



Broadcasting Decision CRTC 2017-354

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Reference: Part 1 licence renewal application posted on 30 March 2017

Ottawa, 5 October 2017

CFPV-FM Radio Ltd.
Pemberton, British Columbia

Application 2016-1056-9

CFPV-FM Pemberton – Licence renewal

*The Commission **renews** the broadcasting licence for the English-language commercial radio station CFPV-FM Pemberton from 1 January 2018 to 31 August 2019.*

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

Application

1. CFPV-FM Radio Ltd. filed an application to renew the broadcasting licence for the English-language commercial radio station CFPV-FM Pemberton, British Columbia, which expires 31 December 2017.¹ The Commission did not receive any interventions regarding this application.

Non-compliance

Annual returns

2. Section 9(2) of the *Radio Regulations, 1986* (the Regulations) requires licensees to file an annual return by 30 November of each year for the broadcast year ending the previous 31 August. The specific filing requirements, including the requirement to file financial statements, are set out in Broadcasting Information Bulletin 2011-795.
3. According to the record for this application, the annual returns provided to the Commission for the 2012-2013 and 2014-2015 broadcast years did not include financial statements.
4. The licensee indicated that from now on it would pay attention to the submission of financial statements and ensure that they are attached to the annual returns. The missing financial statements were subsequently filed on 22 December 2016.

¹ The original licence expiry date for the station was 31 August 2017. The licence was administratively renewed until 31 December 2017 in Broadcasting Decision 2017-318.

5. In light of the above, the Commission finds the licensee in non-compliance with section 9(2) of the Regulations for the 2012-2013 and 2014-2015 broadcast years.

Canadian content requirements

6. Sections 2.2(8) and 2.2(9) of the Regulations require licensees of commercial radio stations to devote, in 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, at least 35% of their musical selections from content category 2 (Popular Music) to Canadian selections broadcast in their entirety.
7. During the 22 to 28 November 2015 broadcast week, the station devoted 32.6% of the broadcast week and 29.8% of the period between 6 a.m. and 6 p.m. from Monday to Friday to content category 2 Canadian selections. According to the Commission's analysis, a number of musical selections did not qualify as Canadian content and certain selections claimed as Canadian content were not broadcast in their entirety.
8. The licensee disagreed with this analysis but indicated that on one of the days of the monitored week, an automation malfunction caused audio issues (e.g., selections were being cut off), which produced significantly fewer Canadian content selections, thereby skewing the numbers.
9. In light of the above, the Commission finds the licensee in non-compliance with sections 2.2(8) and 2.2(9) of the Regulations.

Music list requirements

10. Section 9(3)(b) of the Regulations sets out the information on musical selections that licensees must include when filing music lists for any specified period requested by the Commission.
11. The music list for the one-hour syndicated program did not indicate the title and performer of each selection, nor did it identify Canadian selections and content category 3 (Special Interest Music) selections.
12. The licensee admitted that it erred by not submitting the list for the syndicated program. Rather than submitting that list as an addendum to the music lists, it entered the songs manually onto the music lists and submitted the syndicated program list as a supporting document. It indicated that, going forward, weekly lists would be archived along with the syndicated program list. This list was later filed with the Commission on 22 December 2016.
13. In light of the above, the Commission finds the licensee in non-compliance with section 9(3)(b) of the Regulations.

Canadian talent development requirements

14. Condition of licence 2 set out in the appendix to Broadcasting Decision 2013-700 required the licensee to expend the Canadian talent development² (CTD) shortfall totaling \$9,183 to fulfill its CTD commitments made in Broadcasting Decision 2006-643 when it was granted a licence and provide proof of this payment by 17 March 2014. The licensee has not expended this shortfall.
15. The licensee stated that CFPV-FM has suffered financially since its launch and that its business plan relied on the 2010 Olympic Winter Games. It did not anticipate the financial crisis of 2008 and has struggled financially since, in part due to small markets essentially disappearing from most national advertising plans. The licensee proposed to devote \$1,500 per year to Canadian content development (CCD), including the basic CCD contribution, for the duration of whatever licence term the Commission deems appropriate.
16. In light of the above, the Commission finds the licensee in non-compliance with condition of licence 2 set out in the appendix to Broadcasting Decision 2013-700.

Regulatory measures

17. 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 leading to the non-compliance, the arguments provided by the licensee and the actions taken to rectify the situation are also considered.
18. As set out in Broadcasting Regulatory Policy 2014-554, for stations that are in non-compliance, and depending on the nature of the non-compliance, the Commission may apply, on a case-by-case basis, measures such as renewing the licence for a short term; imposing additional conditions of licence; calling the licensee to a public hearing to respond to and discuss apparent non-compliance; issuing a mandatory order requiring the licensee to comply with regulatory requirements; or suspending, not renewing, or revoking the licence.
19. In the case of non-compliance with music programming and CTD and CCD contributions, the Commission may impose as a remedial measure to the harm caused in the broadcasting system a condition of licence requiring the licensee to pay an additional CCD contribution, in addition to the requirement to pay the outstanding amount of \$9,183 in this case.
20. When asked about the possibility that the Commission impose a condition of licence requiring the payment of an additional CCD contribution of \$9,183 annually for the 2017-2018 and 2018-2019 broadcast years in addition to the shortfall to make up the

² now known as Canadian content development

harm caused to the Canadian broadcast system by the non-compliances with music programming and CTD contributions, the licensee stated that it would apply to revoke its licence, given the station's precarious financial state. The licensee instead proposed a contribution of \$1,500 annually for the 2017-2018 and 2018-2019 broadcast years.

21. After having examined CFPV-FM's financial data, the Commission recognizes the licensee's low revenues since 2014 and its apparent inability to pay the \$9,183 shortfall. Consequently, imposing the total shortfall over a two-year period could result in a significant negative financial impact over the next two broadcast years.
22. In light of the above, the Commission finds it reasonable in this case to require that the licensee expend \$1,500 to CCD in each of the 2017-2018 and 2018-2019 broadcast years, as proposed by the licensee. A **condition of licence** to that effect is set out in Appendix 1 to this decision.
23. In addition, given the serious and repeated nature of CFPV-FM's non-compliance, the Commission finds it appropriate to require the licensee to broadcast three times a day, and to distribute in a reasonable manner between 6 a.m. and 10 a.m. or between 4 p.m. and 6 p.m., for five consecutive days, within the 14-day period following the beginning of the new licence term, an announcement regarding its non-compliance.³ To confirm compliance with this requirement, the licensee must provide to the Commission the audio recordings for the broadcast days during which the announcement was broadcast, and file, by no later than 14 days following the final broadcast of the announcement, a completed and signed *Attestation as to the broadcast of the non-compliance announcement on CFPV-FM Pemberton*, set out in Appendix 2 to this decision. A **condition of licence** to that effect is set out in Appendix 1 to this decision.
24. Since this is the second consecutive licence term in which the licensee is in non-compliance, and in light of the serious and repeated nature of the non-compliance, the Commission finds it appropriate to renew the licence for CFPV-FM for a short-term period of two years.
25. Should the licensee again breach its regulatory requirements, the Commission will consider recourse to additional measures, including the imposition of a mandatory order, or the suspension, non-renewal or revocation of the broadcasting licence under sections 9 and 24 of the *Broadcasting Act* (the Act).

Conclusion

26. In light of all of the above, the Commission **renews** the broadcasting licence for the English-language commercial radio programming undertaking CFPV-FM Pemberton from 1 January 2018 to 31 August 2019. The **conditions of licence** are set out in Appendix 1 to this decision.

³ This measure is set out in Broadcasting Regulatory Policy 2014-554.

27. The Commission emphasizes the importance it places on a licensee's fulfillment of regulatory requirements. The short-term licence renewal granted in this decision will allow for an earlier review of the licensee's compliance with the Regulations and its conditions of licence.

Reminders

28. Licensees are responsible for filing complete annual returns on time, including the financial statements. In addition, as set out in Broadcasting Information Bulletin 2011-795, it is the licensees' responsibility to ensure that all appropriate forms and documentation are included with their annual returns and to contact the Commission if further clarification is required.
29. Shortfalls in the broadcast of Canadian musical selections cause harm to the Canadian broadcasting system because they deprive certain classes of artists not receiving airplay. The royalties that licensees avoid paying to those classes of artists, which make up a share of licensees' revenues, represent a means of approximating the impact of the harm. Further, Canadian listeners are deprived of the benefits of Canadian music.
30. The Commission is charged with the supervision and regulation of the Canadian broadcasting system. The submission of complete and accurate program logs, logger tapes and music lists enables the Commission to conduct an analysis of a station's programming to verify compliance with regulatory requirements and conditions of licence. The retention of program logs and logger tapes also makes it possible for the Commission to investigate a station's programming in the case of complaints. As such, any licensee that does not file requested material in a timely manner, or does not file such material at all, affects the ability of the Commission to adequately perform its duty to independently confirm the licensee's adherence to regulatory requirements and its conditions of licence. 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. It is important that radio station licensees make their required contributions to CCD, given that CCD initiatives not only help to develop and advance the careers of emerging Canadian artists, but increase the supply of high-quality Canadian music in a variety of genres and the demand for Canadian music by listeners. The non-payment of CCD contributions therefore has the potential to cause harm to the Canadian broadcasting system. It is incumbent upon licensees to provide, by the required deadlines, proof of payment to such initiatives. They must also provide sufficient documentation to support the eligibility of their contribution(s). Failure to do so may result in the Commission finding a contribution ineligible, which in turn may affect a station's compliance with regulatory obligations. Moreover, licensees must ensure that expenditures are not self-serving—that is, beneficiaries must be independent of licensees.

32. Pursuant to section 22 of the 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

- *Various radio stations – Administrative renewals*, Broadcasting Decision CRTC 2017-318, 31 August 2017
- *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
- *CFPV-FM Pemberton – Licence renewal*, Broadcasting Decision CRTC 2013-700, 16 December 2013
- *Filing annual returns for radio programming undertakings*, Broadcasting Information Bulletin CRTC 2011-795, 20 December 2011
- *English-language FM radio station in Pemberton*, Broadcasting Decision CRTC 2006-643, 27 November 2006

This decision is to be appended to the licence.

Appendix 1 to Broadcasting Decision CRTC 2017-354

Terms, conditions of licence, expectation and encouragement for the English-language commercial radio programming undertaking CFPV-FM Pemberton

Terms

The licence will expire 31 August 2019.

Conditions of licence

1. The licensee shall adhere to the conditions set out in *Conditions of licence for AM and FM radio stations*, Broadcasting Regulatory Policy CRTC 2009-62, 11 February 2009, with the exception of condition of licence 8 relating to single-station markets, as well as to the conditions set out in the broadcasting licence for the undertaking.
2. The licensee shall expend \$1,500 to Canadian content development (CCD) in each of the 2017-2018 and 2018-2019 broadcast years and shall provide proof of this payment by 30 November of each of those broadcast years.
3. In regard to the licensee's non-compliance with the *Radio Regulations, 1986*, as set out in the present decision:
 - a) The licensee shall broadcast the following announcement three times a day, distributed in a reasonable manner, between 6 a.m. and 10 a.m. or between 4 p.m. and 6 p.m., for five consecutive days, within the 14-day period immediately following 1 January 2018, the beginning of the new licence term:

Radio frequencies are a limited public resource. Holding a broadcasting licence is a privilege, and broadcasters are required to abide by a number of regulations and conditions of licence in order to operate a radio station. In *CFPV-FM Pemberton – Licence renewal*, Broadcasting Decision CRTC 2017-354, 5 October 2017, the CRTC determined that this station is in non-compliance with the *Radio Regulations, 1986*. The instances of non-compliance are a recurring issue. CFPV-FM has put measures in place to ensure that the non-compliance in question does not reoccur.

- b) The licensee shall provide to the Commission the audio recordings for the broadcast days during which the announcement was broadcast, and file a completed and signed *Attestation as to the broadcast of the non-compliance announcement on CFPV-FM Pemberton*, set out in Appendix 2 to *CFPV-FM Pemberton – Licence renewal*, Broadcasting Decision CRTC 2017-354, 5 October 2017, by no later than 14 days following the final broadcast of the announcement.

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.

Appendix 2 to Broadcasting Decision CRTC 2017-354

Attestation as to the broadcast of the non-compliance announcement on CFPV-FM Pemberton

In regard to the requirements set out in condition of licence 3 in Appendix 1 to *CFPV-FM Pemberton – Licence renewal*, Broadcasting Decision CRTC 2017-354, 5 October 2017, I, _____ (NAME), on behalf of _____ (LICENSEE), certify that the announcement regarding CFPV-FM Pemberton's non-compliance with the *Radio Regulations, 1986* and its conditions of licence was duly broadcast three times a day, and distributed in a reasonable manner between 6 a.m. and 10 a.m. or between 4 p.m. and 6 p.m., for five consecutive days, within the 14-day period immediately following 1 January 2018, the beginning of the new licence term, as follows:

First date of broadcast:		Times	1:	2:	3:
Second date of broadcast:		Times	1:	2:	3:
Third date of broadcast:		Times	1:	2:	3:
Fourth date of broadcast:		Times	1:	2:	3:
Fifth date of broadcast:		Times	1:	2:	3:

Signature

Date
