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

Broadcasting Decision CRTC 2007-133

Ottawa, 11 May 2007

Canadian Satellite Radio Inc.
Across Canada

Application 2006-0300-5, received 21 March 2006
Broadcasting Public Notice CRTC 2006-120, received 21 March 2006
13 September 2006

Licence amendment for XM Radio Canada

The Commission ***denies*** *an application to amend the condition of licence that stipulates XM Radio Canada's required contributions to Canadian talent development.*

Introduction

1. Following a competitive process, Canadian Satellite Radio Inc. (CSR) was granted a broadcasting licence to operate a satellite subscription radio (SSR) undertaking, which is now known as XM Radio Canada (XM) (Broadcasting Decision CRTC 2005-246). CSR launched XM in November 2005.

2. CSR had committed to contribute a minimum of 4% of its gross annual revenues to Canadian talent development (CTD). However, in accordance with the licensing framework for SSR undertakings set out in Broadcasting Public Notice CRTC 2005-61, the Commission imposed a condition of licence on CSR requiring that, during each broadcast year, it contribute a minimum of 5% of its gross revenues from its SSR undertaking to eligible third parties directly connected to the development of Canadian musical and other artistic talent or other initiatives approved by the Commission.

3. In the present application, CSR requested that "during each broadcast year" be deleted from this condition of licence. CSR also proposed that the calculation of its annual 5% contribution to CTD be based on its gross subscription revenues rather than on its gross annual revenues.

4. Under CSR's proposed condition of licence, the licensee would be permitted to apply any over payment, i.e. payment of more than 5% of gross subscription revenues in any given year, to its entire contribution over the licence term. CSR maintained that this flexibility would allow it to contribute more to CTD during its initial years of operation resulting in increased and earlier funding to more Canadian artists and eligible third party initiatives in those years.

5. The Commission considers that the primary issue arising from this application is whether CSR's proposed method for calculating its required CTD contributions, which represents a departure from the Commission's usual practice for SSR undertakings, would best serve the needs of Canadian artists and eligible third party initiatives.

6. The Commission received three interventions in support of this application as well as two interventions in opposition and one comment.

Commission's analysis and determination

7. As noted by the opposing interveners, CSR is not currently prohibited from exceeding its required annual CTD contributions because its requirement is stipulated as a minimum. The calculation of CSR's required minimum CTD contributions is based on a percentage of its gross revenues, which includes all advertising and subscriber revenues. The Commission has consistently imposed similar CTD expenditure requirements on commercial radio licensees based on gross revenues as minimums to be met in each broadcast year, but which allow for over payments to be made in any given year. Many commercial radio licensees exceed their minimum annual requirements for contributions to CTD and maintain their conditions of licence.

8. The Commission notes that CSR's proposed licence amendment would establish the licensee's CTD expenditure requirement as a maximum payment over the entire licence term and limit its contributions to 5%. While the Commission agrees with the licensee that the proposed amendment would ensure a greater level of funding in the earlier years of the licence term, the Commission shares the opposing interveners' concern that CSR's contributions to CTD could be reduced in subsequent years, particularly in the final years. With respect to the licensee's proposal to base its calculations solely on gross subscriber revenues, the Commission notes that CSR's subscriber revenues in 2006 represented 85% of its gross revenues for that year. Even though subscriber revenues represent a large proportion of CSR's revenues, its CTD contributions would have been reduced by $8,679 in 2006, if its 5% CTD contribution calculation had been based only on subscriber revenues in that year.

9. The Commission determines that approval of the application would result in a reduction of CSR's contributions to CTD and consequently would not serve the needs of Canadian artists and eligible third party initiatives. The Commission further notes that CSR's condition of licence was imposed on the licensee following a competitive licensing process. In the Commission's view, allowing a licensee to reduce significant commitments during the first licence term would, absent special circumstances, bring into question the integrity of the licensing process.

10. In light of all the above, the Commission **denies** the application by Canadian Satellite Radio Inc. to amend the condition of licence that stipulates the method for calculating the required contributions to Canadian talent development for its satellite subscription radio undertaking known as XM Radio Canada.

Secretary General

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