



Broadcasting Decision CRTC 2010-614 and Broadcasting Order CRTC 2010-615

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Route reference: 2010-146

Ottawa, 24 August 2010

Aboriginal Voices Radio Inc.

Toronto and Ottawa, Ontario; Calgary and Edmonton, Alberta; Vancouver, British Columbia

Applications 2010-0186-7, 2010-0185-9, 2010-0188-3, 2010-0191-6, 2010-0190-9, received 13 January 2009

CKAV-FM Toronto, CKAV-FM-2 Vancouver, CKAV-FM-3 Calgary, CKAV-FM-4 Edmonton and CKAV-FM-9 Ottawa – Licence renewals and Issuance of a mandatory order

*The Commission **renews** the broadcasting licences for the Native Type B radio programming undertakings noted above from 1 September 2010 to 31 August 2012. These short-term licence renewals will enable the Commission to review, at an earlier date, the licensee's compliance with the Radio Regulations, 1986 and its conditions of licence.*

The Commission also imposes a mandatory order pursuant to section 12(2) of the Broadcasting Act requiring the licensee to comply at all times with the requirements contained in section 9(2) of the Radio Regulations, 1986, which deals with the filing of annual returns. The Order is set out in Appendix 1 to this decision.

Introduction

1. The Commission received applications by Aboriginal Voices Radio Inc. (AVR), to renew the broadcasting licences for the Native Type B radio programming undertakings CKAV-FM Toronto, CKAV-FM-2 Vancouver, CKAV-FM-3 Calgary, CKAV-FM-4 Edmonton and CKAV-FM-9 Ottawa, which expire 31 August 2010.¹

Previous licence renewal

2. As part of the previous licence renewal process for the AVR stations in Toronto, Vancouver, Calgary and Ottawa, the Commission called AVR to the 30 October 2006

¹CKAV-FM-4 Edmonton was approved in Broadcasting Decision 2004-134, and this is its first licence renewal. The Commission last renewed the licences of the other AVR stations in Broadcasting Decision 2007-121.

public hearing in Regina to discuss its apparent non-compliance with its condition of licence requiring that at least 25% of all programming broadcast during each broadcast week be spoken word programming and, for the Toronto station only, with the section 8 of the *Radio Regulations, 1986* (the Regulations), as it relates to the filing of complete logger tapes, and section 9(2) relating to the filing of annual returns. The Commission also had concerns about the level of local programming broadcast on the AVR stations.

3. Following the Regina public hearing, the Commission issued Broadcasting Decision 2007-121 renewing the licences for CKAV-FM Toronto, CKAV-FM-2 Vancouver, CKAV-FM-3 Calgary and CKAV-FM-9 Ottawa from 1 May 2007 to 31 August 2010.

Current compliance issues

4. In Broadcasting Notice of Consultation 2010-146, the Commission stated that AVR may have failed to comply with section 9(2) of the Regulations, which relates to the provision of annual returns, for the 2008 broadcast year.
5. Further, based on monitoring of AVR programming for the broadcast week of 5 to 11 July 2009, the Commission noted that AVR may have failed to comply, for each of its stations, with its condition of licence that requires the licensee to devote a minimum of 25% of its weekly broadcast schedule to the broadcast of local programming. During that week, the Commission noted that one original newscast was heard each day on each of the stations. This newscast was repeated unaltered several times a day and contained only one local item, in addition to other stories. The Commission's monitoring revealed no local weather or sports coverage and no promotion of local events and activities on any of the AVR stations.
6. The Commission also indicated that it intended to inquire into the current staff levels of AVR stations, the stations' funding, local newscasts, continuity of the originally proposed AVR service and the quality of service provided in each market.
7. The Commission further indicated that it expected the licensee to show cause why a mandatory order should not be issued requiring AVR to comply with the Regulations as well as its conditions of licence. The Commission also stated that it might consider recourse to additional measures including short-term renewal, suspension, non-renewal or revocation of the AVR licences pursuant to sections 9 and 24 of the *Broadcasting Act*.

Interventions

8. The Commission received interventions in support of AVR's applications from Aboriginal artists and associations. The complete record of this proceeding is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Commission's analysis and determinations

9. The Commission considers that the issues to be addressed in its determinations are as follows:
 - compliance with the requirement to submit annual returns;

- local programming; and
- plans for increasing local presence, audience and revenues.

Compliance with the requirement to submit annual returns

10. Section 9(2) of the Regulations requires licensees to file their annual returns for a specific broadcast year by 30 November of that same broadcast year. AVR filed its annual returns for the 2008 broadcast year on 12 March 2009. The Commission therefore finds that AVR was in non-compliance with section 9(2) of the Regulations for the 2008 broadcast year.
11. AVR indicated that the late submission of the 2008 annual returns was due in part to the departure of the previous operations manager. The licensee indicated that knowledge regarding the submission of annual returns now rests with more than one person and that the submission of annual returns now has a high priority.
12. The Commission notes that it previously found AVR in non-compliance with section 9(2) of the Regulations in Broadcasting Decision 2007-121. In that decision, the Commission reminded AVR that it must adhere to the Regulations respecting the filing of annual returns. Given that this is the second consecutive licence term in which AVR has been in non-compliance with regard to the submission of annual returns, the Commission considers that it is appropriate to impose a mandatory order requiring the licensee to comply with section 9(2) of the Regulations. This mandatory order is set out in Appendix 1 to this decision.
13. As indicated in Circular 404, radio licensees that are not public companies and do not have total radio advertising revenues of more than \$10 million do not generally have to file audited financial statements. However, given AVR's continued non-compliance with respect to the filing of annual returns and the Commission's need for accurate financial information, the Commission further requires AVR pursuant to section 9(4) of the Regulations to submit audited financial statements as part of the annual returns for each station, beginning with the 2010 broadcast year.

Local programming

AVR's compliance with its condition of licence for local programming

14. In Broadcasting Decision 2007-121, the Commission emphasized the importance of local programming. Accordingly it imposed the following condition of licence on each AVR station:

The licensee shall devote a minimum of 25% of its weekly broadcast schedule to the broadcast of local programming within twelve (12) months of this decision.

For the purposes of this condition, "local programming" shall have the same meaning as that set out in *Commercial Radio Policy 2008*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006, as amended from time to time.

15. Broadcasting Public Notice 2006-158 defines local programming as follows:

Local programming includes programming that originates with the station or is produced separately and exclusively for the station. It does not include programming received from another station and rebroadcast simultaneously or at a later time; nor does it include network or syndicated programming that is five minutes or longer unless it is produced either by the station or in the local community by arrangement with the station.

In their local programming, licensees must incorporate spoken word material of direct and particular relevance to the community served. This must include local news, weather, sports coverage, and the promotion of local events and activities.

16. After monitoring AVR programming for the week of 5 to 11 July 2009, the Commission informed AVR by letter that it may have failed to comply with this condition of licence because of the absence of local news, weather, sports coverage and the promotion of local activities. AVR replied that it had been unaware of the current definition of local programming and had relied on an earlier definition. AVR stated it has since implemented the necessary changes to ensure that it is in compliance with the condition of licence. For example, AVR indicated that it now includes local surveillance information in its programming.
17. The Commission finds that AVR has not complied with the condition of licence with respect to local programming. The Commission continues to be of the view that it is important that local programming be broadcast on each AVR station. It further notes that the definition of local programming was directly referenced in the condition of licence imposed in Broadcasting Decision 2007-121. However, to make its requirements for local programming clear for all parties for the upcoming licence term, the Commission considers that it is appropriate to amend the condition of licence regarding local programming and imposes the following **condition of licence**:

The licensee shall devote a minimum of 25% of its weekly broadcast schedule to the broadcast of local programming. Local programming must incorporate spoken word material of direct and particular relevance to the community served. This must include local news, weather, sports coverage, and the promotion of local events and activities.

Local newscasts

18. In Broadcasting Decision 2007-121, the Commission also imposed the following condition of licence with respect to local newscasts:

The licensee shall broadcast regular daily local newscasts within twelve (12) months of the date of this decision.

19. During its monitoring of AVR, the Commission found that the licensee broadcast one original newscast each day on each of the stations, repeated unaltered several times each day. This newscast included no local weather or sports coverage on any of the stations, neither was there any promotion of local events and activities.

20. While AVR was technically in compliance with its condition of licence regarding local newscasts, the Commission is of the view that a single daily newscast with only one local item is inadequate, and considers that expanded local news is necessary if the AVR stations are to provide a high quality local service and reflect the markets that they serve. Accordingly, the Commission considers that it is appropriate to amend the licensee's condition of licence regarding local newscasts and imposes the following **condition of licence** for the next licence term:

The licensee shall broadcast regular daily local newscasts on each station which must include at least five distinct local news stories for each market served by AVR per broadcast day.

For purposes of this condition, distinct local news stories are those that incorporate spoken word material of direct and particular relevance to the community served.

Live programming

21. At the hearing, AVR indicated that it was not currently broadcasting any live programming. Instead the programming for each station is assembled the day before broadcast. AVR further stated that, because of its financial situation, it was not yet in a position to institute live programming on its stations.
22. While recognizing the financial challenges faced by AVR, the Commission considers that live programming is an essential element in providing a meaningful and appealing local radio service. The Commission therefore expects AVR to provide live programming, particularly during the morning and afternoon drive periods, by the final year of the licence term.

Plans for increasing local presence, audience and revenues

Local presence

23. AVR indicated that it currently operates two studios – one in Toronto and one in Ottawa – and contracts a total of six people to cover all five stations. AVR stated that, on renewal of its licences, it would increase staffing levels by contracting a local program director for each market to coordinate the production of community-based talk programming, news, and music programming. AVR further indicated that it planned to build a studio in Vancouver this year, and arrange for studio access from third parties in Calgary and Edmonton.
24. The Commission considers that fulfilment of these commitments will serve to improve the local service offered by AVR stations. It therefore expects AVR to build a Vancouver studio by 31 December 2010 and arrange for studio access from third parties in Calgary and Edmonton.

Audience and revenues

25. AVR currently receives most of its revenues from commitments made by commercial broadcasters in the context of tangible benefits proposed in applications for the transfer of ownership or control of radio stations and other financial commitments made by

commercial broadcasters in support of paragraph 3(1)(o) of the *Broadcasting Act*.² In its application, AVR stated that in order for the network to become sustainable beyond 2013 when those revenues will decline dramatically, it must create new revenue opportunities. This will include increasing its advertising revenues to support the operations of its stations. This will be particularly challenging, since AVR stations currently have very modest audience levels.

26. Following the hearing, AVR presented the following strategic objectives to increase listening and revenues.

Strategy to increase time spent listening

27. AVR stated that currently 50% of AVR's Toronto listeners tune in during the morning – about 25% lower than the industry norm. AVR indicated that it would develop news/talk programming mixed with the right blend of music for morning broadcast to increase time spent listening in this time block. The licensee also proposed to institute on-air contests and music research to fine tune the playlist.

Strategy to improve audience share

28. AVR stated that it would increase its audience share through outdoor and community print advertising, multimedia cross promotion, supporting artists at live concerts, and sponsoring community events.

Strategy to increase advertising revenues

29. AVR stated that it would increase its advertising revenues so that 90% of advertising revenues would be generated from local advertisers. The remaining 10% would come from national advertisers, including the Government of Canada. Among other things, AVR intends to develop marketing materials which identify categories of listeners that would appeal to advertisers.

Progress report

30. The Commission considers that the strategies set out above are integral to ensuring the success of the AVR stations. Accordingly, pursuant to section 9(4) Regulations, the Commission requires AVR to file, by 30 September 2011, a report setting out details on the implementation of its strategic objectives discussed above to increase time spent listening, as well as audience share and advertising market share of AVR stations. The report should also include AVR's new programming schedule, an update on on-air staff levels for each stations, levels of local and live programming, and progress on establishing studios and studio access in Vancouver, Calgary and Edmonton.
31. The Commission further encourages AVR to appoint a board member with experience in Aboriginal media to help it develop and achieve its strategic objectives.

² Paragraph 3(1)(o) states that programming that reflects the aboriginal cultures of Canada should be provided within the Canadian broadcasting system as resources become available.

Conclusion

32. The Commission is seriously concerned with the operation of AVR and the difficulty it has had implementing its originally proposed services, its continued non-compliance and difficulty implementing conditions of licence integral to the licensing of its stations, particularly those related to local programming. The Commission is also concerned about the funding challenges that AVR faces. The Commission notes that the markets in which AVR is licensed have a scarcity of available frequencies and that it must ensure that optimum use is being made of those frequencies. The Commission considers that it is essential that AVR respect the conditions of licence set out in this decision so that that it provides a high quality service to each of the markets in which it operates.
33. In light of all of the above, in accordance with its practice regarding radio non-compliance set out in Circular No. 444, the Commission considers that a short-term renewal period for the AVR stations would be appropriate. Accordingly, the Commission **renews** the broadcasting licences for the Native Type B radio programming undertakings CKAV-FM Toronto, CKAV-FM-2 Vancouver, CKAV-FM-3 Calgary, CKAV-FM-4 Edmonton and CKAV-FM-9 Ottawa from 1 September 2010 to 31 August 2012. This short-term renewal will enable the Commission to assess, at an earlier date, the licensee's compliance with the Regulations and its conditions of licence. It will also permit the Commission to review with the licensee its success in implementing the measures that AVR has proposed to increase audience and revenues. The licence will be subject to the **conditions** set out in Appendix 2 to this decision.
34. As indicated above, the Commission is also imposing a mandatory order, set out in Appendix 1 of this decision, requiring AVR to comply at all times with section 9(2) of the *Radio Regulations, 1986*. This order will be filed immediately with the Federal Court and become an order of the Federal Court. Failure to comply with Federal Court orders may result in resort to the compliance procedures of that court.
35. The Commission puts the licensee on notice that any future non-compliance may result in additional measures, including short-term renewal, suspension, non-renewal or revocation of licence pursuant to sections 9 and 24 of the *Broadcasting Act*.

Secretary General

Related documents

- Broadcasting Notice of Consultation CRTC 2010-146, 12 March 2010
- *CKAV-FM Toronto, CKAV-FM-2 Vancouver, CKAV-FM-3 Calgary and CKAV-FM-9 Ottawa – Licence renewals*, Broadcasting Decision CRTC 2007-121, 27 April 2007
- *Commercial Radio Policy 2006*, Broadcasting Public Notice 2006-158, 15 December 2006
- *Native FM radio station in Edmonton*, Broadcasting Decision CRTC 2004-134, 5 April 2004

- *Practices regarding radio non-compliance*, Circular No. 444, 7 May 2001
- *Requirements for the Filing of Financial Statements*, Circular 404, 23 August 1994

* *This decision is to be appended to each licence.*

Appendix 1 to Broadcasting Decision CRTC 2010-614

Broadcasting Mandatory Order CRTC 2010-615

Aboriginal Voices Radio Inc., for each of its stations, is hereby ordered, pursuant to subsection 12(2) of the *Broadcasting Act*, to comply at all times with the requirements set out in subsection 9(2) of the *Radio Regulations, 1986*, which reads as follows:

(2) 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.

Appendix 2 to Broadcasting Decision CRTC 2010-614

Terms conditions of licence, expectations and encouragements

Terms

The licences will expire 31 August 2012.

Pursuant to section 9(4) of the *Radio Regulations, 1986*, Aboriginal Voices Radio Inc. shall, by 30 September 2011, file details on its strategic objectives identified in the undertakings submitted following the hearing and dated 14 June 2010. These objectives relate to increasing time spent listening, audience share and advertising market share of AVR stations. The report should also include AVR's new programming schedule, an update on on-air staff levels for each station, levels of local and live programming, and progress on establishing studios and studio access in Vancouver, Calgary and Edmonton.

Aboriginal Voices Radio Inc. shall submit audited financial statements as part of the annual returns for each of its stations, beginning with the 2010 broadcast year.

Conditions of licence

1. The licensee shall, for each station, devote a minimum of 25% of its weekly broadcast schedule to the broadcast of local programming. Local programming must incorporate spoken word material of direct and particular relevance to the community served. This must include local news, weather, sports coverage, and the promotion of local events and activities.

For purposes of this condition, "local programming" shall have the same meaning as that set out in *Commercial Radio Policy, 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006, as amended from time to time.

2. The licensee shall broadcast daily local newscasts on each station which must include at least five distinct local news stories for each market served by AVR per broadcast day.

For the purposes of this condition, "distinct local news stories" are those that incorporate spoken word material of direct and particular relevance to the community served.

3. The licensee shall devote a minimum of twenty hours per broadcast week to structured enriched spoken word programming. For the purposes of this condition of licence, "structured enriched spoken word programming" shall be defined as:

spoken word programming of any length and in any language involving some research pertaining to the documentation of current and past events, instruction and information, human interest information, leisure interests, public affairs, cultural programming, storytelling, academic instruction, interview and the like;

spoken word programming as described above that does not include song intros/outros,

surveillance information (such as news reports, weather and public service announcements), impromptu, casual or spontaneous talk by announcers during music-flow programming, contests, or any programming defined by content categories 2, 3, 4 or 5 as set out in the *Radio Regulations, 1988*; and

spoken word programming as described above and of which the duration shall not include the time devoted to musical selections interspersed with or interrupting such programming.

The licensee shall provide, upon the Commission's request, the schedule for a broadcast week of all the programming defined above.

4. The licensee shall ensure that a minimum of 2% of all spoken word programming broadcast during each broadcast week is in a Canadian Aboriginal language.
5. The licensee shall ensure that a minimum of 2% of all vocal musical selections aired during each broadcast week is in a Canadian Aboriginal language.
6. The licensee shall ensure that a minimum of 35% of all musical selections from content category 2 (Popular music) aired during each broadcast week are Canadian selections, broadcast in their entirety.
7. The licensee shall adhere to the guidelines on gender portrayal set out in the Canadian Association of Broadcasters' *Sex-role Portrayal Code for Television and Radio Programming*, as amended from time to time and approved by the Commission.
8. The licensee shall adhere to the provisions of the Canadian Association of Broadcasters' *Broadcast Code for Advertising to Children*, as amended from time to time and approved by the Commission.

Expectations

The Commission expects AVR to build a studio in Vancouver by 31 December 2010 and to arrange for studio access from third parties in Calgary and Edmonton.

The Commission expects live programming to be part of AVR's service, particularly during the morning and afternoon drive periods, by the final year of the licence term.

Encouragements

Board of Directors

The Commission encourages AVR to appoint a board member with experience in Aboriginal media to help it develop and achieve its strategic objectives.

Employment equity

In accordance with *Implementation of an employment equity policy*, Public Notice CRTC 1992-59, 1 September 1992, the Commission encourages the licensee to consider employment equity issues in its hiring practices and in all other aspects of its management of human resources.