



Broadcasting Decision CRTC 2012-589

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Route reference: 2012-224

Additional reference: 2012-224-1

Ottawa, 23 October 2012

1158556 Ontario Limited
Timmins, Ontario

Application 2012-0188-9, received 17 February 2012
Public hearing in the National Capital Region
19 June 2012

CHIM-FM Timmins – Non-renewal of licence

*The Commission **denies** the application to renew the broadcasting licence for the English-language commercial specialty radio station CHIM-FM Timmins and its transmitters.*

The application

1. The Commission received an application by 1158556 Ontario Limited (1158556 Ontario) to renew the broadcasting licence for the English-language commercial specialty radio programming undertaking CHIM-FM Timmins and its transmitters CHIM-FM-1 North Bay, CHIM-FM -2 Iroquois Falls, CHIM-FM-3 Kirkland Lake, CHIM-FM-4 New Liskeard, CHIM-FM-5 Red Deer, CHIM-FM-6 Sault Ste. Marie, CHIM-FM-7 Elliot Lake, CHIM-FM-8 Chapleau, CHIM-FM-9 Wawa and CHIM-FM-10 Kapuskasing, which expires 30 November 2012.¹ The Commission did not receive any interventions in connection with this application.

Background

2. CHIM-FM was granted a licence by the Commission in Decision 95-782 and began operations in 1996. The Commission renewed the broadcasting licence for CHIM-FM for a short term from 1 January 2008 to 31 August 2011 in Broadcasting Decision 2007-433. The short-term renewal was due to the licensee's failure to comply with section 9(2) of the *Radio Regulations, 1986* (the Regulations) relating to the filing of annual returns for the 2000-2001, 2001-2002, 2002-2003, 2003-2004 and 2006-2007 broadcast years, and failure to comply with its condition of licence relating to

¹ The current licence was administratively renewed from 1 September 2012 to 30 November 2012 in Broadcasting Decision 2012-341.

Canadian talent development (CTD) contributions for the 2000-2001, 2001-2002, 2002-2003, 2003-2004, 2004-2005 and 2005-2006 broadcast years.

3. In Broadcasting Decision 2011-552, the Commission renewed the licence for CHIM-FM for one year from 1 September 2011 to 31 August 2012. The short-term renewal resulted from the licensee's failure once again to comply with section 9(2) of the Regulations relating to the filing of annual returns for the 2009-2010 broadcast year and with section 15 of the Regulations relating to its Canadian content development (CCD) contributions for the 2008-2009 broadcast year.
4. Concurrent with Broadcasting Decision 2011-552, the Commission issued two mandatory orders. Broadcasting Mandatory Order 2011-553 required the licensee to comply at all times with section 9(2) of the Regulations. Broadcasting Mandatory Order 2011-554 required the licensee to comply at all times with sections 15(2) and 15(4) of the Regulations.
5. In each of these renewal decisions, the licensee was reminded of the importance that the Commission places on a licensee's compliance with regulatory obligations and conditions of licence, adding in Broadcasting Decision 2011-552 that the Commission views any non-compliance as a very serious matter. The Commission also noted in each instance that it may consider recourse to additional measures, including short-term licence renewal, suspension, non-renewal or revocation of the licence pursuant to sections 9 and 24 of the *Broadcasting Act* (the Act), should the licensee once again breach the Regulations or any of its conditions of licence.
6. In Broadcasting Notice of Consultation 2012-224, as amended by Broadcasting Notice of Consultation 2012-224-1, the Commission noted that it appeared that the licensee had failed to comply with:
 - sections 8(6), 9(2) and 9(4) of the Regulations, which relate to the submission of logger tapes, annual returns and other information, for the 2010-2011 broadcast year; and
 - section 15 of the Regulations and the licensee's condition of licence relating to CCD contributions for the 2010-2011 broadcast year.
7. The Commission noted that these instances of non-compliance may also constitute breaches of Broadcasting Mandatory Orders 2011-553 and 2011-554.
8. The Commission indicated that it intended to inquire into these matters at the 19 June 2012 public hearing and that it wanted to discuss measures taken or that could be taken to address concerns raised by the apparent non-compliance. The Commission also reminded the licensee that, in addition to the possibility of imposing mandatory orders, it may consider recourse to additional measures, including short-term renewal, suspension, non-renewal or revocation of the licence, pursuant to sections 9 and 24 of the Act.

9. The Commission also put the licensee on notice of the possible sanctions noted above through various letters and emails, including letters dated 1 March 2011, 27 March 2012 and 14 June 2012, as well as an email dated 18 January 2012.

Non-compliance

Canadian content development contribution obligations

10. 1158556 Ontario is required to make contributions to CCD in accordance with section 15 of the Regulations, which outlines the basic contribution requirements of commercial radio stations and the allocation of those contributions. The licensee failed to provide proof of payment for required contributions to FACTOR with its 2010-2011 annual return. Following correspondence from the Commission, the licensee provided the necessary proof of payment on 3 April 2012. Accordingly, the Commission finds the licensee to be in compliance with section 15 of the Regulations and with Broadcasting Mandatory Order 2011-554.
11. The licensee is further required to make CCD contributions in accordance with a condition of licence set out in Appendix 3 to Broadcasting Decision 2011-552, relating to a CCD shortfall of \$300 for the 2008-2009 broadcast year. That shortfall relates to a contribution by the licensee to Christopher de Ste. Croix, a Canadian artist and operator of Golden Vocal Studio (formerly Home Grown Studios) that the Commission had deemed ineligible due to failure to provide appropriate proof of eligibility. Pursuant to that condition of licence, the licensee was required to provide appropriate proof of payment and proof of eligibility by no later than 30 September 2011 attesting to the contribution of \$300 to an eligible initiative. In that condition of licence, the Commission also outlined what the proof of eligibility must include in order to be deemed appropriate.
12. As noted in Broadcasting Decision 2011-552, the licensee had been asked repeatedly, and failed to provide appropriate proof to substantiate the eligibility of its chosen CCD initiative. In reply to those requests, the licensee filed copies of cancelled cheques to substantiate that payment was made and a brief letter from Mr. de Ste. Croix indicating that the funds were received and had been used for projects such as free studio time for local artists. The Commission, however, deemed that the information was insufficient to substantiate the eligibility of the initiative. Consequently, in Broadcasting Decision 2011-552, the Commission found the licensee to be in non-compliance with section 15 of the Regulations, which resulted in the condition of licence in question.
13. Following the issuance of Broadcasting Decision 2011-552, the licensee wrote to the Commission on several occasions, including on 21 December 2011, in response to the request to file its licence renewal application; on 24 February 2012, following the registration of Broadcasting Mandatory Orders 2011-553 and 2011-554; and on 27 March 2012, in its cover letter accompanying its renewal application. In that correspondence, the licensee submitted that the Commission had erred by finding the

licensee in non-compliance and by imposing a short-term renewal, and that the Commission, by not correcting its decision, was refusing to address its mistake.

14. In its annual return filed on 1 December 2011, as well as in other correspondence to the Commission,² the licensee submitted correspondence from Mr. de Ste. Croix, which contained the same information that had previously been deemed insufficient. The licensee provided no further information as required under its condition of licence to demonstrate the eligibility of the initiative. Furthermore, in the above-noted correspondence, the licensee repeatedly argued that it had already submitted proof and that it did not understand why the Commission would not acknowledge that it was in compliance with its condition of licence relating to CCD.
15. At the 19 June 2012 public hearing, the licensee provided additional documentation relating to Mr. de Ste. Croix, namely, a list of songs and artists produced by him. The licensee also indicated that after it contributed funds to the initiative, Mr. de Ste. Croix provided CHIM-FM with the songs he had produced and noted that the station now plays those songs on-air.
16. The licensee also proposed, as a corrective measure, to direct its entire CCD contribution to FACTOR in the future to avoid possible non-compliance.
17. At the hearing, the Commission requested, and the licensee undertook to file, adequate proof of eligibility for the \$300 CCD contribution, such as a letter from an artist produced by Mr. de Ste. Croix, a letter from Mr. de Ste. Croix explaining how the contribution was used, and proof demonstrating that the funding was used in a manner consistent with the requirements set out in Broadcasting Public Notice 2006-158.
18. On 27 June 2012, the licensee provided additional documentation consisting of a letter from Mr. de Ste. Croix indicating that he used the \$300 contribution from CHIM-FM to upgrade his studio and to produce music by local artists for CHIM-FM.

Commission analysis and decision

19. Contrary to the allegations of the licensee, the Commission has acknowledged receiving the letter from Mr. de Ste. Croix. The Commission notes, however, that the issue at hand is that the proof provided was insufficient to substantiate the eligibility of the chosen initiative. In spite of the Commission's numerous requests for information and in spite of the direction it provided to the licensee on numerous occasions outlining the requirements and expectations regarding what would constitute appropriate proof of eligibility, the licensee has repeatedly filed the same information that was previously deemed insufficient.

² Letters dated 8 July 2011 and 3 April 2012, the latter of which was filed again as part of correspondence on 11 June 2012

20. The Commission further notes that it only received new information at and following the hearing. The additional documentation filed by the licensee on 27 June 2012 indicates that the funds were used for capital expenditures for the studio and for the production of music for various artists, at least some of which was produced exclusively for CHIM-FM. The Commission notes that contributions for capital expenditures are not eligible CCD initiatives. Further, it considers that the production of music exclusively for a particular station is self-serving and, therefore, also ineligible. Accordingly, the \$300 payment to Mr. de Ste. Croix is an ineligible contribution.
21. In light of the above, the Commission finds the licensee in non-compliance with its condition of licence relating to CCD set out in Appendix 3 to Broadcasting Decision 2011-552.

Timely submission of logger tapes

22. Section 8(6) of the Regulations requires the licensee to furnish forthwith a clear and intelligible tape recording or other exact copy of all matter broadcast during the applicable timeframe when requested to do so by the Commission.
23. On 17 January 2012, the Commission requested, among other things, the logger tapes for the broadcast week of 8 to 14 January 2012, to be filed by no later than 30 January 2012.
24. On 3 February 2012 – after the deadline for receipt of the requested material – the licensee indicated to the Commission that there would be a delay in sending the material, due to certain technical difficulties. The logger tapes were finally filed with the Commission on 8 February 2012. These logger tapes were unfortunately misplaced by Commission staff, and the licensee raised this issue in its defence at the 19 June 2012 public hearing.
25. At the hearing, the licensee also indicated that it has taken steps to ensure compliance going forward, specifically noting that its system is now entirely computerized, and that this would help ensure that material is provided in a timely manner.

Commission analysis and decision

26. The Commission notes that the requirement to provide logger tapes forthwith is clearly set out in the Regulations.
27. Although the licensee provided the logger tapes following a second request by the Commission, its argument that Commission staff misplaced the original tapes is immaterial to the fact that they were initially filed after the deadline. The Commission notes that the logger tapes were filed over a week late and that the licensee contacted the Commission to advise that there was a problem with the filing only after the 30 January 2012 deadline had passed.

28. The Commission therefore finds the licensee to be in non-compliance with section 8(6) of the Regulations.

Provision of complete annual returns

29. Section 9(2) of the Regulations requires that, on or before 30 November of each year, a licensee must submit to the Commission a statement of accounts, on the annual return of broadcasting licensee form, for the broadcast year ending the previous 31 August. In addition, the Commission has provided direction to broadcasters concerning the content of their annual returns through various information bulletins, including Broadcasting Information Bulletin 2011-795.

30. The Commission notes that during CHIM-FM's past two consecutive licence terms, the licensee has been found in non-compliance with that requirement. For this reason, the Commission imposed Broadcasting Mandatory Order 2011-553 at the last licence renewal for CHIM-FM, requiring the licensee to comply with section 9(2) of the Regulations. This order was registered with the Federal Court and the licensee was advised of this fact by service pursuant to the *Federal Courts Rules*.

31. When asked, during the proceeding leading to Broadcasting Decision 2011-552, to explain its failure to provide its 2009-2010 annual return on time, the licensee indicated that it was due in part to the loss of a number of members of the Board of Directors and volunteers, and to the fact that the station's corporate year end does not coincide with the end of the broadcast year. It indicated that it had hired a bookkeeper to keep the station's affairs in order and that the station's year end would be changed to match the end of the broadcast year.

32. Subsequent to the issuance of Broadcasting Decision 2011-552, the licensee submitted an incomplete annual return for the 2010-2011 broadcast year. In particular, as noted above, the licensee submitted insufficient proof of payment for its required CCD contribution to FACTOR, providing an invoice, rather than acceptable proof of payment such as a receipt or a cancelled cheque, as specified in Broadcasting Information Bulletin 2011-795. Further to Commission staff questioning, the licensee provided cancelled cheques for its payments to FACTOR, but submitted them on 3 April 2012, well past the 30 November deadline for the filing of annual returns. Moreover, the licensee did not submit the required financial statements, as stipulated in Circular No. 404.³

33. In a letter received 3 April 2012, the licensee explained that the documents were missing because its corporate year-end was 30 November rather than the end of the

³ All licensees of radio programming undertakings, including radio networks, must file audited financial statements at the licensee level for each 12-month period ending 31 August. Other than licensees who are public companies, all licensees of radio undertakings who do not have total radio advertising revenues of more than \$10 million for all of their licensed radio undertakings combined may, in lieu of audited financial statements, file non-audited financial statements at the licensee level for each 12-month period ending 31 August.

broadcast year. This explanation is similar to that provided by the licensee at the last licence renewal for CHIM-FM.

34. In this regard, the licensee stated that its accountant had requested a change of its corporate year with the Canadian Revenue Agency (CRA) so that the corporate year would coincide with the broadcast year. It noted, however, that according to the CRA, a change to the licensee's year end could only be made at 1158556 Ontario's corporate year end (30 November 2011), when the tax return was filed. At the 19 June 2012 public hearing, the licensee submitted that the problem has been solved since the CRA had changed the year end to 31 August, and the licensee undertook to provide the Commission with the relevant correspondence. The licensee further indicated that the non-compliance was not its fault since the year-end was set up in this manner by the licensee's lawyer.
35. In response to its undertaking at the 19 June 2012 public hearing, the licensee filed a copy of a letter it sent to the CRA, dated 17 May 2012, requesting the change to the year end. As well, the licensee filed, on 3 August 2012 – well past the deadline for the filing of its undertaking – a copy of the letter from the CRA dated 25 July 2012 approving of the change of the year end.

Commission analysis and decision

36. The Commission notes that the requirements related to annual returns are clearly set out in the Regulations and in various information bulletins on the matter. Although, as noted above, adequate proof of the licensee's CCD payment to FACTOR for the 2010-2011 broadcast year was eventually filed with the Commission, this proof was not filed with the licensee's annual return but was filed well past the deadline for the filing of its annual return. Consequently, the Commission was unable to assess prior to CHIM-FM's licence renewal process whether the licensee was in compliance with the Regulations relating to the payment of its CCD contributions.
37. In addition, despite assurances made during its previous licence renewal proceeding that it understood its regulatory obligations regarding the filing of financial statements and that it would make the necessary changes to its corporate year end to ensure that, going forward, its annual returns are filed within the required deadlines, the licensee again failed to provide the required financial statements with its annual returns.
38. In light of the above, the Commission finds the licensee to be in non-compliance with section 9(2) of the Regulations as well as with Broadcasting Mandatory Order 2011-553.

Responding to Commission inquiries

39. Section 9(4) of the Regulations requires a licensee to respond to Commission requests for information on various matters relating to the licensee's undertaking, including ownership, financial affairs, programming and adherence to its regulatory obligations.

40. On 20 December 2011, the Commission sent a letter to the licensee requesting that it file the licence renewal application for CHIM-FM by no later than 25 January 2012. The licensee responded on 21 December 2011 indicating that the Commission should correct CHIM-FM's last renewal decision and extend the licence term, and that it did not have time to complete the necessary paperwork. In reply, Commission staff reiterated that the application must be received by 25 January 2012, and that failure to do so could result in non-compliance with section 9(4) of the Regulations. Commission staff further pointed the licensee to Broadcasting Decision 2011-552, in which the Commission emphasized the seriousness with which it views non-compliance and set out the various measures that the Commission could take were non-compliance to reoccur.
41. The Commission received the licence renewal application on 17 February 2012. Nevertheless, the licensee continued to dispute the need for the licence renewal process and insisted that the Commission correct its mistake in Broadcasting Decision 2011-552, in which it renewed CHIM-FM's broadcasting licence for one year, and grant the station a full-term licence renewal (i.e., seven years).
42. In response to questioning by the Commission as to why the licence renewal application was filed late, the licensee indicated in a letter received 3 April 2012 that it did not believe that filing the renewal application was necessary given that it was waiting for a response from the Commission regarding the error it claimed was made in Broadcasting Decision 2011-552. The licensee stated that it believed that the Commission would correct the mistake and that a renewal application would be unnecessary. The licensee also stated that it did not see the correspondence immediately given the number of emails it receives.
43. In addition, on 17 January 2012, the Commission also requested from the licensee CHIM-FM's music list and program log for the broadcast week of 8 to 14 January 2012, to be submitted (along with the above-noted logger tapes) by no later than 30 January 2012. The Commission notes that this material was received 8 February 2012 and that part of the requested music list was missing. By letter dated 20 March 2012, the Commission notified the licensee of the missing information and that failure to provide it constituted apparent non-compliance with section 9(3) of the Regulations. This section requires a licensee to submit for any period specified by the Commission a list of the musical selections in the order in which they are broadcast by the licensee that includes the title and performer of each musical selection and a legend that identifies specific features of the musical selections listed.
44. In response, the licensee submitted the missing information and explained that it did not realize that it had to submit music lists for programs produced by other individuals. While the licensee's submission of the missing information satisfies concerns regarding compliance with section 9(3), the fact that the licensee did not file the information within the timeframes requested by the Commission means that the licensee may not be in compliance with section 9(4) of the Regulations.

Commission analysis and decision

45. The Commission notes that the requirement to respond to Commission requests for information is clearly set out in the Regulations and that the requests at issue clearly identified the dates by which the Commission required the information. As noted above, although the licensee did eventually file the information, the licensee failed to respond to the Commission's requests for information within the prescribed timelines on two separate occasions during the licence term.
46. Accordingly, the Commission finds the licensee to be in non-compliance with section 9(4) of the Regulations.

Regulatory action

47. In Broadcasting Information Bulletin 2011-347, the Commission announced a revised approach to deal with radio stations found in non-compliance. The Commission noted in particular that each instance of non-compliance will be evaluated in light of factors such as the quantity, recurrence and seriousness of the non-compliance. The Commission also noted that it will consider the circumstances leading to the non-compliance in question, the licensee's arguments and the measures taken to rectify the situation.
48. The Commission considers that the issues of non-compliance described above, when taken cumulatively, are extremely serious both due to the nature of the non-compliance and its recurrence.
49. As regards the nature of the non-compliances, the Commission considers that they relate to fundamental aspects of the broadcasting regulatory system and of 1158556 Ontario's licence. In particular, because the Commission is charged with the supervision and regulation of the Canadian broadcasting system, it must at all times be in a position to obtain information from licensees to adequately perform its duties. The filing of complete annual returns, the provision of complete program logs and records forthwith, the filing of appropriate proof of payment for CCD initiatives and responding to Commission inquiries are fundamental to the Commission's ability to monitor a radio station's performance and verify its compliance with the Regulations and with individual conditions of licence. Further, when the material requested is not filed or is not filed in a timely manner, this affects the ability of the Commission to independently confirm a licensee's adherence to these regulatory obligations. These filings also become important indicators of whether the licensee has the willingness, ability and knowledge necessary to bring itself into compliance and maintain such compliance.
50. As mentioned above, the recurrence of 1158556 Ontario's non-compliances is also cause for concern. The Commission notes that despite having reminded the licensee in the previous two renewal decisions of the importance placed on compliance, and having imposed mandatory orders on the licensee to impress upon it the seriousness with which the Commission takes repeated non-compliance, this is the third

consecutive licence term in which the licensee has been found in non-compliance with regulatory obligations. Of greater concern, however, is the fact that this represents the third consecutive licence term in which the licensee has been found in non-compliance with the same regulatory obligations.

51. In assessing the appropriate regulatory action to take in the circumstances, and in assessing the licensee's understanding of its responsibilities and the seriousness with which it takes them, the Commission has taken into account the licensee's responses to the non-compliances both in writing and at the hearing. As discussed below, the Commission considers that the reactions and responses of 1158556 Ontario call into question the credibility of the licensee as regards its commitments to its regulatory obligations.

Circumstances and explanations for the licensee's non-compliance

52. The Commission is not convinced by the licensee's explanations for the various instances of non-compliance that have occurred over the licence term and considers that the explanations offered in most cases are insufficient to justify the licensee's non-compliance. In particular, the Commission notes a number of inconsistencies in the explanations provided, a failure to take responsibility for the non-compliances, and that the licensee has demonstrated that it is unaware of its obligations, and has shown a general inability or unwillingness to comply. The Commission is also concerned that the licensee does not respect the Commission's authority or take its responsibilities as a licensee seriously.
53. The Commission has identified a number of inconsistencies between the explanations that the licensee provided and what the record indicates actually occurred. For example, the licensee indicated that it had not immediately seen the Commission's correspondence concerning the filing of its licence renewal application. However, the Commission's files show that the licensee actually responded to the Commission's request on 21 December 2011, the day after the request had been sent, and indicated in its response its reticence to file the application. As well, with respect to annual returns, the Commission notes the licensee's statements in correspondence received on 3 April 2012 and at the hearing that the change in corporate year end had already been implemented. Yet documentation provided by the licensee in response to its undertaking made at the hearing indicated that the request for the change in year end had only been made on 17 May 2012, and was not granted until 25 July 2012.
54. The Commission also notes that, despite the fact that licensees are responsible for ensuring the compliance of their undertakings with their regulatory obligations, 1158556 Ontario's explanations often involve shifting responsibility to others for its non-compliance. Notably, the licensee blamed the Commission and Commission staff for its non-compliance with its condition of licence relating to CCD contributions, repeatedly arguing that the Commission's previous decision was wrong and that they had failed to acknowledge that the licensee had provided the necessary information. The licensee also blamed its non-compliance with section 8(6) of the Regulations relating to the provision of logger tapes on Commission staff's misplacement of the

original filing. As well, the licensee also blamed its own lawyer for its non-compliance with section 9(2) of the Regulations relating to its annual returns without acknowledging that the lawyer would have acted only with the approval of its client, the licensee.

55. The Commission also notes that it is incumbent on licensees to be aware of their regulatory obligations in order to ensure compliance. 1158556 Ontario's responses to its non-compliance have not convinced the Commission that the licensee has the requisite knowledge. For example, the licensee indicated that it was not aware that music lists must include selections played on programs not produced by the station. However, section 9(3)(b) of the Regulations clearly requests information on "each musical selection" and does not create any exclusion based on who produced the program in which the musical selection is contained.
56. Furthermore, the Commission notes the inability and seeming unwillingness of the licensee to comply with certain of its regulatory obligations. In particular, the Commission notes that this is the third consecutive licence term in which the licensee has been in non-compliance with section 9(2) of the Regulations and that even the presence of a mandatory order was not enough to bring the licensee into compliance. As well, the Commission notes that problems related to the licensee's CCD contributions remain unresolved over two consecutive licence terms and that, prior to that, the licensee had also been found in non-compliance with its CTD contributions. The Commission also notes the licensee only notified it of a delay with respect to the provision of logger tapes after the deadline for their submission had passed and despite a clear requirement in the Regulations that the logger tapes be provided "forthwith" upon request. This inability or unwillingness to comply also suggests a disregard for the Commission's authority to regulate the licensee's conduct.
57. The licensee's lack of respect for the Commission is similarly demonstrated by the licensee's responses to Broadcasting Decision 2011-552, to the request to file its renewal application, and to being called to the 19 June 2012 public hearing. Pursuant to the Act, Commission decisions are final and conclusive, subject only to an appeal to the Federal Court of Appeal or, in certain instances, a petition to the Governor-in-Council. However, since the issuance of Broadcasting Decision 2011-552, the licensee has persisted in its demands for the Commission to simply change the decision and has refused to provide the necessary information outlined by the Commission to demonstrate eligibility of the questionable CCD initiative or to direct the CCD contribution elsewhere. The licensee also refused to file a renewal application when requested, eventually doing so only following prompting from Commission staff. Most recently, it objected to the Commission's requirement that it appear at the 19 June 2012 public hearing by repeatedly filing arguments as to why it should not have to appear and should in fact be granted a longer licence term without the need for its application to be assessed. The Commission considers that, in such circumstances, a responsible licensee that took its licence seriously and respected the Commission's authority would have worked to understand and correct the non-compliance in a timely fashion and would have filed its renewal application and appeared at the public hearing to discuss the matters without objection.

Measures taken by the licensee to bring itself into compliance

58. Many of the measures that the licensee took to bring itself into compliance were taken only with repeated prompting from Commission staff and at the outset of the public hearing itself. As noted above, timely compliance is important for a number of reasons. The Commission is concerned that the licensee would seek to provide requested material or proof of corrective measures at the last minute in order to appear to be bringing itself into compliance when, in actuality, it has disregarded its regulatory obligations up to that time. As well, some of the current instances of non-compliance are the same as those that occurred in the past.
59. For example, with respect to CCD contributions, despite the finding of non-compliance and the imposition of the condition of licence in Broadcasting Decision 2011-552, as well as repeated requests to file appropriate proof of payment and eligibility, the licensee only provided the necessary details regarding the Christopher de Ste. Croix initiative on 27 June 2012 pursuant to an undertaking given at the 19 June 2012 public hearing. Further, as discussed above, the evidence indicates that the change to the licensee's corporate year end was not actually requested by the licensee until approximately one month before the 19 June 2012 public hearing and that approval was not actually received until approximately one month after the conclusion of that hearing. The Commission also notes that the missing financial statements were only filed the week prior to the 19 June 2012 public hearing. Furthermore, despite findings of non-compliance with respect to both CCD contributions and annual returns on two previous occasions, as well as the imposition of two mandatory orders and a condition of licence relating to its CCD contribution shortfall, the licensee failed on both occasions to take the necessary steps to correct the non-compliances and bring itself into compliance going forward.
60. The Commission notes the corrective measures proposed by the licensee, and other steps that it has taken, to be in compliance with its various regulatory obligations in the future. These include its proposal to give all of its CCD contributions to FACTOR and proof that it has now changed its corporate year end with the CRA. The Commission nevertheless has continuing concerns with respect to the licensee's willingness and ability to comply with its regulatory obligations as well as its disregard for Commission authority, and is not convinced that the proposed measures adequately address these concerns.

Conclusion

61. 1158556 Ontario has demonstrated a history of repeated non-compliance, often in regard to the same regulatory obligations, and has shown disregard for those obligations over three consecutive licence terms. The Commission notes that CHIM-FM's station manager has held that position for 16 years, yet the licensee continues to be in non-compliance with its regulatory obligations. A responsible licensee, under the same circumstances and subject to a one-year short-term renewal, would have understood the seriousness of its situation and the Commission's warnings of the implications of further non-compliance, and would have seized the opportunity to

rectify the situation and would have taken all necessary steps to do so as quickly as possible. However, 1158556 Ontario took the opposite course of action, committing repeated and further acts of non-compliance and taking steps to bring itself into compliance only after intervention by Commission staff and at the outset of or subsequent to the public hearing. The Commission is gravely concerned with the licensee's willingness and ability to bring itself into compliance as well as with its disregard for Commission authority. Given all of the above, the Commission is unconvinced as to the seriousness with which the licensee takes its regulatory obligations. The Commission is similarly not convinced that the licensee's attitude toward its regulatory obligations will change going forward.

62. The Commission has reviewed the various measures it may adopt to ensure that broadcasting licensees meet their obligations where it finds that they are in non-compliance, such as mandatory orders, short-term renewal, suspension and non-renewal of the licence. In this instance it is clear that the licensee is not complying with a mandatory order and a condition of licence that were imposed only a year ago. The licensee's approach to its regulatory obligations over the course of the licence term leaves the Commission with no reason to believe that it would comply with either its present obligations or new ones if it were granted even a short-term renewal. The Commission is similarly not convinced that a suspension would be effective as there is no evidence to suggest that the licensee would not revert to its present practices once it resumed broadcasting. In light of the all of the above, the Commission is of the view that non-renewal is the only appropriate measure in this case.
63. The Commission therefore **denies** the application by 1158556 Ontario Limited to renew the broadcasting licence for the English-language commercial specialty radio programming undertaking CHIM-FM Timmins and its transmitters CHIM-FM-1 North Bay, CHIM-FM-2 Iroquois Falls, CHIM-FM-3 Kirkland Lake, CHIM-FM-4 New Liskeard, CHIM-FM-5 Red Deer, CHIM-FM-6 Sault Ste. Marie, CHIM-FM-7 Elliot Lake, CHIM-FM-8 Chapleau, CHIM-FM-9 Wawa and CHIM-FM-10 Kapuskasing. Accordingly, in line with the current expiry date of CHIM-FM's broadcasting licence, the licensee must cease broadcasting by no later than the end of the broadcast day on **30 November 2012**.

Secretary General

Related documents

- *Administrative renewals*, Broadcasting Decision CRTC 2012-341, 22 June 2012
- *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2012-224, 18 April 2012, as amended by Broadcasting Notice of Consultation CRTC 2012-224-1, 11 May 2012
- *Filing annual returns for radio programming undertakings*, Broadcasting Information Bulletin CRTC 2011-795, 20 December 2011

- *CHIM-FM Timmins and its transmitters CHIM-FM-1 North Bay, CHIM-FM-2 Iroquois Falls, CHIM-FM-3 Kirkland Lake, CHIM-FM-4 New Liskeard, CHIM-FM-5 Red Deer, CHIM-FM-6 Sault Ste. Marie, CHIM-FM-7 Elliot Lake, CHIM-FM-8 Chapleau, CHIM-FM-9 Wawa and CHIM-FM-10 Kapuskasing – Licence renewal and Issuance of mandatory orders*, Broadcasting Decision CRTC 2011-552 and Broadcasting Orders CRTC 2011-553 and 2011-554, 31 August 2011
- *Revised approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2011-347, 26 May 2011
- *CHIM-FM Timmins – Licence renewal*, Broadcasting Decision CRTC 2007-433, 24 December 2007
- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006
- *New Christian music FM radio station – Approved*, Decision CRTC 95-782, 27 October 1995
- *Requirements for the Filing of Financial Statements with the Broadcasting Annual Return*, Circular No. 404, 23 August 1994