



Broadcasting Decision CRTC 2015-372

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Reference: 2015-51

Ottawa, 13 August 2015

CKPM-FM Radio Ltd.
Port Moody, British Columbia

Application 2013-1591-1, received 8 November 2013

CKPM-FM Port Moody – Licence renewal

*The Commission **renews** the broadcasting licence for the English-language commercial radio station CKPM-FM Port Moody from 1 September 2015 to 31 August 2019.*

This short-term renewal will allow for an earlier review of the licensee's compliance with its regulatory requirements.

Application

1. CKPM-FM Radio Ltd. (CKPM-FM Radio) filed an application to renew the broadcasting licence for the English-language commercial radio station CKPM-FM Port Moody, British Columbia, which expires 31 August 2015.¹ The Commission did not receive any interventions regarding this application.

Non-compliance

2. In Broadcasting Notice of Consultation 2015-51, the Commission stated that the licensee was in apparent non-compliance with requirements relating to the broadcast of musical selections. Specifically, the licensee was in apparent non-compliance with the following:
 - sections 2.2(8) and 2.2(9) of the *Radio Regulations, 1986* (the Regulations), which require the station to devote at least 35% of its musical selections from content category 2 (Popular Music) to Canadian selections broadcast in their entirety each broadcast week and between 6 a.m. and 6 p.m., in any period beginning on a Monday and ending on the Friday of that week; and
 - its condition of licence requiring that the station devote 25% of its musical selections in each broadcast week to selections from content subcategories 33 (World Beat and International) and 34 (Jazz and Blues).

¹ The original expiry date for CKPM-FM's broadcasting licence was 31 August 2014. The licence was renewed administratively until 31 August 2015 in Broadcasting Decision 2013-418.

3. Monitoring of CKPM-FM's programming for the week of 25 to 31 August 2013 revealed that the level of Canadian content broadcast by the station was 32.4% during the week and 31.4% between 6 a.m. and 6 p.m., Monday to Friday of that same broadcast week. This review also revealed that the level of music drawn from subcategories 33 and 34 for that broadcast week was 2.5%.
4. The licensee indicated that it had retained a programming consultant to manage and ensure compliance, and that its music director—who is required to file weekly reports on quotas for all regulatory categories, according to the licensee—will search through music charts and online for format-compatible blues, jazz and World Beat selections. It added that in 2014, the station introduced two day-long weekly features that air gold selections from the aforementioned musical categories. CKPM-FM Radio also claimed that the station manually programs songs from subcategories 33 and 34 on a daily basis. The station hired a music expert to host a weekly three-hour program entitled Super Soul Sunday and is currently developing a jazz, blues and R&B program that will air on Fridays.
5. In light of the above, the Commission finds CKPM-FM Radio in non-compliance, for the broadcast week of 25 to 31 August 2013, with sections 2.2(8) and 2.2(9) of the Regulations and with its condition of licence regarding the level of music to be drawn from subcategories 33 and 34.

Regulatory measures

6. The Commission's approach to non-compliance by radio stations is set out in Broadcasting Information Bulletin 2014-608. Under that approach, each instance of non-compliance is evaluated in its context and in light of factors such as the quantity, recurrence and seriousness of the non-compliance. The circumstances, the arguments provided by the licensee and the actions taken to rectify the situation are also considered.
7. It is important that radio stations respect the Commission's licensing process by providing the programming that they proposed to offer to listeners by condition of licence and that is required by the Regulations.
8. As set out in Broadcasting Regulatory Policy 2014-554, for stations that are in or appear to be in non-compliance, the following measures may be applied on a case-by-case basis depending on the nature of the non-compliance:
 - renew the licence for a short term;
 - impose additional conditions of licence;
 - call the licensee to a public hearing to respond to and discuss apparent non-compliance;
 - following a public hearing, issue a mandatory order requiring the licensee to comply with regulatory requirements. Such orders are made orders of the Federal Court and can be enforced through contempt of court proceedings;

- suspend the licence;
 - not renew the licence;
 - revoke the licence
9. In that same regulatory policy, the Commission introduced further measures to address the potential harm that could be caused to the broadcasting system by non-compliance with various regulations and conditions of licence. For serious cases of non-compliance, the Commission considered it appropriate to introduce a measure by which, in certain circumstances, stations in non-compliance would announce that finding on air, an approach similar to that currently used by the Canadian Broadcast Standards Council (CBSC). In regard to non-compliance with programming or CCD requirements in particular, it considered it appropriate to introduce a measure by which, in certain circumstances, radio station licensees in non-compliance would be required to direct all further CCD contributions to funds such as FACTOR, MUSICACTION or the Community Radio Fund of Canada (CRFC), rather than to discretionary initiatives such as talent contents, or make additional CCD contributions that are over and above those required by the Regulations and by existing condition of licence.
10. In regard to the present case, Commission staff asked² CKPM-FM Radio to comment on the following ways to address, during the course of the next licence term, the station's repeated non-compliance:
- measures such as those set out in paragraph 8 above;
 - a requirement to make additional CCD contributions over and above those required pursuant to the Regulations or by condition of licence; and
 - a requirement to announce on air that the station has been in non-compliance and that the licensee has put measures into place to ensure that the non-compliance does not occur again.
11. In reply, the licensee indicated that imposing a short-term renewal would add an additional administrative burden and that non-renewal would represent a financial loss to its station. Further, it questioned the rationale for potential non-renewal given that CKPM-FM is the only one of its three stations to have maintained its original music format. It added that the imposition of additional CCD contributions would financially burden the station, which is currently unprofitable. Finally, it indicated that removing the ability to make CCD contributions to discretionary initiatives would negatively impact local artists by taking money out of the local artistic community and sending it to out-of-town agencies such as FACTOR.

² in a letter dated 30 January 2015

12. The Commission acknowledges the explanations provided by the licensee and notes the measures it has put in place to address the various instances of non-compliance and to ensure compliance going forward. However, given the nature and extent of the non-compliance, particularly as it relates to three instances of non-compliance including two separate instances of a shortfall in the broadcast of Canadian musical selections and the significant shortfall in the broadcast of category 3 music, a short-term licence renewal of four years for CKPM-FM is appropriate.
13. Further, given the seriousness of the non-compliance and the harm caused to the broadcasting system by the non-compliance, the Commission finds it appropriate to require CKPM-FM Radio to make, by the end of the 2015-2016 broadcast year, an additional CCD contribution that is over and above those required by the Regulations or by existing conditions of licence. Based on CKPM-FM's annual revenues and taking into account the serious nature of the non-compliance, the Commission finds that an additional contribution of \$600 is appropriate. A **condition of licence** to that effect is set out in the appendix to this decision.

Conclusion

14. In light of all of the above, the Commission **renews** the broadcasting licence for the English-language commercial radio programming undertaking CKPM-FM Port Moody from 1 September 2015 to 31 August 2019. This short-term renewal will allow for an earlier review of the licensee's compliance with its regulatory requirements. The **conditions of licence** are set out in the appendix to this decision.

Reminder

15. Pursuant to section 22 of the *Broadcasting Act*, the broadcasting licence renewed in this decision will cease to have any force or effect if the broadcasting certificate issued by the Department of Industry lapses.

Secretary General

Related documents

- *Notice of applications received*, Broadcasting Notice of Consultation CRTC 2015-51, 18 February 2015
- *Update on the Commission's approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2014-608, 21 November 2014
- *A targeted policy review of the commercial radio sector*, Broadcasting Regulatory Policy CRTC 2014-554, 28 October 2014
- *Various radio programming undertakings – Administrative renewals*, Broadcasting Decision CRTC 2013-418, 19 August 2013

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

Appendix to Broadcasting Decision CRTC 2015-372

Conditions of licence, expectation and encouragement for the English-language commercial radio programming undertaking CKPM-FM Port Moody, British Columbia

Conditions of licence

1. The licensee shall adhere 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, as well as to the conditions set out in the broadcasting licence for this undertaking.
2. To fulfill its outstanding commitments to Canadian content development (CCD) set out in Appendix 5 to *Licensing of new radio stations to serve the Vancouver radio market*, Broadcasting Decision CRTC 2008-117, 30 May 2008, the licensee shall file, by 30 November of each year and in a form deemed acceptable by the Commission, all proof of payment regarding the required contribution to CCD to be made in the broadcast year ending the previous 31 August in addition to the required basic annual CCD contribution set out in section 15 of the *Radio Regulations, 1986*, as follows:
 - \$3,839 in the 2014-2015 broadcast year;
 - \$4,809 in the 2015-2016 broadcast year;
 - \$5,865 in the 2016-2017 broadcast year;
 - \$7,013 in the 2017-2018 broadcast year;
 - \$8,258 in the 2018-2019 broadcast year; and
 - by the end of the 2018-2019 broadcast year, any remaining unpaid pro-rated contribution to CCD from the partial 2012-2013 first year of operation.

At least 20% of the required contributions made in each broadcast year shall be allocated to FACTOR or MUSICACTION. Any remaining amount shall be allocated to an eligible CCD initiative as described in paragraph 108 of *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006.

3. The licensee shall, by no later than 31 August 2016, make a \$600 contribution to Canadian content development (CCD) that is over and above the CCD contributions currently required pursuant to the *Radio Regulations, 1986* or by condition of licence. This contribution shall be devoted to FACTOR, MUSICACTION and/or an eligible initiative as set out in paragraph 108 of *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158,

15 December 2006. In addition, the licensee shall file, by 30 November 2016 and in a form deemed acceptable by the Commission, proof of payment regarding the additional contribution to CCD as well as supporting documentation for the eligibility of the contribution if it is not made in whole or in part to FACTOR or MUSICACTION.

4. As an exception to the percentage of Canadian musical selections set out in section 2.2(3) of the *Radio Regulations, 1986*, the licensee shall devote, each broadcast week, at least 20% of its musical selections from content subcategory 34 (Jazz and Blues) and at least 15% of its musical selections from content subcategory 33 (World Beat and International) to Canadian selections broadcast in their entirety.
5. The licensee shall devote, each broadcast week, at least 25% of its musical selections to selections from content subcategories 34 (Jazz and Blues) and 33 (World Beat and International) broadcast in their entirety.

Expectation

The Commission expects the licensee to reflect the cultural diversity of Canada in its programming and employment practices.

Encouragement

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.