



Broadcasting Decision CRTC 2010-585

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Route reference: 2009-793

Ottawa, 17 August 2010

RNC Media Inc.
Montréal, Quebec

Application 2009-1374-0, received 13 October 2009

CKLX-FM Montréal – Licence renewal and amendment

*The Commission **renews** the broadcasting licence for the French-language commercial radio station CKLX-FM Montréal until 31 August 2013. This short-term renewal will enable the Commission to review, at an earlier date, the licensee's compliance with the Radio Regulations, 1986 and with its conditions of licence.*

*The Commission **approves in part** the request by RNC Media Inc. to allocate its outstanding Canadian talent development contributions over the new licence term.*

Introduction

1. The Commission received an application from RNC Media Inc. (RNC) to renew the broadcasting licence for the French-language commercial radio programming undertaking CKLX-FM Montréal, which expires 31 August 2010.¹
2. The licensee also requested an amendment to the licence. In Broadcasting Decision 2003-192, the Commission imposed a condition of licence requiring the licensee to contribute \$200,000 per year over seven years in direct expenditures for Canadian talent development (CTD), beginning with the first year that the station was in operation. Since the station commenced operations in the third year of the licence term, the licensee made five annual contributions to CTD. Since the contributions cover a period of seven years, the licensee must make two more annual contributions of \$200,000 each during the first two years of the new licence term.
3. Citing the station's financial problems, the licensee proposed to allocate the payment of these two contributions with a total value of \$400,000 over the seven years of the next licence term rather than over two years. It stated that it would accept a condition of licence to that effect.

¹ The Commission administratively renewed the station's licence from 1 September 2009 to 31 December 2009 in Broadcasting Decision 2009-506, from 1 January 2010 to 31 May 2010 in Broadcasting Decision 2009-785, and from 1 June 2010 to 31 August 2010 in Broadcasting Decision 2010-291.

4. The licensee also requested an exception to section 15 of the *Radio Regulations, 1986* (the Regulations) relating to Canadian content development (CCD) until such time as its total CTD contribution of \$400,000 has been paid.²
5. In Broadcasting Notice of Consultation 2009-793, the Commission noted that the licensee may have failed to comply with its condition of licence relating to CTD contributions for the 2005, 2006, 2007, 2008 and 2009 broadcast years by not meeting the payment deadlines.
6. The Commission received a comment from the Association québécoise du disque, du spectacle et de la vidéo (ADISQ). The intervention and the licensee's reply are available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Commission's analysis and determinations

7. After examining the application in light of applicable regulations and policies, the Commission considers that the issues to be addressed in its determinations are the following:
 - the licensee's non-compliance with its conditions of licence and with the Regulations;
 - the length of the new licence term; and
 - the reasons submitted in support of the proposed licence amendment and the requested exception to section 15 of the Regulations.

The licensee's non-compliance with its conditions of licence and with the Regulations

8. The Commission notes that the licensee failed to respect the 31 August deadline for payment of CTD contributions for the 2005, 2006, 2007, 2008 and 2009 broadcast years, which constitutes non-compliance with the station's conditions of licence.
9. As well, the Commission notes that the payments made for the 2005, 2006 and 2009 broadcast years were less than the amounts required. Although the annual contribution should have been \$200,000, the licensee contributed \$71,850 in 2005, \$135,854 in 2006 and \$195,000 in 2009. The shortfall to be made up for these years totals \$197,296.
10. However, the Commission notes that the licensee also made contributions greater than the required annual contribution of \$200,000 (\$373,860 in 2007 and \$274,300 in 2008) and, at the end of the license term, had surpassed the total amount that it was required to contribute by condition of licence by \$50,864.

² In Broadcasting Public Notice 2006-158, the Commission replaced the expression "Canadian talent development" with the expression "Canadian content development," effective 1 September 2008.

11. In a letter dated 30 November 2009, the licensee explained that the station was experiencing major financial problems, thereby limiting its ability to comply with its CTD obligations beginning 14 December 2004, the date on which operations began. The licensee added that it had to negotiate agreements with the recipients in question regarding the payment of outstanding amounts.
12. In Broadcasting Information Bulletin 2009-251, the Commission noted that annual contributions required by condition of licence cannot be deferred, in whole or in part, to any subsequent broadcast year unless prior authority is sought and obtained from the Commission. If a payment is made after 31 August, the licensee is deemed to have failed to comply with its obligation to make contributions during the applicable broadcast year.
13. In view of the licensee's delay in paying its CTD contributions, and the fact that it neither sought nor obtained authorization to defer payment of its contributions, the Commission finds the licensee in non-compliance with its condition of licence related to CTD contributions.
14. Furthermore, the Commission generally requires that licensees pay CTD shortfalls for each year in which the contributions paid were less than the required amounts. In the licensee's case, the contributions for the 2005, 2006 and 2009 broadcast years were less than required. However, given the station's precarious financial situation and the fact that the licensee exceeded by \$50,864 the total amount that it was required to pay by condition of licence, the Commission considers it appropriate to depart from its usual practice and not to require that the licensee make these payments.

The length of the new licence term

15. In Circular No. 444, the Commission explains how it deals with the licence renewals of radio stations that have been found in non-compliance with the provisions of the *Broadcasting Act*, the Regulations or their conditions of licence. For the first instance of non-compliance, the Commission generally renews the licence for four years to enable it to review, at an earlier date, the licensee's compliance.
16. The Commission notes that this is the licensee's first instance of non-compliance with its conditions of licence, and therefore considers that it is appropriate to renew the station's licence for a period of four years.

The reasons submitted in support of the proposed licence amendment and the requested exception to section 15 of the Regulations

17. The Commission notes that, over the first five years of operation, CKLX-FM accumulated a negative profit before interest and tax margin. To increase the station's profits, the licensee drastically cut spending from 2005 to 2009. The Commission notes that approving the licensee's request would allow it to save money during the first years of the new licence term. Although these savings will not make the station profitable, the Commission is of the view that they would assist in improving its financial situation.

18. As a general rule, the Commission does not approve requests for licence amendments by licensees who fail to comply with their obligations. However, in view of the station's financial problems, the Commission finds it appropriate to depart from its usual practice and to approve the proposed licence amendment.
19. Accordingly, the Commission authorizes the licensee to pay the outstanding CTD contributions over the next licence term. The Commission notes that the licensee, when it filed its application, expected that CKLX-FM's licence would be renewed for seven years. However, given the licensee's non-compliance, the new licence term will be four years. Consequently, the \$400,000 CTD contribution will be allocated over four years.
20. With respect to the requested exception to section 15 of the Regulations, which sets out the basic annual CTD contributions to be paid by licensees, the Commission notes that the licensee may use the transitional measure set out in Broadcasting Public Notice 2008-67. Under this measure, the licensee may deduct the basic annual amount contributable for CCD under the Regulations from the amount to be contributed for CTD under its conditions of licence.

Conclusion

21. In light of the above, the Commission **renews** the broadcasting licence for the French-language commercial radio programming undertaking CKLX-FM Montréal until 31 August 2013, four years from the original expiry date of 31 August 2009. This short-term renewal will enable the Commission to review, at an earlier date, the licensee's compliance with the Regulations and with its conditions of licence. The terms and **conditions of licence** are set out in the appendix to this decision.
22. Additionally, the Commission **approves in part** the request by RNC Media Inc. to allocate the payment of the outstanding CTD contributions over the new licence term. A **condition of licence** to that effect is set out in the appendix to this decision.

Employment equity

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

Secretary General

Related documents

- *Administrative renewal*, Broadcasting Decision CRTC 2010-291, 19 May 2010
- *Notice of applications received*, Broadcasting Notice of Consultation CRTC 2009-793, 21 December 2009

- *Administrative renewals*, Broadcasting Decision CRTC 2009-785, 17 December 2009
- *Administrative renewals*, Broadcasting Decision CRTC 2009-506, 20 August 2009
- *Clarifications regarding Canadian content development contributions made by commercial radio stations*, Broadcasting Information Bulletin CRTC 2009-251, 5 May 2009
- *Amendments to the Radio Regulations, 1986 – Implementation of the Commercial Radio Policy 2006 and the Digital Radio Policy – Regulatory Policy*, Broadcasting Public Notice CRTC 2008-67, 23 July 2008
- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006
- *Commercial French-language specialty FM radio station in Montréal*, Broadcasting Decision CRTC 2003-192, 2 July 2003
- *Practices regarding radio non-compliance*, Circular No. 444, 7 May 2001

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

Appendix to Broadcasting Decision CRTC 2010-585

Terms and conditions of licence for the French-language commercial radio programming undertaking CKLX-FM Montréal

Terms

The licence will expire 31 August 2013.

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, with the exception of conditions 7 and 9.
2. The station shall be operated within the Specialty format as defined in *A Review of certain matters concerning radio*, Public Notice CRTC 1995-60, 21 April 1995, and *Revised content categories and subcategories for radio*, Public Notice CRTC 2000-14, 28 January 2000, as amended from time to time.
3. The licensee shall devote a minimum of 70% of the station's music programming to musical selections from subcategory 34 (Jazz and blues).
4. The licensee shall devote a minimum of 45% of all category 2 (Popular music) musical selections broadcast during the broadcast week to Canadian selections broadcast in their entirety.
5. The licensee shall devote a minimum of 35% of all category 3 (Special interest) musical selections broadcast during the broadcast week to Canadian selections, to be scheduled in a reasonable manner throughout the broadcast day.
6. The licensee shall contribute \$100,000 per year over a period of four years to Canadian content or talent development.

The Commission reminds the licensee that it is required to adhere to the requirements relating to contributions to Canadian content development set out in section 15 of the *Radio Regulations, 1986* (the Regulations).

As set out in *Amendments to the Radio Regulations, 1986 – Implementation of the Commercial Radio Policy 2006 and the Digital Radio Policy – Regulatory Policy*, Broadcasting Public Notice CRTC 2008-67, 23 July 2008, the licensee is entitled to deduct the basic annual contribution required under the Regulations from the Canadian content or talent development contributions required under this condition of licence.

The licensee shall allocate 20% of the balance to FACTOR or to MUSICACTION. The remainder shall be allocated to the parties and

initiatives fulfilling the definition of eligible initiatives identified in *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006.