



## Broadcasting Decision CRTC 2018-29

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Reference: 2017-223

Ottawa, 24 January 2018

**Stingray Digital Group Inc.**  
Across Canada

*Public record for these applications: 2017-0351-2, 2017-0354-6, 2017-0355-4 and 2017-0356-2*

*Public hearing in the National Capital Region  
7 September 2017*

### **Stingray Juicebox, Stingray Loud, Stingray Retro and Stingray Vibe – Licensing of discretionary services**

*The Commission **approves** applications by Stingray Digital Group Inc. for broadcasting licences to operate the national, English-language discretionary services Stingray Juicebox, Stingray Loud, Stingray Retro and Stingray Vibe.*

#### **Applications**

1. Stingray Digital Group Inc. (Stingray) filed applications for broadcasting licences to operate the currently exempt, national, English-language discretionary services known as Stingray Juicebox, Stingray Loud, Stingray Retro and Stingray Vibe as licensed services.
2. Stingray is a private corporation owned by various shareholders and is controlled by its board of directors.
3. Stingray Juicebox, Stingray Loud, Stingray Retro and Stingray Vibe currently operate as exempt services in accordance with the Exemption order respecting discretionary television programming undertakings serving fewer than 200,000 subscribers set out in Broadcasting Order 2015-88. In a letter dated 24 April 2017, the applicant confirmed that, during the previous three months, the services exceeded the subscriber threshold for the operation of an exempt service. In accordance with Broadcasting Order 2015-88, it filed these applications.
4. The applicant stated that it would abide by the standard conditions of licence for discretionary services set out in Broadcasting Regulatory Policy 2016-436. It also proposed to adhere to a condition of licence requiring it to devote at least 7% of gross annual revenues to the acquisition of and investment in Canadian programming for each of the services.

5. The applicant provided the following descriptions for the services:
- Stingray Juicebox provides music video and related programming for pre-teens.
  - Stingray Loud provides music video and related programming focused on rock and related genres.
  - Stingray Retro provides music video and related programming from the 1980s to the early 2000s.
  - Stingray Vibe provides music video and related programming focused on urban music.

### **Interventions and reply**

6. The Commission received an intervention in opposition to the applications from the Directors Guild of Canada (DGC), as well as comments from the Association québécoise de l'industrie du disque, du spectacle et de la vidéo (ADISQ) and the Writers Guild of Canada (WGC), to which the applicant replied. The interveners submitted that the four services should be required to spend more on Canadian programming each year than Stingray's proposed 7% of revenues.
7. ADISQ and WGC argued that these services should be subject to the 10% minimum Canadian programming expenditure (CPE) requirement set out in Broadcasting Regulatory Policy 2015-86. In its intervention, WGC submitted that it would be contrary to the spirit of that policy to make exceptions to the minimum CPE level. ADISQ asked that the Commission ensure Stingray meets the minimum requirements set out in Broadcasting Regulatory Policy 2015-86.
8. DGC suggested that the Commission should require the four services to contribute at least 15% of the previous year's revenues to Canadian programming. It noted that Stingray is a rapidly growing, successful global multimedia company and that Stingray's proposal reflects the level of CPE made by these services between 2013 and 2015 when they had no CPE obligations and prior to Stingray's acquisition of the services. DGC argued that Stingray should be able to contribute a higher percentage to Canadian programming given the high revenue and large profit margins of the four services from 2013 to 2015.
9. ADISQ submitted that, in addition to the 10% CPE requirement, the Commission should impose an obligation on Stingray to make a financial contribution to support music video production. ADISQ argued that this measure is necessary in the short term given that, in the recent licence renewals for the television services of large private ownership groups, the conditions of licence requiring some licensees to contribute to the production of music videos were removed. ADISQ further submitted that a long-term solution should be found.

10. Stingray replied that the CPE requirement for these services should be based on the average historic spending level of 7% (when the services were operated by Bell Media prior to 2016), rather than the 10% minimum level established by the Commission in Broadcasting Regulatory Policy 2015-86. Stingray highlighted the following reasons to set the CPE requirement at 7%:
- music video services are in a special category because they do not license typical television programs for broadcast, nor do they produce large quantities of their own programming;
  - given the nature of these services, there is a high level of direct negotiation and regulation (through the Copyright Board of Canada) that already governs the licensing of this content;
  - these services face direct and intensifying competition from online video services that offer the same content with no CPE or exhibition requirements; and
  - Stingray's growth in its international commercial music division should not subsidize its Canadian operations.
11. In response to DGC's intervention, Stingray submitted that the overall profit margins for the services when they were operated by Bell Media are not relevant to Stingray's operation of these services. Stingray pointed out that given Bell Media's size, it had the opportunity to create efficiencies by sharing personnel, programming and technical infrastructure within the group, leading to higher profit margins.
12. In addition, Stingray disagreed with the intervention filed by ADISQ, which suggested that it be required to make financial contributions to support music video production. It argued that the Commission phased out this type of obligation for other services in the recent group-based licence renewal decisions. Stingray argued that this would create a disincentive for the operation of Canadian music video services on television. Since there are no Canadian content or expenditure regulatory obligations for these types of services online, this requirement could place pressure on the services to shift to online distribution platforms.

### **Commission's analysis and decision**

13. In Broadcasting Regulatory Policy 2015-86, the Commission determined that discretionary services with over 200,000 subscribers should be subject to a CPE requirement. It established 10% of revenues as the minimum level of CPE for those services and stated that CPE for licensed services would be established "in a case-by-case manner and based on historical levels." Moreover, the Commission reduced or eliminated other requirements that were considered unnecessary, difficult to enforce or were viewed as impediments to a competitive marketplace.
14. Stingray argued that it should have lower CPE obligations due to the genre of the four services, however, it will not be required to adhere to a genre by condition of licence. Given that Stingray could change the genre of its services at any time, the genre of

the services chosen by the licensee at the time of licensing is not a sufficient rationale for setting a CPE level that is below the minimum established in Broadcasting Regulatory Policy 2015-86. Stingray has not otherwise submitted compelling evidence to demonstrate why a CPE lower than the established minimum is appropriate. Moreover, Stingray, unlike the previous owners of these services, will operate in a new policy environment. Accordingly, the Commission will impose a CPE requirement of 10% for each of the services. A **condition of licence** to this effect is set out in the appendix to this decision.

15. With respect to ADISQ's suggestion that the Commission impose an obligation on Stingray to make an "above and beyond" financial contribution to support music video production in light of the removal of similar conditions of licence on other licensees in the recent licence renewals for the television services of large private ownership groups, this matter is before the Commission in a separate proceeding relating to the reconsideration of these renewal decisions initiated by Broadcasting Notice of Consultation 2017-429.

## Conclusion

16. In light of the above, the Commission **approves** the applications by Stingray Digital Group Inc. for broadcasting licences to operate the national, English-language discretionary services Stingray Juicebox, Stingray Loud, Stingray Retro and Stingray Vibe. The terms and **conditions of licence** are set out in the appendix to this decision.
17. Stingray Juicebox, Stingray Loud, Stingray Retro and Stingray Vibe will be subject to the *Discretionary Services Regulations*. In addition, the distribution of these services will be subject to the requirements set out in the *Broadcasting Distribution Regulations*.

Secretary General

## Related documents

- *Reconsideration of the decisions relating to the licence renewals for the television services of large English-language private ownership groups*, Broadcasting Notice of Consultation CRTC 2017-429, 5 December 2017
- *Standard requirements for television stations, discretionary services and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016
- *Exemption order respecting discretionary television programming undertakings serving fewer than 200,000 subscribers*, Broadcasting Order CRTC 2015-88, 12 March 2015
- *Let's Talk TV: The way forward – Creating compelling and diverse Canadian programming*, Broadcasting Regulatory Policy CRTC 2015-86, 12 March 2015

*This decision is to be appended to each licence.*

## **Appendix to Broadcasting Decision CRTC 2018-29**

### **Terms, conditions of licence, expectations and encouragement for the discretionary services Stingray Juicebox, Stingray Loud, Stingray Retro and Stingray Vibe**

#### **Terms**

The licences will expire 31 August 2024.

#### **Conditions of licence**

1. The licensee shall adhere to the standard conditions of licence for discretionary services set out in Appendix 2 to *Standard requirements for television stations, discretionary services, and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016, as well as to the conditions set out in the broadcasting licence for the undertaking.
2. The licensee shall, in each broadcast year, devote not less than 10% of the previous year's gross annual revenues of the undertaking to the acquisition of or investment in Canadian programming. For the first year of the licence term, the calculation of the 10% shall be based on the previous year's gross annual revenues of the previously exempt service.

#### **Definition for “broadcast day”**

As an exception to the definition set out in Appendix 2 to *Standard requirements for television stations, discretionary services, and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016, the term “broadcast day” refers to the 24-hour period beginning each day at 6 a.m. Eastern time.

#### **Expectations**

The standard expectations applicable to this licensee are set out in Appendix 2 to *Standard requirements for television stations, discretionary services, and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016.

#### **Encouragement**

The standard encouragement applicable to this licensee is set out in Appendix 2 to *Standard requirements for television stations, discretionary services, and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016.