



## Broadcasting Decision CRTC 2009-169

Route reference:

Broadcasting Public Notice 2008-47

Ottawa, 31 March 2009

**Newcap Inc.**

Ottawa, Ontario

*Application 2008-0260-5, received 18 February 2008*

### **CIHT-FM Ottawa/Gatineau – Licence renewal**

*By majority decision, the Commission **renews** the broadcasting licence for CIHT-FM Ottawa/Gatineau from 1 April 2009 to 31 August 2012. This short-term renewal will permit the Commission to review at an earlier date the licensee's compliance with its conditions of licence relating to contributions to the development of Canadian talent.*

### **Introduction**

1. The Commission received an application by Newcap Inc. (Newcap) to renew the broadcasting licence for the English-language commercial radio station CIHT-FM Ottawa/Gatineau, which expires 31 March 2009.<sup>1</sup> In Broadcasting Public Notice 2008-47, the Commission noted that the licensee may have failed to comply with its conditions of licence specifying its required contributions to Canadian talent development (CTD).
2. The Commission received an intervention by the Canadian Independent Record Production Association (CIRPA) expressing concern about the apparent failure of the licensee to fulfill its financial obligations to CTD. Newcap did not respond to CIRPA's intervention.

### **Commission's analysis and determinations**

#### **Compliance with CTD conditions of licence**

3. Following a competitive licensing process, the Commission issued Decision 2001-628, in which it authorized Newcap to operate an FM radio station in Ottawa/Hull. The Commission indicated that the licence would expire 31 August 2008. Newcap began operation of the new FM radio station (CIHT-FM) on 7 February 2003.
4. In accordance with the commitments made in its original licensing application, Newcap was required, by condition of licence set out in the licence to be issued, to contribute in

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<sup>1</sup> In Broadcasting Decision 2008-245, the Commission administratively renewed CIHT-FM's licence, from 1 September 2008 to 31 December 2008. In Broadcasting Decision 2008-359, the Commission administratively renewed CIHT-FM's licence, from 1 January 2009 to 31 March 2009.

each broadcast year a minimum of \$8,000 to the Canadian Association of Broadcasters' (CAB) CTD funding plan. Further, in Decision 2001-628, the Commission imposed the following conditions of licence for the new FM radio station:

2. The licensee shall devote a minimum of \$367,000 per year to FACTOR, to be used solely for the production or marketing of new dance music by Canadian artists and musicians from Ottawa. If Ottawa-based talent does not use all of the funds designated for this purpose in any given year, the unused funds will be rolled over into the next year's fund, to be used for the production or marketing of new dance music by Canadian artists and musicians, regardless of where in Canada they are based. This contribution is in addition to the licensee's contribution to third parties associated with Canadian talent development as set out in the Canadian Association of Broadcasters' *Distribution Guidelines for Canadian Talent Development*.

3. The licensee shall devote a minimum of \$2,625,000 over seven years to the development of the Aboriginal Voices Radio Network (AVRN). Of that amount, the licensee shall direct \$588,000 over the same period to AVRN for the establishment of a news bureau in Ottawa. Should the news bureau not be implemented, an amount of \$588,000 over seven years, (\$84,000 per year) shall be directed instead to FACTOR.

5. The Commission's analysis of CIHT-FM's expenditures revealed apparent non-compliance with the station's condition of licence relating to CTD contributions for the 2003 and 2005 broadcast years (ending, respectively, 31 August 2003 and 31 August 2005). Firstly, in the 2003 broadcast year, the licensee contributed only \$4,000 of its required \$8,000 payment to CTD and this \$4,000 contribution was not made by 31 August 2003, the end of the 2003 broadcast year. Secondly, although the licensee contributed \$367,000 to FACTOR for the 2003 broadcast year and \$8,000 to CTD for the 2005 broadcast year, these contributions were made following the completion of those broadcast years, that is, after the 31 August deadline.
6. Newcap explained that this apparent non-compliance relates to a misunderstanding on its part with the requirement to fulfill its annual CTD expenditure obligations for each broadcast year by 31 August of each year. Newcap indicated that it instead used 30 November, the deadline for submission of annual returns, as a cut off date for CTD payments.
7. The Commission considers, however, that a clear distinction between the end of the broadcast year and the deadline for submission of annual returns is set out in section 9(2) of the *Radio Regulations, 1986* (the Regulations), which reads as follows:

On or before November 30 of each year, a licensee shall submit to the Commission a statement of accounts, on the annual return of broadcasting licensee form, for the year ending on the previous August 31.

The Commission therefore considers that Newcap was in non-compliance with its conditions of licence relating to its required contributions to the CAB's CTD funding plan and to FACTOR.

#### **Remaining CTD contributions**

8. The Commission requires Newcap to fulfill all of its remaining and unfulfilled CTD commitments set out in Decision 2001-628. Given that Newcap launched CIHT-FM in the 2003 broadcast year, and that the licensee's original commitment was to make its required CTD expenditures over seven consecutive broadcast years, the licensee is scheduled to fulfill its original CTD obligations by the end of the 2009 broadcast year. As the new licence term will begin on 1 September 2009, the above-noted CTD obligations are to be fulfilled by the end of the first year of the new licence term. Based on the CTD contributions table submitted by Newcap and on the licensee's submitted proof of payments, the Commission requires Newcap, by **condition of licence**, to make the following contributions, for CIHT-FM, by 31 August 2009:
- \$367,000 to be devoted to FACTOR for the 2009 broadcast year;
  - \$12,000 to be devoted to the CAB's CTD funding plan, for the unpaid contributions for the 2003 broadcast year (\$4,000) and the 2009 broadcast year (\$8,000); and
  - a remaining contribution of \$396,693 to be devoted to AVRN.
9. Furthermore, as noted above, Newcap is required, by condition of licence, to direct \$588,000 of the total required contribution of \$2,625,000 to AVRN to the establishment of a news bureau in Ottawa, or to FACTOR should the news bureau not be implemented. The Commission expects Newcap to provide evidence of payment made in this regard by no later than 31 August 2009.

#### **Canadian content development**

10. The Commission reminds Newcap that it must adhere to the requirements relating to Canadian content development (CCD) set out in section 15 of the Regulations, as amended from time to time. Any CCD initiatives that have not been allocated to specific parties by condition of licence must be allocated to the support, promotion, training and development of Canadian musical and spoken word talent, including journalists. Parties and initiatives eligible for CCD funding are identified in paragraph 108 of Broadcasting Public Notice 2006-158.

#### **Licence renewal term**

11. The Commission notes that this is the first time that it has observed Newcap to be in non-compliance with its conditions of licence relating to the operation of CIHT-FM. As set out in Circular No. 444, where apparent non-compliance is observed for the first time, the station is normally granted a short-term licence renewal, generally for four years, to permit a further review of its compliance within a reasonable period of time.

## Conclusion

12. In light of the above, the Commission, by majority decision, **renews** the broadcasting licence for CIHT-FM Ottawa/Gatineau, from 1 April 2009 to 31 August 2012. The terms and **conditions of licence** are set out in the appendix to this decision.

## Employment equity

13. Because this licensee is subject to the *Employment Equity Act* and files reports concerning employment equity with the department of Human Resources and Social Development Canada, its employment equity practices are not examined by the Commission.

Secretary General

## Related documents

- *Administrative renewals*, Broadcasting Decision CRTC 2008-359, 22 December 2008
- *Administrative renewals*, Broadcasting Decision CRTC 2008-245, 29 August 2008
- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006
- *New FM dance station for Ottawa/Hull*, Decision CRTC 2001-628, 4 October 2001
- *Practices regarding radio non-compliance*, Circular No. 444, 7 May 2001

*This decision is to be appended to the licence. It is available in alternative format upon request and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>.*

# Appendix to Broadcasting Decision CRTC 2009-169

## Terms, conditions of licence and expectation

### Terms

The licence will expire 31 August 2012.

### Conditions of licence

1. The licence will be subject to the conditions set out in *Conditions of licence for commercial AM and FM radio stations*, Broadcasting Regulatory Policy CRTC 2009-62, 11 February 2009.
2. The licensee shall, as an exception to the percentage of Canadian musical selections set out in the *Radio Regulations, 1986*, devote 40% or more of its musical selections from content category 2 to Canadian selections, during the broadcast week and between 6 a.m. and 6 p.m., in any period beginning on a Monday and ending on Friday of the same week.
3. In the broadcast year ending 31 August 2009, the licensee shall expend a minimum of \$775,693 to support the development of Canadian talent to be allocated as follows:
  - (i) a minimum of \$12,000 (\$4,000 for broadcast year 2003 and \$8,000 for broadcast year 2009), to be devoted to third parties involved in Canadian talent development (CTD) at the level identified for it in the Canadian Association of Broadcasters' Distribution Guidelines for Canadian Talent Development, as set out in *Contributions by radio stations to Canadian talent development – A new approach*, Public Notice CRTC 1995-196, 17 November 1995, as amended from time to time and approved by the Commission, and to report the names of the third parties associated with CTD, together with the amounts paid to each, concurrently with its annual return; and
  - (ii) a minimum of \$367,000 (for broadcast year 2009) shall be devoted to FACTOR, to be used solely for the production or marketing of new dance music by Canadian artists and musicians from Ottawa. If Ottawa-based talent does not use all of the funds designated for this purpose in any given year, the unused funds shall be rolled over into the next year's fund, to be used for the production or marketing of new dance music by Canadian artists and musicians, regardless of where in Canada they are based.
  - (iii) a minimum of \$396,693 to the development of the Aboriginal Voices Radio Network (AVRN).

**Expectation**

The Commission expects the licensee to provide, by 31 August 2009, proof of payment that \$588,000 has been directed to Aboriginal Voices Radio Network for the establishment of a news bureau in Ottawa, or to FACTOR should the news bureau not be implemented.