



## Broadcasting Decision CRTC 2021-76

PDF version

Reference: Part 1 licence renewal application posted on 10 November 2020

Ottawa, 19 February 2021

**Radio CFXU Club**  
Antigonish, Nova Scotia

*Public record for this application: 2019-1091-9*

### **CFXU-FM Antigonish – Licence renewal**

*The Commission **renews** the broadcasting licence for the low-power, English-language campus radio station CFXU-FM Antigonish, Nova Scotia, from 1 March 2021 to 31 August 2025. This short-term renewal will allow for an earlier review of the licensee's compliance with its regulatory requirements.*

#### **Application**

1. The Commission has the authority, pursuant to section 9(1) of the *Broadcasting Act* (the Act), to issue and renew licences for such terms not exceeding seven years and subject to such conditions related to the circumstances of the licensee as it deems appropriate for the implementation of the broadcasting policy set out in section 3(1) of the Act.
2. On 3 June 2019, the Commission issued Broadcasting Notice of Consultation 2019-194, which listed the radio stations for which the broadcasting licences would expire 31 August 2020 and therefore needed to be renewed to continue their operations. In that notice of consultation, the Commission requested that the licensees of those stations submit renewal applications for their broadcasting licences.
3. In response, Radio CFXU Club (Radio CFXU) filed an application to renew the broadcasting licence for the low-power, English-language campus radio station CFXU-FM Antigonish, Nova Scotia, which expires 28 February 2021.<sup>1</sup>

#### **Intervention and reply**

4. The Commission received an intervention in support of this application from the National Campus and Community Radio Association (NCRA). In its intervention, the NCRA noted that the station is in apparent non-compliance with the *Radio Regulations, 1986* (the Regulations), and tied that apparent non-compliance to a

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<sup>1</sup> The original licence expiry date for this station was 31 August 2020. The licence was administratively renewed from 1 September 2020 until 28 February 2021 as a result of Broadcasting Decision 2020-284.

combination of factors, including the summer and fall 2020 campus shutdown stemming from the COVID-19 pandemic, ongoing staff turnover, insufficient training of new staff, poor communication systems, and a lack of oversight of the station's technical back-up systems. The intervener added that it has offered to help Radio CFXU address these issues by implementing different systems that will help maintain regulatory compliance, improve communications and training systems, and by implementing technical redundancies and oversight. According to the NCRA, based on its own experience, such systems can minimize or eliminate the problem caused by loss of institutional memory. It indicated that Radio CFXU has agreed to such changes, and stated that it has encouraged the station to provide a more detailed plan in its reply to this intervention.

5. In its reply, Radio CFXU confirmed its intent to take all of the steps outlined in the NCRA's intervention. It also described and provided timelines for the projects already underway, including the timelines for their completion, and indicated that the projects should be completed by 1 February 2021.

## **Background**

6. In Broadcasting Decision 2013-649, the Commission found Radio CFXU in non-compliance with section 9(2) of the Regulations relating to the filing of annual returns. Specifically, the licensee did not provide financial statements with CFXU-FM's annual return for the 2010-2011 broadcast year. The Commission determined, however, that this instance of non-compliance was an isolated incident, and that there had been no other instances of non-compliance identified for the same licence term. Further, the Commission considered that the necessary measures had been put into place to ensure future compliance. Accordingly, the Commission renewed the broadcasting licence for the station for a full licence term.

## **Non-compliance**

### **Filing of annual returns**

7. Section 10(1)(i) of the Act authorizes the Commission, in furtherance of its objects, to make regulations requiring licensees to submit to the Commission such information regarding their programs and financial affairs or otherwise relating to the conduct and management of their affairs as the regulations may specify.
8. Pursuant to this authority, the Commission made section 9(2) of the Regulations, which requires licensees to file an annual return, including financial statements, by no later than 30 November of a given 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.
9. According to Commission records, the licensee's annual return for the 2015-2016 broadcast year was filed late, seven months after the 30 November deadline. In addition, the annual returns provided to the Commission for the 2015-2016 through

2017-2018 broadcast years were incomplete as they did not include financial statements.

10. Radio CFXU indicated that the station's financial statements have now been filed with the Commission. It acknowledged, however, that there is a pattern of loss of information during the transitional period leading to the replacement of staff members and managers. The licensee stated that to ensure a smooth transition between each new manager that begins their new term, it would create a new Orientation and Radio Responsibility booklet for incoming managers. This booklet would be provided to any new managers before they take up their duties, so that they may review the licensing and technical requirements of the position. This would be done prior to September's annual arrival so that there are no more delays in getting all the required information to the Commission by no later than the above-noted 30 November deadline. Radio CFXU expressed its confidence that this year's new team at CFXU-FM will complete the new shared management orientation booklet that will record all necessary annual information and task lists that each subsequent new manager will be required to read and immediately address when applicable.
11. In light of the above, the Commission finds the licensee in non-compliance with section 9(2) of the Regulations for the 2015-2016 through 2017-2018 broadcast years.

#### **Commission requests for information**

12. Pursuant to the authority granted by section 10(1)(i) of the Act, the Commission made section 9(4)(b) of the Regulations, which requires licensees to respond to any Commission request for information regarding the licensee's adherence to the conditions of its licence, the Act, the Regulations, industry standards, practices or codes or any other self-regulatory mechanism of the industry.
13. In Broadcasting Notice of Consultation 2019-194, the Commission requested that the licensees listed in the appendix to that notice submit renewal applications for their broadcasting licences by no later than 31 August 2019. According to Commission records, Radio CFXU filed the renewal application for CFXU-FM on 28 October 2019, almost two months after the required deadline.
14. Radio CFXU stated that a lack of email access and training as well as functional issues with the station led to the late filing of the licence renewal application. It further stated that station staff turnover is high due to students being constantly on the move (for example, when students graduate), such that each year there is a period that requires the new team to sort out radio strategies to get into a rhythm. The licensee added that the COVID-19 pandemic situation forced the shuttering of the student union building and CFXU-FM's studios during the summer/fall 2020 period, such that station e-mails and regular mail were not accessible for a period of time, which added to several managerial delays.

15. The licensee reiterated that the new Orientation and Radio Responsibility booklet for incoming managers would allow for a better transition between managers and would help avoid delays in getting all the required information to the Commission. It added that the building General Manager would also be added to the Commission's contact information so that this individual receives copies of any Commission correspondence. Finally, the licensee indicated that it would accept a short-term renewal for CFXU-FM.
16. In light of the above, the Commission finds the licensee in non-compliance with section 9(4)(b) of the Regulations.

### **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 number, recurrence and seriousness of the instances of 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 regard to the licensee's non-compliance with section 9(2) of the Regulations, Commission records indicate that the financial statements for the 2015-2016 through 2017-2018 broadcast years have yet to be filed, despite the licensee's claim to the contrary. Although campus stations are generally run by volunteers and have a higher turnover, the Commission considers that it is the licensee's responsibility to ensure that its regulatory requirements are being met. Consequently, the Commission considers that it would be appropriate to require Radio CFXU to file the missing financial statements for the 2015-2016 through 2017-2018 broadcast years by no later than 90 days from the date of the present decision. A **condition of licence** to that effect is set out in Appendix 1 to this decision.
20. In regard to the licensee's non-compliance with section 9(4)(b) of the Regulations, Commission staff made numerous attempts to contact the licensee to inform it of the impending deadline to submit the renewal application, with no success. In the Commission's view, the reasons the licensee provided for failure to respond are unexceptional in nature. For example, in regard to the claimed impact of the noted shutdown stemming from the COVID-19 pandemic situation, the Commission notes that since the pandemic began in Canada in 2020, it would not have been a factor during the periods when the non-compliance occurred.

21. The Commission has examined the public record for this application and notes the licensee's willingness to ensure the station's compliance with regulatory requirements. In its view, the licensee understands and has taken appropriate measures to ensure future compliance with its regulatory obligations by implementing several business processes. The Commission further notes the commitment made by the NCRA to help Radio CFXU in addressing the issues leading to the various instances of non-compliance, as well as the licensee's willingness to accept the NCRA's guidance. Nevertheless, given the seriousness of the various instances of non-compliance, and given that this is the second consecutive licence term in which Radio CFXU has been found to be in non-compliance with section 9(2) of the Regulations relating to the filing of annual returns, the Commission finds that it would be appropriate to renew the broadcasting licence for CFXU-FM for a short-term period, which will allow for an earlier review of the licensee's compliance with its regulatory requirements.
22. In addition, in light of the serious and recurring nature of Radio CFXU's non-compliance, the Commission finds that it would be appropriate to require Radio CFXU to broadcast on CFXU-FM an on-air announcement regarding its non-compliance once a day, 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 issuance of the present decision. To confirm compliance with this requirement, the licensee must file with the Commission the audio recordings for the broadcast days during which the announcement was broadcast and a completed and signed *Attestation as to the broadcast of the non-compliance announcement on CFXU-FM Antigoinish*, which can be found in Appendix 2 to this decision. A **condition of licence** to that effect is set out in Appendix 1 to this decision.
23. As noted above, this is the second consecutive licence term in which Radio CFXU has been in non-compliance with its requirements relating to the filing of complete annual returns. During the licence renewal process that led to the issuance of Broadcasting Decision 2013-649, the licensee explained that CFXU-FM, as a campus station, experienced high levels of turnover, and that such turnover resulted in the loss of unwritten knowledge given that there are no links between staff that come and go. At that time, it also indicated that several measures had been put in place to ensure a more efficient and effective filing of its annual returns, including the creation of more permanent positions and having the general manager work with the station manager to ensure consistency and knowledge retention.
24. The Commission recognizes the challenges that campus radio stations face, including a high turnover of volunteers. However, the reasons given by the licensee for the station's current non-compliance with sections 9(2) and 9(4)(b) of the Regulations are very similar to those given to explain the station's non-compliance with section 9(2) of the Regulations during the previous licence term. In the Commission's view, this shows that the corrective measures put in place by the licensee have not been sufficient to address its non-compliance with its regulatory requirements. In light of this, the Commission **directs** Radio CFXU to file with the Commission, pursuant to section 9(4) of the Regulations, by no later than **20 May 2021**, the above-noted new Orientation and Radio Responsibility booklet for incoming managers at CFXU-FM.

## **Conclusion**

25. In light of all of the above, the Commission **renews** the broadcasting licence for the low-power, English-language campus radio programming undertaking CFXU-FM Antigonish, Nova Scotia, from 1 March 2021 to 31 August 2025. The **conditions of licence** are set out in Appendix 1 to this decision.

## **Reminders**

### **Annual returns**

26. 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 licensee's responsibility to ensure that all appropriate forms and documentation are included with its annual returns, and to contact the Commission if further clarification is required.

27. Should the licensee continue to be in non-compliance with its regulatory requirements, the Commission may consider recourse to additional measures as part of the next licence renewal process, including the issuance of a mandatory order, or the revocation or non-renewal of the licence.

### **Responding to Commission requests for information**

28. Licensees are required to provide, upon Commission request, information regarding their adherence to regulatory and other requirements. Failure to respond to the Commission's inquiries could lead to non-renewal of the broadcasting licence or its revocation.

### **Force and effect of broadcasting licences**

29. 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 programming undertakings – Administrative renewals*, Broadcasting Decision CRTC 2020-284, 21 August 2020
- *Call for licence renewal applications*, Broadcasting Notice of Consultation CRTC 2019-194, 3 June 2019
- *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
- *CFXU-FM Antigonish – Licence renewal*, Broadcasting Decision CRTC 2013-649, 4 December 2013
- *Filing annual returns for radio programming undertakings*, Broadcasting Information Bulletin CRTC 2011-795, 20 December 2011

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

## Appendix 1 to Broadcasting Decision CRTC 2021-76

### Terms, conditions of licence, expectations and encouragement for the low-power, English-language campus radio programming undertaking CFXU-FM Antigonish, Nova Scotia

#### Terms

The licence will expire 31 August 2025.

#### Conditions of licence

1. The licensee shall adhere to the conditions set out in *Standard conditions of licence for campus and community radio stations*, Broadcasting Regulatory Policy CRTC 2012-304, 22 May 2012, as well as to the conditions set out in the broadcasting licence for the undertaking.
2. The licensee shall submit financial statements for the station for the 2015-2016 through 2017-2018 broadcast years as soon as possible, and by no later than **20 May 2021**.
3. The licensee shall broadcast the following announcement once a day 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 the issuance of *CFXU-FM Antigonish – Licence renewal*, Broadcasting Decision CRTC 2021-76, 19 February 2021 (Broadcasting Decision 2021-76):

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 2021-76, the CRTC determined that this station is in non-compliance with the *Radio Regulations, 1986*. The instances of non-compliance occurred during the 2015-2016 through 2017-2018 broadcast years and are a recurring issue. CFXU-FM has put measures in place to ensure that the instances of non-compliances in question do not reoccur.

The licensee shall file with the Commission the audio recordings for the broadcast days during which the announcement was broadcast and a completed and signed *Attestation as to the broadcast of the non-compliance announcement on CFXU-FM Antigonish*, set out in Appendix 2 to Broadcasting Decision 2021-76, by no later than 14 days following the final broadcast of the announcement.

#### Expectations

As set out in *Campus and community radio policy*, Broadcasting Regulatory Policy CRTC 2010-499, 22 July 2010, the Commission expects all community and campus licensees to file yearly updates on the composition of their boards of directors. These annual updates can be submitted at the time of submission of annual returns, following

annual board of directors' elections or at any other time. Such information may be submitted through the Commission's website.

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

**Encouragement**

The Commission considers that community radio stations should be particularly sensitive to employment equity issues in order to reflect fully the communities they serve. It encourages the licensee to consider these issues in its hiring practices and in all other aspects of its management of human resources.

## Appendix 2 to Broadcasting Decision CRTC 2021-76

### Attestation as to the broadcast of the non-compliance announcement on CFXU-FM Antigonish

In regard to the requirements set out in condition of licence 3 in Appendix 1 to  
*CFXU-FM Antigonish – Licence renewal*, Broadcasting Decision CRTC 2021-76,  
19 February 2021 (Broadcasting Decision 2021-76),

I, \_\_\_\_\_ (NAME), on behalf of  
\_\_\_\_\_ (LICENSEE), certify that the announcement  
regarding CFXU-FM Antigonish's non-compliance with the *Radio Regulations, 1986*  
was duly broadcast once a day 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 the issuance of  
Broadcasting Decision 2021-76, as follows:

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date