



## Broadcasting Decision CRTC 2018-231 and Broadcasting Order CRTC 2018-232

PDF version

Reference: 2017-381

Ottawa, 10 July 2018

**9116-1299 Québec inc.**  
Maniwaki, Quebec

*Public record for this application: 2016-0927-3*  
*Public hearing in the National Capital Region*  
*11 January 2018*

### **CFOR-FM Maniwaki – Licence renewal and issuance of a mandatory order**

*The Commission **renews** the broadcasting licence for the French-language commercial radio station CFOR-FM Maniwaki from 1 September 2018 to 31 August 2020. This short-term licence renewal will allow for an earlier review of the licensee's compliance with regulatory requirements.*

*In addition, the Commission issues a mandatory order requiring 9116-1299 Québec inc. to ensure that CFOR-FM complies with its condition of licence 2.*

#### **Application**

1. 9116-1299 Québec inc. (9116-1299 Québec) filed an application to renew the broadcasting licence for the French-language commercial radio station CFOR-FM Maniwaki, which expires 31 August 2018.<sup>1</sup>

#### **Intervention**

2. The Commission received an intervention opposing the application from an individual. The individual submitted that the licences of licensees in non-compliance should not be renewed. The applicant did not reply to this intervention.

#### **Non-compliance**

3. In Broadcasting Notice of Consultation 2017-381, the Commission stated that the licensee was in apparent non-compliance with the following sections of the *Radio*

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<sup>1</sup> In Broadcasting Decision 2017-224, the broadcasting licence for CFOR-FM was administratively renewed until 31 August 2018.

*Regulations, 1986* (the Regulations) and following conditions of licence set out in Broadcasting Decision 2015-324:

- section 9(4) relating to the requirement to provide information regarding compliance with its regulatory obligations;
- sections 8(1) and 8(4) relating to the filing of program logs, sections 8(5) and 8(6) relating to the filing of audio recordings of the matter broadcast and section 9(3) relating to the filing of music lists;
- condition of licence 2 relating to over-and-above Canadian content development contributions (CCD); and
- condition of licence 4(a) and (b) relating to the broadcast of an on-air announcement and to the obligation to provide the Commission with the audio recordings for the broadcast days during which the announcement was broadcast and to file a completed and signed attestation.

#### **Radio monitoring materials**

4. Sections 8(1) through (6) of the *Radio Regulations, 1986* (the Regulations) set out requirements relating to the keeping, retaining and filing to the Commission of audio recordings and program logs of all matter broadcast. Section 9(3) of the Regulations sets out the information on musical selections that licensees must include when filing music lists for any period specified by the Commission.
5. The licensee was required to file, by no later than 16 March 2016, the audio recordings and related documents for the broadcast week of 21 to 27 February 2016. These recordings were received on 8 June 2016, almost three months late. Not only were the documents incomplete and incorrectly labelled, but it appears that the documents related to a broadcast week in 2013. The licensee did not send the requested audio recordings and documents, despite the fact that the Commission explained the issue to the licensee and provided an opportunity for the licensee to rectify the situation.
6. The licensee submitted that the person responsible for the administration and follow-up of the files was not qualified and has since left the organization. An experienced resource person has been hired to ensure the station's future compliance.
7. In light of the above, the Commission finds the licensee in non-compliance with sections 8(1), 8(4), 8(5), 8(6) and 9(3) of the Regulations.

#### **Commission request for information**

8. Section 9(4) of the Regulations requires licensees to provide information regarding their adherence to regulatory requirements.

9. Following the events explained above, in a letter dated 8 August 2016, the Commission reiterated its request for the licensee to provide audio recordings for the broadcast week of 21 to 27 February 2016. This letter remains unanswered, and the requested audio recordings and documents have not been sent to the Commission.
10. In light of the above, the Commission finds the licensee in non-compliance with section 9(4) of the Regulations.

#### **Over-and-above contributions to Canadian content development**

11. In Broadcasting Decision 2015-324, the Commission imposed conditions of licence 2 and 3 requiring the licensee to make an over-and-above contribution of \$880 to CCD by 31 August 2016 and \$880 by 31 August 2017.
12. During its last licence term, from 1 September 2015 to 31 August 2017, the licensee did not pay these contributions and did not file proof of payment, as required in its conditions of licence.
13. During the clarification process, the licensee committed to paying \$880 in June 2017 and \$880 in August 2017. Subsequently, the licensee did not file its annual returns on time and did not include proof that those payments were made.
14. The licensee submitted that it was misled by the Commission in the past. It appeared to have confused the additional and basic contributions. Pursuant to Broadcasting Regulatory Policy 2013-476, basic contributions are no longer required for undertakings earning less than \$1,250,000. This created confusion for the licensee, even though the requirements were well defined in its conditions of licence.
15. In light of the above, the Commission finds the licensee in non-compliance with its conditions of licence 2 and 3 relating to over-and-above CCD contributions.

#### **Requirement to broadcast an announcement**

16. Pursuant to condition of licence 4 set out in Appendix 1 to Broadcasting Decision 2015-324, the licensee was required to broadcast, within 14 days immediately following the publication of that decision, an announcement stating that the station had been found in non-compliance and that it had put measures in place to ensure that the non-compliance did not recur.
17. The licensee was also required to provide to the Commission the audio recordings for the broadcast days during which the announcement was broadcast and to file a completed and signed attestation to that effect by no later than 14 days following the final broadcast of the announcement.
18. 9116-1229 Québec did not meet the deadline to broadcast the message. Further, it is impossible to reconcile the audio recordings and the broadcast schedule for the message as the licensee did not file the recordings for the whole broadcast days

during which the message was broadcast. Finally, the licensee did not file the signed attestation as to the broadcast of the announcement.

19. The licensee explained that a Commission employee acknowledged receipt of the audio recording of the announcement of non-compliance. However, it seems that the station's employee who communicated with the Commission, the same employee who has now left the station, misunderstood the Commission's requirements.
20. In light of the above, the Commission finds the licensee in non-compliance with its condition of licence 4.

### **Regulatory measures**

21. 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.
22. The Commission also specified that the sanctions could include short-term licence renewal, the imposition of conditions of licence or mandatory orders or the non-renewal, suspension or revocation of the licence.
23. The Commission notes that the licensee did not propose specific measures to ensure compliance in the future. The Commission is concerned with all of the instances of non-compliance noted above and particularly with the non-compliance relating to the over-and-over CCD contributions, which is recurring. The licensee has failed to meet these requirements for a third licence term. Therefore, the Commission finds it appropriate to renew the licence for CFOR-FM Maniwaki for a short term of two years.
24. The Commission also finds it appropriate to require the licensee to broadcast an announcement regarding its non-compliance three times a day for five consecutive business days within the 14-day period following the beginning of the new licence term. 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 CFOR-FM Maniwaki*, set out in Appendix 2 to this decision. A **condition of licence** to that effect is set out in Appendix 1 to this decision.
25. In light of all of the above, the Commission **renews** the broadcasting licence for the French-language commercial radio programming undertaking CFOR-FM Maniwaki from 1 September 2018 to 31 August 2020. This short-term renewal will allow for an earlier review of the licensee's compliance with regulatory requirements. The licensee shall adhere to the **conditions of licence** set out in Appendix 1 to this decision.

26. In light of the recurring nature of the non-compliance relating to over-and-above CCD contributions, the Commission issues a mandatory order, pursuant to section 12(2) of the *Broadcasting Act* (the Act), requiring the licensee to comply with condition of licence 2. The licensee had the opportunity to comment on the Commission's possible imposition of this mandatory order.
27. The mandatory order is set out in Appendix 3 to this decision. Pursuant to section 13 of the Act, the order will be filed with the Federal Court and will become an order of that court.
28. However, the non-compliance regarding condition of licence 3 was only raised after the renewal application had been processed. Accordingly, the Commission will not issue a mandatory order relating to this condition of licence. The Commission reminds the licensee that it must adhere to condition of licence 3, as well as all its conditions of licence.
29. Given the recurring nature of the non-compliance over multiple licence terms and the licensee's apparent lack of cooperation, the Commission is concerned with the licensee's ability and commitment to operate the station in a compliant manner. Should the licensee again breach regulatory requirements, including the mandatory order, the Commission will consider the suspension, non-renewal or revocation of the broadcasting licence under sections 9 and 24 of the Act.

## **Reminders**

30. In August 2017, 9116-1229 Québec submitted an application for authority to effect a change in its ownership and effective control. In a letter dated 10 January 2018, the Commission determined that the licensee made two changes to its effective control without the Commission's prior approval. The Commission reminds 9116-1299 Québec that pursuant to section 11(4) of the Regulations, a licensee must obtain the Commission's prior approval for any transaction that would result in a change to the undertaking's effective control.
31. The Commission is charged with the supervision and regulation of the Canadian broadcasting system. The submission of complete and accurate audio recordings, 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 complete and accurate radio monitoring materials 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, files material that is incomplete 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 and licence requirements. 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.

32. 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.
33. 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 contributions. Failure to do so may result in the Commission finding a contribution ineligible, which in turn may affect a station's compliance with its regulatory obligations.
34. 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**

- *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2017-381, 25 October 2017
- *Various radio stations – Administrative renewals*, Broadcasting Decision CRTC 2017-224, 29 June 2017
- *CFOR-FM Maniwaki – Licence renewal*, Broadcasting Decision CRTC 2015-324, 21 July 2015
- *Update on the Commission's approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2014-608, 21 November 2014
- *Amendments to the Radio Regulations, 1986 concerning basic Canadian content development contributions and the addition of a definition of the Community Radio Fund of Canada*, Broadcasting Regulatory Policy CRTC 2013-476, 6 September 2013

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

## Appendix 1 to Broadcasting Decision CRTC 2018-231

### Terms, conditions of licence and encouragement for the French-language commercial radio programming undertaking CFOR-FM Maniwaki

#### Terms

The licence will take effect 1 September 2018 and expire 31 August 2020.

#### 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, as well as to the conditions set out in the broadcasting licence for the undertaking.
2. The licensee shall, by no later than 30 September 2018, make a contribution to Canadian content development (CCD) of \$880 that is over and above any CCD contributions required pursuant to the *Radio Regulations, 1986*. This contribution shall be allocated as follows:
  - 45% to FACTOR or MUSICACTION;
  - 40% to any eligible initiative as set out in paragraph 108 of *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006; and
  - 15% to the Community Radio Fund of Canada.

In addition, the licensee shall file, by 30 November 2018 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 portion of the contribution not made to FACTOR, MUSICACTION or the Community Radio Fund of Canada.

3. The licensee shall, by no later than 30 September 2018, make a contribution to Canadian content development (CCD) of \$880 that is over and above any CCD contributions required pursuant to the *Radio Regulations, 1986* and its conditions of licence 2 above. This contribution shall be allocated as follows:
  - 45% to FACTOR or MUSICACTION;
  - 40% to any eligible initiative as set out in paragraph 108 of *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006; and
  - 15% to the Community Radio Fund of Canada.

In addition, the licensee shall file, by 30 November 2018 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 portion of the contribution not made to FACTOR, MUSICACTION or the Community Radio Fund of Canada.

4. 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 business days within the 14-day period immediately following the beginning of the new licence term (i.e. 1 September to 15 September 2018):

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 Broadcasting Decision 2018-231, the CRTC determined that this station is in non-compliance with the *Radio Regulations, 1986* and its conditions of licence. The instances of non-compliance are a recurring issue. CFOR-FM has put measures in place to ensure that the non-compliances in question does not recur.

- 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 CFOR-FM Maniwaki*, which is set out in Appendix 2 to *CFOR-FM Maniwaki – Licence renewal and issuance of a mandatory order*, Broadcasting Decision CRTC 2018-231, 10 July 2018, by no later than 14 days following the final broadcast of the announcement.

## **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 2018-231

### Attestation as to the broadcast of the non-compliance announcement on CFOR-FM Maniwaki

In regard to the requirements set out in condition of licence 4 in Appendix 1 to  
*CFOR-FM Maniwaki – Licence renewal and issuance of a mandatory order*,  
Broadcasting Decision CRTC 2018-231, 10 July 2018,

I, \_\_\_\_\_ (NAME), on behalf of  
\_\_\_\_\_ (LICENSEE), certify that the announcement  
regarding CFOR-FM Maniwaki'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 business days within the 14-day period immediately following 1 September  
2018, the beginning of the new licence term, as follows:

<b>First date of broadcast:</b>		Time	1:	2:	3:
<b>Second date of broadcast:</b>		Time	1:	2:	3:
<b>Third date of broadcast:</b>		Time	1:	2:	3:
<b>Fourth date of broadcast:</b>		Time	1:	2:	3:
<b>Fifth date of broadcast:</b>		Time	1:	2:	3:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## Appendix 3 to Broadcasting Decision CRTC 2018-231

### Broadcasting Mandatory Order CRTC 2018-232

Pursuant to section 12(2) of the *Broadcasting Act*, the Commission hereby orders 9116-1299 Québec inc., licensee of CFOR-FM Maniwaki, to comply with condition of licence 2 set out in *CFOR-FM Maniwaki – Licence renewal and issuance of a mandatory order*, Broadcasting Decision CRTC 2018-231, 10 July 2018, which reads as follows:

2. The licensee shall, by no later than 30 September 2018, make a contribution to Canadian content development (CCD) of \$880 that is over and above any CCD contributions required pursuant to the *Radio Regulations, 1986*. This contribution shall be allocated as follows:
  - 45% to FACTOR or MUSICACTION;
  - 40% to any eligible initiative as set out in paragraph 108 of *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006; and
  - 15% to the Community Radio Fund of Canada.

In addition, the licensee shall file, by no later than 30 November 2018 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 portion of the contribution not made to FACTOR, MUSICACTION or the Community Radio Fund of Canada.