



Broadcasting Decision CRTC 2022-130

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Reference: 2021-337

Ottawa, 17 May 2022

The News Forum Inc.
Across Canada

Public record: 2021-0213-5

*Public hearing in the National Capital Region
6 December 2021*

The News Forum – Licensing of a national news discretionary service

Summary

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

However, the Commission **denies** the applicant's request for mandatory distribution pursuant to paragraph 9(1)(h) of the *Broadcasting Act* as part of this application.

In addition, the Commission **denies** the applicant's request for advance approval to transfer control of The News Forum Inc. to Tore Stautland and Julie Stautland as part of the current application.

Application

1. The Commission has the authority, pursuant to subsection 9(1) of the *Broadcasting Act* (the Act), to issue licences for such terms not exceeding seven years and subject to such conditions related to the circumstances of the licensee as the Commission deems appropriate for the implementation of the broadcasting policy set out in subsection 3(1) of the Act.
2. The national news discretionary service The News Forum 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. Given that the service has exceeded that 200,000 subscriber threshold for over three months, The News Forum Inc. filed an application for a broadcasting licence to operate The News Forum as a licensed service. The News Forum provides daily national and international news, as well as analysis and commentary.

3. The News Forum Inc. has 11 shareholders. At the time of the initial application, Julie Stautland held 36% of the shares, Tore Stautland held 19%, and the nine other shareholders held 5% each. The board of directors had five members including Tore Stautland, who was chief executive officer (CEO) of The News Forum Inc. In the context of multiple rounds of requests for information and amendments to this application, The News Forum Inc. made significant changes to its corporate structure and implemented a voting trust agreement in order to comply with the *Direction to the CRTC (Ineligibility of Non-Canadians)*, which requires the Canadian broadcasting system to be effectively owned and controlled by Canadians.
4. The applicant indicated that it will adhere to the standard conditions of licence for Canadian discretionary services operating as national news services set out in the appendix to Broadcasting Regulatory Policy 2015-436.
5. The Commission received 22 letters in support of this application, including a joint intervention provided by the applicant comprising 12 letters from individuals.

Issues

6. After examining the record for this application in light of applicable regulations and policies, the Commission considers that it must examine the following issues:
 - compliance with the *Direction to the CRTC (Ineligibility of Non-Canadians)*;
 - the applicant's request for advance approval to effect a change in ownership as part of the current application; and
 - the applicant's request for mandatory distribution of The News Forum pursuant to paragraph 9(1)(h) of the Act and the policy framework set out in Broadcasting Order 2013-735, Broadcasting Regulatory Policy 2015-86 and Broadcasting Regulatory Policy 2015-436

Compliance with the *Direction to the CRTC (Ineligibility of Non-Canadians)*

7. Paragraph 3(1)(a) of the Act states that the Canadian broadcasting system shall be effectively owned and controlled, legally and in fact, by Canadians. The *Direction to the CRTC (Ineligibility of Non-Canadians)*, SOR 97-192 (the Direction) sets out that no broadcasting licence may be issued to an applicant that is a non-Canadian. The Direction defines "Canadian" as follows:
 - (a) a citizen within the meaning of subsection 2(1) of the *Citizenship Act* who is ordinarily resident in Canada;
 - (b) a permanent resident within the meaning of subsection 2(1) of the *Immigration Act* who is ordinarily resident in Canada and has been ordinarily resident in Canada for not more than one year after the date on which that person first became eligible to apply for Canadian citizenship.

8. When a licensee is a corporation, it must be a “qualified corporation” to be considered Canadian. The Direction specifies that

A “qualified corporation” means a corporation incorporated or continued under the laws of Canada or a province, where

(a) the chief executive officer or, where the corporation has no chief executive officer, the person performing functions that are similar to the functions performed by a chief executive officer, and not less than 80 per cent of the directors are Canadians;

(b) in the case of a corporation having share capital, Canadians beneficially own and control, directly or indirectly, in the aggregate and otherwise than by way of security only, not less than 80 per cent of all the issued and outstanding voting shares of the corporation and not less than 80 per cent of the votes.

9. Section 3 of the Direction sets out that when the Commission determines that an applicant is controlled by a non-Canadian, whether on the basis of personal, financial, contractual or business relations, or any other considerations relevant to determining control, the applicant is deemed to be a non-Canadian. In other words, the Commission could determine that a non-Canadian controls a corporation on the basis of factors other than legal control.

Changes to The News Forum Inc.’s corporate structure

10. At the time of the application, Tore Stautland did not meet the definition of Canadian set out in the Direction: he obtained permanent residency status in 1989 and was not a Canadian citizen. Therefore, The News Forum Inc. made significant changes to its corporate structure in the context of multiple rounds of requests for information.
11. In response to a request for information from the Commission, the applicant stated that Tore Stautland resigned as CEO and that the position was assumed by Lorna Dueck, who is a Canadian as defined in the Direction. In addition, Tore and Julie Stautland established a Voting Trust Agreement that transferred their voting rights as shareholders to Douglas McKenzie, who is a Canadian as defined in the Direction. The applicant specified that Douglas McKenzie is a person independent from Julie and Tore Stautland. Pursuant to the Voting Trust Agreement, Tore and Julie Stautland no longer exercise the rights associated with their shares, including the right to elect members of the board of directors.
12. In response to a subsequent request for information from the Commission, the applicant stated that The News Forum Inc. issued additional shares. As a result, Julie Stautland now holds 14.57% of the shares, Tore Stautland holds 7.67%, one shareholder holds 1.43% and the remaining shareholders hold 9.54% each. In addition, The News Forum Inc. amended its bylaws to specify that not less than 80% of the directors shall be Canadians.

Commission's analysis

13. Following the issuance of the additional shares, 92.3% of the shares of The News Forum Inc. are beneficially owned by Canadians. With the Voting Trust Agreement in place, 100% of the shares are controlled by Canadians. Finally, the new CEO and 80% of the board of directors are Canadians. Therefore, the Commission considers that the News Forum Inc. meets the test for legal control.

14. To assess control in fact, the Commission has generally relied on the following test set out in Decision No. 297-A-1993 of the Canadian Transportation Agency:

There is no one standard definition of control in fact but generally, it can be viewed as the ongoing power or ability, whether exercised or not, to determine or decide the strategic decision-making activities of an enterprise. It can also be viewed as the ability to manage and run the day-to-day operations of an enterprise. Minority shareholders and their designated directors normally have the ability to influence a company as do others such as bankers and employees. The influence, which can be exercised either positively or negatively by way of veto rights, needs to be dominant or determining, however, for it to translate into control in fact.

15. The determination of control in fact lies in the substance, not just the form, of the undertaking. Further, consideration must be extended to the actual and proposed operational, managerial and financial control as well as to the intent and ability of individual shareholders to exert influence and control. It is also noted that agreements, such as shareholder agreements and commercial contracts between the shareholders and the company are of particular importance.

16. The Commission is of the view that Tore Stautland, as co-founder, former CEO and minority shareholder of The News Forum Inc., still has a certain level of influence over the corporation. However, the Commission draws a distinction between influence and control. That a non-Canadian has a degree of influence over a corporation does not necessarily result in a conclusion that control is in the hands of a non-Canadian.

17. The Commission notes that Tore and Julie Stautland own together 22.24% of the common shares of The News Forum Inc. In addition, the Voting Trust Agreement prevents them from exercising the rights associated with ownership of their shares. No single shareholder has the ability to elect board members of The News Forum Inc. Finally, the shareholders have not entered into a shareholders agreement that would grant specific rights to any shareholder. Given that no individual in particular has the ability to decide the strategic decision-making activities of The News Forum Inc., the Commission is of the view that effective control of The News Forum Inc. is exercised by its board of directors.

18. In light of the above, the Commission considers that effective control of The News Forum Inc. is exercised, legally and in fact, by its board of directors and that it is a qualified corporation as defined in the Direction.

19. The Commission reminds the applicant that, pursuant to section 10 of the *Discretionary Services Regulations*, Tore Stautland and Julie Stautland, should they amend or terminate the Voting Trust Agreement, may be required to notify the Commission or to seek the Commission's prior approval depending on the nature of the changes. In any event, the Commission expects the applicant to notify it of any changes to the Voting Trust Agreement or the status of Tore Stautland's Canadian citizenship regardless of whether such notification or prior approval is required.

Request for advance approval to make a change in ownership

20. Pursuant to subsections 10(4) and (5) of the *Discretionary Services Regulations*, a licensee shall obtain the Commission's prior approval or shall notify the Commission of any act, transaction or agreement that, directly or indirectly, would result in a change by any means of the effective control of its undertaking.

21. As part of the current application, the applicant requested advance approval to transfer control of The News Forum Inc. from Douglas McKenzie, the trustee, to Tore Stautland and Julie Stautland once Tore Stautland obtains Canadian citizenship.

22. The Commission is of the view that such a request is premature given that the parties are not currently in a position to make such a change in effective control. To begin with, the applicant is not yet a licensee. Therefore, section 10 of the *Discretionary Services Regulations* does not apply: the applicant does not yet have standing to make such a request. Further, which changes may be sought once Tore Stautland obtains Canadian citizenship is not certain. As a result, the Commission does not know exactly what it would be approving. The Commission considers that Tore Stautland must first obtain Canadian citizenship. Until that time, the Voting Trust Agreement remains in force and the requirements are not currently met for its termination.

23. In light of the above, the Commission **denies** the applicant's request for advance approval to transfer control of The News Forum Inc. from the trustee to Tore Stautland and Julie Stautland as part of the current application. Should The News Forum Inc. wish to effect such a change in ownership and/or control at a future time, it must provide notice or submit an application as required in the circumstances to remain in compliance with section 10 of the *Discretionary Services Regulations*.

Mandatory distribution

24. In Broadcasting Regulatory Policy 2013-734, the Commission established a framework to govern the distribution of national news discretionary services. The framework includes a number of safeguards to ensure greater and more equitable access by national news services to the Canadian broadcasting system, thereby ensuring that Canadians have access to a healthy and diverse range of Canadian news programming. The framework, which includes provisions for the mandatory distribution of national news discretionary services, was implemented in Broadcasting Order 2013-735. As part of the current application, the applicant requested mandatory distribution of The News Forum pursuant to paragraph 9(1)(h) of the Act and the policy framework set out in Broadcasting Order 2013-735, Broadcasting Regulatory Policy 2015-86 and Broadcasting Regulatory Policy 2015-436.

25. Being licensed as a national news discretionary service does not automatically guarantee mandatory distribution. Broadcasting Order 2013-735 enumerates the specific services to which it applies. Therefore, The News Forum does not benefit from the privileges afforded by that order until the Commission amends it to include the service. The applicant must file an application and demonstrate that it meets the requirements set out in Broadcasting Regulatory Policy 2015-436 before the Commission can grant it mandatory distribution.
26. In Broadcasting Regulatory Policy 2015-436, the Commission updated its criteria for assessing whether a national news discretionary service should benefit from the mandatory distribution established in Broadcasting Order 2013-735. In particular, condition of licence 1(a) requires the licensee to provide updated news reports every 120 minutes.
27. The Commission finds that in general The News Forum meets the criteria for mandatory distribution set out in Broadcasting Regulatory Policy 2015-436. However, the Commission is concerned with the frequency of The News Forum's provision of updated news reports.
28. The 2021 spring schedule provided by the applicant shows that the period from 12:30 p.m. to 6:00 p.m. on weekdays is devoted to category 2a) programs (Analysis and Interpretation).¹ This portion of the schedule does not include any category 1 programs (News), which would include an updated news report. Therefore, the Commission is not satisfied that The News Forum provides updated news reports every 120 minutes.
29. In light of the above, the Commission **denies** the applicant's request for mandatory distribution pursuant to paragraph 9(1)(h) of the Act and the policy framework set out in Broadcasting Order 2013-735, Broadcasting Regulatory Policy 2015-86 and Broadcasting Regulatory Policy 2015-436. However, should the licensee file documentation with the Commission showing that The News Forum meets all of the obligations set out in Broadcasting Regulatory Policy 2015-436, the Commission will consider as part of a separate proceeding whether to grant mandatory distribution of The News Forum.

Conclusion

30. In light of all the above, the Commission **approves** the application by The News Forum Inc. for a broadcasting licence to operate The News Forum as an English-language national news discretionary service. The terms and **conditions of licence** are set out in the appendix to this decision. The News Forum will also be subject to the *Discretionary Services Regulations*.
31. However, the Commission **denies** the applicant's request for mandatory distribution pursuant to paragraph 9(1)(h) of the Act and the policy framework set out in Broadcasting Order 2013-735, Broadcasting Regulatory Policy 2015-86 and

¹ The definitions for television program categories are set out in the appendix to Broadcasting Regulatory Policy 2010-808.

Broadcasting Regulatory Policy 2015-436. The Commission will consider as part of a separate proceeding whether to grant mandatory distribution of The News Forum, once the applicant has provided documentation showing that it meets all of the obligations set out in Broadcasting Regulatory Policy 2015-436.

32. In addition, the Commission **denies** the applicant's request for advance approval to transfer control of The News Forum Inc. from the trustee to Tore Stautland and Julie Stautland as part of the current application.
33. Finally, the Commission expects the licensee to inform the Commission of any changes to Tore Stautland's Canadian citizenship status and to the Voting Trust Agreement.

Reminders

34. News services play a vital role in the broadcasting system. The Commission considers that certain regulatory supports must remain in place to ensure that Canadians have access to high quality news and information and are exposed to a diversity of views on matters of public concern. In this respect, the Commission notes the applicant's commitment to adhere to the standard conditions of licence for discretionary services operating as national news services set out in the appendix to Broadcasting Regulatory Policy 2015-436, which include a number of standards related to news and information. The Commission reminds the licensee that it is required by condition of licence to comply with the following codes administered by the Canadian Broadcast Standards Council:

- the *RTDNA Code of (Journalistic) Ethics*;
- the *Canadian Association of Broadcasters' Code of Ethics*; and
- the *Journalistic Independence Code*.

The licensee must also adhere to the Canadian Association of Broadcasters' *Equitable Portrayal Code* and *Violence Code*, or it must be a member in good standing of the Canadian Broadcast Standards Council.

35. The Commission also reminds the licensee that pursuant to subsection 10(4) of the *Discretionary Services Regulations*, it must obtain the Commission's prior approval of any act, transaction or agreement that, directly or indirectly, would result in a change by any means of the effective control of The News Forum. In addition, prior approval from the Commission is required if Tore Stautland and Julie Stautland were to control 30% or more of the voting interests in The News Forum Inc. Should such a change result in Tore Stautland and Julie Stautland controlling more than 20% but less than 30% of the voting interests, they would still be required to notify the Commission pursuant to subsection 10(5) of the *Discretionary Services Regulations*.

Secretary General

Related documents

- *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2021-337, 5 October 2021
- *Revised standard conditions of licence for Canadian discretionary services operating as national news services*, Broadcasting Regulatory Policy CRTC 2015-436, 23 September 2015
- *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
- *Distribution of Canadian Category C national news specialty services*, Broadcasting Order CRTC 2013-735, 19 December 2013
- *Distribution of Canadian Category C national news specialty services*, Broadcasting Regulatory Policy CRTC 2013-734, 19 December 2013
- *Definitions for television program categories*, Broadcasting Regulatory Policy CRTC 2010-808, 1 November 2010

This decision is to be appended to the licence.

Appendix to Broadcasting Decision CRTC 2022-130

Terms, conditions of licence and expectations for the English-language national news discretionary service The News Forum

Terms

The licence will expire on 31 August 2027.

Conditions of licence

1. The licensee shall adhere to the standard conditions of licence, expectations and encouragement for discretionary services operating as national news services set out in the appendix to *Revised standard conditions of licence for Canadian discretionary services operating as national news services*, Broadcasting Regulatory Policy CRTC 2015-436, 23 September 2015.
2. To ensure that the licensee complies at all times with the *Direction to the CRTC (Ineligibility of non-Canadians)*, SOR/97-192, the licensee shall
 - a) file with the Commission a copy of any programming supply agreement or licence or trademark agreement that it has entered into with a non-Canadian party within 30 days of its execution; and
 - b) respond to Commission requests for any additional document that could affect the control of the programming or management of the service.

Expectations

The Commission expects the licensee to inform the Commission of any changes to Tore Stautland's Canadian citizenship status.

The Commission expects the licensee to inform the Commission of any changes to the undertaking's Voting Trust Agreement.