



Broadcasting Decision CRTC 2020-90

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Reference: 2019-303

Ottawa, 10 March 2020

Stingray Group Inc.
Across Canada

*Public record for this application: 2019-0185-1
Public hearing in the National Capital Region
5 November 2019*

Stingray Hits – Licensing of a discretionary service

*The Commission **approves** an application by Stingray Group Inc. for a broadcasting licence to operate the currently exempt, national discretionary service Stingray Hits. The service will be licensed as a national, English-language discretionary service.*

Application

1. Stingray Group Inc. (Stingray) filed an application for a broadcasting licence to operate the currently exempt, national discretionary service known as Stingray Hits as a licensed service.
2. Stingray is a widely held Canadian public company effectively controlled by Mr. Eric Boyko, as per the Nominations Rights Agreement and the Voting Trust Agreement.
3. Stingray Hits currently operates as an exempt service 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 accordance with that order, Stingray filed the application addressed in this decision, in which it confirmed that during the previous three months this service exceeded the subscriber threshold for the operation of an exempt service.
4. The applicant indicated that it will adhere to the standard conditions of licence for discretionary services as well as the expectations and encouragements set out in Appendix 2 to Broadcasting Regulatory Policy 2016-436. Stingray also proposed to adhere to a condition of licence relating to Canadian programming expenditures (CPE) that would require it to devote, in each broadcast year, at least 10% of the previous year's gross revenues to the acquisition of or investment in Canadian programming.

5. In its application, Stingray did not specifically identify the broadcast language of the proposed service. However, according to the applicant, Stingray Hits is a service directed towards the French-language market that provides music television programming focused on popular music videos from the last 20 years. As regards music video clips, the service broadcasts 60% English-language and 40% French-language programming. The applicant expressed its intention to eventually broadcast all programming other than music video programming in French.
6. Following a preliminary review of this application, the Commission published it for consideration as part of the non-appearing phase of the 5 November 2019 hearing in Gatineau, Quebec, announced in Broadcasting Notice of Consultation 2019-303.

Intervention

7. The Commission received an intervention from the Association québécoise de l'industrie du disque, du spectacle et de la vidéo (ADISQ). The applicant did not reply to the intervention.

Commission's analysis and decision

8. Having examined the public record for this application, the Commission considers that the issues it must address in this decision are the following:
 - whether Stingray Hits should be licensed as a French-language or an English-language service, and
 - whether the requested CPE requirement of 10% of the previous broadcast year's gross revenues is appropriate and whether a portion of these expenditures should be devoted to MUSICACTION, as proposed by ADISQ in its intervention.

Language designation of the service

9. Despite Stingray's submission that the service will target a French-language audience,¹ given the applicant's statement that the service will broadcast the majority of its programming in English and given the concerns expressed by ADISQ in its intervention, the details of which are set out below, the Commission, having examined the record of this proceeding in more detail, finds that it must consider whether it is appropriate to designate Stingray Hits as a French- or English-language service.

¹ Stingray, in its letters dated 11 June 2019 and 8 August 2019, both of which were responses to Commission requests for information, submitted that Stingray Hits intends to target a French-language audience, even though the applicant also indicated that Stingray Hits intends to broadcast only 40% of its programming in French with the remaining 60% of the programming to be broadcast in English.

10. In general, the designation of the language of a service relates to the language of the programming that it broadcasts. As such, the Commission considers that the language designation of a service is that in which the service predominantly broadcasts.
11. According to the applicant, Stingray Hits broadcasts 40% of its music video programming, as well as some spoken-word programming between music video clips, in French while the rest of the content is broadcast in English.
12. In its intervention, ADISQ requested that the Commission impose a condition of licence requiring that any spoken-word programming be broadcast in French. Broadcasting Regulatory Policy 2015-86, however, eliminated genre protection and nature of service requirements in order to afford broadcasters greater flexibility in creating and acquiring programming for their audiences. Given this, the Commission finds that ADISQ's request is contrary to the approach set out in that regulatory policy.
13. While the Commission recognizes that there does not currently exist a specific regulation or standard condition of licence that determines the linguistic breakdown of a television service as it relates to the linguistic designation of that service, the Commission has demonstrated a consistency in its licensing approach for both radio and television services. For instance, Broadcasting Public Notice 2006-158 established a requirement for French-language commercial radio stations to ensure that French-language vocal selections comprise at least 65% of the content category 2 (Popular Music) musical selections that they broadcast during each broadcast week. As regards television services that, in the past, would have been held to a nature of service similar to the programming proposals offered by Stingray, the Commission notes that MusiMax and MusiquePlus were required to ensure that French-language music video clips comprised at least 50% of the total number of music video clips that each of those services broadcast during each broadcast month.²
14. Given that the service broadcasts predominantly English-language programming, and that nothing in this application indicated that the language of the programming would necessarily change once the service is licensed, the Commission finds it appropriate to designate Stingray Hits as an English-language service.

Canadian programming expenditure requirement

15. 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 gross 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."

² These conditions of licence were set out in Appendices 5 and 6 to Broadcasting Decision 2012-241 for MusiMax and MusiquePlus, respectively.

16. ADISQ submitted that Stingray Hits should be authorized to contribute a portion of its CPE to MUSICACTION or a similar fund. However, the Commission finds this approach contrary to the policy set out in Broadcasting Regulatory Policy 2015-86, which eliminated genre protection. Given that discretionary services are permitted to change their programming strategy at any time, the Commission finds that it is not appropriate to require a service to allocate a portion of its CPE in alignment with its current programming approach.
17. In light of the above, the Commission considers that the CPE requirement proposed by the applicant meets the minimum requirement established in Broadcasting Regulatory Policy 2015-86. Accordingly, the Commission imposes a 10% CPE requirement for Stingray Hits. A **condition of licence** to this effect is set out in the appendix to this decision.

Conclusion

18. In light of all of the above, the Commission **approves** the application by Stingray Group Inc. by granting it a broadcasting licence to operate Stingray Hits as a national, English-language discretionary service. The terms and **conditions of licence** are set out in the appendix to this decision.
19. Stingray Hits will be subject to the *Discretionary Services Regulations*. In addition, the distribution of this service will be subject to the requirements set out in the *Broadcasting Distribution Regulations*.

Secretary General

Related documents

- *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2019-303, 28 August 2019
- *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
- *Astral Media inc. – Group-based licence renewals*, Broadcasting Decision CRTC 2012-241, 26 April 2012
- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006

This decision is to be appended to the licence.

Appendix to Broadcasting Decision CRTC 2020-90

Terms, conditions of licence, expectations and encouragements for the national, English-language discretionary service Stingray Hits

Terms

The licence will expire 31 August 2025.

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. In each broadcast year, the licensee shall devote to the acquisition of or investment in Canadian programming at least 10% of the previous year's gross revenues of the undertaking. For the first year of the licence term, the calculation of the 10% shall be based on the previous year's gross revenues of the previously exempt service.

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.

Encouragements

The standard encouragements 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.