



Broadcasting Decision CRTC 2015-324

PDF version

Reference: 2015-93

Ottawa, 21 July 2015

9116-1299 Québec inc.
Maniwaki, Quebec

Application 2014-0828-7, received 26 August 2014

CFOR-FM Maniwaki – Licence renewal

*The Commission **renews** the broadcasting licence for the French-language commercial radio station CFOR-FM Maniwaki from 1 September 2015 to 31 August 2017.*

This short-term renewal will allow for an earlier review of the licensee's compliance with its conditions of licence and with the Commission's regulatory requirements.

Application

1. 9116-1299 Québec inc. (9116-1299 Québec) filed an application to renew the broadcasting licence for the French-language commercial radio station CFOR-FM Maniwaki, Quebec, which expires 31 August 2015. The Commission did not receive any interventions regarding this application.

Background

2. When it last renewed the broadcasting licence for CFOR-FM (see Broadcasting Decision 2012-703), the Commission determined that the licensee was in non-compliance with its condition of licence regarding its Canadian talent development (CTD) contribution for the 2004-2005 broadcast year, with section 15(2) of the *Radio Regulations, 1986* (the Regulations) regarding its Canadian content development (CCD) contributions for the 2008-2009 and 2009-2010 broadcast years, and with section 9(2) of the Regulations regarding the requirement to file annual returns by the 30 November deadline for the 2004-2005 to 2008-2009 broadcast years.
3. The Commission therefore imposed conditions of licence requiring 9116-1299 Québec to make a \$400 contribution to reflect the shortfall incurred during the 2004-2005 broadcast year and a \$480 contribution relating to the shortfalls incurred during the 2008-2009 and 2009-2010 broadcast years, and to provide proof of payment for these contributions by no later than 8 May 2013. The Commission renewed CFOR-FM's licence for a short-term period, until 31 August 2015.

Non-compliance

4. In Broadcasting Notice of Consultation 2015-93, the Commission stated that 9116-1299 Québec is in apparent non-compliance with requirements relating to CTD and CCD contributions. Specifically, the licensee is in apparent non-compliance with the following:
 - its condition of licence 2, requiring the licensee to pay the \$400 shortfall in CTD for the 2004-2005 broadcast year and provide proof of payment for these contributions by no later than 8 May 2013; and
 - its condition of licence 3, requiring the licensee to pay the \$480 shortfall in CCD for the 2008-2009 and 2009-2010 broadcast years and provide proof of payment for these contributions by no later than 8 May 2013.
5. The licensee did not pay these amounts, nor did it file the required proof of payment, as required by the 8 May 2013 deadline set out in its conditions of licence. In response to deficiency questions from Commission staff, the licensee filed proof of payment for these amounts with the Commission on 20 February 2015. The documentation filed by the licensee indicated that the payments were made to MUSICACTION on 2 February 2015.
6. According to the licensee, the non-compliance in the current licence term resulted from not being properly advised by Commission staff of the distribution of CCD amounts. However, it failed to provide any proof to support its allegations and could have consulted Broadcasting Decision 2012-703—publicly available on the Commission’s website—to be reminded of its obligations. The licensee committed to adhere to the Commission’s obligations in the future.
7. In light of the above, the Commission finds 9116-1299 Québec in non-compliance with its conditions of licence 2 and 3 regarding the payment of CTD/CCD shortfalls by no later than 8 May 2013.

Regulatory measures

8. 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, the arguments provided by the licensee and the actions taken to rectify the situation are also to be considered.
9. Further, it is important that radio station licensees make their required contributions to the development of Canadian content, given that CCD initiatives not only help to develop and advance the careers of emerging Canadian artists but increase the supply of high-quality Canadian music in a variety of genres and the demand for Canadian music by listeners. It is also important that licensees provide, by the required

deadlines, proof of payment to such initiatives so that the Commission may verify licensees' compliance with regulatory requirements and conditions of licence relating to CCD.

10. Since the Commission is charged with the supervision and regulation of the Canadian broadcasting system, a licensee that does not file requested material in a timely manner, or does not file such material at all, affects the ability of the Commission to adequately perform its duty to independently confirm the licensee's adherence to regulatory and licence requirements. These filings also become important indicators of whether the licensee has the willingness, ability and knowledge necessary to bring itself into compliance and maintain such compliance. Given the above, the Commission views any non-compliance as a very serious matter.
11. As set out in Broadcasting Regulatory Policy 2014-554, for stations that are in or appear to be in non-compliance, the following measures may be applied on a case-by-case basis depending on the nature of the non-compliance:
 - renew the licence for a short term;
 - impose additional conditions of licence;
 - call the licensee to a public hearing to respond to and discuss apparent non-compliance;
 - following a public hearing, issue a mandatory order requiring the licensee to comply with regulatory requirements. Such orders are made orders of the Federal Court and can be enforced through contempt of court proceedings;
 - suspend the licence;
 - not renew the licence;
 - revoke the licence
12. In that same regulatory policy, the Commission introduced further measures to address the potential harm that could be caused to the broadcasting system by non-compliance with various regulations and conditions of licence. For serious cases of non-compliance, the Commission considered it appropriate to introduce a measure by which, in certain circumstances, stations in non-compliance would announce that finding on air, an approach similar to that currently used by the Canadian Broadcast Standards Council (CBSC). In regard to non-compliance related to programming and CCD requirements, it considered it appropriate to introduce a measure by which, in certain circumstances, radio station licensees in non-compliance would be required to make additional CCD contributions that are over and above those required by the Regulations and by existing condition of licence, or to direct all further CCD contributions to funds such as FACTOR, MUSICACTION or the Community Radio

Fund of Canada (CRFC), rather than to discretionary initiatives such as talent contests.

13. In regard to the present case, Commission staff asked¹ 9116-1299 Québec to comment on the following ways to address, during the course of the next licence term, the station's repeated non-compliance:
 - measures such as those set out in paragraph 11 above;
 - a requirement to make additional CCD contributions over and above those required pursuant to the Regulations or by condition of licence; and
 - a requirement to announce on air that the station has been in non-compliance and that the licensee has put measures into place to ensure that the non-compliance does not occur again.
14. In reply, the licensee indicated that it had always acted in good faith and had provided proof regarding its contributions to MUSICACTION. Since the shortfall has been paid in full, it stated that it had no other comments regarding the imposition of a condition of licence requiring additional contributions to CCD or other possible sanctions.
15. The licensee has paid the amounts required by its conditions of licence 2 and 3 and has committed to ensure compliance with any CCD obligations going forward. However, the licensee failed to make these payments and file the required proof within the time frame required by the conditions of licence, which were imposed specifically to rectify the non-compliance that it incurred during that previous licence term. By failing to pay these amounts until February 2015, the licensee deprived the broadcasting system of monies that it was owed over a significant period of time and demonstrated a lack of understanding of and respect for its regulatory obligations.
16. Given the nature, extent and recurrence of the non-compliance, a short-term licence renewal of two years for CFOR-FM is appropriate.
17. Further, given the seriousness of the non-compliance, that this is the second consecutive licence term that CFOR-FM has been in a situation of non-compliance, that it was in non-compliance with a condition of licence specifically imposed to address that previous non-compliance and the harm caused to the broadcasting system by the non-compliance, the Commission finds it appropriate to require CFOR-FM to make, by the end of each of the 2015-2016 and 2016-2017 broadcast years, an additional CCD contribution that is over and above those required by the Regulations. Based on sums that were not paid by 8 May 2013, and taking into account the serious and repeated nature of the non-compliance, the Commission finds it appropriate to require, for each of the broadcast years mentioned above, an

¹ in letters dated 21 January 2015 and 19 February 2015

additional contribution of \$880. **Conditions of licence** to that effect are set out in Appendix 1 to this decision.

18. Finally, considering the serious and repeated nature of CFOR-FM's non-compliance and given the potential impact of that non-compliance on Canadians, the Commission finds it appropriate to require 9116-1299 Québec to broadcast three times 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 the present decision, an announcement regarding the licensee's non-compliance. To confirm compliance with this requirement, the licensee must provide to the Commission the audio recordings for the broadcast days during which the announcement was broadcast, and file a completed and signed *Attestation as to the broadcast of the non-compliance announcement on CFOR-FM Maniwaki*, set out in Appendix 2 to this decision, by no later than 14 days following the final broadcast of the announcement. A **condition of licence** to that effect is set out in Appendix 1 to this decision.
19. Should 9116-1299 Québec again breach its regulatory requirements, the Commission may consider recourse to additional measures as noted above, including suspension, non-renewal or revocation of the broadcasting licence for the station under sections 9 and 24 of the *Broadcasting Act* (the Act).

Conclusion

20. In light of all of the above, the Commission **renews** the broadcasting licence for the French-language commercial radio programming undertaking CFOR-FM Maniwaki from 1 September 2015 to 31 August 2017. The **conditions of licence** are set out in Appendix 1 to this decision.

Reminder

21. Pursuant to section 22 of the Act, the broadcasting licence renewed in this decision will cease to have any force or effect if the broadcasting certificate issued by the Department of Industry lapses.

Secretary General

Related documents

- *Notice of applications received*, Broadcasting Notice of Consultation CRTC 2015-93, 17 March 2015
- *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

- *Various commercial radio programming undertakings – Licence renewals*, Broadcasting Decision CRTC 2012-703, 21 December 2012
- *Revised approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2011-347, 26 May 2011

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

Appendix 1 to Broadcasting Decision CRTC 2015-324

Conditions of licence and encouragement for the French-language commercial radio programming undertaking CFOR-FM Maniwaki, Quebec

Conditions of licence

1. The licensee shall adhere to the conditions of licence 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. The licensee shall, by no later than 31 August 2016, make a \$880 contribution to Canadian content development (CCD) that is over and above any CCD contributions required pursuant to the *Radio Regulations, 1986*. This contribution shall be allocated as follows:
 - 45% to FACTOR or MUSICACTION;
 - 40% to any eligible initiative as set out in paragraph 108 of *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006; and
 - 15% to the Community Radio Fund of Canada.

In addition, the licensee shall file, by 30 November 2016 and in a form deemed acceptable by the Commission, proof of payment regarding the additional contribution to CCD as well as supporting documentation for the eligibility of the portion of the contribution not made to FACTOR, MUSICACTION or the Community Radio Fund of Canada.

3. The licensee shall, by no later than 31 August 2017, make a \$880 contribution to Canadian content development (CCD) that is over and above any CCD contributions required pursuant to the *Radio Regulations, 1986*. This contribution shall be allocated as follows:
 - 45% to FACTOR or MUSICACTION;
 - 40% to any eligible initiative as set out in paragraph 108 of *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006; and
 - 15% to the Community Radio Fund of Canada.

In addition, the licensee shall file, by 30 November 2017 and in a form deemed acceptable by the Commission, proof of payment regarding the additional contribution to CCD as well as supporting documentation for the eligibility of the

portion of the contribution not made to FACTOR, MUSICACTION or the Community Radio Fund of Canada.

4. a) The licensee shall broadcast the following announcement three times a day, 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 *CFOR-FM Maniwaki – Licence renewal*, Broadcasting Decision CRTC 2015-324, 21 July 2015 (Broadcasting Decision 2015-324):
 - 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 2015-324, the CRTC determined that this station is in non-compliance with the *Radio Regulations, 1986* and its conditions of licence. The instances of non-compliance occurred during the 2004-2005, 2008-2009 and 2009-2010 broadcast years and are a recurring issue. CFOR-FM has put measures in place to ensure that the non-compliances in question do not reoccur.
- b) The licensee shall provide to the Commission the audio recordings for the broadcast days during which the announcement was broadcast, and file a completed and signed *Attestation as to the broadcast of the non-compliance announcement on CFOR-FM Maniwaki*, set out in Appendix 2 to Broadcasting Decision 2015-324, by no later than 14 days following the final broadcast of the announcement.

Encouragement

In accordance with *Implementation of an employment equity policy*, Public Notice CRTC 1992-59, 1 September 1992, the Commission encourages the licensee to consider employment equity issues in its hiring practices and in all other aspects of its management of human resources.

Appendix 2 to Broadcasting Decision CRTC 2015-324

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

In regard to the requirements set out in condition of licence 4 in Appendix 1 to *CFOR-FM Maniwaki – Licence renewal*, Broadcasting Decision CRTC 2015-324, 21 July 2015 (Broadcasting Decision 2015-324), I, _____ (NAME)

On behalf of _____ (LICENSEE), certify that the announcement regarding CFOR-FM Maniwaki's non-compliance with the *Radio Regulations, 1986* was duly broadcast three times 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 2015-324, as follows:

First date of broadcast:		Times	1:	2:	3:
Second date of broadcast:		Times	1:	2:	3:
Third date of broadcast:		Times	1:	2:	3:
Fourth date of broadcast:		Times	1:	2:	3:
Fifth date of broadcast:		Times	1:	2:	3:

Signature

Date