



## Broadcasting Decision CRTC 2020-76

PDF version

References: 2019-303 and 2019-303-1

Ottawa, 28 February 2020

**CHMZ-FM Radio Ltd.**  
Tofino, British Columbia

**CIMM-FM Radio Ltd.**  
Ucluelet, British Columbia

*Public record for these applications: 2019-0179-4, 2019-0181-9, 2018-0692-8 and 2018-0693-6*

*Public hearing in the National Capital Region  
5 November 2019*

### **CHMZ-FM Tofino and CIMM-FM Ucluelet – Change in ownership and effective control, and licence renewals**

*The Commission **approves** applications by CHMZ-FM Radio Ltd. and CIMM-FM Radio Ltd. for authority to change their ownership and effective control through the transfer of all of their issued and outstanding shares to 1193833 B.C. Ltd., a company wholly owned and controlled by Mr. Cameron Randall Dennison.*

*Further, the Commission **renews**, subject to the following **condition of approval**, the broadcasting licences for CHMZ-FM Tofino and CIMM-FM Ucluelet from 1 April 2020 to 31 August 2022:*

*1193833 B.C. Ltd. shall file with the Commission, by no later than **30 June 2020**, a document demonstrating that the transaction approved in the present decision has been completed and that all conditions relating to closing have been satisfied or waived.*

*Should 1193833 B.C. Ltd. not file the required documentation by that deadline, the Commission will immediately and without further process revoke the broadcasting licences for CHMZ-FM and CIMM-FM. In such case, the Commission would inform the licensees of the revocation by Commission letter and the licensees would be required to cease operation of the stations as of 1 July 2020.*

*The short term renewals granted in this decision will allow for an earlier review of the licensees' compliance with regulatory requirements.*

## Applications

1. CHMZ-FM Radio Ltd. (CHMZ-FM Radio) and CIMM-FM Radio Ltd. (CIMM-FM Radio) (the licensees) filed applications (2019-0179-4 and 2019-0181-9, respectively), pursuant to section 11(4) of the *Radio Regulations, 1986* (the Regulations), for authority to change their ownership and effective control through the transfer of all of their issued and outstanding shares to 1193833 B.C. Ltd. (1193833 B.C.).
2. CHMZ-FM Radio and CIMM-FM Radio are corporations wholly owned and controlled by Mr. Matthew G. McBride.
3. 1193833 B.C. is a corporation wholly owned and controlled by Mr. Cameron Randall Dennison. Mr. Dennison, the sole member of the board of directors of 1193833 B.C., is a Canadian pursuant to *Direction to the CRTC (Ineligibility of Non-Canadians)*. Currently, Mr. Dennison does not own or control radio stations in Canada.
4. Following the close of the transaction, CHMZ-FM Radio and CIMM-FM Radio, the licensees of the English-language commercial radio stations CHMZ-FM Tofino and CIMM-FM Ucluelet, respectively, will be wholly owned and controlled by Mr. Dennison.
5. Pursuant to the purchase agreement, CHMZ-FM Radio and CIMM-FM Radio proposed a value of the transaction of \$108,755, which equals the purchase price. The licensees did not propose a tangible benefits package.
6. CHMZ-FM Radio and CIMM-FM Radio also filed applications (2018-0693-6 and 2018-0692-8, respectively) to renew the broadcasting licences for CHMZ-FM and CIMM-FM, both of which expire 31 March 2020.<sup>1</sup>
7. In Broadcasting Notice of Consultation 2019-303, the Commission stated that the licensees were in apparent non-compliance with the following sections of the Regulations and with certain of their conditions of licence, as follows:
  - for CHMZ-FM, section 2.2(3)(b) of the Regulations relating to the requirement to devote at least 10% of its musical selections from content category 3 (Special Interest Music) to Canadian selections;
  - for CIMM-FM, condition of licence 2 set out in Appendix 1 to Broadcasting Decision 2016-297, which relates to the requirement to devote, each broadcast week, a minimum of three hours to programming in Indigenous languages and an additional three hours to be used by local First Nations groups; and
  - for both CHMZ-FM and CIMM-FM:

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<sup>1</sup> The Commission administratively renewed the broadcasting licences for these stations from 1 September 2019 to 31 March 2020 in Broadcasting Decision 2019-256.

- sections 8(5), 9(3)(a) and 9(3)(b) of the Regulations relating to the submission of clear and complete audio recordings, accurate self-assessment reports and complete and accurate music lists;
  - their conditions of licence relating to the broadcast of on-air announcements regarding their non-compliance.<sup>2</sup>
8. In that notice of consultation, the Commission further stated that it had concerns regarding the local programming offered by both stations and the licensees' ability and commitment to operate the stations in a compliant manner.

## Interventions

9. The Commission received numerous interventions in support of the applications for the change in ownership and effective control of CHMZ-FM Radio and CIMM-FM Radio and to renew the broadcasting licences for CHMZ-FM and CIMM-FM.<sup>3</sup> Interveners noted the important role the stations play in providing community news and information. Many noted Mr. Dennison's commitment to the stations and to the communities, and submitted that he has acted with integrity, perseverance and dedication in relation to both stations.
10. The Commission also received interventions from individuals who either provided comments or expressed opposition to certain elements of the four applications.<sup>4</sup> During the public hearing, Mr. McBride, who controls the current licensees, and the proposed purchaser, Mr. Dennison, replied to the substance of those interventions. One of the individual interveners who opposed the present applications stated at the hearing that he was a former employee of the station who held a management position with Mr. McBride. This intervener indicated that concerns about the stations were often brought to his attention, and submitted that the four stations owned and controlled by Mr. McBride (CHMZ-FM and CIMM-FM, as well as CFPV-FM Pemberton and CKPM-FM Port Moody) have a "legacy of non-compliance." The intervener also questioned Mr. McBride's ability and willingness to operate the stations in a compliant manner in the

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<sup>2</sup> For CHMZ-FM, see condition of licence 2 set out in Appendix 2 to Broadcasting Decision 2016-297; for CIMM-FM, see condition of licence 3 set out in Appendix 1 to Broadcasting Decision 2016-297.

<sup>3</sup> Supporting interventions were filed by members of the public, a local Member of Parliament, a representative from the Ucluelet Chamber of Commerce, the Executive Producer of Vancouver Island MusicFest in Courtenay, British Columbia, and a coordinator of the Tofino Emergency Program, among others.

<sup>4</sup> An individual who opposed the licence renewal application for CHMZ-FM submitted that the licensee violated section 6 of the Regulations, which sets out that "during an election period, a licensee shall allocate time for the broadcasting of programs, advertisements or announcements of a partisan political character on an equitable basis to all accredited political parties and rival candidates represented in the election or referendum." According to the intervener, on 20 May 2019, in regard to a local election for the Board of Directors for the Tofino Consumers' Co-operative Association, CHMZ-FM broadcast a highly biased live radio interview with two candidates and allowed a statement from a third candidate to be read on air two days before the election, without offering similar opportunities to three incumbent candidates. The Commission notes, however, that Section 6 of the Regulations pertains to federal, provincial or municipal elections or referendums, and not to local elections for town associations.

future. At the hearing, Mr. McBride indicated that the intervener never held a management position with the company and was hired to provide piecework for a very brief period of time.

### **Commission's analysis and decisions**

11. In the following sections, the Commission addresses issues relating to the proposed transaction and to the licensees' apparent non-compliance with regulatory requirements.

#### **Proposed transaction**

12. The review of ownership transactions is an essential element of the Commission's regulatory and supervisory mandate under the *Broadcasting Act* (the Act). Since the Commission does not solicit competitive applications for changes in effective control of broadcasting undertakings, the onus is on the applicant to demonstrate that approval is in the public interest, and that the benefits of the transaction are commensurate with the size and nature of the transaction.

13. The Commission must consider each application on its merits, based on the circumstances specific to the application. In addition, the Commission must be assured that approval of a proposed ownership transaction furthers the public interest as expressed in the objectives set out in section 3(1) of the Act.

14. After examining the record for the applications relating to the proposed transaction in light of applicable regulations and policies, the Commission has addressed the following issues:

- whether approval of the transaction would be in the public interest;
- whether there had already been a change in control in fact of CHMZ-FM and CIMM-FM to Mr. Dennison without the Commission's prior approval; and
- the value of the transaction and the allocation of tangible benefits.

#### **Public interest**

15. The communities of Tofino and Ucluelet are located on the west coast of Vancouver Island; each has a population of fewer than 2,000. CHMZ-FM and CIMM-FM are the only commercial radio stations currently serving Tofino and Ucluelet, respectively.<sup>5</sup>

16. One of the individuals who intervened in this proceeding expressed the view that Ucluelet and Tofino, as separate and distinct coastal communities, must maintain their respective radio identities, and that it is necessary for the two licences to be held by two different parties in order to maintain each station's individuality. As an example, the intervener argued that local Ucluelet artists, businesses, and community issues are no

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<sup>5</sup> The Canadian Broadcasting Corporation also serves these communities with its Radio One service, through rebroadcasting transmitters of the English-language radio station CBCV-FM Victoria.

longer adequately represented on their radio station. In reply, Mr. McBride indicated that there were serious concerns regarding the operation of CIMM-FM prior to the removal of the local operator at the station. For his part, Mr. Dennison stated that the comment regarding the threat to CIMM-FM's identity is unjustified since the station has local DJs from Ucluelet and since the station broadcasts news from this community.

17. In support of the application, Mr. Dennison stated that his goal is that CHMZ-FM and CIMM-FM provide local news, entertainment, as well as cultural and music programming. He noted that, in addition to supporting local music, the stations endeavour to play more than the usual rotation of Top 40 musical selections by showcasing world music and playing other music, including classical, rock, and folk musical selections. In his view, the stations' mission is to use the airwaves for the purpose of community building and the transmission of positive vibrations on Canada's west coast.
18. Mr. Dennison further noted that CHMZ-FM and CIMM-FM present and promote the events and culture of the Tofino and Ucluelet regions through daily interviews and musical offerings, including live broadcasts and studio shows. While acknowledging that both stations currently operate out of Tofino, he noted that they offer local content specific to Ucluelet and Tofino at different times throughout the day. In regard to CIMM-FM in particular, Mr. Dennison indicated that local residents are hosting shows and are bringing Indigenous content to the Tofino airwaves.
19. In regard to Mr. Dennison himself, the Commission notes that he is currently the station manager for both CHMZ-FM and CIMM-FM and that he resides in the Tofino/Ucluelet region of British Columbia. Furthermore, Mr. Dennison is both present and involved in those communities through his sponsorship of events and his fundraising support for several major causes. This is reflected in many of the supporting interventions, and by Mr. McBride, who noted Mr. Dennison's involvement in the communities.
20. For the next licence term, Mr. Dennison stated that he anticipates increases in the number of advertising contracts and in local and national advertising revenues, with each station becoming profitable by Year 3. Further, each station's programming and production expenses are projected to increase when compared to average historical spending. Mr. Dennison also submitted that CHMZ-FM and CIMM-FM would continue to benefit from synergies and back-office efficiencies, including shared studios and production facilities.
21. In addition, the Commission notes that the revenue and expense projections for CHMZ-FM and CIMM-FM are comparable to those generated by other independently owned radio stations serving similar sized markets in British Columbia. It further notes that, when questioned on his ability to sustain losses should the financial projections for the stations fail to materialize, Mr. Dennison indicated that he has secured a loan as well as support from the community and businesses in the area, including businesses of his own, that would ensure the continued operation of the stations.
22. In regard to the stations' local programming offerings, the Commission notes that, based on monitoring during 2017, it had concerns regarding their broadcast of spoken word

programming. For example, in regard to CIMM-FM, the Commission had concerns regarding the relevance of the information broadcast, given that segments relating to surf, tide, and weather information were repeated over the course of a single day and were not updated to reflect potential changes, thereby not providing relevant information to listeners.

23. CHMZ-FM and CIMM-FM, as radio stations operating in single-station markets, are not required to ensure that one-third of the programming that is broadcast is local programming in order to solicit or accept local advertising.<sup>6</sup> However, as specified in the definition of local programming set out in Broadcasting Public Notice 2006-158, licensees must incorporate into their local programming spoken word material of direct and particular relevance to the community served. This must include local news, weather, sports coverage, and the promotion of local events and activities.
24. In addition to making various commitments that would ensure specified levels of local and spoken word programming for the stations, Mr. Dennison indicated that he has established relationships with experts in the communities, such as the Ministry of Transportation, that would enable the stations to provide accurate weather and traffic information for the communities.
25. In light of the above, the Commission finds that approval of the transaction would serve to address its above-noted concerns regarding the stations' broadcast of local programming. The Commission expects CHMZ-FM and CIMM-FM to provide local programming, as defined in Broadcasting Public Notice 2006-158 and reiterated below, that serves, respectively, the distinct communities of Tofino and Ucluelet:

Local programming includes programming that originates with the station or is produced separately and exclusively for the station. It does not include programming received from another station and rebroadcast simultaneously or at a later time; nor does it include network or syndicated programming that is five minutes or longer unless it is produced either by the station or in the local community by arrangement with the station.

In their local programming, licensees must incorporate spoken word material of direct and particular relevance to the community served. This must include local news, weather, sports coverage, and the promotion of local events and activities.

26. Given the size and location of Tofino and Ucluelet, the Commission is of the view that CHMZ-FM and CIMM-FM play an important role in providing members of those communities with coverage of local news, events, and safety issues. In the Commission's view, their continued operation would have a positive impact on those communities. Further, given Mr. Dennison's involvement in the community, his proposed

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<sup>6</sup> As specified in condition of licence 8 set out in the appendix to Broadcasting Regulatory Policy 2009-62, for commercial FM stations serving markets other than single-station markets, as defined in Public Notice 1993-121, the licensee shall refrain from soliciting or accepting local advertising for broadcast during any broadcast week when less than one-third of the programming aired is local.

programming orientation for the stations, and revenue projections that are in line with revenue levels of stations in similar-sized markets, the Commission finds that approval of the present transaction would better position CHMZ-FM and CIMM-FM to invest in the quality of local programming serving the communities of Tofino and Ucluelet.

27. In light of all of the above, the Commission finds that approval of the proposed transaction would be in the public interest.

**Control in fact**

28. Pursuant to section 11(4) of the Regulations, a licensee must obtain prior approval of the Commission in respect of any act, agreement or transaction that directly or indirectly would result in a change by whatever means of the effective control of its undertaking.
29. Further, as stipulated in a broadcasting undertaking's licence, the undertaking shall be operated in fact<sup>7</sup> by the licensee itself, and the licence cannot be transferred or assigned. The Commission considers that the appropriate test for assessing control in fact is set out in [Decision No. 297-A-1993](#) of the Canadian Transportation Agency:

There is no one standard definition of control in fact but generally, it can be viewed as the ongoing power or ability, whether exercised or not, to determine or decide the strategic decision-making activities of an enterprise. It can also be viewed as the ability to manage and run the day-to-day operations of an enterprise. Minority shareholders and their designated directors normally have the ability to influence a company as do others such as bankers and employees. The influence, which can be exercised either positively or negatively by way of veto rights, needs to be dominant or determining, however, for it to translate into control in fact.

30. In assessing control in fact, the Commission notes that each case is unique and that the facts of each case will determine the specific factors that are relevant for such an assessment.
31. In regard to the present case, although both CHMZ-FM and CIMM-FM are wholly owned by Mr. McBride, Mr. Dennison initially stated in the ownership applications that he had an agreement with the current owner whereby he was leasing the licences as of 2014, which suggested that a potential transfer of control in fact had occurred as early as 2014. This question of the current control of the licensees was further raised by an intervener who claimed that Mr. Dennison was making all the operational decisions in regard to the stations and the programming offered. However, the intervener did not provide any documentation to support this claim, noting that he was referencing information on the public record relating to examples of this change in control.
32. In reply, Mr. McBride stated that he always maintained effective control of the licensees, and noted that Mr. Dennison only has an employment agreement with the stations. For

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<sup>7</sup> "Control in fact" relates to the ongoing power or ability, whether exercised or not, to determine or decide strategic decision-making activities of an enterprise.

his part, Mr. Dennison also stated that he was an employee of Mr. McBride, with an employment agreement for the management of the day-to-day operations starting in 2014, but that Mr. McBride has always maintained effective control of the licensees.

33. At the hearing, Mr. McBride specified which aspects of the operations had been delegated to Mr. Dennison in his capacity of station manager, such as day-to-day operations, local outreach efforts, and community involvement. Mr. McBride further stated that he has never delegated his authority to make strategic or organizational changes. Mr. Dennison corroborated these statements and added that Mr. McBride gave final approval on issues that would involve strategic decision-making.
34. Although certain responsibilities were delegated to Mr. Dennison in his capacity as station manager, the Commission is satisfied that Mr. McBride continued to exercise effective control of the licensees. Overall, the evidence shows that Mr. Dennison acted on behalf of and in accordance with the directions of Mr. McBride while overseeing the operations of the undertakings. As such, the Commission is satisfied that there has not been a change to the effective control of CHMZ-FM Radio and CIMM-FM Radio without prior Commission approval.

**Value of the transaction and the allocation of tangible benefits**

35. The Commission's policy regarding tangible benefits is set out in Broadcasting Regulatory Policy 2014-459 (the Tangible Benefits Policy). In that policy, the Commission determined that for transactions involving a change in the ownership or control of commercial radio stations, tangible benefits must generally represent at least 6% of the value of the transaction as determined by the Commission.
36. As set out in the Tangible Benefits Policy, for the purpose of calculating the value of the transaction, the Commission looks at the value of the transaction as a whole, including the value of gross debt, working capital to be transferred at closing, ancillary agreements, any leases assumed by the purchaser for real property (buildings, studios and offices) and transmission facilities. The value of the leases is calculated over a five-year period. These elements, if relevant, are added to the purchase price.
37. The licensees proposed a value of the transaction of \$108,755, which corresponds to the purchase price for both undertakings.
38. Accordingly, as per the calculation set out in the table below, the Commission has established a revised value of the transaction of \$187,055, which includes the elements of the transaction for which a value has been attributed pursuant to the Tangible Benefits Policy:

<b>Item</b>	<b>Amount</b>
Purchase price	\$108,755
Additions: assumed leases for CHMZ-FM's studios and CIMM-FM's transmitter	\$78,300
<b>Value of the transaction</b>	<b>\$187,055</b>

39. The Tangible Benefits Policy states that there may be cases where the Commission finds that the public interest is fully served without the payment of tangible benefits, and that the onus is on the applicant to demonstrate that this is the case. The policy also states that a request for an exception should be made at the filing of the application and should meet all of the following criteria:

- the undertaking to be acquired is not in its first licence term;
- the undertaking has suffered significant financial losses over an extended period of time (that is, for at least five consecutive years following the first licence term); and
- the purchaser demonstrates that there is a public interest, either for the broadcasting system as a whole or the community served, in maintaining the failing undertaking.

40. At the time the applications were filed with the Commission, neither the licensees nor Mr. Dennison proposed a tangible benefits package, nor did they request an exception to the Tangible Benefits Policy. When given the opportunity to request an exception, Mr. Dennison chose not to respond. Subsequently, Mr. Dennison agreed to the imposition of a requirement to pay tangible benefits if the Commission considered such a requirement to be appropriate. Accordingly, the Commission has imposed a requirement for the payment of tangible benefits as part of the present transaction.

41. Based on the revised value of the transaction and consistent with the Tangible Benefits Policy, the Commission **directs** CHMZ-FM Radio and CIMM-FM Radio to pay tangible benefits in the amount of \$11,223 (6% of \$187,055), to be allocated as follows in equal annual payments over seven consecutive broadcast years:

- 3% (\$5,612) to Radio Starmaker Fund or Fonds Radiostar;
- 1.5% (\$2,806) to FACTOR or MUSICACTION;
- 1% (\$1,870) to any eligible Canadian content development (CCD) initiative at the discretion of the purchaser; and
- 0.5% (\$935) to the Community Radio Fund of Canada.

### **Non-compliance**

42. During the last two licence terms for CIMM-FM, the Commission renewed the station's broadcasting licence for short-term periods due to the licensee's non-compliance with the following:

- the station’s condition of licence relating to contributions to Canadian talent development (CTD, now known as CCD<sup>8</sup>) (see Broadcasting Decision 2013-452); and
- sections 9(2) (submission of complete annual returns); 8(1), 8(4) through 8(6), and 9(3) (filing of program logs, audio recordings and music lists); and 9(4) (responding to Commission requests) of the Regulations (see Broadcasting Decision 2016-297).

43. In regard to CHMZ-FM, in Broadcasting Decision 2012-694, the Commission approved an application by CHMZ-FM Radio for authority to acquire, from McBride Communications & Media Inc. and Umeek Human Resources Development Inc., partners in West Island Radio Enterprises General Partnership, the assets of CHMZ-FM. In that decision, the Commission granted a new broadcasting licence for the station for a short-term period due to non-compliance with the station’s condition of licence relating to CTD contributions, with regulatory requirements relating to a change in the ownership and control of CHMZ-FM, and with sections 9(2) and 15(2) of the Regulations, which set out requirements relating, respectively, to the submission of complete annual returns and to basic CCD contributions. Subsequently, in Broadcasting Decision 2016-297, the Commission renewed the broadcasting licence for CHMZ-FM for a short-term period due to the licensee’s non-compliance with sections 8(4), 8(5) and 9(3)(b) of the Regulations relating, respectively, to the filing of program logs, audio recordings and music lists.

44. In the following sections, the Commission addresses CHMZ-FM Radio’s and CIMM-FM Radio’s apparent non-compliance during the current licence term with requirements relating to the following:

- the broadcast of Canadian content category 3 musical selections (CHMZ-FM);
- the broadcast of programming in Indigenous languages and the allocation of broadcast time for use by local First Nations groups (CIMM-FM);
- the submission of monitoring materials (CHMZ-FM and CIMM-FM); and
- the broadcast of on-air announcements regarding previous non-compliance (CHMZ-FM and CIMM-FM).

**Broadcast of Canadian content category 3 musical selections (CHMZ-FM)**

45. In a letter dated 5 November 2018, Commission staff informed the licensee that, for the 15 to 21 October 2017 broadcast week, only 9.1% of all musical selections broadcast on CHMZ-FM were Canadian content category 3 musical selections, which is below the required level of 10% set out in section 2.2(3)(b) of the Regulations.

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<sup>8</sup> In Broadcasting Public Notice 2006-158, the Commission replaced the expression “Canadian talent development” with “Canadian content development.”

46. In reply, the licensee noted the “failure of the local operator to recognize the significance of this item.” It added that it intended to update the programming/automation system in order to assist with the management and reporting of the songs and to allow the licensee to print and provide exact Commission reports for all different categories.
47. At the hearing, Mr. Dennison, in his capacity as station manager, acknowledged that the station had been just shy of the 10% threshold set out in the Regulations, but noted that the station has since been broadcasting more than 50% Canadian content, well above the required level.
48. Although the licensee indicated that the non-compliance was due to the failure of the local operator working at the station at the time, it is ultimately the licensee’s responsibility to ensure that its radio station is in compliance with regulatory requirements relating to the broadcast of Canadian musical selections. Accordingly, the Commission find the licensee in non-compliance with section 2.2(3)(b) of the Regulations.

**Broadcast of programming in Indigenous languages and the allocation of broadcast time for use by local First Nations groups (CIMM-FM)**

49. In Broadcasting Decision 2006-69, the Commission approved an application by McBride Communications & Media Inc. for a broadcasting licence to operate a new English-language FM radio station, which would launch as CIMM-FM. In that decision, based on a proposal by the applicant, the Commission imposed the following condition of licence:
2. During each broadcast week, the licensee shall devote a minimum of three hours to programming in Aboriginal languages and an additional three hours for use by local first nations groups.
50. In the letter dated 5 November 2018, Commission staff informed the licensee that during the performance evaluation analysis for CIMM-FM for the 15 to 21 October 2017 broadcast week, no such programming was broadcast. In its reply dated 23 November 2018, the licensee indicated that the station had been unable to create programming in Indigenous languages and programming to be used by local First Nations groups given the absence of participation by Indigenous peoples.
51. The licensee further stated that it was unaware of the attempts by the local employee charged with the development and broadcast of a local initiative involving Indigenous peoples and the creation of content to meet the commitment towards Indigenous programming. It added that the employee is no longer working at the station. The licensee also indicated that it did not realize that contacting the Commission in regard to the situation was a possible recourse.
52. At the hearing, Mr. Dennison confirmed that his involvement in CIMM-FM’s operations began about ten months prior to the hearing, and that he was therefore not involved with the station at the time of the Commission’s monitoring in 2017. He also confirmed that he would adhere to the condition of licence, and stated that he has been actively encouraging local Indigenous peoples to participate in the station’s programming. He indicated that

two disc jockeys from the Indigenous peoples community, who have been given a platform at the station that amounts to about six hours each broadcast week, provide musical and political content on Wednesday nights. Mr. Dennison added that on Fridays, an Elder teaches him how to speak Nu-Chal-Nuth (about three hours per week), and that other Nu-Chal-Nuth speakers will be invited to the station so they can dialogue together. Finally, Mr. Dennison noted that CIMM-FM is currently exceeding the requirements regarding Indigenous programming and that the station has clearly made efforts to actively solicit the participation of local Indigenous peoples.

53. In the Commission's view, the current licensee should have been aware of the former employee's attempts to encourage participation by Indigenous peoples. If the licensee had realized that it was unable to comply with its condition of licence in this regard, it could have, at any point in time, requested assistance by informing the Commission of its situation and by specifying the efforts it had made in order to comply.
54. In light of the above, the Commission finds the licensee in non-compliance with its condition of licence relating to the broadcast of programming in Indigenous languages and the allocation of broadcast time for use by local First Nations groups.

#### **Submission of monitoring materials (CHMZ-FM and CIMM-FM)**

55. As noted above, in Broadcasting Notice of Consultation 2019-303, for both CHMZ-FM and CIMM-FM, the Commission noted the licensees' apparent non-compliance with sections 8(5), 9(3)(a) and 9(3)(b) of the Regulations relating, respectively, to the submission of clear and complete audio recordings, accurate self-assessment reports, and complete and accurate music lists.
56. In regard to section 8(5), approximately five hours of audio was missing from the recordings submitted for CHMZ-FM for 15 October and 18 October 2017. As such, the Commission was unable to confirm the content that was broadcast during those times. Further, the sound quality of the recordings submitted was very poor, and the recordings were often difficult to understand due to static. In the audio recordings submitted for CIMM-FM for 20 October 2017, more than two hours of audio was missing, making it impossible for the Commission to confirm the content broadcast during that time. In both cases, the licensees explained that the missing audio was the result of power outages on the west coast of Vancouver Island.
57. In regard to section 9(3)(a), there were discrepancies between the submitted self-assessment reports for both stations and the number of musical selections identified in the submitted music lists. For CHMZ-FM, the licensee indicated that certain discrepancies were the result of different interpretations of what constitutes a content category 2 (Popular Music) musical selection, whereas others resulted from certain Canadian musical selections being excluded from the music lists given that they were broadcast at the end of the day on 15 October 2017. The licensee did not explain why information regarding the broadcast of content category 3 musical selections was missing from the report. For CIMM-FM, the licensee indicated that the spreadsheet used to calculate the song totals for the self-assessment report included a contextual error on two of the days.

It added that the very slight variance between the totals is probably due to differences between the clock timing used by Commission staff and the clock timing used for the station's spreadsheet calculations.

58. In regard to section 9(3)(b), for CHMZ-FM, the submitted music list for the 15 to 21 October 2017 broadcast week did not include all of the musical selections aired during that week. The licensee explained that the local manager had taken some liberties in playing music without having it log onto the automation system, despite the instructions to keep a log or a record of all songs played on the station. For CIMM-FM, airing times specified in the music list for the same broadcast week did not match the audio files; as such, the number of musical selections broadcast differed from the number indicated in the music list. The licensee explained that the mislabeling of airing times for musical selections was a result of a variation in the system clocks between the machines (either the logging machine or the various programming machines used to carry out the programming).
59. In regard to issues relating to variation in clock timing, the licensees committed to ensuring that, going forward, the logs and computer clocks are synchronized so that they reflect accurate and identical timeframes.
60. In addition, Mr. Dennison, the person currently employed to be in charge of ensuring compliance relating to radio monitoring materials, confirmed that he has acquired for both the stations new systems (Zetta and GSelector) that provide and print exact Commission reports for all different categories. In regard to the missing audio for both stations due to power outages, Mr. Dennison indicated that he has two generators, one at the radio station and one at the transmitter site, and a backup battery power, to ensure that the stations stay on the air.
61. Although the licensees indicated that the non-compliance stemmed in part from slight variances stemming from different technologies used by themselves and by the Commission and different interpretations regarding the classification of musical selections, it was ultimately the licensees' responsibility to ensure that their radio stations were in compliance with regulatory requirements relating to the submission of radio monitoring materials. Consequently, the Commission finds both CHMZ-FM Radio and CIMM-FM Radio in non-compliance with sections 8(5), 9(3)(a) and 9(3)(b) of the Regulations.

**Broadcast of on-air announcements regarding previous non-compliance (CHMZ-FM and CIMM-FM)**

62. In Broadcasting Decision 2016-297, due to the serious and repeated nature of CHMZ-FM's and CIMM-FM's non-compliance during the stations' licence terms ending 31 August 2016, the Commission imposed conditions of licence on both stations requiring the licensees to broadcast announcements regarding their non-compliance, to provide the Commission with the audio recordings for the broadcast days during which the announcements were broadcast, and to file an *Attestation as to the broadcast of the*

*non-compliance announcement* (the attestation form) by no later than 14 days following the final broadcast of the announcements.<sup>9</sup>

63. In letters dated 14 May 2019, Commission staff informed the licensees that neither the audio recordings nor the completed and signed attestation form had been filed for either station by the prescribed deadline (i.e., 28 September 2016). On 28 May 2019, the licensees stated that the stations did broadcast the on-air announcements. Further, they filed two 40-second audio recordings of the announcement for both stations, but not for the broadcast days during which the announcement was broadcast, as specified in the condition of licence.
64. At the hearing, Mr. Dennison, who was the station manager at that time, confirmed that he was aware of the requirement to broadcast on-air announcements, and stated that he recalled playing the announcements. The Commission considers, however, that the licensees were ultimately responsible for ensuring that the required documentation was submitted within the prescribed deadline, which they failed to do for both stations. In the Commission's view, the conditions of licence imposed in Broadcasting Decision 2016-297 to address the serious and repeated nature of CHMZ-FM's and CIMM-FM's non-compliance in the previous licence terms clearly set out the requirement for each station to broadcast on-air announcements.
65. The Commission considers that the condition of licence requiring the broadcast of on-air announcements is very clear and notes that this condition was imposed due to the serious and repeated nature of CHMZ-FM's and CIMM-FM's non-compliance in the previous licence terms. Consequently, the Commission finds both CHMZ-FM Radio and CIMM-FM Radio in non-compliance with their respective conditions of licence, set out in the above-noted appendices to Broadcasting Decision 2016-297, requiring the broadcast of on-air announcements regarding CHMZ-FM's and CIMM-FM's previous non-compliance.

#### **Regulatory measures**

66. 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. Possible regulatory measures include a short-term licence renewal, the imposition of conditions of licence or mandatory orders, or the non-renewal or suspension of the licence.
67. The Commission is satisfied with the measures taken by Mr. Dennison to ensure the stations' future compliance with regulatory requirements relating to the submission of audio recordings, self-assessment reports and music lists. Nevertheless, this is the second

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<sup>9</sup> For CIMM-FM, condition of licence 3 set out in Appendix 1 to Broadcasting Decision 2016-297; for CHMZ-FM condition of licence 2 set out in Appendix 2 to Broadcasting Decision 2016-297.

consecutive licence term during which both CHMZ-FM and CIMM-FM have been in non-compliance with sections of the Regulations relating to the submission of monitoring materials.

68. Further, the Commission is satisfied that Mr. Dennison, who would own and control the current licensees of CHMZ-FM and CIMM-FM following the close of the proposed transaction, has demonstrated a willingness to bring CHMZ-FM into compliance with the regulatory requirement relating to the broadcast of Canadian content category 3 musical selections. However, when a licensee is in non-compliance with requirements relating to music programming, the shortfall in the broadcast of Canadian musical selections deprives certain artists of airplay and royalties, with a resulting harm to the Canadian broadcasting system. Furthermore, Canadian music listeners are deprived of the opportunity to listen to Canadian music, which runs counter to the objectives of the Act regarding safeguarding, enriching and strengthening the cultural fabric of Canada.
69. In regard to CIMM-FM's condition of licence relating to programming in Indigenous languages and programming to be used by local First Nations groups, the Commission considers that the licensee's non-compliance demonstrates its unwillingness to adhere to the station's conditions of licence and its regulatory obligations. Nevertheless, the Commission is encouraged by Mr. Dennison's stated efforts to involve Indigenous peoples in the station's programming, given the importance of such programming for Indigenous communities.
70. Finally, the Commission considers that the condition of licence relating to the broadcast of on-air announcements is very clear. In regard to the requirement set out in that condition of licence, Mr. Dennison stated that he would never have put himself into a similar situation as the stations are currently in. Although the Commission is satisfied that Mr. Dennison will take compliance with regulatory requirements seriously and will adhere to such requirements going forward, this condition of licence was imposed due to the serious and repeated nature of CHMZ-FM's and CIMM-FM's non-compliance in the previous licence terms.
71. It is the responsibility of the licensee of a radio station to ensure that the station is in compliance with its conditions of licence and regulatory requirements at all times. When the Commission last renewed the broadcasting licences for CHMZ-FM and CIMM-FM, it stated that should the licensees again breach their regulatory requirements, it might consider recourse to additional measures, including calling the licensees to a public hearing, or the suspension, non-renewal or revocation of the broadcasting licences under sections 9(1) and 24(1) of the Act. In the Commission's view, under the same circumstances, a responsible licensee would have understood the seriousness of the situation and the Commission's warnings. Despite the unequivocal nature of these warnings, the licensees, all under Mr. McBride's control, have been found in non-compliance for a third consecutive licence term.
72. Nevertheless, the Commission considers that approval of the proposed ownership transaction would be in the public interest. Further, approval of the transaction would ensure that the control of the stations is no longer exercised by Mr. McBride. Given Mr.

McBride's lack of understanding and willingness to comply with CHMZ-FM's and CIMM-FM's conditions of licence, as evidenced by his systematic, repeated, and serious non-compliance over the years, the Commission only finds it warranted to renew the stations' broadcasting licences in conjunction with its approval of the requested change in ownership and effective control of the current undertakings. In other words, the Commission would not have been inclined to renew the licences had controlled continued to be exercised by Mr. McBride.

73. In light of the above, and in light of the measures put in place by Mr. Dennison in his role as station manager and his expressed willingness and capacity to ensure the stations' future compliance with regulatory requirements going forward, the Commission considers it appropriate to renew the broadcasting licences for CHMZ-FM and CIMM-FM for short-term periods until 31 August 2022. This will provide sufficient time for the purchaser to implement the required measures to ensure full compliance, while allowing the Commission to conduct an earlier review of the new licensee's compliance with regulatory requirements. The Commission further considers that it would be appropriate to impose a condition of approval on the renewal of the broadcasting licences for the undertakings, whereby 1193833 B.C., the corporation wholly owned and controlled by Mr. Dennison, must file, by no later than 30 June 2020, a document demonstrating that the transaction approved in the present decision has been completed and that all conditions relating to closing have been satisfied or waived.

## Conclusion

74. In light of all the above, the Commission **approves** the applications by CHMZ-FM Radio Ltd. and CIMM-FM Radio Ltd. for authority to change their ownership and effective control through the transfer of all of their issued and outstanding shares to 1193833 B.C. Ltd.
75. Further, the Commission **renews**, subject to the following **condition of approval**, the broadcasting licences for CHMZ-FM Tofino and CIMM-FM Ucluelet from 1 April 2020 to 31 August 2022:
- 1193833 B.C. Ltd. shall file with the Commission, by no later than **30 June 2020**, a document demonstrating that the transaction approved in the present decision has been completed and that all conditions relating to closing have been satisfied or waived.
76. Should 1193833 B.C. not file the required documentation by that deadline, the Commission will immediately and without further process revoke the broadcasting licences for CHMZ-FM and CIMM-FM. In such case, the Commission would inform the licensees of the revocation by Commission letter and that the licensees would be required to cease operation of the stations as of 1 July 2020.
77. These short term renewals will allow for an earlier review of the licensees' compliance with regulatory requirements. The terms and **conditions of licence** for CHMZ-FM are set

out in Appendix 1 to this decision. The terms and **conditions of licence** for CIMM-FM are set out in Appendix 2.

## Reminders

78. Licensees must comply at all times with the requirements set out in the Act, the Regulations and their conditions of licence.
79. The Commission is charged with the supervision and regulation of the Canadian broadcasting system. The submission of complete and accurate radio monitoring materials enables the Commission to conduct an analysis of a station's programming to verify compliance with regulatory obligations and its conditions of licence. The retention of these radio monitoring materials makes it possible for the Commission to investigate a station's programming in the case of complaints. As such, a licensee's failure to file requested material in a timely manner or to file such material at all affects the Commission's ability 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.
80. Should there once again be a breach of regulatory requirements, the Commission will consider the suspension, non-renewal or revocation of the broadcasting licences under sections 9 and 24 of the Act.
81. Pursuant to section 22 of the Act, the broadcasting licences renewed in this decision will cease to have any force of effect if the broadcasting certificates issued by the Department of Industry lapse.

Secretary General

## Related documents

- *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2019-303, 28 August 2019, as amended by *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2019-303-1, 11 October 2019
- *Various commercial radio programming undertakings – Administrative renewals*, Broadcasting Decision CRTC 2019-256, 16 July 2019
- *CIMM-FM Ucluelet and CHMZ-FM Tofino – Licence renewals*, Broadcasting Decision CRTC 2016-297, 29 July 2016
- *Update on the Commission's approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2014-608, 21 November 2014
- *Simplified approach to tangible benefits and determining the value of the transaction*, Broadcasting Regulatory Policy CRTC 2014-459, 5 September 2014

- *CIMM-FM Ucluelet – Licence renewal*, Broadcasting Decision CRTC 2013-452, 28 August 2013
- *CHMZ-FM Tofino – Acquisition of assets*, Broadcasting Decision CRTC 2012-694, 20 December 2012
- *Conditions of licence for commercial AM and FM radio stations*, Broadcasting Regulatory Policy CRTC 2009-62, 11 February 2009
- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006
- *English-language FM radio station in Ucluelet*, Broadcasting Decision CRTC 2006-69, 14 March 2006
- *Local programming policy for FM radio – Definition of a single-station market*, Public Notice CRTC 1993-121, 17 August 1993

*This decision and the appropriate appendix are to be appended to each licence.*

## **Appendix 1 to Broadcasting Decision CRTC 2020-76**

### **Terms, conditions of licence, expectation and encouragement for the English-language commercial FM radio programming undertaking CHMZ-FM Tofino, British Columbia**

#### **Terms**

The licence will expire 31 August 2022.

#### **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 the undertaking.

#### **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 2020-76**

### **Terms, conditions of licence, expectation and encouragement for the English-language commercial FM radio programming undertaking CIMM-FM Ucluelet, British Columbia**

#### **Terms**

The licence will expire 31 August 2022.

#### **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 the undertaking.
2. During each broadcast week, the licensee shall devote a minimum of three hours to programming in Indigenous languages and an additional three hours for use by local Indigenous Peoples.

#### **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.