



Broadcasting Decision CRTC 2009-794

Route reference: 2009-589

Ottawa, 22 December 2009

Astral Media Radio Inc., on behalf of Astral Media Radio (Toronto) Inc. and 4382072 Canada Inc., partners in a general partnership carrying on business as Astral Media Radio G.P.

Montréal, Quebec; Toronto, Hamilton, London, St. Catharines, Ottawa and Pembroke, Ontario; Brandon and Winnipeg, Manitoba; Calgary and Edmonton, Alberta; Fort Nelson, Fort St. John, Vernon, Kitimat, Vancouver, Revelstoke, Kelowna, Penticton, Osoyoos, Summerland, Golden, Trail, Terrace, Prince Rupert, Dawson Creek, Princeton, Nelson and Salmon Arm, British Columbia

Application 2009-0991-3, received 6 July 2009

Canadian content development commitments

*The Commission **approves in part** an application by Astral Media Radio Inc., on behalf of Astral Media Radio (Toronto) Inc. and 4382072 Canada Inc., partners in a general partnership carrying on business as Astral Media Radio G.P. (Astral), to amend the schedule and amount of payments made for Canadian content development (CCD). The revised payments address a shortfall in CCD contributions for the 2008 broadcast year. The Commission **requires** Astral to expend \$750,000 on CCD, allocated as proposed in its application. However, Astral must expend this amount immediately and in any event no later than 31 August 2010.*

1. The Commission received an application by Astral Media Radio Inc., on behalf of Astral Media Radio (Toronto) Inc. and 4382072 Canada Inc., partners in a general partnership carrying on business as Astral Media Radio G.P. (Astral), to amend the schedule and amount of payments made for Canadian content development (CCD). Astral indicated that the revised payments would address a shortfall in basic CCD contributions for the 2008 broadcast year.
2. The condition of licence relating to CCD for the Astral radio stations is set out in Broadcasting Decisions 2007-216 and 2007-359 and reads as follows:

The licensee shall make a basic annual contribution to Canadian content development (CCD). The amount of the contribution shall be determined in accordance with the policy set out in *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006 (Public Notice 2006-158), as amended from time to time.

The licensee shall allocate 60% of this basic annual CCD contribution to FACTOR or to MUSICACTION.

The remainder of the annual basic contribution to CCD shall be allocated to parties and initiatives fulfilling the definition of eligible initiatives in Public Notice 2006-158.

This condition of licence shall expire upon the coming into force of the amendment to the *Radio Regulations, 1986* relating to CCD.¹

3. Astral indicated that, through a good faith error related to a misunderstanding of when the condition of licence set out above came into force, it had underpaid its CCD contribution for the 2008 broadcast year by an estimated \$659,152. In order to make up this shortfall, Astral proposed to contribute a total of \$750,000 (which reflects interest accrued on the amount owing plus a supplementary amount) over seven consecutive broadcast years beginning 1 September 2009. Astral indicated that it would direct \$450,000 or 60% to MUSICACTION and \$300,000 or 40% to the Community Radio Fund of Canada (CRFC).

Intervention

4. The CRFC submitted an intervention in support of the application. The CRFC further requested that it be permitted to use the entire \$300,000 contribution for administrative purposes to fund its operations. This would require an exception to the framework established when the CRFC was certified by the Commission.

Commission's analysis and determinations

5. The Commission finds that there are two issues to be addressed:
 - Should Astral's proposal to address its CCD shortfall for the 2008 broadcast year be approved?
 - Should the CRFC be permitted to use all of the funds received from Astral under the current proposal for administrative purposes?

Should Astral's proposal to address its CCD shortfall for the 2008 broadcast year be approved?

6. The Commission's usual practice is to deal with non-compliance issues at the time of licence renewal. Stations found in non-compliance are normally granted a short-term renewal so that the Commission can review their performance at an early date.² The Commission notes that Astral has come forward of its own accord to address a mistake it made and has offered a remedy to ensure funding of its CCD initiatives at the levels required by the condition of licence applicable to its stations.

¹ The amendment to the *Radio Regulations, 1986* referred to in the condition of licence came into force on 1 September 2008.

² See Circular 444.

7. The Commission is of the view, however, that the seven-year period that Astral has proposed to make up its shortfall for the 2008 broadcast year is too long and not in line with the Commission's general practice of requiring that shortfalls be paid as soon as possible. Accordingly, the Commission **approves in part** Astral's application. It **requires** Astral to expend \$750,000 on CCD, allocated as proposed in its application. However, Astral must expend this amount immediately and in any event no later than 31 August 2010 as an ongoing commitment. This will allow Astral to amortize its payment over a number of years. Astral must file a letter with the Commission upon disbursal of the funds, confirming that it has made the required payments to MUSICACTION and the CRFC. The Commission will evaluate Astral's compliance with this requirement as well as its overall compliance with its conditions of licence and the *Radio Regulations, 1986* at the time of licence renewal.

Should the CRFC be permitted to use all of the funds received from Astral under the current proposal for administrative purposes?

8. As indicated above, the CRFC has requested that the Commission permit it to use all money received from Astral under this proposal for administrative purposes.
9. The primary goal of the CRFC, under its current structure and financing, is to support the campus and community radio sector through the financing of various types of projects. Under the terms of its certification as a fund eligible to receive CCD funding, the CRFC must limit its spending on administrative activities as follows:
 - 20% administrative overhead to be retained on fund revenues up to \$200,000;
 - 5% administrative overhead to be retained on those revenues in excess of \$200,000.
10. Approval of the CRFC proposal would therefore require an exception to the terms set out above.
11. The Commission notes that, in Broadcasting Notice of Consultation 2009-418, it initiated a review of campus and community radio. This review will include a public hearing beginning 18 January 2010. The Commission may consider matters related to the funding of the CRFC, including amounts spent on administration, as part of that review.

Secretary General

Related documents

- *Review of campus and community radio*, Broadcasting Notice of Consultation CRTC 2009-418, 13 July 2009
- *Acquisition of assets*, Broadcasting Decision CRTC 2007-359, 28 September 2007

- *Radio programming undertakings – Licence renewals*, Broadcasting Decision CRTC 2007-216, 6 July 2007
- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006
- *Practices regarding radio non-compliance*, Circular 444, 7 May 2001

This decision is to be appended to each 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>.