



Broadcasting Decision CRTC 2018-476

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Reference: Part 1 application posted on 13 October 2017

Ottawa, 17 December 2018

Bell Media Inc.
Across Canada

Public record for this application: 2017-0943-7

Eligibility of tangible benefits expenditures made by Bell Media Inc. in the 2013-2014 broadcast year

*Having considered the information provided by Bell Media Inc. (Bell) in its application to reverse in part a decision letter dated 15 May 2017 regarding tangible benefit requirements, the Commission **denies** Bell's application and upholds that decision in its entirety.*

*The Commission **directs** Bell to pay the total tangible benefits shortfall of \$433,120 to the initiatives specified in the current decision and to file proof of payment by 16 January 2019.*

Background

1. In a decision letter dated 15 May 2017, the Commission informed Bell Media Inc. (Bell) that an audit identified issues with several expenditures claimed towards meeting its tangible benefit requirements for the 2013-2014 broadcast year. These requirements were imposed on Bell as a result of Broadcasting Decisions 2007-165, 2007-368, 2011-163 and 2013-310. Specifically, the following expenditures were found not to meet the eligibility criteria set out in Broadcasting Public Notice 2006-158 (the Commercial Radio Policy):

Initiative	Reason	Amount
Aboriginal Voices Radio (AVR)	In-kind contributions are not eligible Canadian content development (CCD) expenditures.	\$97,398
Canadian Music Week	Funds directed towards a non-Canadian artist's talent fee and travel expenses are not eligible CCD expenditures as well as a lack of documentation to support the eligibility of the contribution, specifically regarding the distribution of tickets	\$493,893
Total		\$591,291

2. The letter directed Bell to pay the outstanding amount relating to ineligible expenditures by 14 August 2017 and file proof of payment by 12 September 2017.

Application

3. Bell filed an application requesting that the Commission reverse part of its decision regarding the ineligibility of the expenditures for Canadian Music Week, which were directed to the Fanfest concert.
4. Bell did not dispute the findings with respect to the ineligibility of the expenditures made to AVR (\$97,398) and also accepted in part the Commission's decision with respect to directing funds to a non-Canadian artist, Ellie Goulding, who headlined Fanfest.
5. However, Bell stated that it provided sufficient information to satisfy the specific issues raised during the audit. It also noted that it was only after the Commission's determination of non-compliance that Bell was informed that the Commission relied on a 28 March 2014 Bell press release during its audit to call into question the veracity of the information that it had provided.
6. Bell argued that if it had been provided with the press release during the audit, it would have been able to fully satisfy the Commission's concerns. Since it was not afforded this opportunity, Bell argued that due process was not followed.
7. Bell also expressed concerns with respect to the Commission's finding to the effect that it submitted insufficient documentation, in particular regarding ticket distribution, to support the eligibility of the Fanfest contribution. Bell stated that it was asked to provide details on how tickets were distributed, which Bell argued it provided. However, Bell stated that it was not asked to provide documentation on ticket distribution, but rather only receipts and contracts for certain enumerated costs. In Bell's view, ticket revenue was not a cost and therefore it provided no documentation in that respect. Bell noted that another tangible benefits initiative (Breakthrough Canada Concert Series) for which tickets were also sold was found to be fully compliant with Commission policy, despite the fact that Bell did not provide any documentation regarding the distribution of tickets for that initiative.

Interventions

8. Rogers Media Inc. (Rogers) and Corus Entertainment Inc. (Corus) filed interventions supporting Bell's application.
9. Rogers stated that it was unreasonable to expect Bell to substantiate its compliance with regulatory obligations when specific concerns or evidence regarding the alleged non-compliance were not disclosed to the licensee prior to a final determination. Rogers noted the importance of due process in this context, arguing that licensees must have the opportunity to respond to any evidence being relied upon by the Commission during a compliance assessment.

10. Corus noted that all licensees should have the legitimate expectation that they will have a full and fair opportunity to be heard on any matter that could lead to a negative determination being made and that the principles of natural justice are the leading principles that determine how administrative tribunals such as the Commission must conduct themselves. Corus also argued that when Bell was not given the express opportunity to explain how the press release issued in relation to the Fanfest event was fully consistent with Commission policies and regulations, natural justice was denied.

Commission's analysis and decisions

Consideration of the press release

11. Section 31(1) of the Act provides that every decision and order of the Commission is final and conclusive. The Commission nonetheless has a duty to ensure that its processes are conducted in a fair and transparent manner, including giving parties the opportunity to know and comment on the evidence upon which it relies in making its decision. In this case, Bell has demonstrated that it was not given the opportunity to comment on certain evidence upon which the Commission relied to reach its decision, specifically the 28 March 2014 press release. As a result, the Commission finds it appropriate to make an exception to section 31(1) in order to consider Bell's current application.
12. In the context of this application, Bell has taken full advantage of the opportunity to provide additional submissions relating to the 28 March 2014 press release, including an explanation as to why its distribution of tickets with respect to Fanfest was acceptable. As a result, any due process concerns raised by Bell with respect to the opportunity to comment on the 28 March 2014 press release are now remedied.

Transparency

13. Before the Commission decides whether its previous decision should be reversed, it considers it important to highlight concerns with respect to the level of transparency demonstrated by Bell during the auditing process.
14. Broadcasting Information Bulletin 2011-795 provides licensees with guidance regarding the information that must be included on the CCD forms to be filed as part of each licensee's annual returns. With respect to payments made to music festivals, it states that supporting documentation should include the following items: a brochure from the event sponsored indicating that the event took place, a letter from the recipient organization confirming the uses of the fund and a brief summary of how the event meets the criteria for an eligible initiative. In addition, the documentation should always include information regarding revenues generated by the event, the organization that retained the revenues, the manner in which tickets were distributed to the public, the artists that were sponsored with the funds and proof of the licensee's independence from the recipient organization.

15. In its 2013-2014 annual return, Bell did not provide any details on the manner in which tickets for the Fanfest initiative claimed as a CCD contribution were distributed and the treatment of any revenues. In addition, Bell neither highlighted nor provided justification for the sponsorship of the non-Canadian artist in its annual return. Finally, while Bell responded to subsequent clarification requests during the audit process, its response did not provide sufficient detail with respect to how the initiative fit within the parameters of the Commercial Radio Policy and the guidelines for licensees regarding eligible CCD initiatives, which can be found on the Commission's website under the heading "[Canadian Content Development Contributions and Eligible Initiatives](#)" (the Guidelines), nor how Fanfest maximized the exposure of Canadian artists.
16. The Commission is of the view that Bell was not forthcoming during the audit process that led to the 15 May 2017 Commission decision and did not provide complete supporting information, particularly on the distribution of tickets, which affected the ability of the Commission to determine the eligibility of the initiative.
17. As part of its current application, Bell provided information that was not provided in its 2013-2014 annual return nor in any of its submissions during the initial audit process, despite the opportunity afforded to Bell.
18. Accordingly, the Commission reminds Bell that it is the responsibility of the licensee to provide sufficient documentation to demonstrate the eligibility of its contributions. Failure to do so may result in a contribution being found ineligible and may affect a station's compliance with regulatory obligations.
19. The Commission expects licensees to be forthcoming during an audit process as it provides the Commission with the information it requires to ensure the proper supervision and regulation of the Canadian broadcasting system.
20. A licensee that does not file complete supporting information with respect to its CCD and tangible benefit contributions affects the ability of the Commission to independently confirm the licensee's adherence to regulatory and licence requirements. These filings are also important indicators of whether the licensee has the willingness, ability and knowledge necessary to bring itself into compliance and maintain such compliance.

Whether the decision should be reversed

21. The Commission considers the main issue regarding the eligibility of Fanfest as a tangible benefit initiative to be the use of a non-Canadian artist to headline the festival. In the Commission's view, such an approach to CCD is contrary to the Commission's Commercial Radio Policy. In particular, the Commission has clearly set out that CCD funds should be used for the support, promotion, training and development of Canadian musical and spoken word talent, including journalists.

22. The fees paid to a non-Canadian artist as part of Bell's overall \$493,893 claim in CCD expenditures represented the largest single item for this initiative. The Commission remains of the view that the proportion of this expense in relation to the overall CCD expenditure claimed renders the entire amount ineligible. The Commission is of the view that the nature of this expense does not accord with the spirit of the Commercial Radio Policy and should therefore be rejected.
23. In the context of the Part 1 application, the Commission has also re-examined the issue of ticket distribution in light of Bell's additional evidence and is of the view that the manner in which it was conducted, while not determinative, provides further grounds upon which to find the entire initiative ineligible. Specifically, as part of this process, Bell provided a full account of how tickets were distributed for Fanfest. A total of 2,703 persons attended Fanfest. Of the tickets distributed for the event, 400 were only available on a "win-to-get-in" basis from CHUM-FM, a Bell radio station, meaning that listeners had to listen for the airplay of participating artists and call in at select times to win tickets. In addition, 275 tickets were distributed to industry guests. As a result, 675 tickets to the event were not available to the general public.
24. In Broadcasting Decision 2007-359, the Commission noted that its longstanding radio tangible benefits policy has emphasized that payments should be made to third parties, should not be self-serving and should be incremental (i.e. over and above the normal cost of doing business). In this respect, the Guidelines provide additional insight into how CCD funds and tangible benefits should be used to support, develop or promote Canadian musical or spoken word talent, including the following:

Concerts presenting Canadian artists are expected to maximize the exposure of the artists by being open to the general public, and not be limited to winners of station contests, "loyal listeners" and/or clients of the station. Promotional aspects must be a minor component of the main public event.
25. In this instance, the distribution of 400 tickets to listeners was problematic. While there is no specific threshold or value regarding what constitutes a self-serving amount of tickets, in the context of the non-Canadian headliner, the use of the tickets becomes a factor in the consideration of the overall eligible tangible benefit amount and lends further support to finding the entire expenditure ineligible. In this case, Bell was likely able to leverage the major non-Canadian headliner for its promotional and marketing purposes.
26. Further, while Bell argued that another initiative, the Breakthrough Canada Concert Series, was determined to be compliant, the facts of that case are different and not relevant to the assessment of the present initiative. First, the Breakthrough Canada Concert Series was headlined by Canadian artists. Second, it was only after additional requests for information in this proceeding that it became known to the Commission that approximately 25% of available tickets were reserved for either contest winners or station employees. Had Bell provided this information as part of its annual returns or during the audit period, the Commission might have arrived at a different conclusion with respect to this initiative. Moreover, this also raises a separate concern with respect to Bell's providing complete supporting information regarding CCD and tangible benefit contributions for regulatory review, as discussed above.

27. Based on the preceding, the Commission finds the initiative in question ineligible for purposes of meeting the licensee's tangible benefit requirements.

Conclusion

28. In light of all the above, the Commission **denies** Bell's request that it reverse its decision letter dated 15 May 2017 and upholds that decision in its entirety.

29. Taking into account the eligible tangible benefits already paid by Bell,¹ the Commission **directs** Bell to pay the total remaining tangible benefit shortfall of \$433,120 to the following initiatives and to file proof of payment by **16 January 2019**:

- \$99,730 to FACTOR;
- \$73,517 to MUSICACTION;
- \$43,312 to the Community Radio Fund of Canada;
- \$124,664 to Radio Starmaker Fund; and
- \$91,897 to Fonds Radiostar.

Secretary General

Related documents

- *Astral broadcasting undertakings – Change of effective control*, Broadcasting Decision CRTC 2013-310, 27 June 2013
- *Filing annual returns for radio programming undertakings*, Broadcasting Information Bulletin CRTC 2011-795, 20 December 2011
- *Change in effective control of CTVglobemedia Inc.'s licensed broadcasting subsidiaries*, Broadcasting Decision CRTC 2011-163, 7 March 2011
- *Acquisition of assets*, Broadcasting Decision CRTC 2007-368, 12 October 2007
- *Acquisition of assets*, Broadcasting Decision CRTC 2007-359, 28 September 2007
- *Transfer of effective control of CHUM Limited to CTVglobemedia Inc.*, Broadcasting Decision CRTC 2007-165, 8 June 2007
- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006

¹ Bell was directed to pay \$591,291 in the decision letter dated 15 May 2017. Of that amount, Bell subsequently paid \$158,171 (\$97,398 relating to the AVR initiative and \$60,773 relating to the Canadian Music Week event). Bell disputed the remainder of the amount owing, \$433,120, in the Part 1 application considered in this decision.