



Broadcasting Decision CRTC 2005-476

Ottawa, 3 October 2005

3095531 Nova Scotia Company
Toronto, Ontario

Application 2005-0071-1
Broadcasting Public Notice CRTC 2005-66
13 July 2005

CKXT-TV Toronto and CKXT-DT Toronto – Licence amendments

*In this decision, the Commission **approves in part** amendments to conditions of licence related to required expenditures for independently-produced ethnic programs in English.*

Background

1. In *New television station for Toronto/Hamilton*, Broadcasting Decision CRTC 2002-81, 8 April 2002 (Decision 2002-81), the Commission approved an application by Craig Broadcast Systems Inc., on behalf of a corporation to be incorporated (Craig), for a broadcasting licence to operate an English-language over-the-air television station to serve Toronto, with an additional transmitter in Hamilton. The conditions of licence for the new station included the following, which reflected a commitment by Craig to establish a New Voices Fund to support independently-produced ethnic programs in English:
 - 4a) Over the licence term, the licensee shall expend at least \$6,650,000 in licence fees for independently-produced ethnic programs in English, and at least \$725,000 for script and concept development for such programs. Administrative costs shall not be included in these amounts. The programming funded by the amounts set out in this condition shall not include any programming covered by conditions of licence 3 and 4b). For purposes of this condition, “expend” means actual cash outlay.
2. In *Transfer of effective control of Toronto One to TVA Group Inc. and Sun Media Corporation*, Broadcasting Decision CRTC 2004-503, 19 November 2004 (Decision 2004-503), the Commission approved applications by TVA Group Inc. (TVA) and Sun Media Corporation (Sun Media),¹ on behalf of Newco, a wholly-owned subsidiary corporation to be incorporated by Craig, to transfer effective control of Newco to TVA, and to add a condition of licence relating to editorial independence. At the time of closing, all of the issued and outstanding shares of Newco would be transferred to TVA

¹ TVA Group Inc. and Sun Media Corporation are both controlled by Quebecor Media Inc.

(75%) and Sun Media (25%). Newco would be the licensee of CKXT-TV Toronto and its transmitter CKXT-TV-1 Hamilton, and CKXT-DT Toronto and its transmitter CKXT-DT-1 Hamilton (collectively, Toronto One). Newco has since become 3095531 Nova Scotia Company (the licensee).

3. In the application to transfer effective control of Toronto One, TVA and Sun Media reported that, as of 31 August 2004, a large portion of the New Voices Fund remained to be expended by the end of the current licence term, which expires on 31 August 2008. The applicants argued that expending the remaining money within such a short time frame might have a negative impact on the quality of the resulting programming. They further expressed concern about whether the community involved in the production of ethnic programming could reasonably accommodate such a volume of spending over a short period of time. In light of these concerns, as a tangible benefit of the transaction to transfer effective control of Toronto One, TVA and Sun Media proposed to inject an additional \$1 million into the New Voices Fund while extending to seven years the period over which the money in that fund would be expended. The Commission addressed this proposal in paragraphs 37 and 38 of Decision 2004-503, which read as follows:

The Commission accepts the additional \$1 million for the New Voices Fund as a tangible benefit of this transaction. The Commission requires the applicants to file, within 60 days of the date of this decision, an application to amend the condition of licence set out in Decision 2002-81 with respect to the New Voices Fund so that the condition reflects the addition of this \$1 million dollars and the extension of the period within which the money in the New Voices Fund will be expended.

The Commission further expects the money in the New Voices Fund to be expended in a timely manner, and that expenditures be equally distributed over the seven year period, which translates into an annual expenditure of approximately \$1.1 million or 14% of the augmented New Voices Fund.

The application

4. The licensee proposed to amend condition of licence 4a) for CKXT-TV in order to reflect the Commission's direction set out in Decision 2004-503. The amended condition of licence would read as follows:

From 1 September 2003 to 31 August 2008, the licensee shall expend at least \$4,000,000 in licence fees for independently-produced ethnic programs in English, and at least \$500,000 for script and concept development for such programs. Administrative costs shall not be included in these amounts. The programming funded by the amounts set out in this condition shall not include any programming covered by conditions of licence 3 and 4b). For purposes of this condition, "expend" means actual cash outlay.

5. The licensee proposed that the Commission impose an additional condition of licence effective at the time of licence renewal that would cover the amounts allocated to the New Voices Fund that would remain to be expended after 31 August 2008.
6. The licensee further noted that condition of licence 1 for CKXT-DT, the transitional digital television undertaking associated with CKXT-TV Toronto, currently reads as follows:

In addition to the conditions set out below, the licence is subject to the terms and conditions applicable to the analog television station CKXT-TV Toronto, as set out in *New television station for Toronto/Hamilton*, Broadcasting Decision CRTC 2002-81, 8 April 2002.²

7. The licensee submitted that, if the Commission were to approve its proposed amendment to condition of licence 4 a) for CKXT-TV, condition of licence number 1 for CKXT-DT should be amended to read as follows:

In addition to the conditions set out below, the licence is subject to the terms and conditions applicable to the analog television station CKXT-TV Toronto, as set out in *New television station for Toronto/Hamilton*, Broadcasting Decision CRTC 2002-81, 8 April 2002, or as later amended.

Interventions

8. The Commission did not receive any interventions in connection with this application.

The Commission's analysis and determination

9. The Commission's determination set out in Decision 2004-503 to extend the time period over which the money in the New Voices Fund would be expended was a special case based on concerns about program quality and whether the community involved in the production of ethnic programming could reasonably accommodate a very high volume of spending over such a short period of time.
10. In its application, the licensee stated that, during the time that Craig owned Toronto One, it had expended a total of \$525,809 of its original \$7,375,000 commitment to the New Voices Fund. Therefore, when the licensee assumed control of Toronto One on 2 December 2004, its total outstanding obligation to the New Voices Fund was \$6,849,191³ from Craig's original commitment plus \$1 million resulting from its own commitment made as a tangible benefit when acquiring the station, for a total of \$7,849,191.

² See *CKXT-TV Toronto – transitional digital television licence*, Broadcasting Decision CRTC 2004-65, 30 January 2004.

³ This amount was identified as \$6,898,662 by the licensee in the application to transfer effective control of Toronto One and was reflected in Decision 2004-503. The licensee corrected the amount in the current application.

11. While the current application, as filed, would ensure that all of the money that the licensee has committed to the New Voices Fund would be spent over seven years, as provided in Decision 2004-503, the Commission is concerned about the timeframe proposed by the licensee for expenditures that would be made during the current licence term. As proposed, the licensee would be obligated to expend at least \$4,000,000 in licence fees for independently-produced ethnic programs in English, and at least \$500,000 for script and concept development for such programs between 1 September 2003 and 31 August 2008, for a total of \$4,500,000. The Commission notes, however, that the licensee did not take ownership of Toronto One until 2 December 2004 and is therefore of the view that the timeframe for expenditures related to the New Voices Fund for the first term of licence should be adjusted so that it extends from 2 December 2004 to 31 August 2008, which is the expiry date of the current licence. Under this revised timeframe, which would cover approximately four broadcast years beginning with the 2004-2005 broadcast year, the licensee's expenditures would exceed the annual target of \$1.1 million identified in Decision 2004-503.
12. Although the licensee proposed a further condition of licence to address expenditures related to the New Voices Fund for the subsequent licence term, which would begin on 1 September 2008, it is the Commission's practice to refrain from imposing conditions of licence that would apply specifically to a subsequent licence term. However, in accordance with the licensee's commitments, the Commission expects the licensee, at the time of licence renewal, to accept a condition of licence that would ensure that the \$3,349,191 that will remain to be expended from the New Voices fund at the end of the current licence term is expended between 1 September 2008 and 31 August 2011. This will ensure that the licensee's obligation to the New Voices Fund is discharged over a period of seven years, pursuant to Decision 2004-503.
13. In light of all of the above, the Commission **approves in part** the licensee's proposal to amend condition of licence 4a) for CKXT-TV. The revised condition of licence, which reflects a starting date of 2 December 2004 rather than 1 September 2003, as proposed by the licensee, reads as follows:

From 2 December 2004 to 31 August 2008, the licensee shall expend at least \$4,000,000 in licence fees for independently-produced ethnic programs in English, and at least \$500,000 for script and concept development for such programs. Administrative costs shall not be included in these amounts. The programming funded by the amounts set out in this condition shall not include any programming covered by conditions of licence 3 and 4b). For purposes of this condition, "expend" means actual cash outlay.

14. The Commission further **approves** the licensee's proposal to amend condition of licence 1 for CKXT-DT, Toronto. The revised condition of licence reads as follows:

In addition to the conditions set out below, the licence is subject to the terms and conditions applicable to the analog television station CKXT-TV Toronto, as set out in *New television station for Toronto/Hamilton*, Broadcasting Decision CRTC 2002-81, 8 April 2002, or as later amended.

Secretary General

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>