



Broadcasting Decision CRTC 2013-458

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Route reference: 2013-220

Ottawa, 29 August 2013

Dufferin Communications Inc.
Toronto, Ontario

Application 2012-1357-9, received 25 October 2012

CIRR-FM Toronto – Licence renewal and complaint concerning explicit programming

The Commission finds that, by broadcasting sexually explicit programming in the afternoon when children are more likely to be listening, the licensee's programming was not consistent with the high standard requirement, as provided under section 3(1)(g) of the Broadcasting Act.

*The Commission also **renews** the broadcasting licence for CIRR-FM Toronto from 1 September 2013 to 31 August 2020.*

Introduction

1. In this decision the Commission addresses the following matters related to the commercial radio station CIRR-FM Toronto, Ontario, which is operated by Dufferin Communications Inc. (Dufferin):
 - a complaint that CIRR-FM broadcast sexually explicit programming that does not meet the requirement of high standard programming set out in section 3(1)(g) of the *Broadcasting Act* (the Act); and
 - the application to renew the broadcasting licence for CIRR-FM.

Complaint – explicit programming

2. On 9 July 2012, the Commission received a complaint from an individual alleging that on 30 May 2012 at 4:17 p.m., CIRR-FM broadcast, without advisories, a program entitled *Slap and Tickle Wednesdays* featuring matters of sex, sexuality and sexual health that featured unduly sexually explicit material at a time when children could be expected to be listening.

Commission's analysis and decision

3. Although this is the first complaint that the Commission has received concerning CIRR-FM's programming, the Commission takes such complaints seriously and notes

that section 3(1)(g) of the Act provides that programming originating from the broadcast undertakings should be of high standard.

4. In assessing high standard, the Commission uses the Canadian Association of Broadcasters' (CAB) *Code of Ethics* (the Code), which applies to members of the Canadian Broadcast Standards Council (CBSC)¹ since it reflects a broad community standard for broadcast ethics that is equally applicable to members and non-members of the CBSC. Section 9(b) of the Code stipulates that radio broadcasters are to ensure that programming on their stations does not contain unduly sexually explicit material, which has been defined by both the CBSC and the Commission to mean too explicit for daytime or early evening radio hours / times of the day when children could reasonably be expected to be listening.
5. In this instance, the Commission notes the program was a detailed discussion of the sexual act of fellatio broadcast at 4:17 p.m., at which time children could be expected to be listening and, therefore, considers the broadcast to have been unduly sexually explicit. Although the Commission agrees with CIRR-FM's argument that it has a right to freedom of expression, the Commission also notes that right is subject to such reasonable limits as can be demonstrably justified, including the need to protect vulnerable groups like children. The Commission is of the view that the station did not take sufficient steps to balance the protection of children with its freedom of expression.

CIRR-FM's advisory board and code of ethics

6. In its licensing decision,² CIRR-FM committed to establishing an Advisory Board whose roles would include reviewing complaints and making available to the Commission, upon request, the minutes of its meetings.
7. However, the Commission notes the lack of detail provided by CIRR-FM regarding its internal code of ethics and mandate of its Advisory Board, and has concerns regarding the station's interpretation regarding the type of material that is appropriate for broadcast over public airwaves.
8. Although, as noted earlier, this is the first complaint that the Commission has received concerning this licensee's programming, it takes this complaint seriously and will ensure that the necessary measures are put in place. Consequently, the Commission directs the licensee to provide to the Commission, no later than 30 days from the date of this decision, CIRR-FM's:
 - code of ethics;

¹ CIRR-FM is not a member of the CBSC and, as such, is not bound by the Code. For this reason, the complaint is being addressed by the Commission.

² Broadcasting Decision 2006-128

- programming policies and processes regarding the broadcast of adult content at times when children could be listening;
- Advisory Board processes for vetting content and preventing inappropriate content from being aired; and
- complaint-resolution process.

Renewal application

9. Dufferin also filed an application to renew the broadcasting licence for CIRR-FM, which expires 31 August 2013.³
10. The Commission received an intervention from the Ontario Ministry of Community Safety and Correctional Services relating to the participation of CIRR-FM in the National Public Alerting System (NPAS), to which the applicant replied. The public record relating to this application can be found on the Commission's website at www.crtc.gc.ca under "Public Proceedings."
11. As specified in its three-year plan, the Commission will be looking at measures to ensure the participation of Canadian broadcasters and telecommunications service providers in the NPAS. Therefore, the Commission will not impose conditions of licence requiring the participation of broadcasters in the NPAS at this time. However, the Commission expects all licensees to voluntarily participate in the NPAS, so that Canadians receive timely warnings of imminent perils.

Non-compliance

12. In Broadcasting Notice of Consultation 2013-220, the Commission noted that the licensee was in apparent non-compliance with its condition of licence relating to Canadian talent development (CTD) contributions for the 2006-2007 broadcast year.
13. The Commission notes that its general practice has been to require that a licensee, in its first year of operation, make a pro-rated payment in an amount representing the number of months the station was in operation during that broadcast year. CIRR-FM began operating in April 2007 and should have made a pro-rated CTD payment of \$16,667 for the 2006-2007 broadcast year. However, no contribution was made in that year.
14. The licensee stated that it did not believe that it was required to make a pro-rated payment of \$16,667 for the 2006-2007 broadcast year. Nevertheless, it stated that it has since paid the pro-rated shortfall.

³ The original expiry date for CIRR-FM's broadcasting licence was 31 August 2012. The licence was administratively renewed until 31 August 2013 as a result of Broadcasting Decision 2012-447.

15. In light of all of the above, the Commission finds the licensee in non-compliance with its condition of licence relating to CTD for the 2006-2007 broadcast year.

Regulatory measures

16. In Broadcasting Information Bulletin 2011-347, the Commission announced a revised approach to non-compliance by radio stations. Specifically, the Commission indicated that each instance of non-compliance would be evaluated in its context and in light of factors such as the quantity, recurrence and seriousness of the non-compliance. The Commission also indicated that it would consider the circumstances of the non-compliance, the arguments provided by the licensee and the measures taken to rectify the situation.

17. The Commission considers that initiatives relating to the development of Canadian content and talent will not only help to develop and advance the careers of emerging Canadian artists but will increase the supply of high-quality Canadian music in a variety of genres and the demand for Canadian music by listeners. Accordingly, it is important that radio licensees make their required contributions to the development of Canadian content and talent.

18. The Commission has reviewed the record for this application and notes the licensee's explanation and that it made up, on its own, the pro-rated contributions in the years that followed. The Commission is therefore of the view that this was an isolated incident as there were no subsequent compliance issues relating to its CTD obligations. Given the circumstances surrounding Dufferin's non-compliance for CIRR-FM, the Commission considers it appropriate to grant a full-term renewal for the station.

Conclusion

19. In light of all of the above, the Commission **renews** the broadcasting licence for CIRR-FM Toronto, Ontario from 1 September 2013 to 31 August 2020. The terms and **conditions of licence** are set out in the appendix to this decision.

Reminders

20. The Commission notes that the licensee has outstanding tangible benefits relating to the transaction as published in Broadcasting Information Bulletin 2009-323. The Commission reminds the licensee that it must fulfill these outstanding obligations.

21. In light of the complaint addressed above, the Commission reminds the licensee that it expects licensees who broadcast open-line programming to adhere to the policy regarding such programming, as set out in Public Notice 1988-213.

22. Pursuant to section 22 of the Act, the Commission reminds the licensee that the broadcasting licence 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 applications received*, Broadcasting Notice of Consultation CRTC 2013-220, 7 May 2013
- *Various radio programming undertakings – Administrative renewals*, Broadcasting Decision CRTC 2012-447, 17 August 2012, as corrected by Broadcasting Decision CRTC 2012-447-1, 22 August 2012
- *Revised approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2011-347, 26 May 2011
- *Applications processed pursuant to streamlined procedures*, Broadcasting Information Bulletin CRTC 2009-323, 2 June 2009
- *Clarifications regarding Canadian content development contributions made by commercial radio stations*, Broadcasting Information Bulletin CRTC 2009-251, 5 May 2009
- *English-language FM radio station in Toronto*, Broadcasting Decision CRTC 2006-128, 5 April 2006
- *New licence form for commercial radio stations*, Public Notice CRTC 1999-137, 24 August 1999
- *Policy regarding open-line programming*, Public Notice CRTC 1988-213, 23 December 1988

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

Appendix to Broadcasting Decision CRTC 2013-458

Terms, conditions of licence, expectations and encouragements for the commercial radio programming undertaking CIRR-FM Toronto, Ontario

Terms

The licence will expire 31 August 2020.

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 amended from time to time.
2. The licensee shall, as an exception to the percentage of Canadian musical selections set out in sections 2.2(8) and 2.2(9) of the *Radio Regulations, 1986* (the Regulations), in any broadcast week:
 - a) devote, in that broadcast week, a minimum of 40% of its musical selections from content category 2 (Popular Music) to Canadian selections broadcast in their entirety; and
 - b) devote, between 6:00 a.m. and 6:00 p.m., in the period from Monday to Friday of the same broadcast week, a minimum of 40% of its musical selections from content category 2 to Canadian selections broadcast in their entirety.

For the purposes of this condition, the terms “broadcast week,” “Canadian selection,” “content category,” and “musical selection” shall have the same meaning as that set out in the Regulations.

Expectations

The Commission expects the licensee to ensure that its open-line programs meet the Commission’s policy regarding open-line programming, as set out in *Policy regarding open-line programming*, Public Notice CRTC 1988-213, 23 December 1988.

Encouragements

The Commission encourages the licensee to join the Canadian Broadcasting Standards Council.

Employment equity

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.