 2010-819, 5 November 2010.

### **Encouragement**

In accordance with *Implementation of an employment equity policy*, Public Notice CRTC 1992-59, 1 September 1992, the Commission encourages the licensee to consider employment equity issues in its hiring practices and in all other aspects of its management of human resources.