Canadian Radio-television and Telecommunications Commission
Conseil de la radiodiffusion et des télécommunications canadiennes

Broadcasting Decision CRTC 2022-221

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Stingray Group Inc.
Across Canada

Public record: 2021-0784-6

Regulatory relief regarding the payment of tangible benefits contributions for the 2019-2020 and 2020-2021 broadcast years in the context of the COVID-19 pandemic

Summary

The Commission **denies** an application by Stingray Group Inc. (Stingray) for regulatory relief regarding the payment of tangible benefits contributions for the 2019-2020 and 2020-2021 broadcast years due to the impact of the COVID-19 pandemic on the operation of its services.

The Commission finds that the requested regulatory relief is not warranted as Stingray has the financial capacity to fulfill its tangible benefits commitments without any additional delay. Further, the Commission finds that the relief sought by Stingray would be harmful to various affected funds and their beneficiaries in that it would compromise the stability and predictability of contributions they receive. The Commission also finds that approval of Stingray's application would undermine the Commission's Tangible Benefits Policy in regard to the consistent and predictable application of that policy and in regard to fairness to other broadcasters that are subject to that policy. Finally, Stingray did not provide sufficient evidence that approval of its application is necessary to maintain the operation of its services.

Background

1. On 13 July 2020, the Canadian Association of Broadcasters (CAB) filed an application in which it requested immediate regulatory relief relating to expenditure and exhibition requirements for Canadian programming in regard to the 2019-2020 broadcast year for Canadian private broadcasters due to the COVID-19 pandemic. The CAB represents the vast majority of private Canadian programming services, including radio and television stations, as well as pay audio, discretionary and on-demand services.

2. In light of the issues raised and the number of stakeholders that could be affected by the requested relief, the Commission called for comments on the CAB's application in Broadcasting Notice of Consultation 2020-336. In that notice, the Commission also sought comments on its proposed approach whereby licensees would have more time to

fulfill their expenditure requirements. Specifically, it stated that financial requirements could be spread over several broadcast years to ensure that broadcasters have the flexibility they need, while ensuring that the broadcasting system continued to benefit from broadcasters' financial contributions as Canada's creative industries ramped back up to full capacity. The notice stated that any potential regulatory relief had to meet the following four expected outcomes:

- the viability of the Canadian broadcasting sector, insofar as it has been affected by the pandemic, is not further harmed as a result of the regulatory relief proposed;
- parties that currently benefit from the requirements imposed by the Commission on broadcasters are not unreasonably affected by any potential regulatory relief;
- when viewed as a whole, current news and information programming and the service such programming provides to Canadians is maintained; and
- any resulting regulatory action granting potential relief is minimally administratively burdensome on those entities seeking relief but is easily monitored and supervised by the Commission in order to ensure appropriate accountability.

3. In Broadcasting Decision 2021-274, the Commission denied the CAB's application since it failed to meet the second and fourth expected outcomes. Instead, the Commission considered that the extended payment approach it proposed in that same decision met all four expected outcomes. To this effect, the Commission granted radio and television broadcasters additional time to pay various expenditure and contribution shortfalls incurred in the 2019-2020 broadcast year over several broadcast years. Specifically,

- radio licensees must pay 50% of their incurred Canadian content development (CCD) contribution (including tangible benefits) shortfalls for the 2019-2020 broadcast year by 31 August 2022 and the remaining 50% by 31 August 2023 (the 50-50% formula);
- television licensees of large ownership groups and licensees of independent services must pay their Canadian programming expenditure (CPE) shortfalls by 31 August 2023 and 31 August 2024, respectively. They were not given any flexibility in regard to the payment of tangible benefits as only a limited number of broadcasters are currently required to pay tangible benefits.

Application

4. Following the publication of Broadcasting Decision 2021-274, Stingray filed an application for regulatory relief regarding the payment of tangible benefits for the 2019-2020 and 2020-2021 broadcast years due to the impact of the COVID-19 pandemic on the operation of its services.

5. Specifically, Stingray requested to be relieved of the entirety of its regulatory obligations to pay tangible benefits directed to FACTOR/Musicaction and the Radio Starmaker Fund/Fonds Radiostar (the Funds), which amount to a total of $9,025,079 for the 2019-2020 and 2020-2021 broadcast years (Proposal 1a)).

6. Alternatively, if the Commission were to deny Proposal 1a), Stingray requested that it be permitted to make the required payments to the Funds totalling $9,025,079 over a two-year period at the end of the respective term for each of the benefits packages involved (Proposal 1b)).

7. Finally, Stingray proposed to pay all other radio and television tangible benefits shortfalls (excluding those directed to the Funds) for the 2019-2020 and 2020-2021 broadcast years, using the 50-50% formula set out in Broadcasting Decision 2021-274 for radio broadcasters. Specifically, Stingray would pay 50% of the shortfalls by 31 August 2022 and the remaining 50% by 31 August 2023 (Proposal 2).

8. In support of its application, Stingray submitted that its services have experienced significant revenue declines since the onset of the pandemic and that the decline is likely to continue in the foreseeable future. It further submitted that denial of its application would have a negative effect on its stations and the service that those stations provide to Canadians. In Stingray's view, the Funds would unlikely be affected should it not pay its tangible benefits for a two-year period.

9. Stingray currently carries tangible benefits obligations related to three transactions:

   - In Administrative Decision L2015-0035 dated 22 April 2015, the Commission approved a change in ownership and effective control by Stingray Digital Group Inc. as a result of its transition to a public company. In that decision, the Commission required Stingray Digital Group Inc. to allocate $5,507,760 in tangible benefits to initiatives relating to the radio sector, to be paid in equal amounts over seven consecutive broadcast years.

   - In Broadcasting Decision 2018-404, the Commission approved a change in ownership and effective control of various radio and television broadcasting undertakings from Newfoundland Capital Corporation Limited, on behalf of Newcap Inc. (Newcap) and its licensed broadcasting subsidiaries to Stingray Digital Group Inc. In that decision, the Commission directed Stingray Digital Group Inc. to allocate $30,104,028 in tangible benefits to initiatives relating to the radio sector and $859,277 to initiatives relating to the television sector, for a total tangible benefits package of $30,963,305, to be paid in equal amounts over seven consecutive broadcast years. As part of this acquisition, the Commission also made Stingray Digital Group Inc. responsible for the payment of the outstanding tangible benefits totalling $4,462,179 from past radio transactions that Newcap had completed.

   - In Broadcasting Decision 2019-253, the Commission approved Stingray Radio Inc.'s acquisition of the radio station CHOO-FM Drumheller, Alberta, from Golden West Broadcasting Ltd. In that decision, the Commission directed Stingray Radio Inc. to pay $101,974 in tangible benefits in equal amounts over seven consecutive broadcast years.

Interventions

10. The Commission received interventions in opposition to and comments on Stingray's application from the Funds, Quebecor Media Inc. (Quebecor), the Writers Guild of Canada (WGC), the Canadian Independent Music Association (CIMA), the Society of Composers, Authors and Music Publishers of Canada (SOCAN),[1] the Canadian Media Producers Association (CMPA), the Association québécoise de l'industrie du disque, du spectacle et de la vidéo (ADISQ), The National Campus and Community Radio Association and the Public Interest Advocacy Centre (PIAC). Stingray replied to the interventions. The concerns raised by the interveners are discussed below.

Regulatory framework

11. Pursuant to subsection 5(1) of the *Broadcasting Act* (the Act), the Commission's mandate is to regulate and supervise all aspects of the Canadian broadcasting system in the public interest. The public interest is reflected in the numerous objectives of the Act and of the Canadian broadcasting policy set out in subsection 3(1) of the Act. The review of ownership transactions in the public interest forms part of the Commission's regulatory and supervisory mandate under the Act.

12. As set out in Broadcasting Regulatory Policy 2014-459 (the Tangible Benefits Policy), the Commission requires applicants to pay tangible benefits when a change in ownership leads to a change in the effective control of a broadcasting undertaking.

Commission's approach to examining Stingray's application

13. In Broadcasting Notice of Consultation 2020-336, the Commission indicated that any regulatory relief granted to broadcasters, in both the radio and television sectors, should balance the needs of broadcasters with the needs of other elements of the Canadian broadcasting system, such as the creative sector. The four expected outcomes set out above were then established to help interveners and the Commission assess the impact of any regulatory relief proposed on the broadcasting system at large, since the regulatory reliefs to be granted would likely affect the broadcasting ecosystem as a whole (broadcasters and the creative sector). This framework set the stage for the policy approach to regulatory relief established in Broadcasting Decision 2021-274.

14. Although Stingray's overall revenues generated from its regulated broadcasting undertakings continue to decline, its profit before interest and taxes (PBIT) margins for

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[1] SOCAN stated that its intervention reflects the positions of Canada's songwriters, composers and music publishers as well as the organizations and collective management organizations that support them. It collectively referred to these organizations as "ACCORD" and noted that ACCORD represents over "170,000 English and French-Canadian songwriters, composers and music publishers as our members".

the 2019-2020 and 2020-2021 broadcast years were close to those achieved in the 2018-2019 broadcast year, before the pandemic.

15. While Stingray endured financial hardship during the 2019-2020 broadcast year, the Commission considers that the company's financial performance does not suggest that the hardship it endured was more severe than that endured by other Canadian broadcasters who managed to fulfill their regulatory obligations despite the pandemic. Although Stingray's total revenues for its radio operations declined at roughly the same rate as for the rest of the industry in both the 2019-2020 and 2020-2021 broadcast years, Stingray was able to maintain PBIT margins for both years that vastly exceeded the industry average due to extensive reductions in total expenses.

16. The Commission is of the view that the approach to be taken in Stingray's case should be different from the approach based on four expected outcomes since the Commission has already made a decision based on these outcomes and established relief measures that apply to all broadcasters, including Stingray. It is therefore in light of the relief granted in Broadcasting Decision 2021-274 and the arguments raised in Stingray's application that the Commission has examined that application.

17. After examining Stingray's application in light of applicable policies and regulations, the Commission has considered each of Proposals 1a), 1b) and 2 in regard to the following:

    - whether each proposal is warranted in light of Stingray's particular circumstances;
    - the impact that approval of each proposal would have on the Funds and their beneficiaries; and
    - the impact that approval of each proposal would have on the consistent and predicable application of the Tangible Benefits Policy and in regard to fairness to other broadcasters that are subject to that policy.

Evaluation of Stingray's Proposal 1a)

18. Under Proposal 1a), Stingray is seeking to be relieved of the entirety of its regulatory obligations to pay tangible benefits directed to the Funds for the 2019-2020 and 2020-2021 broadcast years, which amount to a total of $9,025,079.

19. In Broadcasting Decision 2021-274, the Commission did not relieve any licensees from making their required contributions; it only gave them more time to pay. Therefore, the Commission considers that Proposal 1a) deviates from the regulatory relief established in Broadcasting Decision 2021-274. In the sections below, the Commission evaluates whether this deviation is warranted under Stingray's particular circumstances, whether the deviation would have an unreasonable impact on the Funds and their beneficiaries, and its potential impact on the consistent and predictable application of the Tangible Benefits Policy and on fairness to other broadcasters that are subject to that policy.

Is the deviation from established regulatory relief warranted under Stingray's particular circumstances?

20. Stingray submitted that denying the relief it is seeking would impact its operations and the service that its stations provide to Canadians. It reported engaging in various cost saving measures during the pandemic in an effort to manage the decline in its revenues, and submitted that being relieved of its tangible benefits contributions to the Funds would help it to continue to provide a high level of service to listeners.

Interventions

21. PIAC, CIMA and ADISQ questioned Stingray's assertion that it does not have the ability to fulfill its tangible benefits contributions as originally proposed, and stated that they could not support an application that would undermine the Canadian broadcasting system as a whole. These interveners noted that Stingray remained profitable during the pandemic and has continued to acquire businesses. In this regard, CIMA and ADISQ stated that Stingray announced in January 2022 that it had acquired InStore Audio Network, the largest in-store audio advertising network in the United States, which represented a purchase agreement of approximately $59 million. CIMA, Quebecor and Musicaction argued that approving Stingray's application would create a disadvantage for broadcasters who have made their required tangible benefits contributions while experiencing reductions in revenues. Some of these broadcasters are unprofitable, unlike Stingray.

22. In reply, Stingray submitted that it has worked hard over the years to diversify its business interests, which has included significant investments in various businesses, some outside of Canada, including those using innovative new technologies. It submitted that it should not have to divert money from more sustainable lines of business to prop up its regulated broadcasting assets. Stingray argued that this would discourage it from investing in regulated Canadian broadcasting services in the future.

Commission's analysis

23. Although, as noted above, Stingray's radio revenues decreased in both the 2019-2020 and 2020-2021 broadcast years, the decrease was no more severe than the decreases experienced by other broadcasters. Moreover, Stingray was able to maintain high profit margins by offsetting these losses with expense reductions.

24. Accordingly, the Commission finds that Stingray is in a financial position to fulfill its tangible benefits contribution requirements for the 2019-2020 and 2020-2021 broadcast years, and that approval of Proposal 1a) is not warranted under the licensee's particular circumstances. Further, approval of this proposal would set a precedent by signaling to other broadcasters that appropriate demonstration of financial need is not necessary to obtain similar relief.

Impact that approval of the proposal could have on the Funds and their beneficiaries

25. Stingray argued that its proposal not to allocate the tangible benefits to the Funds for the 2019-2020 and 2020-2021 broadcast years would not unreasonably affect the Funds since they are well-established with significant resources. It argued that this is particularly true for FACTOR, since that fund has a large reserve that supports many of the same beneficiaries and has received millions of dollars in top-up funding from the federal government.

Interventions

26. The Funds, PIAC, CIMA, Quebecor, SOCAN, the CMPA and ADISQ disagreed with Stingray's assertion that Proposal 1a) would not unreasonably affect the Funds. FACTOR submitted that Stingray, by withholding its contributions, would adversely affect Canadian musicians, songwriters, independent labels, conferences and community organizations to whom funding is to be allocated. It further submitted that Stingray's contributions are also intended, in part, to support a diversity of high-quality cultural content upon which it may ultimately draw as a broadcaster. FACTOR added that implementing Stingray's proposal would impoverish the licensee's own options in the coming years.

27. On the matter of government assistance provided to recipients, PIAC, CIMA and ADISQ stated that government support and tangible benefits contributions are two different revenue streams. These interveners noted that government assistance is used to make up for lost income in the production sector, while tangible benefits are used to generate work for the creators. They submitted that government assistance therefore does not make up for the loss of tangible benefits contributions.

28. PIAC, SOCAN and the CMPA argued that government funding should not form the basis for granting relief from regulatory obligations. These interveners expressed the view that government funding is provided to assist in the survival of the sector, not to replace tangible benefits obligations. Furthermore, they argued that it is not up to Stingray to determine whether or not funds need approved tangible benefits contributions.

Commission's analysis

29. Relieving Stingray of its regulatory obligation to pay tangible benefits contributions to the Funds for the 2019-2020 and 2020-2021 broadcast years would result in over $9 million not going to the Funds and their beneficiaries. This in turn would result in Canadian programming being deprived of valuable funding and would run counter to objectives of the Act, including that set out in subsection 3(e), which states that "each element of the Canadian broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming."

30. The Commission notes that government assistance was established to help the creative industry through a difficult financial period in order to maintain jobs and support business continuity for organizations whose viability has been negatively affected by the

pandemic. It therefore agrees with interveners that government contributions to those funds are not intended to make up for the loss of tangible benefits contributions.

31. Accordingly, the Commission finds that approval of Stingray’s Proposal 1a) would result in too significant a loss to the Funds and their beneficiaries.

Impact on the consistent and predictable application of the Tangible Benefits Policy and on fairness to other broadcasters that are subject to that policy

32. As set out in the Tangible Benefits Policy, the Commission does not solicit competing applications for changes to the ownership or effective control of broadcasting undertakings. The onus is on the applicant to show that the application is the best possible proposal in the circumstances and that approval is in the public interest, consistent with the overall objectives of the Act. As one way of ensuring that the public interest is served, the Commission expects applicants to propose tangible benefits, that is, financial contributions that are proportionate to the size and nature of the transaction and that will yield measurable improvements to the communities served by the broadcasting undertaking to be acquired, as well as to the Canadian broadcasting system and creators.

Interventions

33. The WGC, CIMA, Quebecor, the CMPA and ADISQ noted that tangible benefits are imposed as a condition of approval for transactions and are not conditional on the success or viability of the transaction. Interveners further noted that tangible benefits are not based on an assumed future value of the undertaking but instead are determined at the time of the transaction and are not dependent on the future operations of a business or the economy.

Commission’s analysis

34. Stingray did not ask for and did not receive an exemption from the requirement to pay tangible benefits for the above-noted 2015, 2018 and 2019 transactions. In fact, for the 2015 transaction, the Commission approved Stingray’s proposal to pay 8% of the value of the transaction as tangible benefits, which exceeded the 6% generally required. Furthermore, in each case, the Commission required Stingray to pay the tangible benefits in equal amounts over seven consecutive broadcast years, in accordance with its approach set out in the Tangible Benefits Policy.

35. The Commission approved these transactions and the proposed financial contributions as a way of ensuring that the public interest and several objectives of the Act would be served. As mentioned by the interveners, those tangible benefits were based on the value of the transaction at the time of the purchase as opposed to the future value of the undertakings acquired.

36. The primary goal of imposing tangible benefits is to ensure that, in the absence of competing applications, an application for transfer of ownership and effective control is the best possible proposal and that approval is in the public interest. In the Commission’s view, approval of Stingray’s Proposal 1a) would therefore undermine the integrity of the

Tangible Benefits Policy in regard to the consistent and predictable application of that policy. Further, approval of the proposal would be unfair to other broadcasters who have fulfilled their tangible benefits commitments and to the Funds and their beneficiaries, who rely on funding from tangible benefits.

Conclusion

37. As set out above, the Commission finds that approval of Stingray's Proposal 1a) is not warranted as Stingray has the financial capacity to fulfill its tangible benefits commitments without any additional delay. Further, it finds that approval of the proposal would be harmful to the Funds and their beneficiaries, and would undermine the Commission's Tangible Benefits Policy in regard to the consistent and predictable application of that policy and in regard to fairness to other broadcasters that are subject to that policy. Consequently, the Commission's **denies** Stingray's Proposal 1a).

Evaluation of Stingray's Proposal 1b)

38. As set out above, under Proposal 1b), Stingray proposed to pay the tangible benefits shortfalls to the Funds totalling $9,025,079 over a two-year period at the end of the respective terms for each of the benefits packages involved.

Interventions

39. Interveners who addressed the matter, including the CMPA, PIAC and ADISQ, expressed the view that approval of Proposal 1b) would extend payments over too long a period and would cause unnecessary delays in the Funds receiving Stingray's tangible benefits contributions.

Commission's analysis

40. In essence, Stingray is asking to fulfil its tangible benefits commitments over nine years rather than seven, extending the payment period for some of its tangible benefits contributions to 31 August 2028. Although Broadcasting Decision 2021-274 allowed radio broadcasters, including Stingray, more time to pay their tangible benefits due to the pandemic, the relief did not extend beyond the 2022-2023 broadcast year.

Is the proposal warranted in light of Stingray's particular circumstances?

41. As noted above, Stingray remained profitable during the 2019-2020 and 2020-2021 broadcast years and is currently in a sound financial position despite some of the challenges caused by the pandemic. The Commission considers that Stingray did not provide sufficient evidence to support its position that approval of Proposal 1b) was necessary to maintain the operation of its services or that denial of the proposal would create undue financial harm. Consequently, the Commission finds that approval of Proposal 1b) is not warranted under the licensee's particular circumstances. Further, as was the case for Proposal 1a), the Commission finds that approval of Proposal 1b) would set a precedent by signaling to other broadcasters that appropriate demonstration of financial need is not necessary to obtain similar relief.

Impact that approval of the proposal could have on the Funds and their beneficiaries

42. As was the case for Proposal 1a), the Commission considers that Proposal 1b) would unreasonably impact the Funds and their beneficiaries. These beneficiaries include Canadian musicians, songwriters and independent labels, to name a few, who count on financial contributions to the Funds to realize their creations and projects and to participate in events and initiatives. Some of these projects may have to be delayed or abandoned if the expected contributions are not made on time.

43. Further, the Funds and their beneficiaries may already have been affected since Stingray is behind on its tangible benefits payments. Accordingly, approval of this proposal would have a negative impact on the stability and predictability of contributions to the Fund and their beneficiaries.

Impact on the consistent and predictable application of the Tangible Benefits Policy and on fairness to other broadcasters that are subject to that policy

44. Proposal 1b) deviates from the Commission's practice of directing licensees to fulfill their tangible benefits commitments over a seven-year period. Delaying the payment of tangible benefits by granting an additional two-year payment period to Stingray, without substantial justification to do so, would undermine the Commission's Tangible Benefits Policy in regard to the consistent and predictable application of that policy and in regard to fairness to other broadcasters that are subject to that policy.

Conclusion

45. As set out above, the Commission finds that approval of Stingray's Proposal 1b) is not warranted as it has the financial capacity to fulfill its tangible benefits commitments without any additional delay. Further, the Commission finds that approval of the proposal would be harmful to the Funds and their beneficiaries, and would undermine the Tangible Benefits Policy in regard to the consistent and predictable application of that policy and in regard to fairness to other broadcasters that are subject to that policy. Consequently, the Commission **denies** Stingray's Proposal 1b).

Evaluation of Stingray's Proposal 2

46. As set out above, under Proposal 2, Stingray wishes to pay all the shortfalls regarding radio and television tangible benefits that are not directed to the Funds for the 2019-2020 and 2020-2021 broadcast years according to the 50-50% formula set out in Broadcasting Decision 2021-274 for radio broadcasters. Accordingly, Stingray would pay 50% of the shortfall by 31 August 2022 and 50% by 31 August 2023.

47. The Commission notes that Stingray's Proposal 2 deviates from the regulatory relief granted in Broadcasting Decision 2021-274 in two ways:

- The Commission did not grant regulatory relief for the payment of financial contributions due in the 2020-2021 broadcast year. Such relief was granted only for the 2019-2020 broadcast year, whereas Stingray is also applying for relief for shortfalls incurred during the 2020-2021 broadcast year.

- The Commission did not grant any relief to television broadcasters in regard to the payment of tangible benefits, whereas Stingray is applying for relief regarding its television tangible benefits shortfalls incurred during both the 2019-2020 and 2020-2021 broadcast years.

Tangible benefits for radio

Interventions

48. CIMA submitted that the Commission should not provide Stingray with greater flexibility than that granted to broadcasters in Broadcasting Decision 2021-274. The intervener added that it is also in a time of need and relies on the influx of contributions to stabilize its business lines in order to continue to invest in and support Canadian artists. SOCAN noted that Broadcasting Decision 2021-274 did not address tangible benefits obligations for the 2020-2021 broadcast year, and considered that no regulatory relief for that broadcast year is required.

Commission's analysis

49. As noted above, in Broadcasting Decision 2021-274, the Commission did not grant regulatory relief for the payment of financial contributions due in the 2020-2021 broadcast year. Stingray's proposal to postpone until 31 August 2022 and 31 August 2023 the payment of tangible benefits that were due on 31 August 2021 therefore deviates from the relief granted in that decision. The Commission finds that Stingray has not demonstrated with supporting evidence that such a deviation from the regulatory relief granted in Broadcasting Decision 2021-274 is warranted in light of Stingray's overall financial situation. In addition, as is the case for Proposals 1a) and 1b), the Commission finds that approval of Proposal 2 would set a precedent signaling to other broadcasters that appropriate demonstration of financial need is not necessary to obtain similar relief.

50. Further, the Commission considers that approval of Stingray's proposal would be harmful to beneficiaries of tangible benefits funding in that they would not receive the anticipated funding according to the schedule that was originally approved by the Commission in the decisions relating to the above-noted ownership transactions.

51. Finally, approval of the proposal would undermine the Commission's Tangible Benefits Policy in regard to the consistent and predictable application of that policy and in regard to fairness to other broadcasters that are subject to that policy given that Stingray would receive relief not afforded to other broadcasters.

52. Consequently, the Commission **denies** Stingray's Proposal 2 as it applies to tangible benefits for the radio sector.

Tangible benefits for television

Interventions

53. The CMPA submitted that in Broadcasting Decision 2021-274, the Commission did not authorize Stingray to make up shortfalls on its tangible benefits for television over a period of time. Quebecor argued that Stingray's request would be unfair to itself and to the other television broadcasters that have paid their required tangible benefits during the pandemic, despite facing the same challenges as Stingray. Moreover, Quebecor stated that since the Commission denied the regulatory relief requested by the CAB that would have benefited all broadcasters, it would be unjustifiable for the Commission to grant regulatory relief to a single broadcaster.

54. In reply, Stingray noted that while some interveners have suggested that approval of its proposal would be unfair to parties who already paid tangible benefits during the past two broadcast years, Quebecor is the only party subject to tangible benefits that filed an intervention. It added that Quebecor's required tangible benefits represent only 0.02% of the nearly $1.1 billion in PBIT that Quebecor's regulated broadcast and distribution properties earned during the 2019-2020 broadcast year.

Commission's analysis

55. The relief sought by Stingray relates to tangible benefits that the licensee is required to make in connection with its 2018 acquisition of the two small-market conventional television stations CITL-DT Lloydminster and CKSA-DT Lloydminster, Alberta. Stingray's accumulated shortfall in tangible benefits payments for the 2019-2020 and 2020-2021 broadcast years totals $245,508. It wishes to be authorized to pay 50% of this shortfall by 31 August 2022 and the remaining 50% by 31 August 2023.

56. In accordance with Broadcasting Decision 2021-274, Stingray, as an independent television licensee, was granted regulatory relief with respect to its CPE requirements for the 2019-2020 broadcast year. However, as noted above, the Commission did not grant any flexibility in regard to tangible benefits for television broadcasters in Broadcasting Decision 2021-274.

57. As a result, television licensees were expected to meet their television tangible benefits obligations during the 2019-2020 broadcast year. In this regard, the Commission notes that other television broadcasters, both profitable and unprofitable, made either all or the majority of their required contributions for the 2019-2020 and 2020-2021 broadcast years in a timely manner, despite facing the same challenges as Stingray. Approving Stingray's proposal would deviate from Broadcasting Decision 2021-274 and therefore provide Stingray regulatory relief exceeding that granted to other television licensees.

58. While Stingray did not explain why the Commission should approve its proposal to make up shortfalls on its television tangible benefits over a period time, it did state that the pandemic has hastened the decline of its small market local television stations that experienced significant declines in revenue. The Commission notes that while Stingray's Lloydminster television stations experienced a decline in revenues during the 2019-2020

broadcast year compared to the previous broadcast year, the stations remained profitable during both the 2019-2020 and 2020-2021 broadcast years. Stingray has also received contributions from the Independent Local News Fund totalling more than $2 million for the 2019-2020 and 2020-2021 broadcast years.

59. As such, the Commission is of the view that the financial position of Stingray is such that it should be able to pay the television tangible benefits shortfall without any additional delay.

60. The Commission is further of the view that approval of Stingray’s proposal would be harmful to beneficiaries of tangible benefits funding in that they would not receive the anticipated funding according to the schedule that was originally approved by the Commission in the decision relating to the above-noted 2018 ownership transaction.

61. Proposal 2, which deviates from Broadcasting Decision 2021-274 and the Commission’s Tangible Benefits Policy, would also undermine that policy in regard to its consistent and predictable application and in regard to fairness to other broadcasters that are subject to the policy given that Stingray would receive relief not afforded to other broadcasters.

62. In light of the above, the Commission **denies** Stingray’s Proposal 2 as it applies to tangible benefits for the television sector.

Conclusion

63. In light of the foregoing, the Commission **denies** the application by Stingray for regulatory relief regarding the payment of tangible benefits contributions for the 2019-2020 and 2020-2021 broadcast years.

64. As noted above, the Commission finds that approval of Stingray’s application is not warranted as it has the financial capacity to fulfill its tangible benefits commitments without any additional delay. The Commission further finds that approval of the relief sought by Stingray would be harmful to the Funds in that it would compromise the stability and predictability of the contributions to them and their beneficiaries. Approval would also undermine the Commission’s Tangible Benefits Policy in regard to the consistent and predictable application of that policy and in regard to fairness to other broadcasters that are subject to that policy. Finally, Stingray did not provide sufficient evidence that approval of its application is necessary to maintain the operation of its services.

65. The Commission generally requires that tangible benefits for a given broadcast year be paid by the end of that broadcast year (i.e., 31 August). However, given that it is issuing this decision close to the end of the 2021-2022 broadcast year, the Commission considers that it is appropriate to allow Stingray until 30 November 2022 to pay the radio tangible benefits shortfalls for the 2020-2021 broadcast year, as well as the television tangible benefits shortfalls for the 2019-2020 and 2020-2021 broadcast years. It further considers that it is appropriate to allow Stingray until 31 December 2022 to submit proof of payment for those tangible benefits contributions.

66. Accordingly, the Commission **directs** Stingray:

- in accordance with Broadcasting Decision 2021-274, to pay all tangible benefits contributions related to the radio sector for the 2019-2020 broadcast year (i.e., $2,095,535) by the end of the 2021-2022 and 2022-2023 broadcast years, as follows:
  - 50% of the contribution shortfall by **31 August 2022**; and
  - 50% of the contribution shortfall by **31 August 2023**;
- to pay the shortfall regarding radio tangible benefits it incurred during the 2020-2021 broadcast year ($5,223,994) by no later than **30 November 2022**; and
- to pay the shortfall regarding television tangible benefits it incurred during the 2019-2020 and 2020-2021 broadcast years ($245,508) by no later than **30 November 2022**.

67. The Commission also **directs** Stingray to provide, by no later than **31 December 2022**, proof of payment for all of the tangible benefits contributions due by 30 November 2022**.**

68. The proof of payment for the contribution shortfalls to be paid by 31 August 2022 and 31 August 2023 must be submitted by no later than 30 November for the broadcast year ending on the previous 31 August, as set out in subsection 9(2) of the *Radio Regulations, 1986.*

Reminder

69. Pursuant to Broadcasting Decision 2021-274, Stingray is required to submit, as part of its annual return, an additional form (or additional line items within an existing form) that will track the progress of the deferred shortfall payments from the 2019-2020 broadcast year for radio and television, up to the end of their payment periods. This will enable the Commission to easily monitor and supervise the payment of shortfalls.

Secretary General

Related documents

- *Regulatory relief for private Canadian broadcasters in the context of the COVID-19 pandemic*, Broadcasting Decision CRTC 2021-274, 12 August 2021
- *Call for comments on an application by the Canadian Association of Broadcasters requesting regulatory relief for Canadian broadcasters in regard to the COVID-19 pandemic*, Broadcasting Notice of Consultation CRTC 2020-336, 17 September 2020
- *CHOO-FM Drumheller – Acquisition of assets*, Broadcasting Decision CRTC 2019-253, 15 July 2019

- *Various radio and television broadcasting undertakings – Change in ownership and effective control*, Broadcasting Decision CRTC 2018-404, 23 October 2018

- *Policy framework for local and community television*, Broadcasting Regulatory Policy CRTC 2016-224, 15 June 2016

- *Simplified approach to tangible benefits and determining the value of the transaction*, Broadcasting Regulatory Policy CRTC 2014-459, 5 September 2014