



## Broadcasting Decision CRTC 2004-210

Ottawa, 17 June 2004

**Focus Entertainment Group Inc.**  
Vancouver, British Columbia

*Application 2003-0871-9*  
*Broadcasting Public Notice CRTC 2004-6*  
*26 January 2004*

### **Proposal to defer Canadian talent development expenditures**

*In this decision, the Commission **approves in part**, an application by Focus Entertainment Group Inc. to amend CFBT-FM's conditions of licence 1 and 2, in order to defer certain required expenditures on Canadian talent development as set out in New urban music FM station in Vancouver, Decision CRTC 2001-312, 5 June 2001.*

### **Background**

1. In November 2000, the Commission held a public hearing to consider a number of radio-related applications to serve Vancouver, Victoria, and other areas of the lower mainland of British Columbia and Vancouver Island. Focus Entertainment Group Inc. (Focus) was one of 11 applicants competing for the use of the frequency 94.5 MHz in Vancouver, and one of two applicants proposing to establish an FM radio station offering an Urban music format. As stated in *Introductory statement to Decisions CRTC 2001-312 to 2001-320: Radio applications considered at the 20 November 2000 public hearing in Burnaby, B.C.*, Public Notice CRTC 2001-63, 5 June 2001, there were a “very limited number of available frequencies in Vancouver”.
2. In *New urban music FM station in Vancouver*, Decision CRTC 2001-312, 5 June 2001 (Decision 2001-312), the Commission approved Focus' application to operate an FM radio station at Vancouver, offering Urban music. As part of its application, Focus made commitments to contribute, over a seven-year licence term, \$2.8 million in direct expenditures in support of Canadian talent development (CTD). In Decision 2001-312, the Commission accepted Focus' plans for the support of Canadian talent<sup>1</sup>, and imposed conditions of licence consistent with Focus' proposals. The licensee's CTD commitments originally approved in Decision 2001-312 are set out in Appendix A to this decision.

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<sup>1</sup> One of Focus' commitments was related to the provision of financial support for the production of an award statue. This proposal was not accepted as constituting an eligible direct contribution to Canadian talent development (CTD). The Commission required the licensee to redirect that proposed expenditure to an eligible CTD initiative. In a letter dated 3 December 2001, Focus proposed to redirect that expenditure to its Beat Boot Camp initiative and to a new scholarship program. The Commission subsequently approved Focus' proposal.

3. The station proposed by Focus launched in March 2002, and is known as CFBT-FM (The Beat).

### **The application**

4. On 11 July 2003, Focus submitted an application requesting that the Commission amend CFBT-FM's conditions of licence 1 and 2, in order to defer certain of its CTD expenditures to years 5, 6 and 7 of the licence term. Focus stated that its CTD commitments for both the first and second year of the licence term had not been entirely fulfilled. Of the total \$350,000 required as the first year's expenditure, the licensee stated that it had spent \$91,694. It further indicated that it had spent \$253,412 of the required second-year expenditures of \$367,500. The resulting shortfall was \$372,394 over the first two years of the licence term.
5. The licensee indicated that its request for deferral of its CTD expenditures was mainly due to:
  - CFBT-FM's start-up costs and first year cash needs being considerably higher than expected.
  - Pricing of Vancouver radio advertising being very aggressive over the past 12 months, reducing CFBT-FM's revenue expectations.
  - The Vancouver radio market has been volatile. According to the applicant, this has been partly due to the recent success of Rogers Broadcasting Limited's (Rogers) Vancouver radio station CKKS-FM (JackFM), at CFBT-FM's expense.
  - CFBT-FM's status in the market is essentially that of a small independent operator, without advantages such as shared resources and expenses.
6. In its application, Focus proposed to defer some of its CTD commitments, in line with the schedule set out in Appendix B to this decision. The licensee stated that, if the proposed deferral were to be approved, the total CTD expenditure approved in Decision 2001-312 would be fulfilled by 31 August 2008, the end of the current licence term.
7. Focus proposed to spend "catch up" amounts, in each of years five, six and seven of the licence term. The licensee indicated that these amounts would be applied to initiatives in arrears, and that it would thereby fulfil the total amounts for each initiative, as required under the original condition of licence. Focus did not specify how the "catch up" amounts would be dispersed in each of those years.

### **Interventions**

8. The Commission received interventions opposing Focus' proposal from the Canadian Independent Record Producers Association (CIRPA) and Integrity Records (Integrity).

9. CIRPA argued specifically that, since the CTD expenditures earmarked for the Foundation to Assist Canadian Talent on Record (FACTOR) are modest, Focus should not be allowed to delay those expenditures, especially given the serious economic challenges that the independent record production sector has encountered in the last three years. CIRPA was of the opinion that Vancouver urban artists should not be disadvantaged due to market changes that should have been foreseen in Focus' original business plan.
10. Integrity expressed specific concern that Focus has not fulfilled its commitments to fund the Music Awards Show, the Rhythmic Roots BBQ, various scholarships, the Beat Star Maker program and the Beat Boot Camp initiatives. Integrity stated that the Vancouver urban music community has been greatly disappointed by Focus' failure to fulfil its CTD commitments, and requested that the Commission require that Focus meet all of its commitments as set out in Decision 2001-312.
11. Focus did not reply to the interventions.

### **The Commission's analysis**

#### **CFBT-FM's revenues and expenses**

12. As noted above, the rationale supporting Focus' application to defer some of its CTD expenditures is predicated primarily on the licensee's financial difficulties.
13. CFBT-FM launched in March 2002. For reporting purposes, the six-month period between March and August 2002 thus constituted the first broadcast year. The Commission notes that CFBT-FM's losses for that period were greater than projected. However, in the 2002-2003 broadcast year, the gap between projected and actual profit before interest and taxes (PBIT) decreased significantly. Further, the Commission notes that, at the November 2000 public hearing, Cowan Properties Limited<sup>2</sup> emphasized "its commitment to the project and confirmed that it would provide additional resources if necessary".
14. Moreover, CFBT-FM's audience listening share increased from 3% in 2002 to 4% in the Fall of 2003, and it ranked 10<sup>th</sup> out of the 22 local public and private radio stations serving the Vancouver market. By the end of the 2002-2003 broadcast year, CFBT-FM had almost achieved profitability, in line with the industry norm that generally sees new FM radio stations achieve profitability within their first three to five years of operation.

#### **The Vancouver advertising market**

15. Focus stated in its application that one of the reasons it was having difficulty in meeting revenue expectations was the increased volatility of the Vancouver market, especially given the success of Roger's Vancouver station CKKS-FM.

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<sup>2</sup> Cowan Properties Limited is the owner of 411855 British Columbia Ltd., which controls 75% of Focus' voting interest.

16. Contrary to Focus' assertions, the Commission finds that the Vancouver radio advertising market has actually exhibited steady growth since the introduction of CFBT-FM in 2002. That market experienced growth of 4.8% in 2002 and 6.1% in 2003, as compared to 3.5% and 4.9% for British Columbia and 3.1% and 8.3% for Canada as a whole, for the same two years.

#### **Integrity of the licensing process**

17. As noted by the Commission in *Introductory statement – Licensing new radio stations*, which appeared in Decisions CRTC 99-480, 99-481 and 99-482, all dated 28 October 1999, an applicant's commitment in support of the development of Canadian talent is one of four criteria used to assess the quality of an application proposing a new radio station.
18. In Decision 2001-312, the Commission noted that the total CTD expenditures proposed by Focus were greater than those proposed by the other applicant seeking a licence to operate an FM station in an Urban music format. It also noted that, while some of the other applicants had offered greater financial commitments to CTD, the Commission was satisfied that the CTD expenditures proposed by Focus were reasonable, particularly taking into account that Focus would be a new entrant to the broadcasting system, proposing to operate a single station in a competitive market. Accordingly, in Decision 2001-312, the Commission imposed conditions of licence specifying the dollar amounts to be spent in each year of the licence term, consistent with the applicant's CTD commitments.
19. As noted above, in its current application to defer CTD expenditures, Focus indicated that several of its CTD commitments had not been fulfilled. The licensee acknowledged that its failure to adhere to the conditions of licence resulted in a shortfall in CTD expenditures of \$372,394 over the first two years of the licence term.

#### **The Commission's determination**

20. Because of the competitive nature of the licensing process and in the interest of fairness to all applicants and other parties, it is essential that successful applicants fulfil all commitments and promises. Given the importance placed on the applicant's CTD commitments in the decision granting Focus its licence, the Commission is concerned that approval of the current application would serve only to undermine the integrity of the Commission's licensing process. At the same time, the Commission is aware that some deferral has already occurred, since initiatives that Focus promised to undertake in 2002 and 2003 cannot be realized retroactively.
21. In the circumstances, the Commission has determined that the most appropriate course of action at this time would be to require Focus to make immediate payments to FACTOR and to scholarship funds for students at the British Columbia Institute for Technology, for students at Langua College and for students pursuing musical training. These payments will represent the full amount of expenditures related to FACTOR and scholarships for which CFBT-FM is responsible under its commitments and conditions of licence, but for which it is currently in arrears. In addition, Focus is required to make

expenditures on CTD representing the remainder of its arrears, by no later than 31 August 2006. In Appendix C to this decision, the Commission sets out amended conditions of licence 1 and 2, that reflect these requirements, and sets out the revised spending requirements for each remaining year of the licence term.

22. The CTD arrears for which the licensee is responsible represent the difference between the amounts required under CFBT-FM's existing conditions of licence 1 and 2, minus the licensee's actual CTD spending in the first and second years of the licence term and its projected CTD spending in year three<sup>3</sup>.
23. Specifically, the licensee, by the end of the third year of the licence term (31 August 2004), must make all of the CTD expenditures projected for that year, plus the total arrears in respect of its commitments to scholarships for students at Langua College and scholarships for musical training (\$14,275), BCIT scholarships (\$4,305), and FACTOR (\$20,575).
24. In addition, by the end of the third year of the licence term, the licensee must redirect to FACTOR the total amount in arrears that had been committed to as the salary for a CTD coordinator for the first, second and third years of the licence term (\$16,083).
25. Respecting the arrears from the Boot Camp initiative (\$11,453), half of the total arrears must be contributed to the Boot Camp project in the fourth year of the licence term (\$5,727) and the remainder (\$5,726) must be contributed to the same initiative in the fifth year of the licence term.
26. Finally, the remaining CTD arrears from initiatives not realized in the first three years of the licence term (Beat Star Maker, Rhythmic Roots and the Music Awards), represent an amount of \$401,579. This amount must be redirected to other eligible third party Canadian talent development organizations that benefit urban artists or artists from British Columbia. By the end of the third year of the licence term, the licensee must redirect half of the total arrears, \$200,790. The remaining \$200,789 must be redirected before the end of the fourth year of the licence term. A portion of these redirected funds may be spent in either of those years, on any of the initiatives for which the funds were originally intended (Beat Star Maker, Rhythmic Roots or the Music Awards).
27. Focus is required to submit to the Commission for approval, its plans for the redirection of the \$401,579 noted above, within 30 days of the date of this decision.

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<sup>3</sup> In calculating the arrears, the Commission has assumed that, in the third year of the licence term, Focus will spend the amounts it proposed to spend in that year, as set out in Appendix B.

28. In order that it may assess Focus' compliance with the conditions of its licence throughout the licence term and at licence renewal, the Commission also requires the licensee, for the remainder of the licence term, to file annual reports setting out the licensee's CTD expenditures for each broadcast year. These reports must be filed by 30 November each year.

Secretary General

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

## Appendix A to Broadcasting Decision CRTC 2004-210

**Canadian talent development expenditures for CFBT-FM, as approved in  
New urban music FM station in Vancouver, Decision CRTC 2001-312,  
5 June 2001**

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Total CTD spending over 7 years
CTD Coordinator	45,000	47,250	49,613	52,093	54,698	57,432	60,304	<b>366,390</b>
Scholarships	10,000	12,600	13,230	13,891	14,586	15,316	16,081	<b>95,704</b>
FACTOR	30,000	31,500	33,075	34,729	36,465	38,288	40,203	<b>244,260</b>
Boot Camp	23,000	24,150	25,358	26,625	27,957	29,354	30,822	<b>187,266</b>
Beat Star Maker	145,000	152,250	159,863	167,856	176,248	185,061	194,314	<b>1,180,591</b>
Rhythmic Roots	40,000	42,000	44,100	46,305	48,620	51,050	53,604	<b>325,680</b>
Music Awards	57,000	57,750	60,638	63,669	66,853	70,195	73,705	<b>449,810</b>
<b>TOTAL</b>	<b>350,000</b>	<b>367,500</b>	<b>385,877</b>	<b>405,168</b>	<b>425,427</b>	<b>446,697</b>	<b>469,033</b>	<b>2,849,701</b>

## Appendix B to Broadcasting Decision CRTC 2004-210

**Revised Canadian talent development spending for CFBT-FM, as proposed by Focus Entertainment Group Inc., in application 2003-0871-9**

	Actual spending in year ending 31 August 2002	Actual spending in year ending 31 August 2003	Proposed spending for Year 3 (ending 31 August 2004)	Proposed spending for Year 4 (ending 31 August 2005)	Proposed spending for Year 5 (ending 31 August 2006)	Proposed spending for Year 6 (ending 31 August 2007)	Proposed spending for Year 7 (ending 31 August 2008)	Total proposed CTD spending over 7 years
CTD Coordinator	23,762	49,765	52,253	54,866	57,609	60,490	63,514	<b>362,261</b>
Scholarships	2,250	5,000	10,000	12,000	12,600	13,230	13,892	<b>68,972</b>
FACTOR	12,500	30,000	31,500	33,075	34,729	36,465	38,288	<b>216,557</b>
Boot Camp	21,908	15,147	24,000	25,200	26,460	27,783	29,172	<b>169,670</b>
Beat Star Maker	31,272	145,000	152,250	159,863	176,248	185,060	194,313	<b>1,044,006</b>
Rhythmic Roots	0	0	20,000	46,305	48,620	51,051	53,604	<b>219,580</b>
Music Awards	0	8,500	0	75,250	79,008	82,958	87,106	<b>332,823</b>
<b>Catch up*</b>	-	-	-	-	145,000	150,000	140,873	<b>435,873</b>
<b>TOTAL</b>	<b>91,694</b>	<b>253,412</b>	<b>290,003</b>	<b>406,558</b>	<b>580,274</b>	<b>607,038</b>	<b>620,763</b>	<b>2,849,742</b>

\* Funds marked as "Catch Up" would be applied to the initiatives in arrears in order that, by the end of the licence term, the amounts spent would equal the amounts required by the original condition of licence.



## Appendix C to Broadcasting Decision CRTC 2004-210

### Revised conditions of licence 1 and 2:

1. The licensee shall participate in the Canadian Association of Broadcaster's (CAB) program for Canadian talent development (CTD) by making annual payments to third parties involved in CTD. However, rather than making payments at the minimum level for the Vancouver market as set out in the CAB's *Distribution Guidelines for Canadian Talent Development*, the licensee shall make payments totalling \$260,343 over seven years, as set out in the chart below. The entire amount required under this condition of licence must be paid to FACTOR. The licensee shall report these payments concurrently with its annual return.
  
2. In addition to its payments under the CAB program for CTD set out in condition of licence number 1, the licensee shall, by the end of the licence term, contribute a minimum \$2,589,361 in direct funding to CTD, as set out in the chart below.

	Year 3 (ending 31 August 2004)	Year 4 (ending 31 August 2005)	Year 5 (ending 31 August 2006)	Year 6 (ending 31 August 2007)	Year 7 (ending 31 August 2008)	Total Revised CTD Spending over 7 years*
<b>CTD Coordinator</b>	52,253	52,093	54,698	57,432	60,304	<b>350,309</b>
<b>Scholarships</b>	24,275	11,576	12,155	12,763	13,401	<b>81,420</b>
<b>BCIT Scholarships</b>	4,305	2,315	2,431	2,553	2,680	<b>14,284</b>
<b>FACTOR</b>	68,158	34,729	36,465	38,288	40,203	<b>260,343</b>
<b>Boot Camp</b>	24,000	32,352	33,683	29,354	30,822	<b>187,266</b>
<b>Beat Star Maker</b>	152,250	167,856	176,248	185,061	194,314	<b>1,052,001</b>
<b>Rhythmic Roots</b>	20,000	46,305	48,620	51,051	53,604	<b>219,580</b>
<b>Music Awards</b>	0	63,669	66,853	70,195	73,705	<b>282,922</b>
<b>Contributions to new 3<sup>rd</sup> parties</b>	200,790	200,789	0	0	0	<b>401,579</b>
<b>TOTAL</b>	546,031	611,684	431,153	446,697	469,033	<b>2,849,704</b>

\* Includes amounts that had been required for Years One and Two of the licence term.

**Note:**

- BCIT scholarships have been calculated separately from general scholarship funds, consistent with information submitted by the licensee.
- Amounts in shaded areas include arrears payments.