



Broadcasting Notice of Public Hearing CRTC 2008-4

Ottawa, 3 April 2008

Notice of consultation and hearing

4 June 2008

Winnipeg, Manitoba

Harmony Broadcasting Corporation called to a Public Hearing

Deadline for submission of interventions/comments: 8 May 2008

The Commission will hold a public hearing on **4 June 2008 at the Fort Garry Hotel, 222 Broadway Avenue, Winnipeg, Manitoba, commencing immediately following the hearing of the applications referenced in Broadcasting Notice of Public Hearing CRTC 2008-3.**

[\[Broadcasting intervention/comments form\]](#)

Please note that the information pertaining to the matters referred to below is only available in the public examination file at the addresses listed in this Notice. However, submissions received from interested parties will be posted on the Commission's Web site.

History

On 29 September 2006, the Commission called Harmony Broadcasting Corporation (Harmony), licensee of the instructional campus radio programming undertaking CJWV-FM Winnipeg to a hearing (Broadcasting Notice of Public Hearing CRTC 2006-8) to discuss its apparent failure to comply with certain conditions of licence noted in Broadcasting Decision CRTC 2004-340, as well as its apparent failure to comply with sections 2.2(8), 8 and 9 of the *Radio Regulations, 1986* (the Regulations). The Commission also noted the licensee's failure to comply with a number of elements of the *Campus Radio Policy* (Public Notice CRTC2000-12) as well as noting a number of complaints regarding the licensee.

In Broadcasting Decision CRTC 2007-37, the Commission issued mandatory orders directing the licensee to comply at all times with the requirements set out in sections 2.2(8), 8 and 9 of the Regulations, regarding the broadcast of Canadian music, the submission of logger tapes and other information and to comply with the conditions of CJWV-FM's licence concerning the broadcast of news, music drawn from Category 3, and formal educational programming. The Commission also required the licensee to file reports related to future compliance and to file other documentation on an annual basis.

In Broadcasting Decision CRTC 2007-37, the Commission further indicated that it might consider additional measures, including suspension, non-renewal or revocation of the licence, if the licensee again breached the Regulations or any conditions of CJWV-FM's licence.

It should be noted that the Commission is also aware that the station has ceased its broadcasting operations since 15 October 2007.

Issues

The Commission is gravely concerned that Harmony has again failed to comply with very basic and fundamental requirements of the Regulations and the consequent uncertainty concerning its adherence to Broadcasting Mandatory Orders CRTC 2007-2 through 2007-6 and its conditions of licence.

The Commission is therefore concerned with the following issues, and will want to discuss these matters in order to determine the appropriate measures:

A. Regulatory Compliance

On two separate occasions, Harmony was asked to provide logger tapes and other pertinent documents for the week of 23 to 29 September 2007 as well as for the week of 7 to 13 October 2007. Although other documents were received for the week of 23 to 29 September 2007, the logger tapes provided were inaccurate as they concerned the week of 23 to 29 July 2006 rather than the week requested. Furthermore, all information and logger tapes requested for the week of 7 to 13 October 2007 have not yet been received despite Commission staff follow-up. These deficiencies represent a breach of Broadcasting Mandatory Order CRTC 2007-1 given its failure to provide the logger tapes and other pertinent documents for the weeks of 23 to 29 September 2007 and 7 to 13 October 2007. Moreover, the Commission also notes a breach of Broadcasting Mandatory Order CRTC 2007 - 2 given the lack of information filed for the week of 7 to 13 October 2007. In addition, the Commission notes the licensee's failure to submit annual returns since 2004 which also constitutes a breach of Mandatory Order 2007-2 and the Regulations.

These deficiencies prevent the Commission from verifying if Harmony has brought itself into compliance with the remainder of the Mandatory Orders outlined in Broadcasting Decision CRTC 2007-37, the Regulations and all of its conditions of licence. This lack of information also does not permit the Commission to fully investigate whether the licensee's operations have been consistent with the *Campus Radio Policy*.

B. Ownership

The Commission notes that, as of 18 May 2007, the entity known as Harmony Broadcasting Corporation was dissolved, to be revived on 18 January 2008. The former board of directors has since resigned, replaced by an entirely new board of directors, pursuant to the terms contained in a letter of offer between 5560731 Manitoba Inc. and Mr. Franc Capozzolo, dated 10 January 2008. Also contained in this letter of offer was a stipulation that Mr. Franc Capozzolo resign as Sole Member of Harmony and that the new Board of Directors grant a favourable vote to Mr. David Asper to become the new Sole Member. The Commission is concerned that this turn of events might have resulted in a change in the governance of this not-for-profit undertaking which could be considered as an apparent change of control. The Commission notes that prior approval for this apparent change of control may be required

pursuant to subsection 11(4) of the Regulations. The licensee has indicated in a letter dated 18 March 2008 that if there is a requirement for a prior authority then the approval can be processed on an expedited basis.

Other matters

It also appears evident that, since the issuance of mandatory orders in January 2007, Harmony has failed to comply with elements of the *Campus Radio Policy*, more specifically in regard to its association with a post-secondary institution.

Process

The Commission intends to inquire into, hear and render determinations with respect to the above noted matters. Therefore, pursuant to sections 12 and 24 of the *Broadcasting Act* (the Act), the Commission calls Harmony Broadcasting Corporation to this public hearing to be held in Winnipeg to show cause:

Why a mandatory order under section 12 of the Act requiring the licensee to conform to the *Radio Regulations, 1986* and to its conditions of licence should not be issued?

Why the Commission should not suspend or revoke the licensee's licence pursuant to sections 9 and 24 of the Act?

As part of the above public hearing, the Commission also intends to inquire into, hear and render determinations with respect to the ownership issue addressed above and accordingly calls Harmony Broadcasting Corporation to show cause why prior Commission approval for the apparent change in control is not required. In the event that prior approval is required, Harmony is also called to show cause why the Commission should grant its approval to the change in control and why further measures such as suspension or revocation of the licensee's license are not warranted.

Important

The Commission notes that additional documents may be added to the public file subsequent to the issuance of this Notice of Public Hearing. Interested parties are accordingly advised to consult the public file for this item on an ongoing basis.

Licensee's address:

1504-201 Portage Avenue
Winnipeg, Manitoba
R3B 3K6
Fax : 204-989-5536
E-Mail : bwortley@aspergroup.com

Examination of documents:

Kensington Building
 275 Portage Avenue
 Suite 1810
 Winnipeg, Manitoba

Public Participation

Deadline for Submissions

8 May 2008

The submission must be received by the CRTC and by the licensee on or before the above-mentioned date. The Commission cannot be held responsible for postal delays.

The submission must include one of the following statements in either the first or the last paragraph:

- 1 - I request to appear at the public hearing.
- 2 - I do not want to appear at the public hearing.

Your submission will be considered by the Commission, and will form part of the public record of the proceeding without further notification to you, provided the procedure set out below has been followed. You will be contacted only if your submission raises procedural questions.

Submit your written submission to the Secretary General of the Commission in **only one** of the following formats:

by using the
[\[Broadcasting intervention/comments form\]](#)

or

by mail to
 CRTC, Ottawa, Ontario K1A 0N2

or

by fax at
 819-994-0218

A true copy **must** be sent to the licensee and proof that this has been done must accompany the submission sent to the Commission.

The Commission advises those who file and serve by electronic mode to exercise caution when using e-mail for service of documents or notification, as it may be difficult to establish that service has occurred.

Before initiating service through electronic mode, please ensure that you will be able to satisfy the Commission, upon request, that service of the notification was completed.

Where the submission is filed by electronic means, the line *****End of document***** should be entered following the last paragraph of the document, as an indication that the document has not been damaged during electronic transmission.

Each paragraph of the document should be numbered.

Your submission should clearly identify the application and indicate whether you support or oppose the application, or if you propose changes to it, include the facts and grounds for your proposal.

In the event that the application is brought to the oral phase of the hearing, and if you wish to appear, you must provide reasons why your written comments are not sufficient and why an appearance is necessary.

Persons requiring communications support such as assistance listening devices and sign language interpretation are requested to inform the commission at least twenty (20) days before the commencement of the public hearing so that the necessary arrangements can be made.

Important notice

Note that all information that you provide as part of this public process, except information granted confidentiality, whether sent by postal mail, facsimile, e-mail or through the Commission's web site at www.crtc.gc.ca, becomes part of a publicly accessible file and will be posted on the Commission's web site. This information includes your personal information, such as your full name, e-mail address, postal/street address, telephone and facsimile number(s), and any other personal information you provide.

The personal information you provide will be used and may be disclosed for the purpose for which the information was obtained or compiled by the Commission, or for a use consistent with that purpose.

Documents received electronically or otherwise will be put on the Commission's web site in their entirety exactly as you send them, including any personal information contained therein, in the official language and format in which they are received. Documents not received electronically will be available in PDF format.

Please note that the information you provide to the Commission as part of this public process is entered into an unsearchable database dedicated to this specific public process. This database is accessible only from the Webpage of this particular public process. As a result, a general search of our Web site with the help of either our own search engine or a third-party

search engine will not provide access to the information which was provided as part of this public process.

Examination of documents

A list of all submissions will be available on the Commission's Web site. An electronic version of all submissions submitted will be accessible from this list. To access the list, select "Lists of interventions/comments" under "Public Proceedings" from the Commission's Web site.

Documents are also available during normal office hours at the local address provided in this notice and at the Commission offices and documentation centres directly involved with this matter or, upon request, within 2 working days, at any other CRTC offices and documentation centres.

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Les Terrasses de la Chaudière
1 Promenade du Portage, Room 206
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Secretary General

This document is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>