



Broadcasting Decision CRTC 2018-477

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Reference: Part 1 licence renewal application posted on 27 November 2017

Ottawa, 17 December 2018

Southshore Broadcasting Inc.
Leamington, Ontario

Public record for this application: 2017-0936-2

CFTV-DT Leamington – Licence renewal

*The Commission **renews** the broadcasting licence for the low-power, English-language independent community-based television station CFTV-DT Leamington from 1 January 2019 to 31 August 2021. This short-term renewal will allow for an earlier review of the licensee's compliance with regulatory requirements.*

Application

1. On 1 June 2017, the Commission issued Broadcasting Notice of Consultation 2017-183 (the Call), which listed the television services and stations for which the licences needed to be renewed in order to continue their operations.
2. In response to the Call, Southshore Broadcasting Inc. (Southshore) filed an application to renew the broadcasting licence for its low-power, English-language independent community-based television station CFTV-DT Leamington, Ontario, which expires 31 December 2018.¹
3. The licensee stated that it would adhere to the provisions and requirements for community-based television stations set out in Broadcasting Regulatory Policy 2016-224.

Background

4. In Broadcasting Decision 2013-467, the Commission renewed the broadcasting licence for CFTV-DT for a short-term period of four years due the licensee's non-compliance with the station's conditions of licence relating to the broadcast of Canadian and local programming.

¹ The broadcasting licence for CFTV-DT was administratively renewed from 1 September 2018 to 31 December 2018 in Broadcasting Decision 2018-317.

Interventions

5. The Commission received a joint intervention from Rogers Media Inc., Corus Entertainment Inc. and Bell Media Inc., who argued that the described video requirements imposed by the Commission on independently owned undertakings are onerous. The licensee did not reply to the intervention.

Non-compliance

Broadcast of Canadian programming

6. Southshore is required by condition of licence to devote not less than 80% of the broadcast year to the broadcast of Canadian programming on CFTV-DT.² Based on reports submitted by the licensee, for the 2013-2014 through 2016-2017 broadcast years, the amount of Canadian programming broadcast on the station was less than the required amount.
7. The licensee explained that this stemmed from a lack of financial resources, its dependence on volunteers for reporting, the conversion of the station from analog to digital technology, investments in a new transmission tower, and competition for viewership with neighbouring over-the-air television stations. It also noted that it had negotiated with a First Nation's production company that has been unable to provide its promised productions.
8. Southshore noted that it is currently negotiating with Canadian post-secondary institutions over the acquisition and broadcast of students' works on air. The licensee submitted that this, along with other ongoing projects, will allow it to fulfill its requirements, and that it even expects to go above and beyond any quotas currently set out in its condition of licence.
9. In light of all of the above, the Commission finds Southshore in non-compliance with CFTV-DT's condition of licence relating to the broadcast of Canadian programming.

Broadcast of local programming

10. Southshore is required by condition of licence to devote not less than 60% of the broadcast year to the broadcast of local programming on CFTV-DT.³ Based on reports submitted by the licensee, for the 2014-2015 and 2015-2016 broadcast years, the amount of local programming broadcast on the station was less than the required amount.

² Condition of licence 2 set out in Appendix 21 to Broadcasting Decision 2013-467

³ Condition of licence 3.(b) set out in Appendix 21 to Broadcasting Decision 2013-467

11. According to Southshore, an ongoing dispute with Cogeco, its local broadcasting distribution undertaking (BDU), led to CFTV-DT being moved to a different channel number without the BDU informing either the licensee or the subscribers to the service. The licensee added that a conflict regarding the manner in which the signal was to be sent to the BDU (either over-the-air or by fibre line) led to the station's programming not being broadcast over the entire territory served by the BDU. Southshore claimed that, as a result, it cannot produce any programming for "cut-off" areas, which led it to upgrade its antenna and transmitter in order to cover those areas and offer the affected communities the programming they deserve.
12. Southshore stated that it is confident that the station will be able to adhere to its local programming condition of licence over the next licence term as it is currently in negotiations with local independent producers.
13. In light of all of the above, the Commission finds Southshore in non-compliance with CFTV-DT's condition of licence relating to the broadcast of local programming.

Filing of annual returns

14. As set out in section 12(1) of the *Television Broadcasting Regulations, 1987* (the Regulations), on or before 30 November of each year, a licensee shall submit to the Commission a statement of accounts, on the annual return of broadcasting licensee form, for the 12-month period ending on the previous 31 August (i.e., the end of the broadcast year). Financial statements must also be filed, covering the same period as the annual return.
15. In regard to CFTV-DT, the annual returns were filed late for the 2013-2014 through 2015-2016 broadcast years.
16. Southshore stated that the late filing of the annual returns was due to limited resources, and the resulting need to have volunteers complete the task. The licensee added that it has since hired a professional to file its annual returns.
17. In light of all of the above, the Commission finds Southshore in non-compliance with section 12(1) of the Regulations relating to the filing of annual returns for CFTV-DT, for the 2013-2014 through 2015-2016 broadcast years.

Regulatory measures

18. In its group-based approach to the licensing of private television services (see Broadcasting Regulatory Policy 2010-167), the Commission set out its intention, given the pace of change in the broadcasting environment and the desire to assess the impact of the new group-based approach, to impose five-year, rather than seven-year licence terms for television licensees controlled by designated groups. Over time, the Commission has adopted this practice for other television services, so as to allow it to more regularly reassess the performance of various licensees as well as the criteria used to assess such performance.

19. In determining the appropriate licence term for CFTV-DT, the Commission has assessed the licensee's compliance with its regulatory requirements over the course of the current licence term, relying principally on the logs and records submitted by the licensee. The Commission has also taken into consideration the following:
- any explanations provided by licensee concerning errors or discrepancies in its logs;
 - the nature of the non-compliance;
 - the frequency of the non-compliance;
 - the number of instances of non-compliance; and
 - the measures taken to address the non-compliance.
20. CFTV-DT's programming is valuable to the local community in Leamington, and its obligations relating to the broadcast of local programming and Canadian programming are key defining elements of the station's broadcasting licence. The Commission acknowledges the financial challenges facing CFTV-DT and the licensee's measures to ensure compliance going forward.
21. However, in the Commission's view, the above-noted instances of non-compliance relating to the broadcast of Canadian programming and of local programming, and to the filing of annual returns, are, collectively, serious and repeated. Although Southshore has not disputed the Commission's findings, it also did not act to correct compliance issues that occurred prior to the last short-term licence renewal for the station. Further, despite the confidence expressed by the licensee that it will be able to adhere to its regulatory obligations over the next licence term, it did not provide any significant evidence of clear measures it will take to ensure ongoing compliance.
22. Consequently, the Commission finds that it would be appropriate to renew the broadcasting licence for CFTV-DT for a short-term period. This short-term renewal will allow for an earlier review of the licensee's compliance with regulatory requirements.

Conclusion

23. In light of all of the above, the Commission **renews** the broadcasting licence for the low-power, English-language independent community-based television programming undertaking CFTV-DT Leamington from 1 January 2019 to 31 August 2021. The terms and **conditions of licence** are set out in the appendix to this decision.
24. The Commission expects the licensee to adhere to the provisions for community-based low-power television programming undertakings set out in Section B of Appendix 2 to Broadcasting Regulatory Policy 2016-224.

Reminders

25. Section 10(3) of the Regulations requires that, except as otherwise provided under a condition of its licence, the licensee shall provide to the Commission, within 30 days after the end of each month, the log or record of its programming for the month. The Commission reminds the licensee that program logs must be accurate and must be kept in a form acceptable to the Commission.
26. Should the licensee continue to be in non-compliance with its regulatory requirements, the Commission may consider recourse to additional measures as part of the next licence renewal process, including the issuance of mandatory orders, as well as the granting of a short-term renewal or the suspension, revocation or non-renewal of the licence.
27. Southshore is authorized by condition of licence⁴ to multiplex CFTV-DT's digital television signal up to a maximum of four separate programming services, although it has not yet implemented this authorization. The Commission reminds the licensee that when launched, all multiplexed services will have the same conditions of licence as the original service. Consequently, if and when CFTV-DT's television signal is multiplexed, the requirements set out in the conditions of licence for the service will need to be met by each multiplexed service individually rather than in aggregate by the service as a whole.

Secretary General

Related documents

- *Various television stations and services – Administrative renewals*, Broadcasting Decision CRTC 2018-317, 24 August 2018
- *Call for licence renewal applications*, Broadcasting Notice of Consultation CRTC 2017-183, 1 June 2017
- *Policy framework for local and community television*, Broadcasting Regulatory Policy CRTC 2016-224, 15 June 2016
- *Various independent conventional and community-based television programming undertakings – Licence renewals*, Broadcasting Decision CRTC 2013-467, 30 August 2013
- *A group-based approach to the licensing of private television services*, Broadcasting Regulatory Policy CRTC 2010-167, 22 March 2010

This decision is to be appended to the licence.

⁴ See condition of licence 3 set out in Appendix 21 to Broadcasting Decision 2013-467.

Appendix to Broadcasting Decision CRTC 2018-477

Terms, conditions of licence and encouragements for the low-power, English-language independent community-based television programming undertaking CFTV-DT Leamington, Ontario

Terms

The licence will expire 31 August 2021.

Conditions of licence

1. The licensee shall devote not less than 80% of the broadcast year to the broadcast of Canadian programming.
2. The licensee shall devote not less than 60% of the broadcast year to the broadcast of local programming.

For the purpose of this condition of licence, “local programming” means station productions or programming produced by community-based independent producers that reflects the particular needs and interests of residents of the area that the community-based television programming undertaking is licensed to serve (i.e., the area defined by the Grade B contour of the antenna).

3. The licensee shall not broadcast more than 12 minutes of local advertising material in any clock hour in a broadcast day.
4. The licensee shall adhere to the Canadian Association of Broadcasters’ *Equitable Portrayal Code*, as amended from time to time and approved by the Commission. However, the application of the foregoing condition of licence will be suspended if the licensee is a member in good standing of the Canadian Broadcast Standards Council.
5. The licensee shall adhere to the Canadian Association of Broadcasters’ *CAB Violence Code*, as amended from time to time and approved by the Commission.
6. The licensee shall adhere to the Canadian Association of Broadcasters’ *Broadcast code for advertising to children*, as amended from time to time and approved by the Commission.
7. In regard to multiplexing the station’s signal:
 - a) The licensee is authorized to multiplex its digital television signal in order to provide up to four separate programming services offering the following: local community programming, French- and Spanish-language programming, programming for people with intellectual, mobility, hearing and visual disabilities, Indigenous programming from the local Caldwell First Nation, and local municipal programming.
 - b) The licensee shall ensure that, once launched, each of the programming services referred to in a) adheres to the requirements set out in conditions of licence 1 through 6.

8. In regard to the repurposing of the 600 MHz frequency band in Canada:
- a) The licensee is authorized to operate the television station and transmitters according to contours and technical parameters that differ from those approved in its most recent application and/or listed on its licence, to the extent that these new contours and technical parameters have been approved by the Department of Industry (the Department) as a result of the Department's repurposing initiative of the 600 MHz frequency band as described in *Decision on Repurposing the 600 MHz Band*, SLPB-004-15, 14 August 2015 and its April 2017 *Digital Television (DTV) Allotment Plan*, *Digital Television (DTV) Transition Schedule* and the *Broadcasting Procedures and Rules* entitled *BPR-11 – Broadcasting Television Application Procedures During the 600 MHz Transition*.
 - b) For the purpose of the *Broadcasting Distribution Regulations*, the licensee is deemed to be operating the television station and transmitters under the contours and technical parameters approved by the Commission and in effect on 15 May 2017.
 - c) The above authorizations are valid only if the Commission receives confirmation from the Department that the revised contours and technical parameters resulting from the Department's repurposing initiative of the 600 MHz frequency band satisfy the requirements of the *Radiocommunication Act* and the regulations made thereunder, and that a broadcasting certificate has been or will be issued to the licensee in respect of the revised parameters.

For the purposes of these conditions of licence:

“Broadcast day” means the period of 18 consecutive hours beginning each day at six o'clock in the morning.

“Advertising material,” “broadcast year” and “clock hour” shall have the same meanings as those out in the *Television Broadcasting Regulations, 1987*.

Encouragements

Closed captioning

The Commission encourages the licensee to close caption as much programming as possible.

Citizen participation

The Commission encourages the licensee to facilitate citizen access to the production of programming and to provide training to those within the community wishing to participate in the production of programming.